

1998

**SENATE
JUDICIARY
COMMITTEE**

MINUTES

SENATE JUDICIARY COMMITTEE
1998

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Sen. Fountain Odom, Vice Chair	300-B	3-5707
Sen. R. C. Soles, Vice Chair	2022	3-5963
Sen. Leslie Winner, Vice Chair	409	5-3038
Sen. Brad Miller, Vice Chair	621	3-9349
Sen. Fletcher Hartsell, Vice Chair	518	3-7223
Sen. Robert Carpenter Ranking Minority Member	517	3-5875
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Sen. Frank Ballance	523	5-3032
Sen. Patrick Ballantine	519	3-5856
Sen. John Blust	1117	3-7850
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Sen. Wib Gulley	408	5-3036
Sen. Hamilton Horton	1406	3-3272
Sen. David Hoyle	300-A	3-5734
Sen. John Kerr	526	3-5621
Sen. Howard Lee	405	5-3030
Sen. Jeanne Lucas	620	3-4599
Sen. William Martin	411	5-3042
Sen. Kenneth Moore	1119	3-5745
Sen. Tony Rand	300-C	3-9892
Sen. Eric Reeves	2111	3-3460
Sen. Bob Rucho	1113	3-5650
Sen. Robert Shaw	1129	3-4809
Walker Reagan, Committee Counsel	545	3-2578
Brenda Carter, Co-Counsel	545	3-2578
Bill Gilkeson, Co-Counsel	545	3-2578
Susan Moore, Committee Clerk	2010	3-5664

NORTH CAROLINA GENERAL ASSEMBLY
 COMMITTEE SUMMARY REPORT
 SENATE: JUDICIARY

1997-98 Regular Session

Valid Through 4-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 27=	THOMPSON	INCREASE PENALTY/PYRAMID SCHEMES	*S -RE-REF COM ON APPROPR	05-06-97	06-25-97
H 61=	BROWN	GS 106 OBSOLETE LAWS	*R -CH. SL 97-0074	03-11-97	05-08-97
H 66=	BROWN	TRESPASS/THEFT OF PINE STRAW	*S -RE-REF COM ON APPROPR	03-03-97	04-07-97
H 115=	CULPEPPER	1997 TECHNICAL CORRECTIONS	*R -CH. SL 97-0456	04-22-97	08-19-97
H 137=	BRAWLEY	AGGRAVATING FACTOR/INJURE OFFICIAL	S -RE-REF COM ON APPROPR	02-26-97	06-25-97
H 139=	JUSTUS	CLARIFY SEX OFFENDER REGISTRATION	*R -CH. SL 97-0015	03-13-97	03-20-97
H 141=	JUSTUS	EMBEZZLEMENT/INCREASE PENALTY	*S -RE-REF COM ON APPROPR	03-13-97	06-25-97
H 142=	JUSTUS	ACCESORY AFTER THE FACT/PENALTY	S -RE-REF COM ON APPROPR	03-11-97	04-03-97
H 144=	JUSTUS	VOL MANSLAUGHTER/CLASS D FELONY	S -RE-REF COM ON APPROPR	03-11-97	04-03-97
H 147=	WEATHERLY	OUTLAW DOG FIGHTS	*R -CH. SL 97-0078	04-21-97	05-06-97
H 158	KISER	PRISON OFFENSES/INCREASE PENALTY	S -RE-REF COM ON APPROPR	03-25-97	04-07-97
H 159	KISER	PRISON ESCAPE PENALTIES	S -RE-REF COM ON APPROPR	03-25-97	04-07-97
H 174	NEELY	ACTIVE SENTENCE/TRIAL WAITING TIME	R -CH. SL 97-0079	04-09-97	05-13-97
H 175	NEELY	STRUCT. SENT./TECHNICAL AMENDS	*R -CH. SL 97-0080	04-10-97	05-13-97
H 176	IVES	EQUINE ACTIVITIES/LIABILITY	*R -CH. SL 97-0376	04-29-97	07-16-97
H 183	BOWIE	DWI/FELONY PRIOR RECORD LEVEL	*R -CH. SL 97-0486	04-28-97	08-04-97
H 184	REDWINE	EXEMPT STATE HEALTH PLAN FROM APA	R -CH. SL 97-0278	03-27-97	06-25-97
H 191	HUNTER R	CERT. COPIES/CUSTODY & WILLS	R -CH. SL 97-0081	03-19-97	05-13-97
H 192	HUNTER R	COURTS COMMISSION MEMBERSHIP	R -CH. SL 97-0082	03-26-97	05-13-97
H 195	BOWIE	CLARIFY POST-RELEASE SUPERVISION	R -CH. SL 97-0237	04-09-97	06-10-97
H 197=	CULPEPPER	JUDICIAL TIMBER SALE/SEALED BID	*R -CH. SL 97-0083	03-13-97	05-07-97
H 202=	CULPEPPER	INCREASE MINIMUM UPSET AMOUNT	*R -CH. SL 97-0119	03-05-97	03-19-97
H 203=	CULPEPPER	COURTS SUPPLEMENT CLARK'S CALENDAR	R -CH. SL 97-0058	03-10-97	05-06-97
H 212	BRAWLEY	CLARIFY COMMUNITY-BASED CORRECTION	*S -REF TO COM ON JUDIC	03-27-97	
H 221	CULPEPPER	INITIAL APPEARANCE BY VIDEO	*R -CH. SL 97-0268	02-26-97	06-10-97
H 221	CULPEPPER	INITIAL APPEARANCE BY VIDEO	*R -CH. SL 97-0268	06-11-97	06-12-97
H 222	CULPEPPER	HABITUAL FELON DETERMINATION	*S -REF TO COM ON JUDIC	04-29-97	
H 248=	CLARY	GRADUATED DRIVERS LICENSES	*R -CH. SL 97-0016	03-13-97	03-17-97
H 267	SHERRILL	BOMB THREAT/FELONY-2	*S -REF TO COM ON JUDIC	03-11-97	
H 301	GARDNER	CHILD SUPPORT/FED. REQ.	*R -CH. SL 97-0433	06-19-97	08-11-97

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BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

SENATE: JUDICIARY

Valid Through 4-NOV-1998

1997-98 Regular Session

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 315=	RUSSELL	STATE HIRES MOST QUALIFIED	*S -RE-REF COM ON ST GVT	04-28-97	04-28-97
H 333=	CULPEPPER	CLARIFY ATTY-IN-FACT GIFTS	*S -REF TO COM ON JUDIC	04-23-97	
H 336	EDDINS	VICTIM'S FAMILY WITNESS EXECUTION	*R -CH. SL 97-0070	03-18-97	05-07-97
H 344=	CLARY	MOTOR VEHICLE OCCUPANT RESTRAINTS	*HF-POSTPONED INDEFINITELY	07-15-97	08-05-98
H 349	DICKSON	SALISBURY ST. PARKING	*R -CH. SL 98-0156	08-11-98	09-02-98
H 354	HENSLEY	ELIMINATE CERTIFIED NOTICE	R -CH. SL 98-0058	05-06-97	07-14-98
H 374	BADDOUR	MODIFY VICTIMS COMPENSATION ACT	*R -CH. SL 97-0227	03-18-97	05-06-97
H 389	RAYFIELD	FELONY CHILD ABUSE/INCR. PENALTY	S -REF TO COM ON JUDIC	03-24-97	
H 402	SMITH	EXPUNGE INFRACTIONS	*R -CH. SL 97-0138	05-06-97	05-20-97
H 427	KISER	ASSAULT CORRECTIONS OFFICER	S -REF TO COM ON JUDIC	04-17-97	
H 431=	HOWARD	PUBLIC ASSISTANCE FRAUD	*R -CH. SL 97-0497	05-06-97	08-06-97
H 433=	GULLEY J	CONCEALED HANDGUN EXEMPTION	*R -CH. SL 97-0274	04-29-97	06-16-97
H 448	HACKNEY	GOVERNOR'S D.W.I. INITIATIVE	*R -CH. SL 97-0379	05-06-97	05-26-97
H 465	SUTTON	VOLUN. DISMISSAL/NOTIFY DEFENDANT	*R -CH. SL 97-0228	04-28-97	05-20-97
H 468	DECKER	NC DA'S M.V. RECOMMENDATIONS	*S -REF TO COM ON JUDIC	05-06-97	
H 470=	TALLEN	MEDICAL INVESTIGATORS	*S -RE-REF COM ON COMMERCE	05-06-97	05-07-97
H 477	CANSLER	CPA EXAM AND RECORDS	R -CH. SL 97-0157	03-20-97	05-27-97
H 507	HUNTER R	MANDATORY JAIL FOR SOME D.W.I.	*S -REF TO COM ON JUDIC	05-06-97	
H 523	WILKINS	CONFISCATED GUN/LAW OFFICER USE	*R -CH. SL 97-0356	04-29-97	07-10-97
H 527=	JUSTUS	OPTOMETRY CHANGES	*R -CH. SL 97-0075	04-17-97	05-15-97
H 530	NEELY	PROFESSIONAL CORPORATION ACT AMEND	*R -CH. SL 97-0244	05-06-97	06-10-97
H 533	HACKNEY	EQUIT. DIST./DIVISIBLE PROP.	*R -CH. SL 97-0302	04-21-97	06-12-97
H 534	HACKNEY	SUPPORT ORDERS ENFORCEMENT	*R -CH. SL 98-0176	04-29-97	08-10-98
H 535	HACKNEY	EQUIT. DIST./RETIREMENT RTS.	*R -CH. SL 97-0212	04-17-97	06-10-97
H 579	ALLRED	CAMPAIGN FINANCE CHANGES	*S -PASSED 3RD READING	05-12-98	
H 581	HACKNEY	SEX EXPLOITATION ACT	*R -CH. SL 98-0213	04-29-97	08-13-98
H 584	JARRELL	ATTEMPTING TO ELUDE ARREST	*S -RE-REF COM ON APPROPR	04-29-97	08-12-97
H 588	ALLRED	UNLAWFUL TO REMOVE DOG COLLARS-2	*S -REF TO COM ON JUDIC	04-09-97	
H 594	STARNES	INJURY TO PREGNANT WOMAN	*S -RE-REF COM ON APPROPR	05-06-97	06-17-98
H 597	MCPAHAN	MUNICIPAL LEASE/VENTURE	*R -CH. SL 97-0233	05-06-97	06-09-97

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1997-98 Regular Session

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Valid Through 4-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 611	HACKNEY	INCREASE COMP. FOR ERR. CONVICTION	*R -CH. SL 97-0388	04-28-97	06-09-97
H 611	HACKNEY	INCREASE COMP. FOR ERR. CONVICTION	*R -CH. SL 97-0388	07-16-97	07-17-97
H 615	BONNER	PUBLIC DEFENDER/DISTRICT 16B	R -CH. SL 97-0175	04-23-97	05-27-97
H 618	MITCHELL	WORKERS' COMPENSATION FRAUD	*R -CH. SL 97-0353	04-10-97	07-08-97
H 646	DAUGHTRY	REVISE UCC/CROP LIENS	*R -CH. SL 97-0336	04-23-97	06-10-97
H 652	SHERRILL	AUDITS	*R -CH. SL 97-0526	05-06-97	08-11-97
H 770=	KISER	AMEND MARIJUANA TRAFFICKING AMTS.	*S -RE-REF COM ON APPROPR	04-15-97	07-08-97
H 810	TOLSON	NASH ROOM TAX/ROCKY MOUNT ANNEX	*R -CH. SL 97-0255	06-02-97	06-18-97
H 823	CULPEPPER	REMOVAL/RESIGNATION OF TRUSTEES	*S -REF TO COM ON JUDIC	05-06-97	
H 853	NYE	AMEND PROFESSIONAL CORPORATION ACT	*R -CH. SL 97-0500	05-06-97	08-25-97
H 872=	GOODWIN	AMEND CIVIL PROCEDURE RULES	*S -REF TO COM ON JUDIC	05-06-97	
H 873	HUNTER R	AGE OF UNDISCIPLINED JUVENILES	*S -REF TO COM ON JUDIC	05-06-97	
H 891=	MITCHELL	WORKERS COMPENSATION MEDICAL CARE	*S -REF TO COM ON JUDIC	05-06-97	
H 898	DAUGHTRY	PUBLIC RECORDS LAW AMENDMENTS	*S -RE-REF COM ON RULES &	04-28-97	08-19-97
H 907	BADDOUR	MEDIATED SETTLEMENT/FAMILY ISSUES	*R -CH. SL 97-0229	05-06-97	05-29-97
H 908	BADDOUR	MODIFY RIGHTS OF DECEDENT'S SPOUSE	*S -RE-REF COM ON RULES &	05-06-97	07-07-97
H 908	BADDOUR	MODIFY RIGHTS OF DECEDENT'S SPOUSE	*S -RE-REF COM ON RULES &	07-15-97	08-13-98
H 915	MERCER	FIREFIGHTERS/NO CONFLICT	*R -CH. SL 98-0122	05-06-97	08-06-98
H 929	MORRIS	DOMESTIC VIOLENCE CHANGES-2	*S -REF TO COM ON JUDIC	04-29-97	
H 936	BEALL	LIABILITY FOR LLAMA ACTIVITIES	*S -REF TO COM ON JUDIC	05-06-97	
H 954=	CULPEPPER	SUPREME COURT SESSIONS	R -CH. SL 97-0056	04-29-97	05-06-97
H 958	HIGHTOWER	CONCEALED HANDGUN LAWS AMEND.	*R -CH. SL 97-0238	05-06-97	05-29-97
H 995	IVES	AMEND TRESPASS/SURVEYORS	*S -REF TO COM ON JUDIC	05-06-97	
H 997	NEELY	NOTARY COMMISSION AMENDMENT	*S -RE-REF COM ON COMMERCE	04-28-97	06-23-97
H1008	WATSON	CHIROPRACTIC LICENSURE AMENDMENTS	*R -CH. SL 97-0230	05-06-97	06-03-97
H1012	SEXTON	SHOOTING RANGE PROTECTION	*R -CH. SL 97-0465	05-06-97	08-13-97
H1023	BADDOUR	LIMIT PRETRIAL RELEASE	*R -CH. SL 98-0208	05-06-97	07-16-97
H1049	97 HSE JUDICII	INCREASE CRUELTY TO ANIMALS PENALTY	*S -RE-REF COM ON APPROPR	05-06-97	06-29-98
H1064	FOX	HOUSING AUTHORITY AMENDMENTS-2	*R -CH. SL 97-0473	05-06-97	07-31-97
H1071	CAPPS	PAY RENT TO STAY EJECTMENT	*R -CH. SL 98-0125	05-06-97	08-10-98

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1997-98 Regular Session

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1086	MILLER G	AMEND OFFER OF JUDGEMENT RULE-2	*S -REF TO COM ON JUDIC	05-06-97	
H1087	BAKER	MOTORIZED VEHICLE TRESPASS	*R -CH. SL 97-0487	05-06-97	08-11-97
H1091	BRASWELL	CRIM. RECORD CHECK BY PRIVATE BUS.	*S -REF TO COM ON JUDIC	05-06-97	
H1094	CULPEPPER	REPEAL/RECODIFY RAILROAD LAWS	*R -CH. SL 98-0128	06-16-97	08-12-98
H1114	EDDINS	SWIFT CREEK MANAGEMENT PLAN	*R -CH. SL 98-0192	07-28-97	07-31-97
H1122	GULLEY J	ADMIT DRUG/OPTOM. EVID./COURT SITE	*R -CH. SL 97-0304	05-06-97	07-08-97
H1124	CAPPS	FIRE/RESCUE PERSONNEL RECORDS CHECKS	S -REF TO COM ON JUDIC	05-06-97	
H1132	HUNTER R	DATE RAPE DRUGS	*R -CH. SL 97-0501	05-06-97	08-11-97
H1140	HUNTER R	LITTERING/REQUIRE COMM. SERVICES	*R -CH. SL 97-0518	05-06-97	06-03-97
H1252	MCCOMBS	CRIMINAL TAX PENALTY TO HOME COUNTY	*S -REF TO COM ON JUDIC	06-24-98	
H1354=	BRAWLEY	IMPROVE TORRENS LAW	*S -REF TO COM ON JUDIC	08-10-98	
H1356=	REYNOLDS	ELECTRONIC COMMERCE ACT	*R -CH. SL 98-0127	07-02-98	07-07-98
H1380	HURLEY	COUNTY ABC ENFORCEMENT	*S -REF TO COM ON JUDIC	06-29-98	
H1405	CULPEPPER	SMALL CLAIMS JUDGEMENTS	*R -CH. SL 98-0120	07-08-98	08-04-98
H1405	CULPEPPER	SMALL CLAIMS JUDGEMENTS	*R -CH. SL 98-0120	08-04-98	08-05-98
H1456=	JUSTUS	DEATH BY LETHAL DRUGS	*S -REF TO COM ON JUDIC	06-10-98	
H1474=	MCPAHAN	MV TECHNICAL CHANGES	*R -CH. SL 98-0149	08-10-98	08-13-98
H1583	IVES	DOMESTIC VIOLENCE/ADMIN. OF GRANTS	S -REF TO COM ON JUDIC	07-22-98	
H1720=	CULPEPPER	ADOPTION & SAFE FAMILIES ACT/FUNDS	*H -PRES. TO GOV. 10-28	09-18-98	10-13-98
S 1	GULLEY W	FULL DISCLOSURE ACT OF 1997	*R -CH. SL 97-0515	02-03-97	02-05-97
S 2	GULLEY W	SHORTER ELECTION YEAR	*H -CAL PURSUANT RULE 36 (A)	02-03-97	03-03-97
S 3	JENKINS	LOBBYIST WAITING PERIOD	*H -RE-REF COM ON RULES	02-03-97	02-19-97
S 7=	COOPER	INCREASE DRUG PENALTIES	S -RE-REF COM ON APPROPR	02-03-97	04-03-97
S 8	COOPER	STRUCTURED SENTENCING AMENDMENTS	S -REF TO COM ON JUDIC	02-03-97	
S 9=	MILLER B	EMBEZZLEMENT/INCREASE PENALTY	*S -RE-REF COM ON APPROPR	02-03-97	04-07-97
S 10=	REEVES	ACCESSORY AFTER THE FACT/PENALTY	S -RE-REF COM ON APPROPR	02-03-97	04-03-97
S 11=	GULLEY W	VOL MANSLAUGHTER/CLASS D FELONY	S -RE-REF COM ON APPROPR	02-03-97	04-03-97
S 12	PHILLIPS	HABITUAL DWI/ACTIVE TIME	S -RE-REF COM ON APPROPR	02-03-97	02-11-97
S 13	CONDER	CHANGE PRIMARY DATE-2	S -REF TO COM ON JUDIC	02-03-97	
S 14	JENKINS	RECLASSIFY PRISON OFFENSES	*S -RE-REF COM ON APPROPR	02-03-97	04-07-97

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S 15=	BALLANCE	AGGRAVATING FACTOR/INJURE OFFICIAL	*S -RE-REF COM ON APPROPR	02-03-97	02-11-97
S 16	BALLANCE	CLARIFY COMMUNITY-BASED CORRECTIONS	*R -CH. SL 97-0057	02-03-97	03-20-97
S 21	CONDER	AUTHORIZATION FOR POLITICAL ADS	S -REF TO COM ON JUDIC	02-03-97	
S 27	RAND	VETO PROCEDURAL CHANGES	*R -CH. SL 97-0001	02-03-97	02-06-97
S 29=	JORDAN	INCREASE PENALTY/PYRAMID SCHEMES	S -RE-REF COM ON APPROPR	02-03-97	04-03-97
S 30	JORDAN	SPEEDING IN A WORK ZONE	*R -CH. SL 97-0488	02-03-97	04-30-97
S 39	SHAW L	MODIFY SETOFF DEBT COLLECTION	*R -CH. SL 97-0490	02-03-97	04-01-97
S 46	MCDANIEL	FELONY TO SHOOT A HORSE	S -REF TO COM ON JUDIC	02-05-97	
S 55	HORTON	CHANGE PRIMARY DATE-3	S -REF TO COM ON JUDIC	02-06-97	
S 57	MCDANIEL	GUILTY BUT MENTALLY ILL	S -REF TO COM ON JUDIC	02-06-97	
S 61=	HARTSELL	MUNICIPAL INCORP. STUDY	*S -RE-REF COM ON RULES &	02-06-97	04-30-97
S 62=	HARTSELL	ANNEXATION/MUNICIPAL SERVICES	S -RE-REF COM ON ST GVT	02-06-97	04-29-97
S 63=	HARTSELL	ANNEXATION CHANGES	S -REF TO COM ON JUDIC	02-06-97	
S 68	HOYLE	FEDERAL DRIVER'S PRIVACY ACT	S -REF TO COM ON JUDIC	02-10-97	
S 73=	ALBERTSON	GS 106 OBSOLETE LAWS	S -REF TO COM ON JUDIC	02-10-97	
S 75=	ALBERTSON	TRESPASS/THEFT OF PINE STRAW	*S -RE-REF COM ON APPROPR	02-10-97	04-07-97
S 79	HARTSELL	REPEAL MORE ANTIQUATED LAWS	R -CH. SL 97-0014	02-10-97	02-25-97
S 86=	HARTSELL	FAST-TRACK TECHNICAL AMENDMENTS	*R -CH. SL 97-0009	02-11-97	02-18-97
S 87=	HARTSELL	INVESTMENT SECURITIES UCC REWRITE	S -REF TO COM ON JUDIC	02-11-97	
S 89=	HARTSELL	1997 TECHNICAL CORRECTIONS	S -REF TO COM ON JUDIC	02-12-97	
S 90=	HARTSELL	REPEAL UCC BULK TRANSFERS	S -REF TO COM ON JUDIC	02-12-97	
S 92	BALLANCE	JUVENILE COURT CHANGES	S -REF TO COM ON JUDIC	02-12-97	
S 95	RAND	VALIDATE NOTARIAL ACTS	*R -CH. SL 97-0019	02-12-97	02-25-97
S 102	MCDANIEL	BOMB THREAT/FELONY	*S -RE-REF COM ON APPROPR	02-12-97	04-07-97
S 103	EAST	CONCEALED HANDGUN/LAW OFFICER	S -REF TO COM ON JUDIC	02-13-97	
S 106	COOPER	SALE OF PROPERTY FOR UNPAID TAXES	*R -CH. SL 97-0121	05-15-97	05-20-97
S 115	GULLEY W	COMMUNITY PENALTIES/RECORD CHECKS	S -REF TO COM ON JUDIC	02-17-97	
S 116	GULLEY W	JURISDICTIONAL AMOUNT INCREASE	S -REF TO COM ON JUDIC	02-17-97	
S 117=	GULLEY W	MODIFY TWO DMV DEFINITIONS	S -REF TO COM ON JUDIC	02-17-97	
S 128=	ODOM	NO INS. POINTS/15 MPH OVER LIMIT	*S -RE-REF COM ON JUDIC	04-30-97	

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S 132	ODOM	CLERKS/YEAR'S ALLOWANCE	*R -CH. SL 97-0310	02-17-97	04-17-97
S 135=	ODOM	CLARIFY SEX OFFENDER REGISTRATION	S -REF TO COM ON JUDIC	02-17-97	
S 143	RAND	BAN TOBACCO SALES TO MINORS	*R -CH. SL 97-0434	02-17-97	03-10-97
S 146	RAND	CLERKS OF COURT ON COMMISSIONS	S -REF TO COM ON JUDIC	02-17-97	
S 148=	WINNER	MOTOR VEHICLE OCCUPANT RESTRAINTS	S -REF TO COM ON JUDIC	02-17-97	
S 149=	COOPER	GRADUATED DRIVERS LICENSES	*S -RE-REF COM ON FINANCE	02-17-97	03-05-97
S 152=	COOPER	SERVICE OF ADMIN. SEARCH WARRANTS	H -RE-REF COM ON JUDICI	02-17-97	03-20-97
S 155	ODOM	ADMIN. RULES/SCOPE OF REVIEW	S -REF TO COM ON JUDIC	02-17-97	
S 156=	HARTSELL	AMEND MEDICAL PROVIDERS' LIENS	S -REF TO COM ON JUDIC	02-17-97	
S 159=	HARTSELL	COURTS SUPPLEMENT CLARK'S CALENDAR	S -REF TO COM ON JUDIC	02-17-97	
S 160=	HARTSELL	INCREASE MINIMUM UPSET AMOUNT	S -REF TO COM ON JUDIC	02-17-97	
S 161=	HARTSELL	JUDICIAL TIMBER SALE/SEALED BID	S -REF TO COM ON JUDIC	02-17-97	
S 162=	HARTSELL	ADOPTION TECHNICAL AMENDMENTS	*R -CH. SL 97-0215	02-17-97	04-22-97
S 170	CARPENTER R	EQUINE ACTIVITY LIABILITY-2	S -REF TO COM ON JUDIC	02-18-97	
S 187=	KERR	APA TECHNICAL CHANGES	R -CH. SL 97-0034	02-19-97	03-11-97
S 202	BALLANTINE	GANG CRIME/ENHANCED PENALTIES	*S -RE-REF COM ON APPROPR	02-20-97	04-07-97
S 214=	LEDBETTER	BOMB THREAT/FELONY-2	S -REF TO COM ON JUDIC	02-20-97	
S 228=	WINNER	CHILD ABUSE REPORT PENALTY	*H -REF TO COM ON JUDICII	02-24-97	04-29-97
S 240	GULLEY W	LIMIT FUND-RAISING IN SESSION	*HF-POSTPONED INDEFINITELY	02-25-97	04-17-97
S 247	RAND	REMOVE SUNSET/HLTH CONTRACT CONFID.	*R -CH. SL 97-0123	02-26-97	03-12-97
S 248	DALTON	BROUGHTON HOSPITAL SECURITY FORCE	*R -CH. SL 97-0320	02-26-97	04-03-97
S 250	WELLONS	CLARIFY PERFECTION-SECUR. INTEREST	*R -CH. SL 97-0386	02-26-97	04-14-97
S 251	WELLONS	CREATION OF EASEMENTS BY LANDOWNER	*R -CH. SL 97-0333	02-26-97	04-14-97
S 263	ODOM	WORKERS' COMP/NONRESIDENT ALIENS	*R -CH. SL 97-0301	02-27-97	04-28-97
S 264	HORTON	LIABILITY FOR JOB REFERENCES	*R -CH. SL 97-0478	02-27-97	04-17-97
S 264	HORTON	LIABILITY FOR JOB REFERENCES	*R -CH. SL 97-0478	07-23-97	08-14-97
S 267	KINCAID	LEGISLATIVE SESSION LENGTH	S -RE-REF COM ON SEL-LMT	02-27-97	04-22-97
S 279=	MILLER B	UNIFORM FRAUDULENT TRANSFER ACT	S -REF TO COM ON JUDIC	03-03-97	
S 281	ODOM	LEFT TURN ON RED	S -REF TO COM ON JUDIC	03-03-97	
S 285	WINNER	AMEND SHOPLIFTING LAW	*S -RE-REF COM ON APPROPR	03-03-97	04-14-97

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S 296	ALBERTSON	CAMPAIGN PLEDGE	*S -RE-REF COM ON JUDIC	03-05-97	03-19-97
S 296	ALBERTSON	CAMPAIGN PLEDGE	*S -RE-REF COM ON JUDIC	03-20-97	
S 309=	MARTIN W	CHILD FATALITY TASK FORCE RECORDS	S -REF TO COM ON JUDIC	03-05-97	
S 311=	MARTIN W	SMOKE DETECTOR PENALTIES	*S -RE-REF COM ON APPROPR	03-05-97	04-30-97
S 311=	MARTIN W	SMOKE DETECTOR PENALTIES	*S -RE-REF COM ON APPROPR	07-15-97	08-13-97
S 313=	DANNELLY	PUBLIC ASSISTANCE FRAUD	S -REF TO COM ON JUDIC	03-05-97	
S 320	RAND	NURSES' TRAINING	*R -CH. SL 97-0375	03-06-97	04-14-97
S 324	BALLANCE	CONCEALED HANDGUNS/LIABILITY	*S -RE-REF COM ON JUDIC	03-06-97	04-28-97
S 324	BALLANCE	CONCEALED HANDGUNS/LIABILITY	*S -RE-REF COM ON JUDIC	04-29-97	
S 325=	ODOM	CONCEALED HANDGUN EXEMPTION	*H -REF TO COM ON RULES	03-10-97	04-24-97
S 331=	REEVES	AGRICULTURE EMPLOYER APPEALS	S -REF TO COM ON JUDIC	03-10-97	
S 348	WELLONS	WAIVE JURY TRIAL/CONST. AMEND	S -REF TO COM ON JUDIC	03-10-97	
S 349	SHAW R	HABITUAL IMPAIRED DRIVING	S -REF TO COM ON JUDIC	03-10-97	
S 353=	RAND	ADD NCCJETSC MEMBER	S -REF TO COM ON JUDIC	03-11-97	
S 359	ALBERTSON	INSANITY DEFENSE/COND. RELEASE	S -REF TO COM ON JUDIC	03-11-97	
S 360	ALBERTSON	BOAT NUMBER FEES	*H -RE-REF COM ON FINANCE	03-11-97	06-12-97
S 364	PAGE	1997 CHILD PROTECTION ACT	S -REF TO COM ON JUDIC	03-11-97	
S 368	ODOM	GOVERNOR'S D.W.I. INITIATIVE	S -REF TO COM ON JUDIC	03-11-97	
S 370	ODOM	COMMERCIAL ARBITRATION AMEND	*R -CH. SL 97-0141	03-11-97	04-01-97
S 371	ODOM	INTERNATIONAL COMM. CONCILIATION	*R -CH. SL 97-0368	03-11-97	04-30-97
S 372	ODOM	TIME LIMITS FOR FOREIGN SERVICE	*R -CH. SL 97-0469	03-11-97	04-30-97
S 373	ODOM	CONTRACTS AGAINST PUBLIC POLICY	S -REF TO COM ON JUDIC	03-11-97	
S 376	WARREN	CAMPUS LAW ENFORCEMENT	R -CH. SL 97-0194	03-12-97	04-22-97
S 377=	ALLRAN	UPPER CATAWBA/PERSONAL WATERCRAFT	S -REF TO COM ON JUDIC	03-12-97	
S 381	GULLEY W	N.C. CLEAN ELECTION ACT	*S -RE-REF COM ON APPROPR	03-12-97	06-04-97
S 384	DALTON	ROBBERY WITNESS STUDY	*S -RE-REF COM ON RULES &	03-13-97	08-11-97
S 386=	BALLANTINE	CLARIFY ATTY-IN-FACT GIFTS	S -REF TO COM ON JUDIC	03-13-97	
S 393	RAND	FAIL COMM. SERVICE/REVOKE LICENSE	*R -CH. SL 97-0234	03-17-97	03-26-97
S 394	RAND	MODIFY VICTIMS COMPENSATION ACT-2	S -REF TO COM ON JUDIC	03-17-97	
S 402	WEBSTER	DEBTOR PROTECTION/SIMPLE IRAS	H -REF TO COM ON JUDICI	03-17-97	04-22-97

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S 403	BALLANCE	RESTORATION OF RIGHTS	S -REF TO COM ON JUDIC	03-17-97	
S 409	SHAW R	AIRPORT LAW ENFORCEMENT	*R -CH. SL 97-0143	03-18-97	04-30-97
S 430=	ODOM	INDUSTRIAL HYGIENISTS	*R -CH. SL 97-0195	03-19-97	04-28-97
S 440=	PLYLER	N.C. NATIONAL GUARD AUTHORITY	S -REF TO COM ON JUDIC	03-20-97	
S 444	HARTSELL	SIMPLIFY CRIMINAL DISCOVERY	S -REF TO COM ON JUDIC	03-20-97	
S 451=	BALLANCE	COMPENSATE ERRONEOUSLY CONVICTED	S -RE-REF COM ON JUDIC	03-24-97	04-24-97
S 451=	BALLANCE	COMPENSATE ERRONEOUSLY CONVICTED	S -RE-REF COM ON JUDIC	06-04-97	
S 452	COOPER	LOCAL REG. ADULT ENTERTAINMENT	*R -CH. SL 98-0046	03-24-97	04-09-97
S 456	REEVES	CARTWAYS SUNSET OFF	SF-FAILED 2ND READING	03-24-97	04-22-97
S 458=	SHAW R	AMEND MARIJUANA TRAFFICKING AMTS	S -REF TO COM ON JUDIC	03-24-97	
S 462	LEE	AMEND RESIDENCY FOR TUITION	S -REF TO COM ON JUDIC	03-24-97	
S 498=	ODOM	WORKERS' COMP/PHYSICIAN SELECTION	S -REF TO COM ON JUDIC	03-25-97	
S 515	DALTON	PRELITIGATION INS. INFO./MEDIATION	H -REF TO COM ON INS	03-26-97	04-17-97
S 517	BALLANCE	CALENDARING CRIMINAL CASES	S -REF TO COM ON JUDIC	03-26-97	
S 530=	RAND	ROLLER SKATING RINK LIABILITY	S -REF TO COM ON JUDIC	03-27-97	
S 540=	MILLER B	STANDARDIZE LAW ENF. DISCIPLINE	S -REF TO COM ON JUDIC	03-27-97	
S 542	SHAW R	TAUNT POLICE ANIMAL	S -REF TO COM ON JUDIC	03-27-97	
S 551	COOPER	AMEND OFFER OF JUDGMENT RULE	S -REF TO COM ON JUDIC	03-27-97	
S 554	HARTSELL	PATERNITY/PARENTAL SUPPORT	R -CH. SL 97-0154	03-27-97	04-30-97
S 561	ODOM	COMPANY POLICE/ CONCEALED HANDGUNS	*R -CH. SL 97-0441	04-01-97	04-29-97
S 571	DALTON	CONTROLLED SUBSTANCE/SCHEDULE II	R -CH. SL 97-0385	04-01-97	04-22-97
S 572	GULLEY W	MODIFIED AT-LARGE ELECTION METHODS	S -REF TO COM ON JUDIC	04-01-97	
S 573=	GULLEY W	ELECTION LAW REFORM	*H -RE-REF COM ON ELE-LAW	04-01-97	04-30-97
S 610	MILLER B	INSURER DISCRI./ABUSED PERSONS	S -REF TO COM ON JUDIC	04-01-97	
S 627	MILLER B	DOMESTIC VIOLENCE CHANGES	*R -CH. SL 97-0471	04-01-97	04-16-97
S 628	MILLER B	DOMESTIC VIOLENCE MISDEMEANOR	S -REF TO COM ON JUDIC	04-01-97	
S 658	KERR	WORKERS' COMPENSATION FRAUD	S -REF TO COM ON JUDIC	04-02-97	
S 663	RUCHO	ABSENTEE VOTING CHANGES	*H -REF TO COM ON ELE-LAW	04-02-97	04-29-97
S 667=	REEVES	AMEND STALKING LAW	*R -CH. SL 97-0306	04-02-97	04-15-97
S 674	ODOM	SEX OFFENDER REGISTRY/PUBLIC INFO	S -REF TO COM ON JUDIC	04-02-97	

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S 675	ODOM	STATEWIDE SEX OFFENDER REGISTRY	S -REF TO COM ON JUDIC	04-02-97	
S 676=	ODOM	SEX OFFENDER LAWS/FED. COMPLIANCE	*R -CH. SL 97-0516	04-02-97	05-20-97
S 691=	GULLEY W	OUTLAW DOG FIGHTS	S -REF TO COM ON JUDIC	04-03-97	
S 695	HARTSELL	IMMUNITY FOR PUBLIC SCH. VOLUNTEER	S -REF TO COM ON JUDIC	04-03-97	
S 708	COOPER	ELECTION ACT OF 1998-2	*H -CAL PURSUANT RULE 36 (A)	04-07-97	04-22-97
S 716=	PERDUE	UNEMPL. BENEFITS/SEVERANCE PAY	S -REF TO COM ON JUDIC	04-07-97	
S 725	MILLER B	STATE EMPLOYEE INCENTIVE BONUS	*R -CH. SL 97-0513	04-07-97	04-29-97
S 741	DANNELLY	CHARLOTTE PHOTO ENFORCEMENT	*R -CH. SL 97-0216	04-07-97	04-28-97
S 744=	RAND	GRANDPARENTS' CHILD SUPPORT	H -RE-REF COM ON RULES	04-07-97	04-30-97
S 759	COOPER	GUILTY BUT MENTALLY ILL-2	S -REF TO COM ON JUDIC	04-08-97	
S 762	HORTON	INSANITY DEFENSE/BURDEN OF PROOF	S -REF TO COM ON JUDIC	04-08-97	
S 763=	COOPER	CRIME VICTIMS RIGHTS ACT	*H -CAL PURSUANT RULE 36 (A)	04-08-97	08-26-98
S 764=	KERR	WORKERS COMPENSATION MEDICAL CARE	*R -CH. SL 97-0308	04-09-97	04-29-97
S 782	CARRINGTON	CLONING OF HUMAN BEING POHIBITED	S -REF TO COM ON JUDIC	04-10-97	
S 786	MARTIN W	VOC. REHAB. SUBROGATION CHANGE	H -REF TO COM ON HR	04-10-97	04-24-97
S 791=	BALLANCE	OSHA WITNESS STATEMENTS	*H -REF TO COM ON COMM	04-10-97	04-29-97
S 793=	CONDER	OPTOMETRY CHANGES	S -RE-REF COM ON FINANCE	04-10-97	07-17-97
S 795	WINNER	PRODUCT LIABILITY LIMITATION	S -REF TO COM ON JUDIC	04-10-97	
S 799	COOPER	DISCIPLINE DISCLOSURE ACT	*H -REF TO COM ON PUBEMP	04-10-97	04-30-97
S 800	COOPER	JUDICIAL STDS. EXEC. SECRETARY	R -CH. SL 97-0072	04-10-97	04-24-97
S 810	WEBSTER	1997 PERSONAL PROTECTION ACT	S -REF TO COM ON JUDIC	04-10-97	
S 825	PAGE	CANDIDATE ACCOUNTABILITY	*H -REF TO COM ON ELE-LAW	04-14-97	04-30-97
S 827=	MILLER B	AMEND CIVIL PROCEDURE RULES	S -REF TO COM ON JUDIC	04-14-97	
S 834=	BALLANCE	COURT IMPROVEMENT ACT	S -RE-REF COM ON SEL-CRT	04-14-97	04-15-97
S 835=	BALLANCE	COURT IMPROVEMENT ACT/CONSTITUTION	S -RE-REF COM ON SEL-CRT	04-14-97	04-15-97
S 842	RAND	ARCHITECTURAL LICENSE EXEMPTION	*R -CH. SL 97-0457	04-15-97	04-24-97
S 844	HOYLE	STRENGTHEN OPEN GOVERNMENT	*R -CH. SL 97-0290	04-15-97	04-28-97
S 844	HOYLE	STRENGTHEN OPEN GOVERNMENT	*R -CH. SL 97-0290	04-29-97	05-01-97
S 853	CONDER	REVENUE OFFICERS' POLICE POWERS	*R -CH. SL 97-0503	04-15-97	06-17-97
S 855=	BALLANCE	COURT INFORMATION REMOTE ACCESS	R -CH. SL 97-0199	04-15-97	04-29-97

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S 862	LEE	UNC CONTRACTS NEGOTIATIONS	*R -CH. SL 97-0412	04-15-97	04-28-97
S 864	MCDANIEL	UPDATE AND REVISE TRADEMARK ACT	*R -CH. SL 97-0476	04-15-97	04-29-97
S 870	RAND	AMEND MARIJUANA TRAFFICKING AMTS-2	S -REF TO COM ON JUDIC	04-15-97	
S 877	LEDBETTER	SPEED TO ELUDE ARREST-2	S -REF TO COM ON JUDIC	04-15-97	
S 885	GULLEY W	NOTICE OF EXECUTION	*R -CH. SL 97-0289	04-15-97	04-30-97
S 893	WEINSTEIN	REGULATING CHARITABLE BINGO	S -REF TO COM ON JUDIC	04-16-97	
S 896	RAND	LEGAL REPRESENTATION/CORPORATIONS	*R -CH. SL 97-0203	04-16-97	04-29-97
S 897	RAND	AMEND ELEC. SURVEILLANCE LAW	*R -CH. SL 97-0435	04-16-97	04-29-97
S 902=	RAND	SUPREME COURT SESSIONS	S -REF TO COM ON JUDIC	04-16-97	
S 904	HOYLE	IMPLEMENT SESSION LIMITS	H -REF TO COM ON ELE-LAW	04-16-97	04-22-97
S 905	HOYLE	SESSION LENGTH LIMITS	*H -CAL PURSUANT RULE 36 (A)	04-16-97	04-22-97
S 907	LEDBETTER	MSD AMENDMENTS	S -REF TO COM ON JUDIC	04-17-97	
S 909	DALTON	BREAK & ENTER/STEAL GUN	S -REF TO COM ON JUDIC	04-17-97	
S 910	DALTON	LIMITATIONS FOR OFFICIAL BONDS	*R -CH. SL 97-0297	04-17-97	04-23-97
S 920	ODOM	ENHANCED SENTENCE/FIREARM FELONIES	S -REF TO COM ON JUDIC	04-17-97	
S 922	ODOM	AMEND HABITUAL FELON LAW	S -REF TO COM ON JUDIC	04-17-97	
S 923	ODOM	COMM. REALTOR LIEN STUDY	*S -RE-REF COM ON RULES &	04-17-97	07-31-97
S 927	COOPER	POSITIVE CAMPAIGNS	S -REF TO COM ON JUDIC	04-17-97	
S 935	PERDUE	MANAGED CARE/UTILIZ. & GRIEVANCE	*H -REF TO COM ON RULES	04-17-97	06-03-97
S 943	RAND	MEDICAID FALSE CLAIMS ACT	*R -CH. SL 97-0338	04-17-97	04-28-97
S 948	GULLEY W	MULTIPLE COMMISSIONS/CAMPUS POLICE	S -REF TO COM ON JUDIC	04-17-97	
S 950	GULLEY W	JUVENILE HEARING OFFICERS	S -RE-REF COM ON RULES &	04-17-97	05-06-97
S 951	GULLEY W	ABSENTEE TECHNICAL AMENDMENTS	S -REF TO COM ON JUDIC	04-17-97	
S 952	GULLEY W	ELECTION CYCLE CONTRIBUTION LIMIT	S -REF TO COM ON JUDIC	04-17-97	
S 957=	HOYLE	ENVIRONMENTAL AUDITS	S -REF TO COM ON JUDIC	04-17-97	
S 961	ALLRAN	CHILD BICYCLE SAFETY ACT	S -REF TO COM ON JUDIC	04-17-97	
S 970	REEVES	INFRACTION/LOCAL ORDINANCE	S -REF TO COM ON JUDIC	04-21-97	
S 982=	JENKINS	HOUSING AUTHORITY AMENDMENTS	S -REF TO COM ON JUDIC	04-21-97	
S 991	MCDANIEL	CONCEALED HANDGUN AMENDMENTS	S -REF TO COM ON JUDIC	04-21-97	
S 997	PLYLER	IGNORE EMERGENCY WARNING	*R -CH. SL 97-0232	04-21-97	04-30-97

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S 998	PLYLER	FRAUD/"PRETEND" CRIME VICTIM	H -REF TO COM ON JUDICII	04-21-97	04-30-97
S 999	LEDBETTER	LAND SURVEYORS ENTRY ON LAND	S -REF TO COM ON JUDIC	04-21-97	
S1005=	GULLEY W	HEALTH CARE INFORMATION PRIVACY	S -RE-REF COM ON RULES &	04-21-97	05-06-97
S1012=	RUCHO	PUBLICATION OF APPELLATE DECISIONS	S -RE-REF COM ON FINANCE	04-21-97	04-30-97
S1014	COOPER	JUDICIAL SELECTION	S -REF TO COM ON JUDIC	04-21-97	
S1021	KINNAIRD	DISPUTE RESOLUTION COMMISSION	S -REF TO COM ON JUDIC	04-21-97	
S1024=	COOPER	SHERIFFS' COMM'N AMENDMENTS	S -RE-REF COM ON ST GVT	04-21-97	04-28-97
S1026	BLUST	OPEN RECORDS/IDENTITY OF JUVENILES	S -REF TO COM ON JUDIC	04-21-97	
S1028	MILLER B	SUBCONTRACTOR CLAIMS AGAINST OWNERS	H -REF TO COM ON RULES	04-21-97	04-28-97
S1033	WEBSTER	REWARD ABILITY AT WORK AND SCHOOL	S -REF TO COM ON JUDIC	04-21-97	
S1034	MILLER B	NO REPORT/NEW ELECTION	S -REF TO COM ON JUDIC	04-21-97	
S1040	MILLER B	NONCOLLISION MV ACCIDENTS	S -REF TO COM ON JUDIC	04-21-97	
S1045	WELLONS	EXPEDITE JURY SELECTION	S -REF TO COM ON JUDIC	04-21-97	
S1046	WELLONS	REDUCE PEREMPTORY CHALLENGES	S -REF TO COM ON JUDIC	04-21-97	
S1048=	HARTSELL	CON MODIFICATIONS	S -REF TO COM ON JUDIC	04-21-97	
S1049	KINNAIRD	CAMPUS SATELLITE POLLING PLACES	H -REF TO COM ON RULES	04-21-97	04-28-97
S1050	KINNAIRD	SEXUAL PRIVACY AT HOME	S -REF TO COM ON JUDIC	04-21-97	
S1055	COOPER	PUBLIC HOSPITAL PERSONNEL ACT	*R -CH. SL 97-0517	04-21-97	04-22-97
S1055	COOPER	PUBLIC HOSPITAL PERSONNEL ACT	*R -CH. SL 97-0517	07-15-97	08-28-97
S1057	BALLANTINE	HURRICANE RELIEF/BEACH HOMEOWNERS	S -REF TO COM ON JUDIC	04-21-97	
S1060	LEE	PUBLIC RECORDS/MEETINGS LAW AMENDS	S -REF TO COM ON JUDIC	04-21-97	
S1061	BALLANTINE	HONESTY IN EVIDENCE	S -REF TO COM ON JUDIC	04-21-97	
S1068=	JENKINS	HOUSING AUTHORITY AMENDMENTS	S -RE-REF COM ON ST GVT	04-21-97	04-29-97
S1077	DALTON	AMEND BURGLARY	S -REF TO COM ON JUDIC	04-21-97	
S1134	PERDUE	TRAFFIC STOPS AT NIGHT	S -REF TO COM ON JUDIC	05-18-98	
S1172	PERDUE	STATE OFFICER/EMPLOYEE ETHICS	S -REF TO COM ON JUDIC	05-20-98	
S1173	PERDUE	DOT STRUCTURE	S -RE-REF COM ON TRANSPRT	05-20-98	07-14-98
S1179=	BALLANCE	FUTURE OF THE COURTS	S -REF TO COM ON JUDIC	05-20-98	
S1186=	BALLANCE	FUTURE OF COURTS PILOTS	S -REF TO COM ON JUDIC	05-20-98	
S1205=	ODOM	CLARIFY INTERMEDIATE PUNISHMENTS	S -REF TO COM ON JUDIC	05-21-98	

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S1228	DALTON	CRIMINAL TAX VIOLATIONS	*R -CH. SL 98-0178	05-21-98	07-27-98
S1231	WELLONS	JURISDICTIONAL AMOUNT INCREASE	S -REF TO COM ON JUDIC	05-21-98	
S1237=	HARTSELL	AMEND CONTESTED CASE PROCEDURE	S -REF TO COM ON JUDIC	05-21-98	
S1243	RAND	CLERKS OF COURT ON COMMISSIONS	*R -CH. SL 98-0170	05-21-98	07-14-98
S1244	RAND	REPRESENTATION IN UIFSA CASES	S -RE-REF COM ON APPROPR	05-21-98	07-21-98
S1258=	ODOM	JUDICIAL APPT./VOTER RETENTION	S -REF TO COM ON JUDIC	05-21-98	
S1259=	RAND	LOW-WEALTH SCHOOL FUNDS	S -REF TO COM ON JUDIC	05-21-98	
S1260	COOPER	JUVENILE JUSTICE REFORM ACT-2	*R -CH. SL 98-0202	05-21-98	07-14-98
S1270	KINNAIRD	DOT CONDEMNATION PROCEDURES	S -REF TO COM ON JUDIC	05-27-98	
S1277=	DALTON	CIVIL PROCEDURE RULES CHANGES	*H -REF TO COM ON JUDICII	05-27-98	08-10-98
S1279=	HARTSELL	1998 TECHNICAL CORRECTIONS	*R -CH. SL 98-0217	05-27-98	08-10-98
S1283=	ODOM	PRIVATE PRISON STANDARDS	S -REF TO COM ON JUDIC	05-27-98	
S1288=	GULLEY W	HEALTH CARE INFORMATION PRIVACY	S -REF TO COM ON JUDIC	05-27-98	
S1325	MARTIN W	COURT IMPROVEMENT PROJECT	S -REF TO COM ON JUDIC	05-27-98	
S1336=	ODOM	1998 GOV. DWI AMENDMENTS	*R -CH. SL 98-0182	05-27-98	07-21-98
S1353	MARTIN W	KEG REGIS./19-20 LOOPHOLE CLOSED-2	S -REF TO COM ON JUDIC	05-27-98	
S1493=	KINNAIRD	ADULT CARE HOMES STAFFING	S -REF TO COM ON JUDIC	05-28-98	
S1506	GULLEY W	VICTIMS' COMPENSATION ACT	S -REF TO COM ON JUDIC	05-28-98	
S1513=	GULLEY W	JUVENILE LAW REVISION	S -REF TO COM ON JUDIC	05-28-98	
S1530	BALLANTINE	DISCRETIONARY SENTENCE FOR DRUGS	S -REF TO COM ON JUDIC	06-01-98	
S1532=	MARTIN W	ADOPTION & SAFE FAMILIES ACT/FUNDS	S -RE-REF COM ON JUDIC	07-09-98	
S1554	RAND	MODIFY CONTROLLED SUBSTANCES TAX	*R -CH. SL 98-0218	07-02-98	08-05-98
S1575	GULLEY W	STRENGTHEN ELECTION ENFORCEMENT	S -REF TO COM ON JUDIC	06-01-98	
S1587	COOPER	NO COMPUTER ACCESS OF OBSCENITIES	S -REF TO COM ON JUDIC	06-01-98	
S1596	LEE	TORT CLAIMS ACT AMENDMENTS	S -REF TO COM ON JUDIC	06-01-98	

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.

* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.

BOLDLED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

SENATE JUDICIARY COMMITTEE INDEX - SENATE BILLS

SB 763	Crime Victims Rights Act	8/20/98
SB 763	Crime Victims Rights Act	8/25/98
SB 909	Break & Enter/Steal Gun	5/28/98
SB 1077	Amend Burglary	5/28/98
SB 1182	Repeal Sunset Child Support Reg.	5/28/98
SB 1228	Criminal Provisions for Tax Violations	7/21/98
SB 1243	Clerk of Court on Commissions	7/14/98
SB 1244	IV-D UIFSA Cases/Represent	7/21/98
SB 1260	Juvenile Justice Reform Act	5/21/98
SB 1260	Juvenile Justice Reform Act	5/26/98
SB 1260	Juvenile Justice Reform Act	6/2/98
SB 1260	Juvenile Justice Reform Act	6/3/98
SB 1260	Juvenile Justice Reform Act	6/4/98
SB 1260	Juvenile Justice Reform Act	6/9/98
SB 1260	Juvenile Justice Reform Act	6/10/98 (10:00 a.m. & 3:00 p.m.)
SB 1260	Juvenile Justice Reform Act	6/18/98
SB 1260	Juvenile Justice Reform Act	6/23/98
SB 1260	Juvenile Justice Reform Act	7/7/98
SB 1260	Juvenile Justice Reform Act	7/8/98

SB 1260	Juvenile Justice Reform Act	7/9/98
SB 1277	Civil Procedure Rules Changes	7/21/98
SB 1277	Civil Procedure Rules Changes	8/5/98 (9:00 a.m.)
SB 1277	Civil Procedure Rules Changes	8/6/98
SB 1279	1998 Technical Corrections	8/5/98 (9:00 a.m. & 1:00 p.m.)
SB 1336	Gov. DWI Amendments	6/16/98
SB 1336	Gov. DWI Amendments	7/14/98
SB 1336	Gov. DWI Amendments	7/16/98
SB 1532	Adoption & Safe Families Act	8/11/98
SB 1554	Modify Controlled Substance Tax	8/5/98 (1:00 p.m.)

SENATE JUDICIARY COMMITTEE INDEX - HOUSE BILLS

HB 344	Motor Vehicle Occupant Restraints	8/4/98
HB 354	Eliminate Certified Notice	7/14/98
HB 534	Support Orders Enforcement	8/6/98
HB 579	Change Campaign Finance Laws	5/14/98
HB 581	Sex Exploitation Act	7/23/98
HB 581	Sex Exploitation Act	7/28/98
HB 581	Sex Exploitation Act	8/11/98
HB 594	Injury to Pregnant Woman	5/28/98
HB 594	Injury to Pregnant Woman	6/16/98
HB 904	Life Imprison./Repeat Child Molester	5/28/98
HB 908	Modify Rights of Decedent's Spouse	8/11/98
HB 915	Firefighters/No Conflict	8/5/98 (9:00 a.m.)
HB 1049	Increase Cruelty to Animals Penalty	6/25/98
HB 1071	Pay Rent to Stay Ejectment	8/5/98 (1:00 p.m.)
HB 1094	Repeal/Recodify Railroad Laws	8/6/98
HB 1405	Small Claims Judgments	8/4/98
HB 1720	Adoption & Safe Families Act	10/13/98

MINUTES
SENATE JUDICIARY COMMITTEE
MAY 14, 1998

The Senate Judiciary Committee met on Thursday, May 14, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper welcomed members and guests to the first meeting of the Committee for the short session.

Senator Cooper recognized Senator Gulley to discuss House Bill 579 - AN ACT TO PROVIDE THAT THE INITIAL ELECTION OF THE ALAMANCE-BURLINGTON BOARD OF EDUCATION SHALL BE HELD IN 1997.

Senator Gulley moved to adopt a Proposed Committee Substitute for House Bill 579 for discussion. The motion carried.

The Proposed Committee Substitute would change the title of the original bill to read: AN ACT TO MAKE CHANGES TO THE CAMPAIGN FINANCE LAWS.

Senator W. Martin moved to make a technical amendment to the Proposed Committee Substitute on Page 4, Line 16 to not strike the word "*party*". The motion carried by a majority voice vote.

Senator Allran moved to amend the Proposed Committee Substitute on Page 4, Line 21 by inserting after the word "*candidate*" the term, "*political committee*". The motion carried by a majority voice vote. (Amendment attached.)

Senator Winner moved to amend the Proposed Committee Substitute on Page 5, Line 31 by removing the word "*not*" making the line to read "*this Article shall be barred after the expiration of five...*".

Senator Soles moved to amend Senator Winner's amendment to change "*five*" to "*two*". The motion did not carry on a majority voice vote.

Senator Winner's motion carried by a majority voice vote. (Amendment attached.)

Senator Gulley moved to amend the Proposed Committee Substitute on Page 2, Line 40 by inserting after the words "*organization that*" the word "*either*". The motion carried by a majority voice vote. (Amendment attached.)

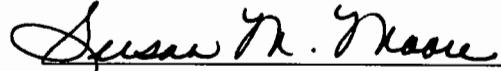
Senator Moore moved to amend the Proposed Committee Substitute to make all dates contained within the PCS to read "January 1, 1999". The motion did not carry by a majority voice vote.

Senator Gulley moved to give the Proposed Committee substitute as amended a favorable report and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned at 11:15 a.m.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 14, 1998

TO: Sen. Roy Cooper, Chair, Senate Judiciary Committee.
FROM: William R. Gilkeson, Staff Attorney.
RE: Proposed Committee Substitute for House Bill 579, Campaign Finance Changes.

The Proposed Committee Substitute for House Bill 579 would make changes to the campaign finance statutes designed to:

- **Tighten the campaign contribution limits;**
- **Bring the statutes into conformity with federal court decisions; and**
- **Lengthen the statute of limitations for campaign finance misdemeanors.**

Contribution Limits: Section 1 of the bill contains three provisions concerning contribution limits.

First, it reduces from \$4,000 to \$2,000 the amount that a contributor (individual or political committee) may give to a candidate or political committee for an election.

Second, it removes the exemption from the contribution limit for the parents and siblings of a candidate. The candidate and the candidate's spouse would still be able to contribute without limit to the candidate.

Third, it removes the exemption from the contribution limit now enjoyed by political party executive committees. Now, those committees may receive and give contributions without limit. Under the bill, those committees would be limited to \$2,000 in contributions coming in and going out. The bill prohibits State and local party committees from accepting unlimited contributions from national parties through their so-called "soft money" accounts.

All the provisions of Section 1 were passed by the Senate in 1997 as part of Senate Bill 1, but they were not in the ratified version of that bill.

Court Compliance: Section 2 of the bill attempts to bring North Carolina into conformity with federal court decisions on campaign finance. On April 30, 1998, Judge Terrence Boyle of U.S. Eastern District Court entered an order in *N.C. Right to Life, Inc. v. Bartlett* invalidating three sections of North Carolina's campaign finance law. First, he held the State's definition of "political committee" too broad because it includes groups that engage only in "issue advocacy" as opposed to "express advocacy of clearly identified candidates." Second, he held the State's prohibition on corporate contributions and expenditures unconstitutionally overbroad because it could apply to independent expenditures by certain kinds of non-business entities that, although incorporated, are issue-oriented and more akin to political

committees than to business firms. (The U.S. Supreme Court in *FEC v. Massachusetts Citizens for Life (MCFL)* recognized that such special corporations could not be banned from making independent expenditures.) Third, he struck the State's restriction on contributions by lobbyists and their political committees to elected officials and candidates during legislative sessions. He said that ban was not narrowly tailored to prevent corruption and the appearance of corruption: He said that the potential for corruption was not limited to legislative sessions, that the law restricts all lobbyist contributions during the session and not just large ones with potential to corrupt, and that the law should not extend to non-incumbent candidates.

The bill addresses the first two aspects of Judge Boyle's decision, but not the third. It addresses his concern about political committees by making several changes to some basic definitions in the statute that were written 24 years ago, before major Supreme Court decisions such as *Buckley v. Valeo*. The Court said in *Buckley* that spending money on politics is First Amendment speech. The Court said government may place dollar limits only on contributions to politicians, to prevent corruption or the appearance of corruption. Expenditures made without consulting with a politician cannot be limited as to size, but government may require them to be disclosed. The Court has said that corporations may be prohibited from making either contributions or independent expenditures (subject to the *MCFL* exception). But none of that regulation is acceptable for expression that is merely discussion of issues; the Court interpreted the federal campaign act as applying only to express advocacy of clearly identified candidates.

- "Political Committee": Currently the term is defined as a group of two or more people "the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election..." The bill trims that broad definition back to a group that:
 - Is controlled by a candidate; or
 - Makes contributions to a candidate or other political committee; or
 - Has as a non-incidental purpose making expenditures to support or oppose the election or defeat of a clearly identified candidate.
- "Contribution": The bill clarifies that, to be a contribution, the gift must be made to a candidate or political committee, and does not include "independent expenditures."
- "Expenditure": The bill clarifies that an expenditure for purposes of the act must either be a contribution or be made to support or oppose the election or defeat of a candidate. The bill also adds a definition for "independent expenditure," an expenditure that is made without consultation or coordination with the candidate or party that benefits. The courts have said that independent expenditures may be regulated in some ways, but may not be subject to dollar-amount limits.

The bill addresses the judge's concern about the overbroad ban on corporate political spending by carving out an exception for independent expenditures by certain kinds of issue-oriented, non-business organizations even though they take the corporate form. North Carolina Right to Life, Inc., the plaintiff in the lawsuit that brought about Judge Boyle's order, pointed out that the U.S. Supreme Court has recognized such an exception in a 1986 case.

Enforcement: Section 3 of the bill addresses enforcement of campaign finance laws by lengthening the statute of limitations for campaign finance misdemeanors from two years to five years.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 579
Committee Substitute Favorable 4/17/97
Proposed Senate Committee Substitute -- H579-PCSRR-001B

Short Title: Campaign Finance Changes.

(Public)

Sponsors:

Referred to:

March 20, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES IN THE CAMPAIGN FINANCE LAWS.
3 The General Assembly of North Carolina enacts:
4 --LOWER THE CONTRIBUTION LIMIT AND CLOSE THE LOOPHOLES FOR PARTY
5 CONTRIBUTIONS AND FAMILY CONTRIBUTIONS.
6 Section 1. (a) G.S. 163-278.13 reads as rewritten:
7 "§ 163-278.13. Limitation on contributions.
8 (a) No individual or political committee shall contribute to
9 any candidate or other political committee any money or make any
10 other contribution in any election in excess of ~~four~~ two thousand
11 dollars ~~(\$4,000)~~ (\$2,000) for that election.
12 (b) No candidate or political committee shall accept or
13 solicit any contribution from any individual or other political
14 committee of any money or any other contribution in any election
15 in excess of ~~four~~ two thousand dollars ~~(\$4,000)~~ (\$2,000) for that
16 election.
17 (c) Notwithstanding the provisions of subsections (a) and (b)
18 of this section, it shall be lawful for a candidate or a
19 candidate's ~~spouse, parents, brothers and sisters~~ spouse to make
20 a contribution to the candidate or to the candidate's treasurer
21 of any amount of money or to make any other contribution in any

1 election in excess of ~~four~~ two thousand dollars ~~(\$4,000)~~ (\$2,000)
2 for that election.

3 (d) For the purposes of this section, the term 'an election'
4 means any primary, second primary, or general election in which
5 the candidate or political committee may be involved, without
6 regard to whether the candidate is opposed or unopposed in the
7 election, except that where a candidate is not on the ballot in a
8 second primary, that second primary is not 'an election' with
9 respect to that candidate.

10 (e) This section shall ~~not~~ apply to any national, State,
11 district or county district, county, precinct, or other executive
12 committee committees of any political party. The limitation in
13 this section on contributions to or from political party
14 executive committees shall apply collectively to all executive
15 committees of the same political party nationally or within the
16 State. ~~For the purposes of this section only, the term~~
17 ~~'political party' means only those political parties officially~~
18 ~~recognized under G.S. 163-96.~~ Contributions by political party
19 executive committees under G.S. 163-278.42 are subject to the
20 limitations of this section.

21 (e1) No referendum committee which received any contribution
22 from a corporation, labor union, insurance company, business
23 entity, or professional association may make any contribution to
24 another referendum committee, to a candidate or to a political
25 committee.

26 (f) Any individual, candidate, political committee, or
27 referendum committee who violates the provisions of this section
28 is guilty of a Class 2 misdemeanor."

29 (b) This section becomes effective January 1, 1999, and
30 applies to all elections occurring on or after that date.

31 --- CONFORM THE CAMPAIGN FINANCE LAW TO FEDERAL COURT OPINIONS.

32 Section 2. (a) G.S. 163-278.6(14) reads as rewritten:

33 " (14) The term 'political committee' means a combination
34 of two or more individuals, or any person,
35 committee, association, or ~~organization, the~~
36 ~~primary or incidental purpose of which is to~~
37 ~~support or oppose any candidate or political party~~
38 ~~or to influence or attempt to influence the result~~
39 ~~of an election or which accepts contributions or~~
40 ~~makes~~ organization that:

41 a. Is controlled by a candidate;

42 b. Makes contributions; or

43 c. Has as a non-incidental purpose making
44 expenditures for the purpose of influencing

1 ~~or attempting to influence~~ to support or
2 oppose the nomination or election or defeat of
3 ~~any~~ a clearly identified candidate at any
4 ~~election,~~ election.
5 ~~or which~~ If the group qualifies as a 'political
6 committee' under sub-subdivision a., b., or c. of
7 this subdivision, it continues to be a political
8 committee if it receives contributions to repay
9 loans or cover a deficit, or ~~which~~ makes
10 expenditures to satisfy obligations of an election
11 already held.
12 The term includes, without limitation, any
13 political party's State, county or district
14 executive committee."
15 (b) G.S. 163-278.6(6) reads as rewritten:
16 "(6) The terms 'contribute' or 'contribution' mean any
17 advance, conveyance, deposit, distribution,
18 transfer of funds, loan, payment, gift, pledge or
19 subscription of money or anything of value
20 whatsoever, to a candidate, political committee, or
21 referendum committee from any person or individual,
22 whether or not made in an election year, and any
23 contract, agreement, promise or other obligation,
24 whether or not legally enforceable, to make a
25 contribution, in support of or in opposition to any
26 candidate, political committee, referendum
27 committee, or political party. These terms include,
28 without limitation, such contributions as labor or
29 personal services, postage, publication of campaign
30 literature or materials, in-kind transfers, loans
31 or use of any supplies, office machinery, vehicles,
32 aircraft, office space, or similar or related
33 services, goods, or personal or real property.
34 These terms also include, without limitation, the
35 proceeds of sale of services, campaign literature
36 and materials, wearing apparel, tickets or
37 admission prices to campaign events such as rallies
38 or dinners, and the proceeds of sale of any
39 campaign-related services or ~~goods notwithstanding~~
40 goods. Notwithstanding the foregoing meanings of
41 'contribution,' the word shall not be construed to
42 include services provided without compensation by
43 individuals volunteering a portion or all of their
44 time on behalf of a candidate, political committee,

- 1 or referendum committee. The term 'contribution'
2 does not include an 'independent expenditure.'"
- 3 (c) G.S. 163-278.6(9) reads as rewritten:
4 "(9) The terms 'expend' or 'expenditure' mean any
5 purchase, advance, conveyance, deposit,
6 distribution, transfer of funds, loan, payment,
7 gift, pledge or subscription of money or anything
8 of value whatsoever, from any person or individual,
9 whether or not made in an election year, and any
10 contract, agreement, promise or other obligation,
11 whether or not legally enforceable, to make an
12 expenditure, ~~in support of or in opposition to~~ to
13 support or oppose the nomination or election or
14 defeat of any clearly identified candidate,
15 political committee, referendum committee, or
16 political party, or to make a contribution."
- 17 (d) G.S. 163-278.6 is amended by adding a new
18 subdivision to read:
19 " (9A) The term 'independently expend' or 'independent
20 expenditure' mean an expenditure made without
21 consultation or coordination with any candidate or
22 political party that benefits or would benefit
23 electorally from the expenditure."
- 24 (e) G.S. 163-278.6(16) reads as rewritten:
25 " (16) The term 'political purpose' means ~~any purpose in~~
26 ~~aid of seeking to influence an election or a~~ to
27 support or oppose the nomination or election or
28 defeat of a clearly identified political party or
29 candidate."
- 30 (f) G.S. 163-269 is repealed.
- 31 (g) G.S. 163-278.19 is amended by adding a new
32 subsection to read:
33 "(f) This section does not prohibit an independent expenditure
34 by an entity that:
- 35 a. Was formed for the express purpose of
36 promoting political ideas and does not engage
37 in business activities;
- 38 b. Does not have shareholders or other persons
39 which have an economic interest in its assets
40 and earnings; and
- 41 c. Was not established by a business corporation,
42 included but not limited to those chartered
43 under Chapter 55 or Chapter 55A, by an
44 insurance company, or by a labor union and has

1 a policy against accepting contributions from
2 such entities."

3 (h) G.S. 163-278.12 reads as rewritten:

4 "~~§163-278.12. Contributions and expenditures by an individual~~
5 ~~other than a candidate. Independent expenditures.~~

6 Subject to G.S. 163-278.16(f) and 163-278.14, it shall be
7 permissible for an individual other than a candidate to make
8 ~~contributions or expenditures in support of, or in opposition to,~~
9 ~~any candidate, political committee, or referendum committee other~~
10 ~~than by contribution to a candidate, political committee, or~~
11 ~~referendum committee. independent expenditures.~~ In the event an
12 individual or entity other than a political committee permitted
13 by law to do so makes contributions or expenditures, other than
14 by contribution to a candidate, political committee, or
15 referendum committee, independent expenditures in excess of one
16 hundred dollars (\$100.00), then, within 10 days after making such
17 a contribution or expenditure, ~~he~~ that individual or entity
18 shall file a statement of such contribution or expenditure with
19 the Board in accordance with the terms and conditions of G.S.
20 163-278.11."

21 (i) This section is effective when it becomes law.

22 --- STRENGTHEN ENFORCEMENT PROVISIONS.

23 Section 3. (a) G.S. 163-278-27(a) reads as rewritten:

24 "(a) Any individual, candidate, political committee,
25 referendum committee, treasurer, person or media who violates the
26 provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10,
27 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17,
28 163-278.18, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or
29 163-278.40E is guilty of a Class 2 misdemeanor. Prosecution for
30 a misdemeanor brought under this section or any other section of
31 this Article shall not be barred prior to the expiration of five
32 years after the date the violation occurred."

33 (b) G.S. 15-1 reads as rewritten:

34 "§ 15-1. Statute of limitations for misdemeanors.

35 The crimes of deceit and malicious mischief, and the crime of
36 petit larceny where the value of the property does not exceed
37 five dollars (\$5.00), and all misdemeanors except malicious
38 ~~misdemeanors,~~ misdemeanors and prosecutions under Article 22A of
39 Chapter 163 of the General Statutes, shall be presented or found
40 by the grand jury within two years after the commission of the
41 same, and not afterwards: Provided, that if any indictment found
42 within that time shall be defective, so that no judgment can be
43 given thereon, another prosecution may be instituted for the same

1 offense, within one year after the first shall have been
2 abandoned by the State."

3 (c) This section becomes effective December 1, 1998,
4 and applies to acts committed on or after that date.

5 Section 4. This act is effective when it becomes law.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:96-CV-835-BO(1)

NORTH CAROLINA RIGHT TO LIFE, INC.)
NORTH CAROLINA RIGHT TO LIFE)
POLITICAL ACTION COMMITTEE, and)
BARBARA HOLT, President of)
North Carolina Right to Life, Inc.)

Plaintiffs,)

v.)

GARY O. BARTLETT, in his official)
capacity as Executive Secretary-)
Director of the State Board of)
Elections of the State of North)
Carolina; STEVE BALOG, in his)
official capacity as District)
Attorney for North Carolina)
Prosecutorial District 15A; MIKE)
EASLEY, in his official capacity as)
Attorney General for the State of)
North Carolina; LARRY LEAKE, in his)
official capacity as Chairman of)
the State Board of Elections;)
S. KATHERINE BURNETTE, in her)
official capacity as a Member of)
the State Board of Elections;)
FAIGER M. BLACKWELL, in his)
official capacity as a Member of)
the State Board of Elections; JUNE)
K. YOUNGLOOD, in her official)
capacity as a Member of the State)
Board of Elections; and DOROTHY)
PRESSER, in her official capacity)
as a Member of the State Board of)
Elections,)

Defendants.)

APR 30 1998

ORDER

This matter is before the Court on the parties' Motions for Summary Judgment and Defendants' Motion to Certify Questions and to Abstain. In the underlying action, Plaintiffs challenge provisions of North Carolina's election laws regulating political contributions and expenditures by corporations, political

committees, and individuals, and seek an injunction against enforcement of the challenged provisions. For the reasons discussed below, Plaintiffs' Motion for Summary Judgment will be granted, and Defendants' Motions for Summary Judgment and to Certify Questions and to Abstain will be denied.

BACKGROUND

Plaintiff North Carolina Right to Life, Inc. (hereinafter, "NCRL"), is a non-profit corporation organized under Chapter 55A of the North Carolina General Statutes. NCRL produces voter guides and other election materials that it distributes to its members and the general public. Verified Complaint at ¶ 29. Plaintiff North Carolina Right to Life Political Action Committee ("NCRLPAC") was established by NCRL as a segregated fund through which NCRL makes contributions to candidates and engages in other activities that support or oppose the elections of identified candidates. Plaintiff Barbara Holt ("Holt") is a registered lobbyist, a principal agent of NCRL and NCRLPAC, and the president of NCRL.

Plaintiffs commenced this action on September 27, 1996, by filing a complaint seeking declaratory and injunctive relief and challenging the constitutionality of various provisions of the North Carolina General Statutes regulating election campaign financing. Plaintiffs filed an amended complaint on December 5, 1997, and now argue that sections 163-278.6(14) (defining "political committee"), 163-269, et seq. ("Violations by corporations"), 163-278.19 (corporate contributions for

"political purpose"), and 163-278.13B ("Limitation on fund-raising during legislative session"), as amended, violate the Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution by infringing protected political speech and association and by denying them the equal protection of the law.

This Court held a hearing on this matter on October 15, 1996, and issued a Declaratory Judgment on February 7, 1997. Both parties subsequently moved for summary judgment. Defendants also filed a Motion to Certify Questions pursuant to section 163-278.23 of the North Carolina General Statutes, urging this Court to abstain from ruling on these questions pending an authoritative interpretation of the challenged statutes from the Executive Secretary-Director of the State Board of Elections. Another hearing was held on November 24, 1997, and the parties' motions are ripe for ruling.

DISCUSSION

I. Defendants' Motion to Certify Questions to the Board of Elections

North Carolina has no legislative authority for certifying questions of state law to the highest state court for decision. The Defendants' argument that this Court should adopt such a procedure in the absence of legislative authority is without merit. There is no basis for abstention in this Court, and this Court is under a duty to rule on issues of federal and constitutional law when they are properly presented to it. The

motion to certify will be denied.

II. Motions for Summary Judgment

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law." Fed. R. Civ. P. 56(c). To avoid summary judgment, the opposing party must introduce evidence to create an issue of material fact on "an element essential to the party's case, and on which the party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). A verified complaint based on personal knowledge is the equivalent of an affidavit for summary judgment purposes. Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991).

In Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L.Ed.2d 659 (1976), the Supreme Court emphasized that "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" Id., at 14, 96 S. Ct., at 632 (quoting Roth v. United States, 354 U.S. 476,

484, 77 S. Ct. 1304, 1308, 1 L.Ed.2d 1498 (1957)). The Supreme Court expressly noted that money spent on political campaigns, whether involving candidates or issues, is a form of political expression and thus entitled to First Amendment protection. Id., at 19, 96 S. Ct., at 634-635.

The Buckley Court, considering the constitutionality of limits on campaign contributions and expenditures in the Federal Election Campaign Act of 1971 ("FECA"), distinguished between these two categories of political expression. A limitation on contributions to candidates, the Court held, "involves little direct restraint on . . . political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues." Id., at 21, 96 S. Ct., at 636. FECA's expenditure limitations, on the other hand, were struck down for placing "substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate." Id., at 58-59, 96 S. Ct., at 654.

Since Buckley, the Supreme Court has held that statutes regulating political expenditures are subject to "exacting scrutiny," McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 344-46, and that States may not infringe upon such expression absent a compelling state interest, Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 256, 107 S. Ct. 616, 627, 93 L.Ed.2d 539 (1986) ("MCFL"); Austin v. Michigan

Chamber of Commerce, 494 U.S. 652, 657, 110 S. Ct. 1391, 1396, 109 L.Ed.2d 652 (1990). The Court has also held that "preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances." Federal Election Comm'n v. National Conservative Political Action Comm., 470 U.S. 480, 496-497, 105 S. Ct. 1459, 1468, 84 L.Ed.2d 455 (1985).

The Buckley Court also drew a distinction between "express advocacy"-communication which advocates in express terms the election or defeat of a clearly identified candidate,¹ 424 U.S., at 44, 96 S. Ct., at 646-647-and "issue advocacy"-which encompasses any other type of political communication expressing one's views on issues without expressly calling for a candidate's election or defeat, id. Statutes which regulate campaign expenditures may regulate express advocacy in the interest of preventing actual or apparent corruption, but may not regulate spending on issue advocacy. Id., at 43-44, 96 S. Ct., at 646-647.

Finally, the Supreme Court has held that a statute may be infirm for overbreadth "when [it] does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of

¹ The Buckley Court described "express words of advocacy" as terms including "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject." 424 U.S., at 44 n.52, 96 S. Ct., at 647 n.52.

speech or of the press." Thornhill v. Alabama, 310 U.S. 88, 97, 60 S. Ct. 736, 742, 84 L.Ed.2d 1093 (1940). Specifically in the First Amendment context, the Supreme Court has long recognized that "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611-612, 93 S. Ct. 2908, 2915, 37 L.Ed.2d 830 (1973). Thus, overbreadth attacks have been allowed where rights of speech and association "were ensnared in statutes which, by their broad sweep, might result in burdening innocent associations." Id., at 612, 93 S. Ct., at 2916.

With these distinctions and definitions in mind, the Court will review the North Carolina statutes challenged by the Plaintiffs.

A. The definition of "political committee" in section 163-278.6(14)

The North Carolina election laws define a "political committee" as "any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election" N.C. Gen. Stat. § 163-278.6(14). Classification as a "political committee" requires an entity to register as such and to comply with the requirements of sections 163-278.7(b) (filing a statement of organization with the Board of

Elections), 163-278.8 (keeping detailed accounts of expenditures and contributions), and 163-278.9 and 163-278.11 (regular filing of organizational and financing reports). Failure to comply with these requirements carries criminal penalties. See N.C. Gen. Stat. §§ 163-278.27 and 163-278.34.

In construing the FECA in Buckley, the Supreme Court noted that, "[s]o long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views." Id., at 45, 96 S. Ct., at 647. While noting that "compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights," id., at 66, 96 S. Ct., at 657, the Buckley Court "acknowledged that there are governmental interests sufficiently important to outweigh the possibility of infringement . . ." id. Thus the Court held that independent reporting requirements may be imposed upon individuals and groups "when they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate." Id., at 80, 96 S. Ct., at 664.

In the instant case, section 163-278.6(14) defines individuals and groups that seek to "influence or attempt to influence the result of an election" as political committees and subjects them to registering and reporting requirements whether or not they "expressly advocate the election or defeat of a clearly identified candidate." Groups engaging only in issue

advocacy are thus subject to spending restrictions and reporting requirements. This violates the First Amendment, as construed by the Supreme Court in Buckley v. Valeo. The Buckley Court noted that, while a statute may target "those expenditures that expressly advocate a particular election result," id., it may not target funds used for general issue advocacy. By this standard, section 163-278.6(14) is fatally overbroad: it does not limit its coverage to entities engaging in express advocacy.

Because section 163-278.6(14) denies full First Amendment protection to individuals and groups engaged in issue advocacy, thereby chilling political speech, it is facially unconstitutional.

B. The prohibitions on independent expenditures and direct contributions in section 163-269 and 163-278.19

Section 163-269 makes it unlawful for any corporation "directly or indirectly, to make any contribution or expenditure . . . for any political purpose whatsoever. . . ." Similarly, section 163-278.19 prohibits corporations from "mak[ing] any contribution or expenditure . . . for any political purpose whatsoever."² In Austin v. Michigan Chamber of Commerce, 494 U.S., at 657, 110 S. Ct., at 1396, the Supreme Court held that "[t]he mere fact that [an entity] is a corporation does not remove its speech from the ambit of the First Amendment." Of course, corporate involvement in politics poses a risk of

² "Political purpose" is defined as "any purpose in aid of seeking to influence an election or a political party or candidate." N.C. Gen. Stat. § 163-278.6(16).

corruption, or the appearance of corruption, to the political process through "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." Id., at 66, 110 S. Ct., at 1397.

The Supreme Court has noted the need "to restrict the influence of political war chests funneled through the corporate form," Federal Election Comm'n v. National Conservative Political Action Comm., 470 U.S. 480, 501, 105 S. Ct. 1459, 1470, 84 L.Ed.2d 455 (1985) ("NCPAC"), to curb the political influence of "those who exercise control over large aggregations of capital," Automobile Workers, 352 U.S. 567, 585, 77 S. Ct. 529, 538, 1 L.Ed.2d 563 (1957), and to regulate the "substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization," Federal Election Comm'n v. National Right to Work Comm., 459 U.S. 197, 206, 103 S. Ct. 552, 559, 74 L.Ed.2d 364 (1982). The "concern over the corrosive influence of concentrated corporate wealth reflects the conviction that it is important to protect the integrity of the marketplace of ideas." MCFL, 479 U.S., at 257, 107 S. Ct., at 627. Corporate political activity may thus be regulated to serve the compelling state interest of protecting the integrity of the political process.

In MCFL the Supreme Court found that not-for-profit corporations structured to avoid corrupting the political process

could be "more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of their incorporated status." Id., at 263, 107 S. Ct., at 631. The MCFL Court described the three salient characteristics which demonstrated why the plaintiff corporation should be exempt from corporate expenditure limitations: (1) it was formed for the express purpose of promoting political ideas, (2) it did not have shareholders or other persons which had an economic interest in its assets and earnings, and (3) it was not established by a traditional business corporation or labor union and did not accept contributions from such entities. Id., at 264, 107 S. Ct., at 631. These factors are not dispositive in determining when corporations should be exempt from expenditure limitations, but are instructive in showing that statutes limiting corporate political spending must distinguish between those corporations which threaten the political process and those which do not.

In the case at bar section 163-269 and 163.278.19 prohibit all nonprofit corporations from making independent expenditures, regardless of whether the corporations demonstrate a real or perceived threat to the political process. The statutes make no attempt to distinguish between corporations which pose a threat to the integrity of the political process and those which do not. They merely prohibit all corporations, without regard for their purpose or threat of corruption, from making independent expenditures "for any political purpose whatsoever." This

violates the Supreme Court's mandate to "be as vigilant against the modest diminution of speech as we are against its sweeping restriction. Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation." Id., at 265, 107 S. Ct., at 631.

Because sections 163-269 and 163-278.19 are drawn too broadly, and might result in burdening innocent entities with expenditure limitations properly designed for traditional for-profit corporate entities, they are facially overbroad and unconstitutional.

C. The prohibition on legislators or candidates soliciting contributions from lobbyists in section 163-278.13B

Section 163-278.13B(b) prohibits "limited contributees" from soliciting or accepting contributions from "limited contributors" while the North Carolina General Assembly is in session. Similarly, during a legislative session a "limited contributor" may not make or offer to make a contribution to a "limited contributee". § 163-278.13B(c). A "limited contributee" is defined as "a member of or candidate for the Council of State, a member or candidate for the General Assembly, or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly." § 163-278.13B(a)(2). A "limited contributor" is defined as "a lobbyist, . . . that lobbyist's agent, or a

political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist. . . ."

§ 163-278.13B(a)(1).

As noted above, the Buckley Court held that, while limitations on contributions clearly implicate fundamental First Amendment rights, they "entail[] only a marginal restriction upon the contributor's ability to engage in free communication." 424 U.S., at 20, 96 S. Ct., at 635. Because contribution limitations usually involve lesser impositions upon First Amendment freedoms than do expenditure limitations, the Supreme Court has held that they generally "require less compelling justification" to pass constitutional muster. MCFL, 479 U.S., at 259-260, 107 S. Ct., at 629.

Unlike the statutes considered in Buckley and MCFL, however, the restrictions at issue here are limitations on when a contribution can be made, regardless of the amount of the contribution. Because this temporal limitation is a complete ban on fundraising while the legislature is in session, it has "a severe impact on political dialogue" by "prevent[ing] candidates from amassing the resources necessary for effective advocacy." Buckley, 424 U.S., at 21, 96 S. Ct., at 636. This limitation on effective advocacy places such a high burden on the free speech and associational rights of the candidates that this Court will apply the "strict scrutiny" standard elucidated by the Supreme Court in Austin and MCFL. The State must therefore demonstrate that this limitation is narrowly tailored to advance a

"compelling state interest."

The State argues that the statute aims to prevent corruption or the appearance of corruption. The Supreme Court has recognized that these may be "legitimate and compelling government interests" for restricting campaign finances. Austin, 494 U.S., at 658, 110 S. Ct., at 637; NCPAC, 470 U.S., at 496-497, 105 S. Ct., at 1468-1469. Assuming, without deciding, that the State's asserted aims are legitimate and compelling in this case, the statute is not narrowly tailored to advance these interests in the least intrusive way.

The prohibition in section 163-278.13B applies to all candidates for office, both incumbents and non-incumbents. A statute seeking to avoid corruption or the appearance of corruption in the State legislature does not advance those purposes by limiting the fundraising of non-incumbent candidates for office. Additionally, the statute fails to account for the fact that political corruption may occur at anytime, whether or not the legislature is in session. Finally, the ban during legislative sessions is complete; it does not discriminate between large contributions with the potential to corrupt and small contributions with no such corruptive potential.

The limitations contained in section 163-278.13B are not narrowly tailored to address the harms asserted by the State to justify the statute, and cannot survive strict scrutiny. Section 163-278.13B is therefore unconstitutional.

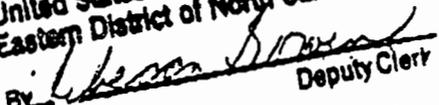
CONCLUSION

For the reasons stated above, the Court hereby GRANTS Plaintiffs' motion for summary judgment as to all claims, and DENIES Defendants' motion for summary judgment and Defendants' motion to certify and abstain. Defendants are hereby permanently enjoined from relying on, enforcing, or prosecuting violations of sections 163-278.6(14), 163-269, 163-278.19, and 163-278.13B against NCRL, Holt, NCRLPAC, and others similarly situated.

SO ORDERED.

This 29 day of April, 1998.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE

I certify the foregoing to be a true and correct copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
By 
Deputy Clerk

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 579

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) ALLRAN

Sen.)

moves to amend the bill on page 4, line 21

by inserting after the word "candidate"
the term, ~~the~~ political committee,

SIGNED Allran

ADOPTED

FAILED

TABLED

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 579

DATE 5/14/98

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) Winner
Sen.) _____

moves to amend the bill on page 5, line 31

by rewriting it as follows:

This Article shall be barred after the expiration of five

SIGNED Jessie Winner

ADOPTED FAILED TABLED

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 579

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) GULLEY

Sen.)

moves to amend the bill on page 2, line 40

by inserting after the words "organization that"
the word "either"

SIGNED W.B. D.

ADOPTED

FAILED

TABLED

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Monday, May 18, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.(CS)	579	Alamance-Burlington School Elections	
		Draft Number:	PCS 8284
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

*also changes short title

MINUTES
SENATE JUDICIARY COMMITTEE
MAY 21, 1998

The Senate Judiciary Committee and the House Judiciary II Committee held a joint meeting on Thursday, May 21, 1998 at 10:00 a.m. in Room 544 of the Legislative Office Building. A majority of Senate Judiciary Committee members was present.

Representative Neely, Chairman of the House Judiciary II Committee called the meeting to order and welcomed members of both committees and visitors.

Senator Cooper explained that the purpose of the joint meeting was to hear a presentation on the Juvenile Crime bill which was a result of the Governor's Commission on Juvenile Crime and Justice.

Senator Cooper recognized Susan Hayes, House Staff Counsel, to give a brief summary of the bill.

Senator Cooper recognized Richard Moore, Secretary of the Department of Crime Control & Public safety to also discuss the bill.

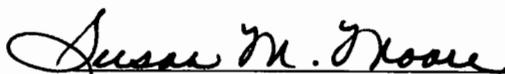
Marcia Morey, Executive Director of the Governor's Commission on Juvenile Crime and Justice, was recognized to answer questions from members.

(The following attachments are included in these minutes: Draft copy of Juvenile Crime Bill, explanation of the draft bill, statistical information and the Final Report from the Governor's Commission on Juvenile Crime and Justice.)

There being no further business, the meeting adjourned at 10:45 a.m.



Sen. Roy A. Cooper III, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, May 21, 1998
Time: 10:00 a.m.
Room: 544

The following bills or resolutions are scheduled to be considered:

This will be a joint meeting with the House Judiciary II Committee to hear a presentation of the Juvenile Crime Bill.

Sen. Roy Cooper, III, Chairman

Posted: 05/19/98 12:56 PM

SENATE BILL 1260: JUVENILE JUSTICE REFORM ACT

Governor's Commission on Juvenile Crime and Justice Recommendation/Appearance in Draft

Recommendation	Statute	Page
CODE RECOMMENDATIONS:		
1) Separate A/N/D from DQT/UND provisions in Code.	7B-100 (A/N/D) 7B-1500 (DQT/UND)	53 105
2) Raise dispo age of DQT jurisdiction to 19. (Note: this reflects a change from the original recommendation to extend jurisdiction to age 21.)	7B-1602 7B-2513	108 147-148
3) Contempt power over UNDs.	[7B-2000(a)] 7B-2503	122 137
4) Raise original age of UND jurisdiction to 18.	7B-1501(28) 7B-1600(b)	107 108
5) Diversion cases open until juvenile substantially complies; and petition filed if not	7B-1706(e)	113
6) JCCs track diversion cases.	7B-1706(d)	112
7) Use diversion contracts.	7B-1706(a) and (b)	111-112
8) Statutory criteria for Teen Court.	7B-1706(c)	112
9) Parents to attend all court hearings.	[7B-1805(a)] [7B-1807(b)(4)] 7B-2700(a)	115 116 149
10) File petition w/in 15 days from receipt of complaint.	7B-1703(b)	110

11) 1st appearances for juvenile felony offenders.	7B-1807	116
12) Detention hearings by 2-way camera.	7B-1906(h)	121-122
13) PC/transfer hrgs. W/in 15 days of 1st appearance.	7B-2202(a)	126
14) 5 days notice b/4 PC hearing.	[7B-1806.1] 7B-2202(e)	116 127
15) Police authority to fingerprint and photograph felony offenders. Destroy if no petition, PC, or adj.	7B-2102	123-124
16) Juv. Ct. Hrgs. open to public	7B-2402	131
17) Police, school, and service providers may access but not photocopy ct records.	7B-3000(b) 7B-3001 7B-3100	166 167-168 168
18) Factors to consider at transfer.	7B-2203(b)	128
19) Crim-Inclusive Blended Sentencing	15A-1340.16B	181-182
20) Direct-file of 15 yr-old A-E felony offenders.	7B-2200(b)	127
DISPOSITION RECOMMENDATIONS:		
21) Protection of the public and no least restrictive = purpose of dispositions.	7B-2500	133
22) Parents may be required to provide all transportation	7B-2703	151
23) Fund parental responsibility classes which parents may be required to attend.	7B-2701	150

24) JCCs may initiate contempt against parents.	7B-2705	151
25) Parent may be required to pay fees for detention, probation supervision, atty's fees; assign insurance for med needs in dt or t/s.	7B-2704	151
26) Additional dispo options (house arrest, training program, victim-offender mediation).	7B-2504	137-139
27) Additional conditions of probation.	7B-2506(a)	142-143
28) Chief JCC authority to add to probation reqs (20 hrs. CSW, SA tx, elec. monitor, intensive probation, life or educ. skills).	7B-2506(b)	143
29) Local continuum of dispo options (day tx. ctrs, home based cnsling, after school progs, in/out pt. SA tx, in/out pt. SO tx, group homes).	Section 19 (uncodified)	201
30) Graduated sanctions approach.	7B-2504.1 7B-2505	139-141 141-143
31) 3 categories of offenses (violent, serious, minor).	7B-2505	141-143
32) 3 levels of DQT history.	7B-2504.1(c)	140
33) 3 dispo levels (community, intermediate, commitment).	7B-2505(c)-(e)	141-142
34) Dispo levels based on offense and DQT hx level.	7B-2505(f)	142
35) Departure from Level 3 dispo (t/s) for extraordinary reasons.	7B-2505(e)	142
36) J's cooperation w/police = mitigating factor at dispo.	7B-2505(g)	142

37) Maximum 14 days detention for Level 2 disposition.	7B-2504(19) 7B-2505(d)	139 141
38) Track diversion agreements. (See Rec. #6)	Section 17 (uncodified)	201
39) Notify DMV re: driving restriction while on probation.	7B-2504(9)	139
40) Options for probation violations, including 2x detention period; but no t/s for misds.	7B-2506(d)	143
41) Repeal "equal to adult" limitation on t/s time.	7B-2509	144-145
42) 6 mos. mandatory min. t/s commitment.	7B-2509(a)	144
43) Mandatory 90 day post release supervision.	7B-2510(d)	146
44) Use jails for serious violent offenders when no detention space.	7B-1905(c) 7B-2509(h)	120 145
AGENCY RECOMMENDATIONS:		
45) Create DJJ incl DYS and JSD (GAL, SROs and Ctr. For Prev. Sch. Viol.?)	143B-511 Section 22 (uncodified)	1 204
46) Create local juvenile councils in partnership with state.	143B-550	12-16
47) Establish JJ policy oversight bd.	143B-560	17-18
48) Allow reasonable transition time line.	Section 24 (uncodified)	204
49) Develop JJ info system.	Section 18	201

	(uncodified)	
50) Authorize local adm. orders for sharing of JJ info. among agencies.	7B-3100	168
51) Adopt "Juvenile Contact Report."	Section 14 (uncodified)	199
52) Acknowledge minority over-rep problem in GCJCJ report.	done	
53) Mandatory minority sensitivity training for JJ professionals and police.	Section 15 (uncodified)	199
PREVENTION RECOMMENDATIONS:		
54) Establish state-local partnership to address DQT prevention. (See Rec # 46)	143B-550	12-16
55) Periodic risk assessments to identify at-risk youth.	Section 21 (uncodified)	202-203
56) Develop comprehensive DQT and SA prevention plan.	143B-540	11-12
57) Appropriate and effective responses to educating students expelled or suspended long term from school.	115C-12(24) 115C-105.47(b)	187-188 188-189
OTHER RECOMMENDATIONS:		
58) Mandate Family Court pilot programs in select urban areas.	Section 20 (uncodified)	202
59) Recommend NCGA review Ct. Improvement Project report.	Section 16 (uncodified)	200
60) NCGA evaluate any implemented reform	Section 23	204

measures.	(uncodified)	
61) Authorize State Bd. of Educ. to study delay of start of school day.	Section 17 (uncodified)	200

SENATE BILL 1260: JUVENILE JUSTICE REFORM ACT

Details in addition to the changes proposed by the Governor's Commission on Juvenile Crime and Justice

Detail	Statute	Page
Purpose	7B-1500	105
Superior court has jurisdiction over persons who committed offenses as juveniles but not charged before his/her 18th birthday.	7B-1601(c)	108
Jurisdiction over juveniles in the (physical) custody of DYS - clarification of statute.	7B-1601(e)	116
Summons to include notice to parents that failure to attend may result in contempt proceedings (contains specific language for the summons).	7B-1805(c)	116
Clerk to provide all parties 5 days written notice of all scheduled hearings unless party was notified in open court or the court orders otherwise.	7B-1806.1	116
First appearance hearing for juveniles charged with felonies in secure custody to be held at first secure custody hearing (i.e, within 5 days, not 10); otherwise, first appearance within 10 days.	7B-1807(a)	116
First appearance may be continued to a time certain for good cause if juvenile is not in secure or non-secure custody.	7B-1807(a)	116
Secure custody hearings to be held at intervals of no more than 10 calendar days.	7B-1906(b)	121
Law enforcement may fingerprint or photograph	7B-2102(a)	123

juveniles <u>in custody</u> alleged to have committed felonies.		
Fingerprints and photographs of a juvenile 10 years old or older adjudicated for a felony offense must be taken if not taken before adjudication.	7B-2102(b)	123
Fingerprints transferred to SBI. Fingerprints of juveniles alleged to have committed A-E felony offenses transferred to FBI.	7B-2102(c)	124
Fingerprints and photographs must be destroyed if no petition is filed, the court does not find probable cause, or the juvenile is not adjudicated delinquent.	7B-2102(e)	124
Nontestimonial for <u>blood sample</u> requires sworn affidavit and probable cause.	7B-2105(b)	125
Transfer hearing may be conducted upon a court's own motion.	7B-2202(e)	127
Transfer hearing <u>shall</u> be continued if the juvenile has not received 5 days notice of intent to seek transfer prior to the probable cause hearing.	7B-2202(e)	127
Structure for contempt of court sanctions for undisciplined juveniles: up to 24 hours in detention for first time in contempt; up to 3 days detention for the second time; up to 5 days for the third and subsequent time.	7B-2503	137
Timing of five 24-hour periods of intermittent detention in the court's discretion.	7B-2504(13)	139
Delinquency history levels: point system devised by Sentencing Commission.	7B-2504.1	139-141

Order of probation to remain in force for 2 years with up to 1 year extension (change from 12 months).	7B-2506(c)	143
The Department of Juvenile Justice, including the court counselor who has or will supervise the juvenile on post release and the staff of the releasing facility, shall develop a post-release supervision plan.	7B-2510	145
Allows extended jurisdiction to 19 years of age only by order of the court. (Note: House members agreed on court approval for extension until age 21.)	7B-2513(a) 7B-1501(16)	147-148 106
Requires motion for extended jurisdiction hearing filed at least 180 days prior to a juvenile's 18th birthday, and the hearing to be held within 30 days of filing of the motion.	7B-2513(b)	147
Court may excuse one or both parents from appearing in court.	7B-2700(a)	150
Employers may not use a parent's appearance in court as basis for demotion or dismissal.	7B-2700(b)	150
Only parent (as opposed to "parent, guardian, or custodian" as in other sections of the proposed bill) may be held responsible for financial coverage of a juvenile's care/treatment. (Note: "Parent, guardian or custodian" may be required to appear in court, participate in treatment of juvenile, or seek treatment for issue resulting or contributing to delinquent behavior of the juvenile, held in contempt for failure to comply with court orders.)	7B-2704	151
Allows criminal or civil contempt proceedings against parents.	7B-2705	151

Record of adjudication for felony offense may be used by law enforcement, magistrate, and prosecutor for pretrial release and plea bargain decisions.	7B-3000	166-167
No divisions created. Roles and responsibilities defined and proscribed for Department of Juvenile Justice and Secretary of Department.	143B-511	1
Community based alternatives to be called "juvenile court services."	143B-512	2
Youth Service Advisory Committees to be called "Juvenile Crime Prevention Councils" with specific membership.	143B-512(4) 143B-550	2 12

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE DRS4664-LT166E(5.6)

Short Title: Juvenile Justice Reform Act.

(Public)

Sponsors: Senators Cooper, Lucas, Odom, and Hartsell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO
3 AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO
4 MAKE CONFORMING CHANGES TO THE STATUTES, AND TO
5 APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON
6 JUVENILE CRIME AND JUSTICE.

7 The General Assembly of North Carolina enacts:

8 **PART I. ESTABLISHMENT OF THE DEPARTMENT OF JUVENILE JUSTICE**
9 **AND CONFORMING STATUTORY CHANGES.**

10 Section. 1. (a) Articles 24 and 24A of Chapter 7A of the General
11 Statutes, Article 2 of Chapter 110 of the General Statutes, and Chapter 134A of the
12 General Statutes are repealed.

13 (b) Chapter 143B of the General Statutes is amended by adding a new
14 Article to read:

15 "ARTICLE 12.
16 "Department of Juvenile Justice.
17 "Part 1. General Provisions.

18
19 **THE FOLLOWING PART IS NEW:**

20
21 **"§ 143B-511. Department of Juvenile Justice -- creation.**

22 There is hereby created and constituted a department to be known as the
23 'Department of Juvenile Justice,' with the organization, powers, and duties defined in
24 Article 1 of this Chapter, except as modified in this Article.

25 **"§ 143B-512. Definitions.**

1 The following definitions shall apply to this Article, unless the context or subject
2 matter otherwise requires:

- 3 (1) Chief court counselor. -- The person responsible for administration
4 and supervision of juvenile intake, probation, and post-release
5 supervision in each judicial district, operating under the
6 supervision of the Secretary of the Department of Juvenile Justice.
- 7 (2) Community-based program. -- A program providing nonresidential
8 or residential treatment to a juvenile under the jurisdiction of the
9 juvenile court in the community where the juvenile's family lives.
10 A community-based program may include specialized foster care,
11 family counseling, shelter care, and other appropriate treatment.
- 12 (3) Court. -- The district court division of the General Court of
13 Justice.
- 14 (4) Court counselor. -- A person responsible for probation and post-
15 release supervision to juveniles under the supervision of the chief
16 court counselor.
- 17 (5) Custodian. -- The person or agency that has been awarded legal
18 custody of a juvenile by a court.
- 19 (6) Department. -- The North Carolina Department of Juvenile Justice.
- 20 (7) Detention facility. -- A facility authorized to provide secure
21 confinement and care for juveniles. Detention facilities include
22 both State and locally administered detention homes, centers, and
23 facilities.
- 24 (8) District. -- Any district court district as established by G.S. 7A-133.
- 25 (9) Judge. -- Any district court judge.
- 26 (10) Judicial district. -- Any district court district as established by G.S.
27 7A-133.
- 28 (11) Juvenile court. -- Any district court exercising jurisdiction pursuant
29 to this Chapter.
- 30 (12) Juvenile court services. -- Any type of residential or nonresidential
31 program for juveniles who are under the jurisdiction of the
32 juvenile court which provides services to a juvenile in the
33 community where the juvenile's family lives. Juvenile court
34 services may include family counseling, restitution, victim-offender
35 mediation, and other appropriate services.
- 36 (13) Juvenile facilities. -- A State-operated training school, detention
37 facility, multipurpose group home, or other residential institution
38 for committed delinquents previously operated by the Department
39 of Juvenile Justice.
- 40 (14) Juvenile Crime Prevention Councils. -- Councils in each county
41 that are appointed by the boards of county commissioners in the
42 respective counties. The Councils develop plans and administer
43 funds for dispositional community service and delinquency
44 prevention and annually evaluate services and programs.

- 1 (15) Post-release supervision. -- The supervision of a juvenile who has
2 been returned to the community after having been committed to
3 the Department of Juvenile Justice.
- 4 (16) Probation. -- The status of a juvenile who has been adjudicated
5 delinquent, is subject to specified conditions under the supervision
6 of a court counselor, and may be returned to the court for
7 violation of those conditions during the period of probation.
- 8 (17) Programs. -- Any type of residential or nonresidential program or
9 service for youth that may be developed by the Secretary as
10 authorized by this Article.
- 11 (18) Prosecutor. -- The district attorney or assistant district attorney
12 assigned by the district attorney to juvenile proceedings.
- 13 (19) Secretary. -- The Secretary of the Department of Juvenile Justice.
- 14 **§ 143B-513. Department of Juvenile Justice -- duties.**
- 15 (a) The Department of Juvenile Justice shall act to:
- 16 (1) Protect the public from acts of juvenile delinquency;
17 (2) Provide services to juveniles to assist them to become productive,
18 responsible citizens;
19 (3) Provide for a statewide and uniform system of juvenile probation
20 and post-release supervision that provides adequate and
21 appropriate services to certain children who are found to be within
22 the juvenile jurisdiction of the district court;
23 (4) Authorize an intake process for diversion of selected juvenile
24 offenders from the juvenile justice system;
25 (5) Plan, develop, and coordinate comprehensive multidisciplinary
26 services and programs statewide for prevention, early intervention,
27 and rehabilitation of juveniles;
28 (6) Implement training school programs that provide appropriate
29 mental health and substance abuse treatment and care according to
30 the needs of the juveniles and provide quality educational
31 programs, including vocational and technical education in
32 coordination with other local and State services and resources for
33 juveniles; and
34 (7) Ensure that personnel responsible for the care, supervision, and
35 treatment of juveniles are appropriately apprised of the
36 requirements of this Article and trained in specialized and cultural
37 diversity areas to comply with standards established by Chapter 7B
38 of the General Statutes.
- 39 (b) In addition to the powers and duties mandated in subsection (a) of this
40 section, the Department may release or transfer a juvenile from a secure custody
41 facility to another secure custody facility when necessary to appropriately administer
42 the juvenile's commitment. The Department shall notify the court that committed
43 the juvenile to the Department, in writing, of its intent to release or transfer the

1 juvenile. If the court does not respond within 10 days after receipt of the notice, the
2 release or transfer shall be deemed granted.

3 (c) The Department may also provide consulting services and technical assistance
4 to courts, law enforcement agencies, and other agencies, local governments, and
5 public and private organizations, and may develop or assist Juvenile Crime
6 Prevention Councils in developing community needs, assessments, and action
7 programs relating to prevention and treatment of delinquent and undisciplined
8 behavior.

9 (d) The Department shall annually collect and report budget expense data for
10 every program operated and contracted by the Department. The budget and expense
11 data shall conform to a format approved by the Department and to any statutory
12 requirements and shall include information and data on all State-operated and
13 contracted programs for the purpose of comparing programs. The Department shall
14 submit an annual budget and expense report to the Office of the Governor no later
15 than February 1 each year.

16 (e) The Department shall develop a cost-benefit model and apply the model to
17 each State-funded program. Program commitment and recidivism rates shall be
18 components of the model. In developing the model, the Department shall consider
19 the recommendations of the State Advisory Board on Juvenile Justice and
20 Delinquency Prevention. The Department shall submit a report ranking the State-
21 funded programs to the Governor and the General Assembly, on or before February
22 1 each year.

23 (f) Each programmatic, residential, and service contract or agreement entered into
24 by the Department shall include a cooperation clause for purposes of complying with
25 the Department's quality assurance requirements, cost-accounting requirements,
26 recidivism rates, and the program outcome evaluation programs.

27 **"§ 143B-514. Department of Juvenile Justice -- functions and organization.**

28 (a) All authority, powers, duties, and functions, including statutory, records,
29 personnel, property, unexpended balances of appropriations, allocations or other
30 funds, including the functions of budgeting and purchasing, of the Division of
31 Juvenile Services of the Administrative Office of the Courts are transferred to and
32 vested in the Department of Juvenile Justice as if by a Type I Transfer as defined in
33 G.S. 143A-6.

34 (b) All authority, powers, duties, and functions, including statutory, records,
35 personnel, property, unexpended balances of appropriations, allocations or other
36 funds, including the functions of budgeting and purchasing, of the Division of Youth
37 Services of the Department of Health and Human Services are transferred to and
38 vested in the Department of Juvenile Justice as if by a Type I Transfer as defined in
39 G.S. 143A-6.

40 (c) All institutions previously operated by the Division of Youth Services of the
41 Department of Health and Human Services and the present central office of the
42 Division of Youth Services, including land, buildings, equipment, supplies, personnel,
43 or other properties rented or controlled for youth development purposes, shall be
44 administered by the Department of Juvenile Justice.

1 (d) All institutions previously operated by the Division of Juvenile Services of the
2 Administrative Office of the Courts and the present central office of the Division of
3 Juvenile Services, including land, buildings, equipment, supplies, personnel, or other
4 properties rented or controlled for youth development purposes, shall be
5 administered by the Department of Juvenile Justice.

6 **"§ 143B-515. Secretary of the Department of Juvenile Justice -- powers and duties.**

7 (a) The head of the Department of Juvenile Justice is the Secretary of the
8 Department of Juvenile Justice. The Secretary shall have the powers and duties
9 conferred by this Chapter, delegated by the Governor, and conferred by the
10 Constitution and laws of this State. The Secretary shall be responsible for effectively
11 and efficiently organizing the Department of Juvenile Justice to promote the policy of
12 the State as set forth in this Article and to promote public safety and to prevent the
13 commission of criminal offenses by juveniles in accord with that policy.

14 (b) The Secretary shall have the following powers and duties:

- 15 (1) To develop a sound admission or intake program to youth services
16 institutions, including the requirement of a careful evaluation of
17 the needs of each child prior to acceptance and placement.
- 18 (2) To assure quality programs in youth services institutions or youth
19 services programs which shall be designed to meet the needs of
20 children in care or receiving services.
- 21 (3) To have all other powers of a secretary in relation to a division of
22 youth services or youth services institutions or youth services
23 programs as provided by the Executive Organization Act of 1973
24 as amended and codified in Chapter 143B of the General Statutes
25 or as provided by any other appropriate State law.
- 26 (4) To adopt rules and regulations to implement the provisions of this
27 Article and the responsibilities of the Secretary and the
28 Department of Juvenile Justice under Chapter 7B of the General
29 Statutes.
- 30 (5) To designate the appropriate unit of the Department of Juvenile
31 Justice to be responsible for coordination of State-level services in
32 relation to delinquency prevention and juvenile court services so
33 that any citizen may go to one place in State government to
34 receive services or access to services.
- 35 (6) To arrange appropriate coordination and planning within the
36 child-serving agencies of the Department of Juvenile Justice and
37 promote interdepartmental coordination.
- 38 (7) To assist local governments and private service agencies in the
39 development of juvenile court services and delinquency
40 prevention, and to provide information on the availability of
41 potential funding sources and whatever assistance may be
42 requested in making application for needed funding.

1 (8) To approve yearly program evaluations and to make
2 recommendations to the General Assembly concerning
3 continuation funding that might be supported by that evaluation.

4 (9) To approve program evaluation standards by which all programs
5 developed under the provisions of this Article may be objectively
6 evaluated.

7 Such standards as may be developed for the purpose of program
8 evaluation shall be in addition to any current standards as may be
9 applicable under the existing authority of the Social Services
10 Commission and the Department of Juvenile Justice.

11 Minimum operating standards, as well as program evaluation
12 standards, as may be needed for new program models designed to
13 fulfill the intent of this Article, may be developed at the discretion
14 of the Secretary either by the Social Services Commission or the
15 Secretary.

16 (10) To develop a formula for funding on a matching basis for juvenile
17 court and delinquency prevention services as provided for in this
18 Article. This formula shall be based upon the county's or counties'
19 relative ability to fund community-based programs for juveniles.

20 Local governments receiving State matching funds for programs
21 under the provisions of this Article must maintain the same overall
22 level of effort that existed at the time of the filing of the county
23 assessment of youth needs with the Department.

24 (11) Assure that the Criminal Justice Information Network Governing
25 Board administer a comprehensive juvenile justice information
26 system to collect data and information about delinquent juveniles
27 for the purpose of developing treatment and intervention plans and
28 allowing reliable assessment and evaluation of the effectiveness of
29 rehabilitative and preventive services provided to delinquent
30 juveniles.

31 (12) Establish substance abuse testing for juveniles adjudicated
32 delinquent for substance abuse offenses.

33 (c) Except as otherwise specifically provided in this Article and in Article 1 of this
34 Chapter, the functions, powers, duties, and obligations of every agency or division in
35 the Department of Juvenile Justice shall be prescribed by the Secretary of the
36 Department of Juvenile Justice.

37 (d) The Secretary may adopt rules and procedures for the implementation of this
38 section. The Secretary may adopt rules applicable to local human services agencies
39 providing juvenile court and delinquency prevention services for the purpose of
40 program evaluation, fiscal audits, and collection of third-party payments.

41 "§ 143B-516. Secretary of the Department of Juvenile Justice requests for grants-in-
42 aid from non-State agencies.

43 It is the intent of this General Assembly that non-State human services agencies
44 providing juvenile court and delinquency prevention programs submit their

1 appropriation requests for grants-in-aid through the Secretary of the Department of
2 Juvenile Justice for recommendations to the Governor, the Advisory Budget
3 Commission, and the General Assembly and that agencies receiving these grants, at
4 the request of the Secretary of the Department of Juvenile Justice, provide a
5 postaudit of their operations that has been done by a certified public accountant.

6 "§ 143B-517. Department of Juvenile Justice -- authority to contract with other
7 entities.

8 (a) The Department of Juvenile Justice may contract with any governmental
9 agency, person, association, or corporation for the accomplishment of its duties and
10 responsibilities provided that the expenditure of funds pursuant to these contracts
11 shall be for the purposes for which the funds were appropriated and is not otherwise
12 prohibited by law.

13 (b) The Department may enter into contracts with and to act as intermediary
14 between any federal government agency and any county of this State for the purpose
15 of assisting the county to recover monies expended by a county-funded financial
16 assistance program; and, as a condition of assistance, the county shall agree to hold
17 and save harmless the Department against any claims, loss, or expense which the
18 Department might incur under the contracts by reason of any erroneous, unlawful, or
19 tortious act or omission of the county or its officials, agents, or employees.

20 "§ 143B-518. Department of Juvenile Justice; authority to assist private nonprofit
21 foundations.

22 The Secretary may allow employees of the Department or provide other
23 appropriate services to assist any private nonprofit foundation which works directly
24 with services or programs of the Department and whose sole purpose is to support
25 the services and programs of the Department. A Department employee shall be
26 allowed to work with a foundation no more than 20 hours in any one month. These
27 services are not subject to the provisions of Chapter 150B of the General Statutes.

28 The board of directors of each private, nonprofit foundation shall secure and pay
29 for the services of the State Auditor's Office or employ a certified public accountant
30 to conduct an annual audit of the financial accounts of the foundation. The board of
31 directors shall transmit to the Secretary of the Department of Juvenile Justice a copy
32 of the annual financial audit report of the private nonprofit foundation.

33

34 **THE FOLLOWING PART REPLACES CHAPTER 134A, YOUTH SERVICES:**

35

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"Part 2. Juvenile Facilities.

37 "§ 143B-520. Juvenile facilities.

38 The Department of Juvenile Justice shall be responsible for administration of
39 statewide programs to implement the right of any committed juvenile to appropriate
40 treatment according to the juvenile's needs, including the following programs or
41 services: educational, clinical and psychological, psychiatric, social, medical,
42 vocational, recreational, and others as identified as appropriate by the Secretary.

43 "§ 143B-521. Authority to provide necessary medical or surgical care.

1 The Department may provide such medical and surgical treatment as is necessary
2 to preserve the life and health of students while in care, provided that no surgical
3 operation may be performed except as authorized in G.S. 148-22.2.

4 **"§ 143B-522. Compensation to children in care.**

5 Juveniles who have been committed to the Department may be compensated for
6 work or participation in training programs at rates approved by the Secretary within
7 available funds. The Department is authorized to accept grants or funds from any
8 source to compensate juveniles as provided under this section.

9 **"§ 143B-523. Criminal offense to aid escapes.**

10 It shall be unlawful for any person to aid, harbor, conceal, or assist any juvenile to
11 escape from an institution or youth services program. Any person who renders said
12 assistance to a juvenile shall be guilty of a Class 1 misdemeanor.

13 **"§ 143B-524. Visits and community activities.**

14 The Department shall encourage visits by parents, guardians, or custodians and
15 responsible relatives of juveniles in care. The Department shall also arrange a suitable
16 program of home visits for juveniles in care.

17 **"§ 143B-525. Regional detention services.**

18 The Department shall be responsible for juvenile detention services, including the
19 development of a statewide plan for regional juvenile detention services that will
20 offer juvenile detention care of sufficient quality to meet State standards to any
21 juvenile requiring juvenile detention care within the State in a detention facility as
22 follows:

23 (1) The Department shall plan with the counties operating a county
24 detention facility to provide regional juvenile detention services to
25 surrounding counties, except that the Department shall have some
26 discretion in defining the geographical boundaries of the regions
27 based on negotiations with affected counties, distances, availability
28 of juvenile detention care that meets State standards, and other
29 appropriate variable factors.

30 (2) The Department shall plan for and administer five or more
31 regional detention homes, including careful planning on location,
32 architectural design, construction, and administration of a program
33 to meet the needs of juveniles in juvenile detention care. Both the
34 physical facility and the program of a regional detention home
35 shall comply with State standards.

36 **"§ 143B-526. State subsidy to county detention facilities.**

37 The Department shall administer a State subsidy program to pay a county
38 detention facility which provides juvenile detention services and meets State
39 standards a certain per diem per juvenile. In general, this per diem should be fifty
40 percent (50%) of the total cost of caring for a juvenile from within the county and
41 100 percent (100%) of the total cost of caring for a juvenile from another county.
42 Any county placing a juvenile in a detention home in another county shall pay fifty
43 percent (50%) of the total cost of caring for the child to the Department. The exact
44 funding formulas may be varied by the Department to operate within existing State

1 appropriations or other funds that may be available to pay for juvenile detention
2 care.

3 **"§ 143B-527. Authority for implementation.**

4 In order to allow for effective implementation of a statewide regional approach to
5 juvenile detention, the Department shall have legal authority to do the following:

- 6 (1) To adopt rules that may be necessary to fulfill its responsibilities
7 under this Article;
8 (2) To plan with counties operating county detention homes to
9 provide regional services and to upgrade physical facilities as
10 recommended in said report, to contract with counties for services
11 and care, and to pay State subsidies to counties providing regional
12 juvenile detention services that meet State standards;
13 (3) To develop one or more pilot programs to demonstrate quality
14 juvenile detention care on a regional basis that meet State
15 standards;
16 (4) To develop a plan whereby law enforcement officers or other
17 appropriate employees of local government shall be reimbursed by
18 the State for the costs of transportation of a juvenile to and from
19 any juvenile detention facility;
20 (5) To seek funding for juvenile detention services from federal
21 sources, and to accept gifts of funds from public or private sources;
22 and
23 (6) To transfer State funds appropriated for institutions or other youth
24 services programs to develop a pilot program of juvenile detention
25 care, to purchase detention care in a county detention facility that
26 meets State standards, and to operate a detention facility.

27

28 **THE FOLLOWING PART REPLACES ARTICLE 24 OF CHAPTER 7A, JUVENILE**
29 **SERVICES, AND ARTICLE 2 OF CHAPTER 110, POWERS AND DUTIES OF**
30 **JUVENILE PROBATION OFFICERS:**

31

32 "Part 3. Juvenile Court Services.

33 **"§ 143B-530. Juvenile court services.**

34 The Department of Juvenile Justice shall be responsible for administration of a
35 statewide and uniform system of juvenile probation and post-release supervision
36 services in all district court districts of the State. The Secretary shall be responsible
37 for planning, organizing, and administering juvenile probation and post-release
38 supervision services on a statewide basis to the end that juvenile services will be
39 uniform throughout the State and of sufficient quality to meet the needs of the
40 children under supervision.

41 **"§ 143B-531. Duties and powers of Secretary.**

42 The Secretary shall have the following powers and duties as they relate to juvenile
43 court services:

- 1 (1) To plan for a statewide program of juvenile probation and post-
2 release supervision services.
- 3 (2) To appoint such personnel within the Department of Juvenile
4 Justice as may be necessary to administer a statewide and uniform
5 system of juvenile probation and post-release supervision.
- 6 (3) To appoint the chief court counselor in each district court district
7 with the approval of the chief district judge of that district.
- 8 (4) To study the various issues related to qualifications, salary ranges,
9 appointment of personnel on a merit basis, including chief court
10 counselors, court counselors, secretaries and other appropriate
11 personnel, at the State and district levels in order to adopt
12 appropriate policies and procedures governing personnel.
- 13 (5) To develop a statewide plan for staff development and training so
14 that chief court counselors, court counselors and other personnel
15 responsible for juvenile services may be appropriately trained and
16 qualified; such plan may include attendance at appropriate
17 professional meetings and opportunities for educational leave for
18 academic study.
- 19 (6) To develop, promulgate, and enforce such policies, procedures,
20 rules, and regulations as the Secretary may find necessary and
21 appropriate to implement a statewide and uniform program of
22 juvenile probation and post-release supervision services.

23 **"§ 143B-532. Duties and powers of chief court counselors.**

24 The chief court counselor in each district court district appointed as provided by
25 this Article shall have the following powers and duties:

- 26 (1) To appoint such court counselors, secretaries, and other personnel
27 as may be authorized by the Department in accordance with the
28 personnel policies adopted by the Secretary.
- 29 (2) To supervise and direct the program of juvenile probation and
30 post-release supervision within the district court district under the
31 supervision of the court and the Secretary according to the
32 statewide practices and procedures promulgated by the Secretary.
- 33 (3) To provide in-service training for staff as required by the
34 Secretary.
- 35 (4) To keep any records and make any reports requested by the
36 Secretary in order to provide statewide data and information about
37 juvenile needs and services.

38 **"§ 143B-533. Duties and powers of juvenile court counselors.**

39 All juvenile court counselors providing services to judges hearing juvenile cases
40 shall have the following powers and duties, as the court may require:

- 41 (1) To secure or arrange for such information concerning a case as the
42 court may require before, during, or after the hearing.
- 43 (2) To prepare written reports for the use of the court.
- 44 (3) To appear and testify at court hearings.

- 1 (4) To assume temporary custody of a juvenile when directed by court
2 order.
- 3 (5) To furnish each juvenile on probation and the juvenile's parents,
4 guardian, or custodian with a written statement of the juvenile's
5 conditions of probation, and to consult with the parents, guardian,
6 or custodian so that they may help the juvenile comply with the
7 juvenile's probation.
- 8 (6) To keep informed concerning the conduct and progress of any
9 juvenile on probation or under court supervision through home
10 visits or conferences with the parents, guardian, or custodian and
11 in other ways.
- 12 (7) To see that the conditions of probation are complied with by the
13 juvenile, or to bring any juvenile who violates the juvenile's
14 probation to the attention of the court.
- 15 (8) To make periodic reports to the court concerning the adjustment
16 of any juvenile on probation or under court supervision.
- 17 (9) To keep such records of the juvenile's work as the court may
18 require.
- 19 (10) To account for all funds collected from juveniles.
- 20 (11) To have all the powers of a peace officer in the district.
- 21 (12) To provide supervision for a juvenile transferred to the officer's
22 supervision from another court or another state, and to provide
23 supervision for any child released from an institution operated by
24 the Department of Correction when requested by the Department
25 to do so.
- 26 (13) To assist in the development of post-release supervision and the
27 supervision of juveniles.
- 28 (14) To have such other duties as the court may direct.
- 29

30 **THE FOLLOWING PART IS NEW:**

31

32 "Part 4. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

33 "§ 143B-540. Comprehensive Juvenile Delinquency and Substance Abuse Prevention
34 Plan.

35 (a) The Department shall develop a comprehensive juvenile delinquency and
36 substance abuse prevention plan that will provide nonduplicative, collaborative,
37 cooperative, public/private, State/local juvenile delinquency and substance abuse
38 prevention programs to youth and their families. These collaborative programs shall
39 be interdisciplinary and multitiered, shall provide a continuum of services, and shall
40 be cooperatively and collaboratively administered at and accessible to community and
41 local levels. In administering the programs, communities and localities shall adhere
42 to proven effective principles. The Department shall ensure that localities are
43 informed about best practices in juvenile delinquency and substance abuse
44 prevention.

1 (b) The Department shall ensure that any program provided through this plan
2 contains at least the following critical elements:

- 3 (1) An addressing of the highest priority problem areas and an
4 identification of the risk and protective factors to which youth in a
5 particular community are exposed;
- 6 (2) The strongest focus on populations exposed to a number of risk
7 factors;
- 8 (3) An addressing of problem areas and an identification of strengths
9 both early in life and at appropriate developmental stages;
- 10 (4) An addressing of multiple risk factors in different settings such as
11 family, school, community, and peer group;
- 12 (5) An offering of comprehensive interventions across many systems
13 that deal simultaneously with many aspects of a youth's life;
- 14 (6) An intensive involvement of multiple contacts weekly or even daily
15 with at-risk youth;
- 16 (7) An operation that is strength-based rather than deficiency-based,
17 that builds on a youth's strengths rather than on deficiencies;
- 18 (8) A holistic approach to youth within the context of their
19 relationships to and with others rather than focusing solely on the
20 youth; and
- 21 (9) An incorporation of community participation and ethnic and
22 cultural diversity into the development and evaluation of services.

23 (c) The Department shall ensure that the plan contain at least the following
24 programs, which have proven effective in preventing juvenile delinquency and
25 substance abuse and which should be available as basic services in communities:

- 26 (1) Early intervention;
- 27 (2) In-home and community-based family counseling and parent
28 training;
- 29 (3) Adolescent and family substance abuse prevention services,
30 including alcohol abuse prevention services and including
31 substance abuse education;
- 32 (4) Nonschool hours activities, both before and after school hours;
- 33 (5) Law-related education and life/social skills training programs;
- 34 (6) Conflict resolution, problem solving, and anger management; and
- 35 (7) Personal advocacy, including mentoring relationships, tutors, or
36 other caring adult programs.

37 (d) Prior to the implementation of any plan and program development prescribed
38 in this section, the Department shall report to the General Assembly in detail on its
39 plan to implement this section, including detailed descriptions of the plan and
40 programs contemplated. The report shall also provide a detailed cost analysis of this
41 section's implementation.

42 (e) The Department shall cooperate with all other affected State agencies and
43 entities in implementing this section.

44

1 THE FOLLOWING PART REPLACES ARTICLE 24A OF CHAPTER 7A,
2 DELINQUENCY PREVENTION AND YOUTH SERVICES:

3

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"Part 5. Juvenile Crime Prevention Councils.

5

"§ 143B-550. Juvenile Crime Prevention Councils; legislative intent.

6

7 (a) It is the intent of the General Assembly both to reduce the number of juveniles
8 committed by the courts for delinquency to institutions operated by the Department
9 of Juvenile Justice or other State agencies and to prevent juveniles who are at risk
10 from becoming delinquent. The primary intent of this Article is to provide an
11 ongoing, comprehensive State/local, public/private, cooperative, collaborative
12 partnership to develop both streamlined and enhanced community-based alternatives
13 to training school and detention commitment and unified, nonduplicative,
14 coordinated, and collaborative community-based prevention strategies and programs.
15 Additionally, it is the intent of the General Assembly to provide noninstitutional
16 dispositional alternatives that will protect the community and the juvenile.

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(1) These programs shall be planned and organized at the community
level, and developed in partnership with the State. These planning
efforts shall include appropriate representation from local
government, local public and private agencies serving families and
children, local business leaders, citizens with an interest in youth
problems, youth representatives, and others as may be appropriate
in a particular community. The planning bodies at the local level
shall be the Juvenile Crime Prevention Councils.

(2) At the State level, the Department shall:

a. Serve the community level as a clearinghouse for
information on delinquency prevention strategies and on
alternatives to commitment. The Department shall research,
collect, and distribute information to local agencies about
best practices, what works, what is promising, and what does
not work;

b. Provide technical assistance to Juvenile Crime Prevention
Councils;

c. Make recommendations to State and local governments on
changes to laws, rules, or policies that will reduce the

- 1 incidence of delinquency and the incidence of inappropriate
2 commitment;
- 3 d. Develop a comprehensive structure for follow-up and
4 delivery of program and treatment services to ensure
5 juvenile, adult, and system accountability;
- 6 e. Coordinate statewide media campaigns that accurately
7 inform people about the development of strategies to
8 prevent delinquency; and
- 9 f. Channel existing delinquency prevention funding streams to
10 the community level until a permanent funding stream for
11 delinquency prevention is established.
- 12 (3) At the local level, as a prerequisite for receiving funding for
13 juvenile court service and delinquency prevention programs, the
14 board of county commissioners of each county shall appoint a
15 Juvenile Crime Prevention Council. The Juvenile Crime
16 Prevention Council shall consist of not more than 25 members and
17 should include, if possible, the following:
- 18 a. The local school superintendent, or that person's designee;
19 b. A chief of police in the county;
20 c. The local sheriff, or that person's designee;
21 d. The district attorney, or that person's designee;
22 e. The chief court counselor, or that person's designee;
23 f. The Director of the Area Mental Health Authority, or that
24 person's designee;
- 25 g. The director of the local department of social services, or
26 that person's designee;
- 27 h. The county manager, or that person's designee;
- 28 i. A substance abuse professional;
- 29 j. A member of the faith community;
- 30 k. A county commissioner;
- 31 l. A youth representative;
- 32 m. A juvenile defense attorney;
- 33 n. A district court judge;
- 34 o. A member of the business community;
- 35 p. A public health professional;
- 36 q. A representative from the United Way or other nonprofit
37 agency; and
- 38 r. Up to six members of the public to be appointed by the
39 county board of commissioners.
- 40 The county shall modify the Council's membership as necessary to
41 ensure that current Council members reflect the racial and
42 socioeconomic diversity of the community and to minimize
43 potential conflicts of interest by members.

1 (4) The Council shall annually review the needs of troubled juveniles,
2 both those at risk of delinquency and those adjudicated delinquent,
3 within the county and the assets and resources that are available to
4 address the needs of those juveniles. The Council shall use a
5 public/private, nonduplicative, collaborative, coordinated,
6 multifaceted, and multidisciplinary approach to this review, and to
7 the utilization of any existing programs as well as to the
8 development of any new programs and services. In particular, the
9 Council shall review the existing resources that can be expanded to
10 provide prevention programs and services. The Council shall
11 include the faith-based community as a vital part of this approach.
12 The Council shall develop and advertise a Request for Proposal
13 process, and submit a written Plan of Action for the expenditure of
14 juvenile sanction and prevention funds to the county for its
15 approval. Upon the county's authorization, the Plan shall be
16 submitted to the Department for final approval and subsequent
17 implementation.

18 In addition to its annual review, the Council shall perform the
19 following functions on an ongoing basis:

- 20 a. Conduct an ongoing updated community needs assessment
21 in order to identify resources and needs and develop
22 appropriate solutions to meet these needs;
23 b. Perform rigorous and ongoing performance evaluations of
24 prevention and alternatives programs and services. The
25 Council shall require each prevention initiative and each
26 alternatives initiative to have a strong evaluation component
27 and the Council shall make this accountability responsibility
28 a condition of each initiative's continued funding;
29 c. Increase public awareness of the causes of delinquency and
30 of strategies to reduce the problem;
31 d. Develop strategies to intervene and appropriately respond to
32 and treat the needs of juveniles at risk of delinquency or of
33 juveniles requiring alternatives to commitment as these
34 needs are identified through appropriate risk assessment
35 instruments;
36 e. Provide services to juveniles who are in need of treatment,
37 counseling, or rehabilitation and to the families of those
38 juveniles, including court-ordered parenting responsibility
39 classes; and
40 f. Plan for the establishment of a permanent funding stream
41 for delinquency prevention.

42 (5) To meet the programming needs of delinquent and at-risk youth in
43 smaller, rural counties, Juvenile Crime Prevention Councils shall
44 examine the benefits of joint program development between

1 counties within the same judicial district. If two or more counties
2 determine that a multicounty initiative would be beneficial, they
3 may establish a multicounty Juvenile Crime Prevention Council,
4 with the membership consisting of the members from each county
5 represented.

6 (6) The Secretary shall develop a funding mechanism for programs
7 that meet the standards as developed under the provisions of this
8 Part. The Secretary shall ensure that the guidelines for the
9 State/local partnership's funding process include the following
10 requirements:

11 a. Fund what works. -- Programs and projects that demonstrate
12 progress, that have been proven to be effective, or that show
13 promise, based on valid research should be supported. The
14 partnership shall fund projects based on a 'menu' of types of
15 services. In addition, new innovative projects shall be
16 rigorously evaluated to determine their effectiveness in
17 preventing delinquency and recidivism and their proximal
18 risk factors and may be funded on a discretionary basis.
19 The merits of a program shall be determined on the basis of
20 known or reasonably projected outcomes. Bad practices,
21 poor outcomes, and programs that have proven to be
22 ineffective shall not be funded;

23 b. The money should follow the juvenile. -- The funding
24 process shall be designed in such a way that, whenever a
25 juvenile is being served by a program, funds are allocated to
26 that program for that juvenile and will follow that juvenile.
27 For example, if a juvenile is receiving delinquency
28 prevention services and is subsequently adjudicated
29 delinquent and committed to training school, the county
30 shall continue to fund the services for the juvenile, if still
31 appropriate to reduce the recidivism risk, and shall send the
32 program dollars to the training school;

33 c. Use a formula for the distribution of funds. -- A funding
34 formula shall be developed that ensures that even the
35 smallest counties will be able to provide the basic
36 prevention and alternatives services to juveniles in their
37 communities;

38 d. Allow and encourage local flexibility. -- A vital component
39 of the State/local partnership established by this section is
40 local flexibility to determine how best to allocate prevention
41 and alternatives funds; and

42 e. Combine resources. -- Counties shall be allowed and
43 encouraged to combine resources and services.

1 The Secretary shall adopt rules to implement the policy and intent summarized in
2 this section.

3 **"§ 143B-551. Purchase of care or services from programs meeting State standards.**

4 The Department of Juvenile Justice and any other appropriate State or local
5 agency may purchase care or services from public or private agencies providing
6 delinquency prevention programs or juvenile court services, including parenting
7 responsibility classes. The programs shall meet the State standards as authorized by
8 G.S. 143B-550. As institutional populations are reduced, the Department of Juvenile
9 Justice may divert State funds appropriated for institutional programs to purchase the
10 services pursuant to the provisions of the Executive Budget Act.

11 The Secretary of Juvenile Justice shall prepare an annual report on the
12 effectiveness and cost-benefit of the Department's programs, which shall include the
13 most current institutional populations of juveniles being served by the various
14 departments of State government which shall include comparative costs of all child-
15 serving agencies. Such report shall be submitted to the Governor, the General
16 Assembly, and the various State departments providing services to juveniles.

17
18 **THE FOLLOWING PART IS NEW:**

19
20 "Part 6. State Advisory Council on Juvenile Justice and
21 Delinquency Prevention.

22 **"§ 143B-560. Findings.**

23 The General Assembly finds that juveniles who come within the jurisdiction of
24 juvenile court also receive services from a variety of other State agencies, including
25 the Department of Public Instruction, the Division of Social Services, the Department
26 of Administration, the Division of Child and Family Services, and the Division of
27 Mental Health, Developmental Disabilities, and Substance Abuse Services. No
28 oversight body exists to review the operation of the juvenile justice system and its
29 ancillary components as a single entity and to ensure that State agencies work
30 together in a comprehensive and effective way.

31 **"§ 143B-561. Creation of Council; purpose; members; duties.**

32 (a) Creation. -- There is created the State Advisory Council on Juvenile Justice
33 and Delinquency Prevention. The Council shall be located within the Office of the
34 Governor for organizational, budgetary, and administrative purposes.

35 (b) Purpose. -- The purpose of the Council is to advise all State agencies providing
36 services and supervision to court-adjudicated youth regarding the coordination of
37 services to juveniles.

38 (c) Membership. -- The Council shall consist of 19 members as follows:

39 (1) Four persons appointed by the Governor, one of whom is a private
40 citizen who has demonstrated an interest and commitment to youth
41 and juvenile justice issues.

42 (2) Four persons appointed by the Chief Justice of the Supreme Court.

43 (3) The following persons, or their designees, ex officio:

44 a. The Governor.

- 1 **b.** The Chief Justice of the Supreme Court.
2 **c.** The President Pro Tempore of the Senate.
3 **d.** The Speaker of the House of Representatives.
4 **e.** The Director of the Administrative Office of the Courts.
5 **f.** The Superintendent of Public Instruction.
6 **g.** The Secretary of the Department of Administration.
7 **h.** The Secretary of the Department of Health and Human
8 Services.
9 **i.** The Secretary of the Department of Correction.
10 **j.** The Secretary of the Department of Crime Control and
11 Public Safety.
12 **k.** The Secretary of the Department of Juvenile Justice.

13 (d) Terms. -- Members shall serve for two-year terms, with no prohibition against
14 being reappointed, except initial appointments shall be for terms as follows:

- 15 (1) The Governor shall initially appoint two members for a term of
16 two years and two members for a term of three years.
17 (2) The Chief Justice of the Supreme Court shall initially appoint two
18 members for a term of two years and two members for a term of
19 three years.

20 (e) Chair. -- The Governor and Chief Justice of the Supreme Court shall serve as
21 cochairs of the Council.

22 (f) Vacancies. -- A vacancy on the Council resulting from the resignation of a
23 member or otherwise shall be filled in the same manner in which the original
24 appointment was made and the term shall be for the balance of the unexpired term.

25 (g) Compensation. -- The Council members shall receive no salary as a result of
26 serving on the Council but shall receive per diem, subsistence, and travel expenses in
27 accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

28 (h) Removal. -- Members may be removed in accordance with G.S. 143B-13 as if
29 that section applied to this Article.

30 (i) Meetings. -- The chair shall convene the Council. Meetings shall be held as
31 often as necessary, but not less than four times a year.

32 (j) Quorum. -- A majority of the members of the Council shall constitute a
33 quorum for the transaction of business. The affirmative vote of a majority of the
34 members present at meetings of the Council shall be necessary for action to be taken
35 by the Council.

36 "§ 143B-562. Powers and duties of the Council.

37 The Council shall have the following powers and duties:

- 38 (1) Advise the Department of Juvenile Justice in the review of the
39 State's juvenile justice planning, the development of the
40 community juvenile justice councils, and the development of a
41 formula for the distribution of funds to community juvenile service
42 boards.
43 (2) Advise all State agencies serving juveniles for the purpose of
44 developing a consistent philosophy with regard to providing

- 1 services to youth and promoting collaboration and the efficient and
 2 effective delivery of services to youth and families through State,
 3 local, and district programs and fully address problems of
 4 collaboration across State agencies with the goal of serving youth.
 5 (3) Review and comment on juvenile justice, delinquency prevention,
 6 and juvenile services grant applications prepared for submission
 7 under any federal grant program by any governmental entity of the
 8 State.
 9 (4) Review the juvenile justice system's operation and prioritization of
 10 funding needs.
 11 (5) Review the progress and accomplishment of State and local
 12 juvenile justice, delinquency prevention, and juvenile services
 13 projects.
 14 (6) Develop recommendations concerning the establishment of
 15 priorities and needed improvements with respect to juvenile
 16 justice, delinquency prevention, and juvenile services and report its
 17 recommendations to the General Assembly on or before March 1
 18 each year.
 19 (7) Review and comment on the proposed budget for the Department
 20 of Juvenile Justice."

21 Section 2. (a) G.S. 7A-343.1 reads as rewritten:

22 "**§ 7A-343.1. Distribution of copies of the appellate division reports.**

23 The Administrative Officer of the Courts shall, at the State's expense distribute
 24 such number of copies of the appellate division reports to federal, State departments
 25 and agencies, and to educational institutions of instruction, as follows:

26		
27	Governor, Office of the	1
28	Lieutenant Governor, Office of the	1
29	Secretary of State, Department of the	2
30	State Auditor, Department of the	1
31	Treasurer, Department of the State	1
32	Superintendent of Public Instruction	1
33	Office of the Attorney General	11
34	State Bureau of Investigation	1
35	Agriculture and Consumer Services, Department of	1
36	Labor, Department of	1
37	Insurance, Department of	1
38	Budget Bureau, Department of Administration	1
39	Property Control, Department of Administration	1
40	State Planning, Department of Administration	1
41	Environment and Natural Resources, Department of	1
42	Revenue, Department of	1
43	Health and Human Services, Department of	1
44	<u>Juvenile Justice, Department of</u>	<u>1</u>

1	Commission for the Blind	1
2	Transportation, Department of	1
3	Motor Vehicles, Division of	1
4	Utilities Commission	8
5	Industrial Commission	11
6	State Personnel Commission	1
7	Office of State Personnel	1
8	Office of Administrative Hearings	2
9	Community Colleges, Department of	38
10	Employment Security Commission	1
11	Commission of Correction	1
12	Parole Commission	1
13	Archives and History, Division of	1
14	Crime Control and Public Safety, Department of	2
15	Cultural Resources, Department of	3
16	Legislative Building Library	2
17	Justices of the Supreme Court	1 ea.
18	Judges of the Court of Appeals	1 ea.
19	Judges of the Superior Court	1 ea.
20	Clerks of the Superior Court	1 ea.
21	District Attorneys	1 ea.
22	Emergency and Special Judges of the Superior Court	1 ea.
23	Supreme Court Library	AS MANY AS REQUESTED
24	Appellate Division Reporter	1
25	University of North Carolina, Chapel Hill	71
26	University of North Carolina, Charlotte	1
27	University of North Carolina, Greensboro	1
28	University of North Carolina, Asheville	1
29	North Carolina State University, Raleigh	1
30	Appalachian State University	1
31	East Carolina University	1
32	Fayetteville State University	1
33	North Carolina Central University	17
34	Western Carolina University	1
35	Duke University	17
36	Davidson College	2
37	Wake Forest University	25
38	Lenoir Rhyne College	1
39	Elon College	1
40	Campbell University	25
41	Federal, Out-of-State and Foreign Secretary of State	1
42	Secretary of Defense	1
43	Secretary of Health, Education and Welfare	1
44	Secretary of Housing and Urban Development	1

1	Secretary of Transportation	1
2	Attorney General	1
3	Department of Justice	1
4	Internal Revenue Service	1
5	Veterans' Administration	1
6	Library of Congress	5
7	Federal Judges resident in North Carolina	1 ea.
8	Marshal of the United States Supreme Court	1
9	Federal District Attorneys resident in North Carolina	1 ea.
10	Federal Clerks of Court resident in North Carolina	1 ea.
11	Supreme Court Library exchange list	1
12		

13 Each justice of the Supreme Court and judge of the Court of Appeals shall receive
 14 for ~~his~~ private use, one complete and up-to-date set of the appellate division reports.
 15 The copies of reports furnished each justice or judge as set out in the table above
 16 may be retained by ~~him~~ personally to enable ~~him~~ the justice or judge to keep up-to-
 17 date ~~his~~ the personal set of reports."

18 (b) G.S. 14-316.1 reads as rewritten:

19 **"§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

20 Any person who is at least 16 years old who knowingly or willfully causes,
 21 encourages, or aids any juvenile within the jurisdiction of the court to be in a place
 22 or condition, or to commit an act whereby the juvenile could be adjudicated
 23 delinquent, undisciplined, abused, or neglected as defined by ~~G.S. 7A-517~~ G.S. 7B-
 24 101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

25 It is not necessary for the district court exercising juvenile jurisdiction to make an
 26 adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in
 27 order to prosecute a parent or any person, including an employee of the Department
 28 of ~~Health and Human Services~~ Juvenile Justice under this section. An adjudication
 29 that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a
 30 subsequent prosecution of a parent or any other person including an employee of the
 31 ~~Division of Youth Services~~ Department of Juvenile Justice, who contributes to the
 32 delinquent, undisciplined, abused, or neglected condition of any juvenile."

33 (c) G.S. 17C-3 reads as rewritten:

34 **"§ 17C-3. North Carolina Criminal Justice Education and Training Standards**
 35 **Commission established; members; terms; vacancies.**

36 (a) There is established the North Carolina Criminal Justice Education and
 37 Training Standards Commission, hereinafter called "the Commission," in the
 38 Department of Justice. The Commission shall be composed of 26 members as follows:

- 39 (1) Police Chiefs. -- Three police chiefs selected by the North Carolina
 40 Association of Chiefs of Police and one police chief appointed by
 41 the Governor.
- 42 (2) Police Officers. -- Three police officials appointed by the North
 43 Carolina Police Executives Association and two criminal justice

1 officers certified by the Commission as selected by the North
2 Carolina Law-Enforcement Officers' Association.

3 (3) Departments. -- The Attorney General of the State of North
4 Carolina; the Secretary of the Department of Crime Control and
5 Public Safety; the Secretary of the Department of ~~Health and~~
6 ~~Human Services~~; Juvenile Justice; the Secretary of the Department
7 of Correction; the President of the Department of Community
8 Colleges.

9 (4) At-large Groups. -- One individual representing and appointed by
10 each of the following organizations: one mayor selected by the
11 League of Municipalities; one law-enforcement training officer
12 selected by the North Carolina Law-Enforcement Training
13 Officers' Association; one criminal justice professional selected by
14 the North Carolina Criminal Justice Association; one sworn law-
15 enforcement officer selected by the North State Law-Enforcement
16 Officers' Association; one member selected by the North Carolina
17 Law-Enforcement Women's Association; and one District Attorney
18 selected by the North Carolina Association of District Attorneys.

19 (5) Citizens and Others. -- The President of The University of North
20 Carolina; the Director of the Institute of Government; and two
21 citizens, one of whom shall be selected by the Governor and one
22 of whom shall be selected by the Attorney General. The General
23 Assembly shall appoint two persons, one upon the
24 recommendation of the Speaker of the House of Representatives
25 and one upon the recommendation of the President Pro Tempore
26 of the Senate. Appointments by the General Assembly shall be
27 made in accordance with G.S. 120-122. Appointments by the
28 General Assembly shall serve two-year terms to conclude on June
29 30th in odd-numbered years.

30 (b) The members shall be appointed for staggered terms. The initial appointments
31 shall be made prior to September 1, 1983, and the appointees shall hold office until
32 July 1 of the year in which their respective terms expire and until their successors are
33 appointed and qualified as provided hereafter:

34 For the terms of one year: one member from subdivision (1) of subsection (a),
35 serving as a police chief; three members from subdivision (2) of subsection (a), one
36 serving as a police official, and two criminal justice officers; one member from
37 subdivision (4) of subsection (a), appointed by the North Carolina Law-Enforcement
38 Training Officers' Association; and two members from subdivision (5) of subsection
39 (a), one appointed by the Governor and one appointed by the Attorney General.

40 For the terms of two years: one member from subdivision (1) of subsection (a),
41 serving as a police chief; one member from subdivision (2) of subsection (a), serving
42 as a police official; and two members from subdivision (4) of subsection (a), one
43 appointed by the League of Municipalities and one appointed by the North Carolina
44 Association of District Attorneys.

1 For the terms of three years: two members from subdivision (1) of subsection (a),
 2 one police chief appointed by the North Carolina Association of Chiefs of Police and
 3 one police chief appointed by the Governor; one member from subdivision (2) of
 4 subsection (a), serving as a police official; and three members from subdivision (4) of
 5 subsection (a), one appointed by the North Carolina Law-Enforcement Women's
 6 Association, one appointed by the North Carolina Criminal Justice Association, and
 7 one appointed by the North State Law-Enforcement Officers' Association.

8 Thereafter, as the term of each member expires, his successor shall be appointed
 9 for a term of three years. Notwithstanding the appointments for a term of years, each
 10 member shall serve at the will of the appointing authority.

11 The Attorney General, the Secretary of the Department of Crime Control and
 12 Public Safety, the Secretary of the Department of ~~Health and Human Services,~~
 13 Juvenile Justice, the Secretary of the Department of Correction, the President of The
 14 University of North Carolina, the Director of the Institute of Government, and the
 15 President of the Department of Community Colleges shall be continuing members of
 16 the Commission during their tenure. These members of the Commission shall serve
 17 ex officio and shall perform their duties on the Commission in addition to the other
 18 duties of their offices. The ex officio members may elect to serve personally at any or
 19 all meetings of the Commission or may designate, in writing, one member of their
 20 respective office, department, university or agency to represent and vote for them on
 21 the Commission at all meetings the ex officio members are unable to attend.

22 Vacancies in the Commission occurring for any reason shall be filled, for the
 23 unexpired term, by the authority making the original appointment of the person
 24 causing the vacancy. A vacancy may be created by removal of a Commission member
 25 by majority vote of the Commission for misconduct, incompetence, or neglect of duty.
 26 A Commission member may be removed only pursuant to a hearing, after notice, at
 27 which the member subject to removal has an opportunity to be heard."

28 (d) G.S. 20-79.5(a) reads as rewritten:

29 "(a) Plates. -- The State government officials listed in this section are eligible for a
 30 special registration plate under G.S. 20-79.4. The plate shall bear the number
 31 designated in the following table for the position held by the official.

32	33 Position	34 Number on Plate
34	Governor	1
35	Lieutenant Governor	2
36	Speaker of the House of Representative	3
37	President Pro Tempore of the Senate	4
38	Secretary of State	5
39	State Auditor	6
40	State Treasurer	7
41	Superintendent of Public Instruction	8
42	Attorney General	9
43	Commissioner of Agriculture	10
44	Commissioner of Labor	11

1	Commissioner of Insurance	12
2	Speaker Pro Tempore of the House	13
3	Legislative Services Officer	14
4	Secretary of Administration	15
5	Secretary of Environment and Natural Resources	16
6	Secretary of Revenue	17
7	Secretary of Health and Human Services	18
8	Secretary of Commerce	19
9	Secretary of Correction	20
10	Secretary of Cultural Resources	21
11	Secretary of Crime Control and Public Safety	22
12	<u>Secretary of Juvenile Justice</u>	<u>23</u>
13	Governor's Staff	23-29 <u>24-29</u>
14	State Budget Officer	30
15	State Personnel Director	31
16	Advisory Budget Commission Nonlegislative Member	32-41
17	Chair of the State Board of Education	42
18	President of the U.N.C. System	43
19	Alcoholic Beverage Control Commission	44-46
20	Assistant Commissioners of Agriculture	47-48
21	Deputy Secretary of State	49
22	Deputy State Treasurer	50
23	Assistant State Treasurer	51
24	Deputy Commissioner for the Department of Labor	52
25	Chief Deputy for the Department of Insurance	53
26	Assistant Commissioner of Insurance	54
27	Deputies and Assistant to the Attorney General	55-65
28	Board of Economic Development Nonlegislative Member	66-88
29	State Ports Authority Nonlegislative Member	89-96
30	Utilities Commission Member	97-104
31	Post-Release Supervision and	
32	Parole Commission Member	105-109
33	State Board Member, Commission Member,	
34	or State Employee Not Named in List	110-200".
35	(e) G.S. 66-58(b) reads as rewritten:	
36	"(b) The provisions of subsection (a) of this section shall not apply to:	
37	(1) Counties and municipalities.	
38	(2) The Department of Health and Human Services or the Department	
39	of Agriculture and Consumer Services for the sale of serums,	
40	vaccines, and other like products.	
41	(3) The Department of Administration, except that the agency shall	
42	not exceed the authority granted in the act creating the agency.	
43	(4) The State hospitals for the mentally ill.	
44	(5) The Department of Health and Human Services.	

- 1 (6) The North Carolina School for the Blind at Raleigh.
2 (6a) The Department of Juvenile Justice.
3 (7) The North Carolina Schools for the Deaf.
4 (8) The Greater University of North Carolina with regard to its
5 utilities and other services now operated by it nor to the sale of
6 articles produced incident to the operation of instructional
7 departments, articles incident to educational research, articles of
8 merchandise incident to classroom work, meals, books, or to
9 articles of merchandise not exceeding twenty-five cents (25¢) in
10 value when sold to members of the educational staff or staff
11 auxiliary to education or to duly enrolled students or occasionally
12 to immediate members of the families of members of the
13 educational staff or of duly enrolled students nor to the sale of
14 meals or merchandise to persons attending meetings or conventions
15 as invited guests nor to the operation by the University of North
16 Carolina of an inn or hotel and dining and other facilities usually
17 connected with a hotel or inn, nor to the hospital and Medical
18 School of the University of North Carolina, nor to the Coliseum of
19 North Carolina State University at Raleigh, and the other schools
20 and colleges for higher education maintained or supported by the
21 State, nor to the Centennial Campus of North Carolina State
22 University at Raleigh, nor to the comprehensive student health
23 services or the comprehensive student infirmaries maintained by
24 the constituent institutions of the University of North Carolina.
25 (9) The Department of Environment and Natural Resources, except
26 that the Department shall not construct, maintain, operate or lease
27 a hotel or tourist inn in any park over which it has jurisdiction.
28 The North Carolina Wildlife Resources Commission may sell
29 wildlife memorabilia as a service to members of the public
30 interested in wildlife conservation.
31 (10) Child-caring institutions or orphanages receiving State aid.
32 (11) Highlands School in Macon County.
33 (12) The North Carolina State Fair.
34 (13) Rural electric memberships corporations.
35 (13a) State Farm Operations Commission.
36 (13b) The Department of Agriculture and Consumer Services with
37 regard to its lessees at farmers' markets operated by the
38 Department.
39 (13c) The Western North Carolina Agricultural Center.
40 (14) Nothing herein contained shall be construed to prohibit the
41 engagement in any of the activities described in subsection (a)
42 hereof by a firm, corporation or person who or which is a lessee of
43 space only of the State of North Carolina or any of its departments
44 or agencies; provided the leases shall be awarded by the

1 Department of Administration to the highest bidder, as provided
2 by law in the case of State contracts and which lease shall be for a
3 term of not less than one year and not more than five years.

- 4 (15) The State Department of Correction is authorized to purchase and
5 install automobile license tag plant equipment for the purpose of
6 manufacturing license tags for the State and local governments and
7 for such other purposes as the Department may direct.

8 The Commissioner of Motor Vehicles, or such other authority as
9 may exercise the authority to purchase automobile license tags is
10 hereby directed to purchase from, and to contract with, the State
11 Department of Correction for the State automobile license tag
12 requirements from year to year.

13 The price to be paid to the State Department of Correction for
14 the tags shall be fixed and agreed upon by the Governor, the State
15 Department of Correction, and the Motor Vehicle Commissioner,
16 or such authority as may be authorized to purchase the supplies.

- 17 (16) Laundry services performed by the Department of Correction may
18 be provided only for agencies and instrumentalities of the State
19 which are supported by State funds and for county or municipally
20 controlled and supported hospitals presently being served by the
21 Department of Correction, or for which services have been
22 contracted or applied for in writing, as of May 22, 1973. In
23 addition to the prior sentence, laundry services performed by the
24 Department of Correction may be provided for the Governor
25 Morehead School and the North Carolina School for the Deaf.

26 The services shall be limited to wet-washing, drying and ironing
27 of flatwear or flat goods such as towels, sheets and bedding, linens
28 and those uniforms prescribed for wear by the institutions and
29 further limited to only flat goods or apparel owned, distributed or
30 controlled entirely by the institutions and shall not include
31 processing by any dry-cleaning methods; provided, however, those
32 garments and items presently being serviced by wet-washing,
33 drying and ironing may in the future, at the election of the
34 Department of Correction, be processed by a dry-cleaning method.

- 35 (17) The North Carolina Global TransPark Authority or a lessee of the
36 Authority.

- 37 (18) The activities and products of private enterprise carried on or
38 manufactured within a State prison facility pursuant to G.S. 148-
39 70."

40 (f) G.S. 66-58(c) reads as rewritten:

41 "(c) The provisions of subsection (a) shall not prohibit:

- 42 (1) The sale of products of experiment stations or test farms.

- 1 (2) The sale of learned journals, works of art, books or publications of
2 the Department of Cultural Resources or other agencies, or the
3 Supreme Court Reports or Session Laws of the General Assembly.
- 4 (3) The business operation of endowment funds established for the
5 purpose of producing income for educational purposes; for
6 purposes of this section, the phrase "operation of endowment
7 funds" shall include the operation by public postsecondary
8 educational institutions of campus stores, the profits from which
9 are used exclusively for awarding scholarships to defray the
10 expenses of students attending the institution; provided, that the
11 operation of the stores must be approved by the board of trustees
12 of the institution, and the merchandise sold shall be limited to
13 educational materials and supplies, gift items and miscellaneous
14 personal-use articles. Provided further that sales at campus stores
15 are limited to employees of the institution and members of their
16 immediate families, to duly enrolled students of the campus at
17 which a campus store is located and their immediate families, to
18 duly enrolled students of other campuses of the University of
19 North Carolina other than the campus at which the campus store is
20 located, to other campus stores and to other persons who are on
21 campus other than for the purpose of purchasing merchandise from
22 campus stores. It is the intent of this subdivision that campus stores
23 be established and operated for the purpose of assuring the
24 availability of merchandise described in this Article for sale to
25 persons enumerated herein and not for the purpose of competing
26 with stores operated in the communities surrounding the campuses
27 of the University of North Carolina.
- 28 (4) The operation of lunch counters by the Department of Health and
29 Human Services as blind enterprises of the type operated on
30 January 1, 1951, in State buildings in the City of Raleigh.
- 31 (5) The operation of a snack bar and cafeteria in the State Legislative
32 Building.
- 33 (6) The maintenance by the prison system authorities of eating and
34 sleeping facilities at units of the State prison system for prisoners
35 and for members of the prison staff while on duty, or the
36 maintenance by the highway system authorities of eating and
37 sleeping facilities for working crews on highway construction or
38 maintenance when actually engaged in such work on parts of the
39 highway system.
- 40 (7) The operation by penal, correctional or facilities operated by the
41 Department of Health and Human ~~Services~~ Services, the
42 Department of Juvenile Justice, or by the Department of
43 Agriculture and Consumer Services, of dining rooms for the
44 inmates or clients or members of the staff while on duty and for

- 1 the accommodation of persons visiting the inmates or clients, and
2 other bona fide visitors.
- 3 (8) The sale by the Department of Agriculture and Consumer Services
4 of livestock, poultry and publications in keeping with its present
5 livestock and farm program.
- 6 (9) The operation by the public schools of school cafeterias.
- 7 (9a) The use of a public school bus or public school activity bus for a
8 purpose allowed under G.S. 115C-242 or the use of a public school
9 activity bus for a purpose authorized by G.S. 115C-247.
- 10 (10) Sale by any State correctional or other institution of farm, dairy,
11 livestock or poultry products raised or produced by it in its normal
12 operations as authorized by the act creating it.
- 13 (11) The sale of textbooks, library books, forms, bulletins, and
14 instructional supplies by the State Board of Education, State
15 Department of Public Instruction, and local school authorities.
- 16 (12) The sale of North Carolina flags by or through the auspices of the
17 Department of Administration, to the citizens of North Carolina.
- 18 (13) The operation by the Department of Correction of forestry
19 management programs on State-owned lands, including the sale on
20 the open market of timber cut as a part of the management
21 program.
- 22 (14) The operation by the Department of Correction of facilities to
23 manufacture and produce traffic and street name signs for use on
24 the public streets and highways of the State.
- 25 (15) The operation by the Department of Correction of facilities to
26 manufacture and produce paint for use on the public streets and
27 highways of the State.
- 28 (16) The performance by the Department of Transportation of dredging
29 services for a unit of local government.
- 30 (17) The sale by the State Board of Elections to political committees
31 and candidate committees of computer software designed by or for
32 the State Board of Elections to provide a uniform system of
33 electronic filing of the campaign finance reports required by
34 Article 22A of Chapter 163 of the General Statutes and to facilitate
35 the State Board's monitoring of compliance with that Article. This
36 computer software for electronic filing of campaign finance reports
37 shall not exceed a cost of one hundred dollars (\$100.00) to any
38 political committee or candidate committee without the State
39 Board of Elections first notifying in writing the Joint Legislative
40 Commission on Governmental Operations.
- 41 (18) The leasing of no more than 50 acres within the North Carolina
42 Zoological Park by the Department of Environment and Natural
43 Resources to the North Carolina Zoological Society for the
44 maintenance or operation, pursuant to a contract or otherwise, of

1 an exhibition center, theater, conference center, and associated
2 restaurants and lodging facilities."

3 (g) G.S. 114-19.6 reads as rewritten:

4 "**§ 114-19.6. Criminal history record checks of employees of and applicants for**
5 **employment with the Department of Health and Human Services; and the Department**
6 **of Juvenile Justice.**

7 (a) Definitions. -- As used in this section, the term:

8 (1) 'Covered person' means:

- 9 a. An applicant for employment or a current employee in a
10 position in the Department of Health and Human Services
11 or the Department of Juvenile Justice who provides direct
12 care for a client, patient, student, resident or ward of the
13 Department; or
14 b. Supervises positions providing direct care as outlined in sub-
15 subdivision a. of this subdivision.

16 (2) 'Criminal history' means a State or federal history of conviction of
17 a crime, whether a misdemeanor or felony, that bears upon a
18 covered person's fitness for employment in the Department of
19 Health and Human ~~Services~~. Services or the Department of
20 Juvenile Justice. The crimes include, but are not limited to,
21 criminal offenses as set forth in any of the following Articles of
22 Chapter 14 of the General Statutes: Article 5, Counterfeiting and
23 Issuing Monetary Substitutes; Article 5A, Endangering Executive
24 and Legislative Officers; Article 6, Homicide; Article 7A, Rape and
25 Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and
26 Abduction; Article 13, Malicious Injury or Damage by Use of
27 Explosive or Incendiary Device or Material; Article 14, Burglary
28 and Other Housebreakings; Article 15, Arson and Other Burnings;
29 Article 16, Larceny; Article 17, Robbery; Article 18,
30 Embezzlement; Article 19, False Pretenses and Cheats; Article
31 19A, Obtaining Property or Services by False or Fraudulent Use of
32 Credit Device or Other Means; Article 19B, Financial Transaction
33 Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article
34 26, Offenses Against Public Morality and Decency; Article 26A,
35 Adult Establishments; Article 27, Prostitution; Article 28, Perjury;
36 Article 29, Bribery; Article 31, Misconduct in Public Office; Article
37 35, Offenses Against the Public Peace; Article 36A, Riots and Civil
38 Disorders; Article 39, Protection of Minors; Article 40, Protection
39 of the Family; Article 59, Public Intoxication; and Article 60,
40 Computer-Related Crime. The crimes also include possession or
41 sale of drugs in violation of the North Carolina Controlled
42 Substances Act, Article 5 of Chapter 90 of the General Statutes,
43 and alcohol-related offenses such as sale to underage persons in

1 violation of G.S. 18B-302, or driving while impaired in violation of
2 G.S. 20-138.1 through G.S. 20-138.5.

3 (b) When requested by the Department of Health and Human ~~Services~~, Services
4 or the Department of Juvenile Justice, the North Carolina Department of Justice may
5 provide to the Department of ~~Health and Human Services~~ a covered person's
6 criminal history from the State Repository of Criminal Histories. Such requests shall
7 not be due to a person's age, sex, race, color, national origin, religion, creed, political
8 affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a
9 State criminal history record check only, the Department of ~~Health and Human~~
10 ~~Services~~ shall provide to the Department of Justice a form consenting to the check
11 signed by the covered person to be checked and any additional information required
12 by the Department of Justice. National criminal record checks are authorized for
13 covered applicants who have not resided in the State of North Carolina during the
14 past five years. For national checks the Department of ~~Health and Human Services~~
15 shall provide to the North Carolina Department of Justice the fingerprints of the
16 covered person to be checked, any additional information required by the
17 Department of Justice, and a form signed by the covered person to be checked
18 consenting to the check of the criminal record and to the use of fingerprints and
19 other identifying information required by the State or National Repositories. The
20 fingerprints of the individual shall be forwarded to the State Bureau of Investigation
21 for a search of the State criminal history record file and the State Bureau of
22 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation
23 for a national criminal history record check. The Department of Health and Human
24 Services shall keep all information pursuant to this section confidential. The
25 Department of Justice shall charge a reasonable fee for conducting the checks of the
26 criminal history records authorized by this section.

27 (c) All releases of criminal history information to the Department of Health and
28 Human Services or the Department of Juvenile Justice shall be subject to, and in
29 compliance with, rules governing the dissemination of criminal history record checks
30 as adopted by the North Carolina Division of Criminal Information. All of the
31 information the Department of ~~Health and Human Services~~ receives through the
32 checking of the criminal history is privileged information and for the exclusive use of
33 the ~~Department of Health and Human Services~~. Department.

34 (d) If the covered person's verified criminal history record check reveals one or
35 more convictions covered under subsection (a) of this section, then the conviction
36 shall constitute just cause for not selecting the person for employment, or for
37 dismissing the person from current employment with the Department of Health and
38 Human ~~Services~~. Services or the Department of Juvenile Justice. The conviction shall
39 not automatically prohibit employment; however, the following factors shall be
40 considered by the Department of ~~Health and Human Services~~ in determining whether
41 employment shall be denied:

- 42 (1) The level and seriousness of the crime;
- 43 (2) The date of the crime;
- 44 (3) The age of the person at the time of the conviction;

- 1 (4) The circumstances surrounding the commission of the crime, if
2 known;
- 3 (5) The nexus between the criminal conduct of the person and job
4 duties of the person;
- 5 (6) The prison, jail, probation, parole, rehabilitation, and employment
6 records of the person since the date the crime was committed; and
- 7 (7) The subsequent commission by the person of a crime listed in
8 subsection (a) of this section.

9 (e) The Department of Health and Human Services and the Department of
10 Juvenile Justice may deny employment to or dismiss a covered person who refuses to
11 consent to a criminal history record check or use of fingerprints or other identifying
12 information required by the State or National Repositories of Criminal Histories. Any
13 such refusal shall constitute just cause for the employment denial or the dismissal
14 from employment.

15 (f) The Department of Health and Human Services and the Department of
16 Juvenile Justice may extend a conditional offer of employment pending the results of
17 a criminal history record check authorized by this section."

18 (h) G.S. 115C-110 reads as rewritten:

19 "**§ 115C-110. Services mandatory; single-agency responsibility; State and local plans;**
20 **census and registration.**

21 (a) The Board shall cause to be provided by all local school administrative units
22 and by all other State and local governmental agencies providing special education
23 services or having children with special needs in their care, custody, management,
24 jurisdiction, control, or programs, special education and related services appropriate
25 to all children with special needs. In this regard, all local school administrative units
26 and all other State and local governmental agencies providing special education and
27 related services shall explore available local resources and determine whether the
28 services are currently being offered by an existing public or private agency.

29 When a specified special education or related service is being offered by a local
30 public or private resource, any unit or agency described above shall negotiate for the
31 purchase of that service or shall present full consideration of alternatives and its
32 recommendations to the Board. In this regard, a new or additional program for
33 special education or related services shall be developed with the approval of the
34 Board only when that service is not being provided by existing public or private
35 resources or the service cannot be purchased from existing providers. Further, the
36 Board shall support and encourage joint and collaborative special education planning
37 and programming at local levels to include local administrative units and the
38 programs and agencies of the Departments of Health and Human ~~Services~~ Services,
39 Juvenile Justice, and Correction.

40 The jurisdiction of the Board with respect to the design and content of special
41 education programs or related services for children with special needs extends to and
42 over the Department of Health and Human ~~Services~~ Services, the Department of
43 Juvenile Justice, and the Department of Correction.

1 All provisions of this Article that are specifically applicable to local school
2 administrative units also are applicable to the Department of Health and Human
3 ~~Services~~ Services, the Department of Juvenile Justice, and the Department of
4 Correction and their divisions and agencies; all duties, responsibilities, rights and
5 privileges specifically imposed on or granted to local school administrative units by
6 this Article also are imposed on or granted to the Department of Health and Human
7 ~~Services~~ Services, the Department of Juvenile Justice, and the Department of
8 Correction and their divisions and agencies. However, with respect to children with
9 special needs who are residents or patients of any state-operated or state-supported
10 residential treatment facility, including without limitation, a school for the deaf,
11 school for the blind, mental hospital or center, mental retardation center, or in a
12 facility operated by the Department of Juvenile Justice, the Department of Correction
13 or any of its divisions and agencies, the Board shall have the power to contract with
14 the Department of Health and Human ~~Services~~ Services, the Department of Juvenile
15 Justice, and the Department of Correction for the provision of special education and
16 related services and the power to review, revise and approve ~~said~~ these Departments'
17 plans for special education and related services to those residents.

18 The Departments of Health and Human ~~Services~~ Services, Juvenile Justice, and
19 Correction shall submit to the Board their plans for the education of children with
20 special needs in their care, custody, or control. The Board shall have general
21 supervision and shall set standards, by rule or regulation, for the programs of special
22 education to be administered by it, by local educational agencies, and by the
23 Departments of Health and Human ~~Services~~ Services, Juvenile Justice, and
24 Correction. The Board may grant specific exemptions for programs administered by
25 the Department of Health and Human ~~Services~~ Services, the Department of Juvenile
26 Justice, or the Department of Correction when compliance by them with the Board's
27 standards would, in the Board's judgment, impose undue hardship on ~~such~~ this
28 Department and when other procedural due process requirements, substantially
29 equivalent to those of G.S. 115C-116, are assured in programs of special education
30 and related services furnished to children with special needs served by ~~such~~ this
31 Department. Further, the Board shall recognize that inpatient and residential special
32 education programs within the Departments of Health and Human ~~Services~~ Services,
33 Juvenile Justice, and Correction may require more program resources than those
34 necessary for optimal operation of ~~such~~ these programs in local school administrative
35 units.

36 Every State and local department, division, unit or agency covered by this section
37 is hereinafter referred to as a 'local educational agency' unless the text of this Article
38 otherwise provides.

39 (b) The Board shall make and keep current a plan for the implementation of the
40 policy set forth in G.S. 115C-106(b). The plan shall include:

- 41 (1) A census of the children with special needs in the State, as
42 required by subsection (j) of this section;
- 43 (2) A procedure for diagnosis and evaluation of each ~~such~~ child;

- 1 (3) An inventory of the personnel and facilities available to provide
2 special education for ~~such~~ these children;
- 3 (4) An analysis of the present distribution of responsibility for special
4 education between State and local educational agencies, together
5 with recommendations for any necessary or desirable changes in
6 the distribution of responsibilities;
- 7 (5) Standards for the education of children with special needs;
- 8 (6) Programs and procedures for the development and implementation
9 of a comprehensive system of personnel development; and
- 10 (7) Any additional matters, including recommendations for
11 amendment of laws, changes in administrative regulations, rules
12 and practices and patterns of special organization, and changes in
13 levels and patterns of education financial support.

14 (c) The Board shall annually submit amendments to or revisions of the plan
15 required by subsection (b) to the Governor and General Assembly and make it
16 available for public comment pursuant to subdivision (1) and for public distribution
17 no less than 30 days before January 15 of each year. All such submissions shall set
18 forth in detail the progress made in the implementation of the plan.

19 (d) The Board shall adopt rules ~~or regulations~~ covering:

- 20 (1) The qualifications of and standards for certification of teachers,
21 teacher assistants, speech clinicians, school psychologists, and
22 others involved in the education and training of children with
23 special needs;
- 24 (2) Minimum standards for the individualized educational program for
25 all children with special needs other than for the pregnant
26 children, and for the educational program for the pregnant
27 children, who receive special education and related services; and
- 28 (3) ~~Such~~ Any other rules ~~or regulations~~ as may be necessary or
29 appropriate for carrying out the purposes of this Article.
30 Representatives from the Departments of Health and Human
31 Services Services, Juvenile Justice, and Correction shall be
32 involved in the development of the standards outlined under this
33 subsection.

34 (e) On or before October 15, each local educational agency shall report annually
35 to the Board the extent to which it is then providing special education for children
36 with special needs. The annual report also shall detail the means by which the local
37 educational agency proposes to secure full compliance with the policy of this Article,
38 including the following:

- 39 (1) A statement of the extent to which the required education and
40 services will be provided directly by the agency;
- 41 (2) A statement of the extent to which standards in force pursuant to
42 G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and
- 43 (3) The means by which the agency will contract to provide, at levels
44 meeting standards in force pursuant to G.S. 115C-110(b)(5) and

1 (d)(2), all special education and related services not provided
2 directly by it or by the State.

3 (f) After submitting the report required by subsection (e), the local educational
4 agency also shall submit such supplemental and additional reports as the Board may
5 require to keep the local educational agency's plan current.

6 (g) By ~~rule or regulation~~, rule, the Board shall prescribe due dates not later than
7 October 15 of each year, and all other necessary or appropriate matters relating to
8 ~~such~~ these annual and supplemental and additional reports.

9 (h) The annual report shall be a two-year plan for providing appropriate special
10 education and related services to children with special needs. The agency shall submit
11 the plan to the Board for its review, approval, modification, or disapproval. Unless
12 thereafter modified with approval of the Board, the plan shall be adhered to by the
13 local educational agency. The procedure for approving, disapproving, establishing,
14 and enforcing the plan shall be the same as that set forth for the annual plan. The
15 long-range plan shall include such provisions as may be appropriate for the following,
16 without limitation:

17 (1) Establishment of classes, other programs of instruction, curricula,
18 facilities, equipment, and special services for children with special
19 needs; and

20 (2) Utilization and professional development of teachers and other
21 personnel working with children with special needs.

22 (i) Each local educational agency shall provide free appropriate special education
23 and related services in accordance with the provisions of this Article for all children
24 with special needs who are residents of, or whose parents or guardians are residents
25 of, the agency's district, beginning with children aged five. No matriculation or
26 tuition fees or other fees or charges shall be required or asked of children with
27 special needs or their parents or guardians except ~~such~~ those fees or charges as are
28 required uniformly of all public school pupils. The provision of free appropriate
29 special education within the facilities of the Department of Health and Human
30 Services and the Department of Juvenile Justice shall not prevent ~~that~~ those
31 Department from charging for other services or treatment.

32 (j) The Board shall require an annual census of children with special needs,
33 subdivided for 'identified' and 'suspected' children with special needs, to be taken in
34 each school year. Suspected children are those in the formal process of being
35 identified, evaluated or diagnosed as children with special needs. The census shall be
36 conducted annually and shall be completed not later than October 15, and shall be
37 submitted to the Governor and General Assembly and be made available to the
38 public no later than January 15 annually.

39 In taking the census, the Board shall require the cooperation, participation, and
40 assistance of all local educational agencies and all other State and local governmental
41 departments and agencies providing or required to provide special education services
42 to children with special needs, and those departments and agencies shall cooperate
43 and participate with and assist the Board in conducting the census.

1 The census shall include the number of children identified and suspected with
2 special needs, their age, the nature of their disability, their county or city of
3 residence, their local school administrative unit residence, whether they are being
4 provided special educational or related services and if so by what department or
5 agency, whether they are not being provided special education or related services, the
6 identity of each department or agency having children with special needs in its care,
7 custody, management, jurisdiction, control, or programs, the number of children with
8 special needs being served by each department or agency, and such other information
9 or data as the Board shall require. The census shall be of children with special needs
10 between the ages of three and 21, inclusive.

11 (k) The Department shall monitor the effectiveness of individualized education
12 programs in meeting the educational needs of all children with special needs other
13 than pregnant children, and of educational programs in meeting the educational
14 needs of the pregnant children.

15 (l) The Board shall provide for procedures assuring that in carrying out the
16 requirements of this Article procedures are established for consultation with
17 individuals involved in or concerned with the education of children with special
18 needs, including parents or guardians of such children, and there are public hearings,
19 adequate notice of such hearings, and an opportunity for comment available to the
20 general public prior to the adoption of the policies, procedures, and rules or
21 regulations required by this Article.

22 (m) Children with special needs shall be educated in the least restrictive
23 appropriate setting, as defined by the State Board of Education."

24 (i) G.S. 115C-111 reads as rewritten:

25 "**§ 115C-111. Free appropriate education for all children with special needs.**

26 No child with special needs between the ages specified by G.S. 115C-109 shall be
27 denied a free appropriate public education or be prevented from attending the public
28 schools of the local educational agency in which he or his parents or legal guardian
29 resides or from which he receives services or from attending any other public
30 program of free appropriate public education because he is a child with special
31 needs. If it appears that a child should receive a program of free appropriate public
32 education in a program operated by or under the supervision of the Department of
33 Health and Human ~~Services~~, Services or the Department of Juvenile Justice, the local
34 educational agency shall confer with the appropriate Department of Health and
35 Human Services or Juvenile Justice staff for their participation and determination of
36 the appropriateness of placement in said program and development of the child's
37 individualized education program. The individualized education program may then
38 be challenged under the due process provisions of G.S. 115C-116. Every child with
39 special needs shall be entitled to attend ~~such~~ these nonresidential schools or programs
40 and receive from them free appropriate public education."

41 (j) G.S. 115C-113(f) reads as rewritten:

42 "(f) Each local educational agency shall prepare individualized educational
43 programs for all children found to be children with special needs other than the
44 pregnant children, and educational programs prescribed in subsection (h) of this

1 section for the pregnant children. The individualized educational program shall be
2 developed in conformity with Public Law 94-142 and the implementing regulations
3 issued by the United States Department of Education and shall be implemented in
4 conformity with timeliness set by that Department. The term "individualized
5 educational program" means a written statement for each such child developed in
6 any meeting by a representative of the local educational agency who shall be
7 qualified to provide, or supervise the provision of, specially designed instruction to
8 meet the unique needs of such children, the teacher, the parents or guardian of such
9 child, and, whenever appropriate, such child, which statement shall be based on rules
10 developed by the Board. Each local educational agency shall establish, or revise,
11 whichever is appropriate, the individualized educational program of each child with
12 special needs each school year and will then review and, if appropriate revise, its
13 provisions periodically, but not less than annually. In the facilities and programs of
14 the Department of Health and Human ~~Services~~, Services and the Department of
15 Juvenile Justice, the individualized educational program shall be planned in
16 collaboration with those other individuals responsible for the design of the total
17 treatment or habilitation plan or both; the resulting educational, treatment, and
18 habilitation plans shall be coordinated, integrated, and internally consistent."

19 (k) G.S. 115C-113.1 reads as rewritten:

20 "**§ 115C-113.1. Surrogate parents.**

21 In the case of a child whose parent or guardian is unknown, whose whereabouts
22 cannot be determined after reasonable investigation, or who is a ward of the State,
23 the local educational agency shall appoint a surrogate parent for the child. The
24 surrogate parent shall be appointed from a group of persons approved by the
25 Superintendent of Public ~~Instruction and~~ Instruction, the Secretary of Health and
26 Human Services, and the Secretary of the Department of Juvenile Justice, but in no
27 case shall the person appointed be an employee of the local educational agency or
28 directly involved in the education or care of the child. The Superintendent shall
29 ensure that local educational agencies appoint a surrogate parent for every child in
30 need of a surrogate parent."

31 (l) G.S. 115C-115 reads as rewritten:

32 "**§ 115C-115. Placements in private schools, out-of-state schools and schools in other**
33 **local educational agencies.**

34 The board shall adopt rules and regulations to assure that:

35 (1) There be no cost to the parents or guardian for the placement of a
36 child in a private school, out-of-state school or a school in another
37 local education agency if the child was so placed by the Board or
38 by the appropriate local educational agency as the means of
39 carrying out the requirement of this Article or any other applicable
40 law requiring the provision of special education and related
41 services to children within the State.

42 (2) No child shall be placed by the Board or by the local educational
43 agency in a private or out-of-state school unless the Board has
44 determined that the school meets standards that apply to State and

1 local educational agencies and that the child so placed will have all
2 the rights he would have if served by a State or local educational
3 agency.

- 4 (3) If the placement of the child in a private school, out-of-state school
5 or a school in another local educational agency determined by the
6 Superintendent of Public Instruction to be the most cost-effective
7 way to provide an appropriate education to that child and the
8 child is not currently being educated by the Department of Health
9 and Human ~~Services~~ Services, the Department of Juvenile Justice,
10 or the Department of Correction, the State will bear a portion of
11 the cost of the placement of the child. The local school
12 administrative unit shall pay an amount equal to what it receives
13 per pupil from the State Public School Fund and from other State
14 and federal funds for children with special needs for that child.
15 The State shall pay the full cost of any remainder up to a
16 maximum of fifty percent (50%) of the total cost."

17 (m) G.S. 115C-121(b) reads as rewritten:

18 "(b) The Council shall consist of ~~48~~ 23 members to be appointed as follows: five ex
19 officio members; two members appointed by the Governor; two members of the
20 Senate appointed by the President Pro Tempore; two members of the House of
21 Representatives appointed by the Speaker of the House; and 12 members appointed
22 by the State Board of Education. Of those members of the Council appointed by the
23 State Board one member shall be selected from each congressional district within the
24 State, and the members so selected shall be composed of at least one person
25 representing each of the following: handicapped individuals, parents or guardians of
26 children with special needs, teachers of children with special needs, and State and
27 local education officials and administrators of programs for children with special
28 needs. The Council shall designate a chairperson from among its members. The
29 designation of the chairperson is subject to the approval of the State Board of
30 Education. The board shall promulgate rules or regulations to carry out this
31 subsection.

32 Ex officio members of the Council shall be the following:

- 33 (1) The Secretary of the Department of Health and Human Services or
34 the Secretary's designee;
35 (1a) The Secretary of the Department of Juvenile Justice or the
36 Secretary's designee;
37 (2) The Secretary of the Department of Correction or the Secretary's
38 designee;
39 (3) A representative from The University of North Carolina Planning
40 Consortium for Children with Special Needs; and
41 (4) The Superintendent of Public Instruction or the Superintendent's
42 designee.

43 The term of appointment for all members except those appointed by the State
44 Board of Education shall be for two years. The term for members appointed by the

1 State Board of Education shall be for four years. No person shall serve more than two
2 consecutive four-year terms. The initial term of office of the person appointed from
3 the 12th Congressional District shall commence on January 3, 1993, and expire on
4 June 30, 1996.

5 Each Council member shall serve without pay, but shall receive travel allowances
6 and per diem in the same amount provided for members of the North Carolina
7 General Assembly."

8 (n) G.S. 115C-139(a) reads as rewritten:

9 "(a) The Board, any two or more local educational agencies and any such agency
10 and any State department, agency, or division having responsibility for the education,
11 treatment or habilitation of children with special needs are authorized to enter into
12 interlocal cooperation undertakings pursuant to the provisions of Chapter 160A,
13 Article 20, Part 1 of the General Statutes or into undertakings with a State agency
14 such as the Departments of Public Instruction, Health and Human ~~Services~~, Juvenile
15 Justice, or Correction, or their divisions, agencies, or units, for the purpose of
16 providing for the special education and related services, treatment or habilitation of
17 such children within the jurisdiction of the agency or unit, and shall do so when it
18 itself is unable to provide the appropriate public special education or related services
19 for ~~such~~ these children. In entering into such undertakings, the local agency and State
20 department, agency, or division shall also contract to provide the special education or
21 related services that are most educationally appropriate to the children with special
22 needs for whose benefit the undertaking is made, and provide ~~such~~ these services by
23 or in the local agency unit or State department, agency, or division located in the
24 place most convenient to ~~such~~ these children."

25 (o) G.S. 115C-250(a) reads as rewritten:

26 "(a) The State Board of Education and local boards of education may expend
27 public funds for transportation of handicapped children with special needs who are
28 unable because of their handicap to ride the regular school buses and who have been
29 placed in programs by a local school board as a part of its duty to provide such
30 children with a free appropriate education, including its duty under G.S. 115C-115.
31 At the option of the local board of education with the concurrence of the State Board
32 of Education, funds appropriated to the State Board of Education for contract
33 transportation of exceptional children may be used to purchase buses and minibuses
34 as well as for the purposes authorized in the budget. The State Board of Education
35 shall adopt rules and regulations concerning the construction and equipment of these
36 buses and minibuses.

37 The Department of Health and Human ~~Services~~ Services, the Department of
38 Juvenile Justice, and the Department of Correction may also expend public funds for
39 transportation of handicapped children with special needs who are unable because of
40 their handicap to ride the regular school buses and who have been placed in
41 programs by one of these agencies as a part of that agency's duty to provide such
42 children with a free appropriate public education.

43 If a local area mental health center places a child with special needs in an
44 educational program, the local area mental health center shall pay for the

1 transportation of the child, if handicapped and unable because of the handicap to
2 ride the regular school buses, to the program."

3 (p) G.S. 115C-325(p) reads as rewritten:

4 "(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or
5 regulation to the contrary, this section shall apply to all persons employed in teaching
6 and related educational classes in the schools and institutions of the Departments of
7 Health and Human ~~Services~~ Services, Juvenile Justice, and Correction regardless of
8 the age of the students."

9 (q) G.S. 115D-1 reads as rewritten:

10 "§ 115D-1. Statement of purpose.

11 The purposes of this Chapter are to provide for the establishment, organization,
12 and administration of a system of educational institutions throughout the State
13 offering courses of instruction in one or more of the general areas of two-year college
14 parallel, technical, vocational, and adult education programs, to serve as a legislative
15 charter for such institutions, and to authorize the levying of local taxes and the
16 issuing of local bonds for the support thereof. The major purpose of each and every
17 institution operating under the provisions of this Chapter shall be and shall continue
18 to be the offering of vocational and technical education and training, and of basic,
19 high school level, academic education needed in order to profit from vocational and
20 technical education, for students who are high school graduates or who are beyond
21 the compulsory age limit of the public school system and who have left the public
22 schools, provided, juveniles of any age committed to the ~~Division of Youth Services~~
23 ~~of the Department of Health and Human Services~~ Department of Juvenile Justice by
24 a court of competent jurisdiction may, if approved by the director of the training
25 school to which they are assigned, take courses offered by institutions of the system if
26 they are otherwise qualified for admission."

27 (r) G.S. 115D-5(b) reads as rewritten:

28 "(b) In order to make instruction as accessible as possible to all citizens, the
29 teaching of curricular courses and of noncurricular extension courses at convenient
30 locations away from institution campuses as well as on campuses is authorized and
31 shall be encouraged. A pro rata portion of the established regular tuition rate charged
32 a full-time student shall be charged a part-time student taking any curriculum course.
33 In lieu of any tuition charge, the State Board of Community Colleges shall establish a
34 uniform registration fee, or a schedule of uniform registration fees, to be charged
35 students enrolling in extension courses for which instruction is financed primarily
36 from State funds; provided, however, that the State Board of Community Colleges
37 may provide by general and uniform regulations for waiver of tuition and registration
38 fees for persons not enrolled in elementary or secondary schools taking courses
39 leading to a high school diploma or equivalent certificate, for training courses for
40 volunteer firemen, local fire department personnel, volunteer rescue and lifesaving
41 department personnel, local rescue and lifesaving department personnel, Radio
42 Emergency Associated Citizens Team (REACT) members when the REACT team is
43 under contract to a county as an emergency response agency, local law-enforcement
44 officers, patients in State alcoholic rehabilitation centers, all full-time custodial

1 employees of the Department of Correction, employees of the Department's Division
2 of Adult Probation and Parole and employees of the ~~Division of Youth Services of~~
3 ~~the Department of Health and Human Services~~ Department of Juvenile Justice
4 required to be certified pursuant to Chapter 17C of the General Statutes and the
5 rules of the Criminal Justice and Training Standards Commission, trainees enrolled
6 in courses conducted under the New and Expanding Industry Program, clients of
7 sheltered workshops, clients of adult developmental activity programs, students in
8 Health and Human Services Development Programs, juveniles of any age committed
9 to the ~~Division of Youth Services of the Department of Health and Human Services~~
10 Department of Juvenile Justice by a court of competent jurisdiction, prison inmates,
11 and members of the North Carolina State Defense Militia as defined in G.S. 127A-5
12 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes.
13 Provided further, tuition shall be waived for senior citizens attending institutions
14 operating pursuant to this Chapter as set forth in Chapter 115B of the General
15 Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be
16 waived for all courses taken by high school students at community colleges in
17 accordance with G.S. 115D-20(4) and this section."

18 (s) G.S. 122C-3(13a) reads as rewritten:

19 "(13a) 'Eligible assaultive and violent children' means children who are
20 citizens of North Carolina and:

- 21 a. Who suffer from emotional, mental, or neurological
22 handicaps that have been accompanied by behavior that is
23 characterized as violent or assaultive; and
- 24 b. Who are involuntarily institutionalized or otherwise placed
25 in residential programs, including:
 - 26 1. Minors who are mentally ill as defined by G.S. 122C-
27 3(21) and who are admitted for evaluation or
28 treatment to a treatment facility under Article 5 of
29 Chapter 122C of the General Statutes or are
30 presented for admission and denied due to their
31 behaviors or handicapping conditions;
 - 32 2. Minors who are referred to an area mental health,
33 developmental disabilities, and substance abuse
34 authority pursuant to ~~G.S. 7A-647(3)~~ G.S. 7B-903 for
35 whom residential treatment or placement is
36 recommended;
 - 37 3. Minors who are placed in residential programs as a
38 condition of probation pursuant to ~~G.S. 7A-649(8)~~;
39 G.S. 7B-2504;
 - 40 4. Minors who are ordered to a professional residential
41 treatment program pursuant to ~~G.S. 7A-649(6)~~; G.S.
42 7B-2504; and

1 5. Minors committed to the custody of the ~~Division of~~
2 ~~Youth Services~~ Department of Juvenile Justice,
3 pursuant to ~~G.S. 7A-649(10)~~; G.S. 7B-2504; and

4 c. For whom the State has not provided appropriate treatment
5 and educational programs."

6 (t) G.S. 122C-113(b1) reads as rewritten:

7 "(b1) The Secretary shall cooperate with the State Board of Education and the
8 Department of Juvenile Justice in coordinating the responsibilities of the Department
9 of Health and Human Services, the State Board of Education, the Department of
10 Juvenile Justice, and the Department of Public Instruction for adolescent substance
11 abuse programs. The Department of Health and Human Services, through its
12 Division of Mental Health, Developmental Disabilities, and Substance Abuse
13 Services, in cooperation with the Department of Juvenile Justice, shall be responsible
14 for intervention and treatment in non-school based programs. The State Board of
15 Education and the Department of Public ~~Instruction~~ Instruction, in consultation with
16 the Department of Juvenile Justice, shall have primary responsibility for in-school
17 education, identification, and intervention services, including student assistance
18 programs."

19 (u) G.S. 122C-117(a) reads as rewritten:

20 "(a) The area authority shall:

- 21 (1) Engage in comprehensive planning, budgeting, implementing, and
22 monitoring of community-based mental health, developmental
23 disabilities, and substance abuse services;
24 (2) Provide services to clients in the catchment ~~area~~; area, including
25 clients committed to the custody of the Department of Juvenile
26 Justice;
27 (3) Determine the needs of the area authority's clients and coordinate
28 with the Secretary and with the Secretary of the Department of
29 Juvenile Justice the provision of services to clients through area
30 and State facilities;
31 (4) Develop plans and budgets for the area authority subject to the
32 approval of the Secretary;
33 (5) Assure that the services provided by the area authority meet the
34 rules of the Commission and Secretary;
35 (6) Comply with federal requirements as a condition of receipt of
36 federal grants; and
37 (7) Appoint an area director, chosen through a search committee on
38 which the Secretary of the Department of Health and Human
39 Services or the Secretary's designee serves as a nonvoting
40 member."

41 (v) G.S. 143-138(g) reads as rewritten:

42 "(g) Publication and Distribution of Code. -- The Building Code Council shall
43 cause to be printed, after adoption by the Council, the North Carolina State Building
44 Code and each amendment thereto. It shall, at the State's expense, distribute copies

1 of the Code and each amendment to State and local governmental officials,
 2 departments, agencies, and educational institutions, as is set out in the table below.
 3 (Those marked by an asterisk will receive copies only on written request to the
 4 Council.)

5 OFFICIAL OR AGENCY NUMBER OF COPIES

6	State Departments and Officials	
7	Governor	1
8	Lieutenant Governor	1
9	Auditor	1
10	Treasurer	1
11	Secretary of State	1
12	Superintendent of Public Instruction.....	1
13	Attorney General (Library)	1
14	Commissioner of Agriculture	1
15	Commissioner of Labor	1
16	Commissioner of Insurance.....	1
17	Department of Environment and	
18	Natural Resources.....	1
19	Department of Health and Human Services.....	1
20	<u>Department of Juvenile Justice</u>	1
21	Board of Transportation.....	1
22	Utilities Commission	1
23	Department of Administration	1
24	Clerk of the Supreme Court.....	1
25	Clerk of the Court of Appeals.....	1
26	Clerk of the Superior Court	1 each
27	Department of Cultural Resources [State	
28	Library]	5
29	Supreme Court Library	2
30	Legislative Library.....	1
31	Schools	
32	All state-supported colleges and universities	
33	in the State of North Carolina	*1 each
34	Local Officials	
35	Clerks of the Superior Courts	1 each
36	Chief Building Inspector of each incorporated	
37	municipality or county.....	1

38
 39 In addition, the Building Code Council shall make additional copies available at
 40 such price as it shall deem reasonable to members of the general public."

41 (w) G.S. 143B-138.1(a) reads as rewritten:

42 "(a) All functions, powers, duties, and obligations previously vested in the
 43 following commissions, boards, councils, committees, or subunits of the Department

1 of Human Resources are transferred to and vested in the Department of Health and
2 Human Services by a Type I transfer, as defined in G.S. 143A-6:

- 3 (1) Division of Aging.
- 4 (2) Division of Services for the Blind.
- 5 (3) Division of Medical Assistance.
- 6 (4) Division of Mental Health, Developmental Disabilities, and
7 Substance Abuse Services.
- 8 (5) Division of Social Services.
- 9 (6) Division of Facility Services.
- 10 (7) Division of Vocational Rehabilitation.
- 11 ~~(8) Division of Youth Services.~~
- 12 (9) Division of Services for the Deaf and the Blind.
- 13 (10) Office of Economic Opportunity.
- 14 (11) Division of Child Development.
- 15 (12) Office of Rural Health."
- 16 (x) G.S. 143B-150.7(b) reads as rewritten:

17 "(b) The Committee shall have 24 members appointed for staggered four-year
18 terms and until their successors are appointed and qualify. The Governor shall have
19 the power to remove any member of the Committee from office in accordance with
20 the provisions of G.S. 143B-13. Members may succeed themselves for one term and
21 may be appointed again after being off the Committee for one term. Six of the
22 members shall be legislators appointed by the General Assembly, three of whom shall
23 be recommended by the Speaker of the House of Representatives, and three of whom
24 shall be recommended by the President Pro Tempore of the Senate. Two of the
25 members shall be appointed by the General Assembly from the public at large, one of
26 whom shall be recommended by the Speaker of the House of Representatives, and
27 one of whom shall be recommended by the President Pro Tempore of the Senate.
28 The remainder of the members shall be appointed by the Governor as follows:

- 29 (1) ~~Five~~ Four members representing the Department of Health and
30 Human Services, one of whom shall be the Assistant Secretary for
31 Children and Family, one of whom shall represent the Division of
32 Social Services, ~~one of whom shall represent the Division of Youth~~
33 ~~Services~~, one of whom shall represent the Division of Mental
34 Health, Developmental Disabilities, and Substance Abuse Services,
35 and one of whom shall represent the Division of Maternal and
36 Child Health;
- 37 (2a) One member representing the Department of Juvenile Justice;
- 38 (2) Two members, one from each of the following: the Administrative
39 Office of the Courts and the Department of Public Instruction;
- 40 (3) One member who represents the Juvenile Justice Planning
41 Committee of the Governor's Crime Commission, and one
42 member appointed at large;
- 43 (4) One member who is a district court judge certified by the
44 Administrative Office of the Courts to hear juvenile cases;

- 1 (5) One member representing the schools of social work of The
2 University of North Carolina;
- 3 (6) Two members, one of whom is a provider of family preservation
4 services, and one of whom is a consumer of family preservation
5 services; and
- 6 (7) Three members who represent county-level associations; one of
7 whom represents the Association of County Commissioners, one of
8 whom represents the Association of Directors of Social Services,
9 and one of whom represents the North Carolina Council of Mental
10 Health, Developmental Disabilities, and Substance Abuse Services.

11 The Secretary of the Department of Health and Human Services shall serve as the
12 Chair of the Committee. The Secretary shall appoint the cochair of the Committee
13 for a two-year term on a rotating basis from among the Committee members who
14 represent the ~~Division of Youth Services, Department of Juvenile Justice~~, the
15 Division of Social Services, and the Division of Mental Health, Developmental
16 Disabilities, and Substance Abuse Services."

17 (y) G.S. 143B-152.6 reads as rewritten:

18 "**§ 143B-152.6. ~~Cooperation S.O.S. Program; cooperation~~ of State and local agencies.**

19 All agencies of the State and local government, including the Department of
20 Juvenile Justice, departments of social services, health departments, local mental
21 health, mental retardation, and substance abuse authorities, court personnel, law
22 enforcement agencies, The University of North Carolina, the community college
23 system, and cities and counties, shall cooperate with the Department of Health and
24 Human Services, and local nonprofit corporations that receive grants in coordinating
25 the program at the State level and in implementing the program at the local level.
26 The Secretary of Health and Human Services, after consultation with the
27 Superintendent of Public Instruction, shall develop a plan for ensuring the
28 cooperation of State agencies and local agencies, and encouraging the cooperation of
29 private entities, especially those receiving State funds, in the coordination and
30 implementation of the program."

31 (z) G.S. 143B-152.14 reads as rewritten:

32 "**§ 143B-152.14. ~~Cooperation Family Resource Center Grant Program; cooperation~~ of**
33 **State and local agencies.**

34 All agencies of the State and local government, including the Department of
35 Juvenile Justice, departments of social services, health departments, local mental
36 health, mental retardation, and substance abuse authorities, court personnel, law
37 enforcement agencies, The University of North Carolina, the community college
38 system, and cities and counties, shall cooperate with the Department of Health and
39 Human Services, and local nonprofit corporations that receive grants in coordinating
40 the program at the State level and in implementing the program at the local level.
41 The Secretary of Health and Human Services, after consultation with the
42 Superintendent of Public Instruction, shall develop a plan for ensuring the
43 cooperation of State agencies and local agencies and encouraging the cooperation of

1 private entities, especially those receiving State funds, in the coordination and
2 implementation of the program."

3 (aa) G.S. 143B-153(2) reads as rewritten:

4 "(2) The Social Services Commission shall have the power and duty to
5 establish standards and adopt rules and regulations:

6 a. For the programs of public assistance established by federal
7 legislation and by Article 2 of Chapter 108A of the General
8 Statutes of the State of North Carolina with the exception of
9 the program of medical assistance established by G.S. 108A-
10 25(b);

11 b. To achieve maximum cooperation with other agencies of the
12 State and with agencies of other states and of the federal
13 government in rendering services to strengthen and maintain
14 family life and to help recipients of public assistance obtain
15 self-support and self-care;

16 c. For the placement and supervision of dependent children
17 and delinquent children who are placed in the custody of
18 the Department of Juvenile Justice, and payment of
19 necessary costs of foster home care for needy and homeless
20 children as provided by G.S. 108A-48; and

21 d. For the payment of State funds to private child-placing
22 agencies as defined in G.S. 131D-10.2(4) and residential
23 child care facilities as defined in G.S. 131D-10.2(13) for care
24 and services provided to children who are in the custody or
25 placement responsibility of a county department of social
26 services."

27 (bb) G.S. 143B-417 reads as rewritten:

28 "**§ 143B-417. North Carolina Internship Council -- creation; powers and duties.**

29 There is hereby created the North Carolina Internship Council of the Department
30 of Administration. The North Carolina Internship Council shall have the following
31 functions and duties:

32 (1) To determine the number of student interns to be allocated to each
33 of the following offices or departments:

34 a. Office of the Governor

35 b. Department of Administration

36 c. Department of Correction

37 d. Department of Cultural Resources

38 e. Department of Revenue

39 f. Department of Transportation

40 g. Department of Environment and Natural Resources

41 h. Department of Commerce

42 i. Department of Crime Control and Public Safety

43 j. Department of Health and Human Services

44 j1. Department of Juvenile Justice

- 1 k. Office of the Lieutenant Governor
 2 l. Office of the Secretary of State
 3 m. Office of the State Auditor
 4 n. Office of the State Treasurer
 5 o. Department of Public Instruction
 6 p. Repealed by Session Laws 1985, c. 757, s. 162.
 7 q. Department of Agriculture and Consumer Services
 8 r. Department of Labor
 9 s. Department of Insurance
 10 t. Office of the Speaker of the House of Representatives
 11 u. Justices of the Supreme Court and Judges of the Court of
 12 Appeals
 13 v. Department of Community Colleges
 14 w. Office of State Personnel
 15 x. Office of the Senate President Pro Tempore;
 16 (2) To screen applications for student internships and select from these
 17 applications the recipients of student internships; and
 18 (3) To determine the appropriateness of proposals for projects for
 19 student interns submitted by the offices and departments
 20 enumerated in (1)."

21 (cc) G.S. 143B-478 reads as rewritten:

22 "**§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings,**
 23 **etc.**

24 (a) There is hereby created the Governor's Crime Commission of the Department
 25 of Crime Control and Public Safety. The Commission shall consist of ~~34~~ 35 voting
 26 members and six nonvoting members. The composition of the Commission shall be as
 27 follows:

- 28 (1) The voting members shall be:
 29 a. The Governor, the Chief Justice of the Supreme Court of
 30 North Carolina (or his alternate), the Attorney General, the
 31 Director of the Administrative Office of the Courts, the
 32 Secretary of the Department of Health and Human Services,
 33 the Secretary of the Department of Juvenile Justice, the
 34 Secretary of the Department of Correction, and the
 35 Superintendent of Public Instruction;
 36 b. A judge of superior court, a judge of district court
 37 specializing in juvenile matters, a chief district court judge,
 38 and a district attorney;
 39 c. A defense attorney, three sheriffs (one of whom shall be
 40 from a "high crime area"), three police executives (one of
 41 whom shall be from a "high crime area"), six citizens (two
 42 with knowledge of juvenile delinquency and the public
 43 school system, two of whom shall be under the age of 21 at
 44 the time of their appointment, one representative of a

- 1 'private juvenile delinquency program,' and one in the
2 discretion of the Governor), three county commissioners or
3 county officials, and three mayors or municipal officials;
- 4 d. Two members of the North Carolina House of
5 Representatives and two members of the North Carolina
6 Senate.
- 7 (2) The nonvoting members shall be the Director of the State Bureau
8 of Investigation, the Secretary of the Department of Crime Control
9 and Public Safety, the Director of the ~~Division of Youth Services~~
10 ~~of the Department of Health and Human Services, the~~
11 ~~Administrator for Juvenile Services of the Administrative Office of~~
12 ~~the Courts, Department of Juvenile Justice, the Director of the~~
13 ~~Division of Prisons and the Director of the Division of Adult~~
14 ~~Probation and Paroles.~~
- 15 (b) The membership of the Commission shall be selected as follows:
- 16 (1) The following members shall serve by virtue of their office: the
17 Governor, the Chief Justice of the Supreme Court, the Attorney
18 General, the Director of the Administrative Office of the Courts,
19 the Secretary of the Department of Health and Human Services,
20 the Secretary of the Department of Juvenile Justice, the Secretary
21 of the Department of Correction, the Director of the State Bureau
22 of Investigation, the Secretary of the Department of Crime Control
23 and Public Safety, the Director of the Division of Prisons, the
24 Director of the Division of Adult Probation and Paroles, the
25 Director of the ~~Division of Youth Services, the Administrator for~~
26 ~~Juvenile Services of the Administrative Office of the Courts,~~
27 Department of Juvenile Justice, and the Superintendent of Public
28 Instruction. Should the Chief Justice of the Supreme Court choose
29 not to serve, his alternate shall be selected by the Governor from a
30 list submitted by the Chief Justice which list must contain no less
31 than three nominees from the membership of the Supreme Court.
- 32 (2) The following members shall be appointed by the Governor: the
33 district attorney, the defense attorney, the three sheriffs, the three
34 police executives, the six citizens, the three county commissioners
35 or county officials, the three mayors or municipal officials.
- 36 (3) The following members shall be appointed by the Governor from a
37 list submitted by the Chief Justice of the Supreme Court, which list
38 shall contain no less than three nominees for each position and
39 which list must be submitted within 30 days after the occurrence of
40 any vacancy in the judicial membership: the judge of superior
41 court, the judge of district court specializing in juvenile matters,
42 and the chief district court judge.
- 43 (4) The two members of the House of Representatives provided by
44 subdivision (a)(1)d. of this section shall be appointed by the

1 Speaker of the House of Representatives and the two members of
 2 the Senate provided by subdivision (a)(1)d. of this section shall be
 3 appointed by the President Pro Tempore of the Senate. These
 4 members shall perform the advisory review of the State plan for
 5 the General Assembly as permitted by section 206 of the Crime
 6 Control Act of 1976 (Public Law 94-503).

7 (5) The Governor may serve as chairman, designating a vice-chairman
 8 to serve at his pleasure, or he may designate a chairman and vice-
 9 chairman both of whom shall serve at his pleasure.

10 (c) The initial members of the Commission shall be those appointed pursuant to
 11 subsection (b) above, which appointments shall be made by March 1, 1977. The terms
 12 of the present members of the Governor's Commission on Law and Order shall
 13 expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint
 14 members, other than those serving by virtue of their office, to serve staggered terms;
 15 seven shall be appointed for one-year terms, seven for two-year terms, and seven for
 16 three-year terms. At the end of their respective terms of office their successors shall
 17 be appointed for terms of three years and until their successors are appointed and
 18 qualified. The Commission members from the House and Senate shall serve two-year
 19 terms effective March 1, of each odd-numbered year; and they shall not be
 20 disqualified from Commission membership because of failure to seek or attain
 21 reelection to the General Assembly, but resignation or removal from office as a
 22 member of the General Assembly shall constitute resignation or removal from the
 23 Commission. Any other Commission member no longer serving in the office from
 24 which he qualified for appointment shall be disqualified from membership on the
 25 Commission. Any appointment to fill a vacancy on the Commission created by the
 26 resignation, dismissal, death, disability, or disqualification of a member shall be for
 27 the balance of the unexpired term.

28 (d) The Governor shall have the power to remove any member from the
 29 Commission for misfeasance, malfeasance or nonfeasance.

30 (e) The Commission shall meet quarterly and at other times at the call of the
 31 chairman or upon written request of at least eight of the members. A majority of the
 32 voting members shall constitute a quorum for the transaction of business."

33 (dd) G.S. 147-45 reads as rewritten:

34 "**§ 147-45. Distribution of copies of State publications.**

35 The Secretary of State shall, at the State's expense, as soon as possible after
 36 publication, provide such number of copies of the Session Laws and Senate and
 37 House Journals to federal, State, and local governmental officials, departments and
 38 agencies, and to educational institutions of instruction and exchange use, as is set out
 39 in the table below:

40

41

Agency or Institution	Session Laws	Assembly Journals

44

1	Governor, Office of the	3	2
2	Lieutenant Governor, Office of the	1	1
3	Secretary of State, Department of the	3	3
4	Auditor, Department of the State	3	1
5	Treasurer, Department of the State	3	1
6	Local Government Commission	2	0
7	State Board of Education	1	0
8	Department of Public Instruction	3	1
9	Controller	1	0
10	Technical Assistance Centers	1 ea.	0
11	Department of Community Colleges	3	1
12	Justice, Department of		
13	Office of the Attorney General	25	3
14	Budget Bureau (Administration)	1	0
15	Property Control (Administration)	1	1
16	State Bureau of Investigation	1	0
17	Agriculture and Consumer Services,		
18	Department of	3	1
19	Labor, Department of	5	1
20	Insurance, Department of	5	1
21	Administration, Department of	1	1
22	Budget Bureau	2	1
23	Controller	1	0
24	Property Control	1	0
25	Purchase and Contract	2	0
26	Policy and Development	1	0
27	Veterans Affairs Commission	1	0
28	Environment and Natural Resources,		
29	Department of	6	0
30	Wildlife Resources Commission	2	0
31	Revenue, Department of	5	1
32	Health and Human Services, Department of	6	0
33	Mental Health, Developmental Disabilities,		
34	and Substance Abuse Services,		
35	Division of	1	0
36	Social Services, Division of	3	0
37	Facilities Services, Division of	1	0
38	Youth Services , Division of	1	0
39	Hospitals and Institutions	1 ea.	0
40	<u>Juvenile Justice, Department of</u>	<u>3</u>	<u>0</u>
41	Transportation, Department of	1	0
42	Board of Transportation	3	0
43	Motor Vehicles, Division of	1	0
44	Commerce, Department of	1	0

1	Economic Development, Division of	2	0
2	State Ports Authority	1	0
3	Alcoholic Beverage Control Commission,		
4	North Carolina	2	0
5	Banking Commission	2	0
6	Utilities Commission	8	1
7	Industrial Commission	7	0
8	Labor Force Development Council	1	0
9	Milk Commission	5	0
10	Employment Security Commission	1	1
11	Correction, Department of	1	0
12	Department of Correction	2	0
13	Parole Commission	2	0
14	State Prison	1	0
15	Correctional Institutions	1 ea.	0
16	Cultural Resources, Department of	1	0
17	Archives and History, Division of	5	1
18	State Library	5	5
19	Publications Division	1	1
20	Crime Control and Public Safety, Department of	2	1
21	North Carolina Crime Commission	1	0
22	Adjutant General	2	0
23	Elections, State Board of	2	0
24	Office of Administrative Hearings	2	0
25	State Personnel Commission	1	0
26	Office of State Personnel	1	1
27	Legislative Branch		
28	State Senators	1 ea.	1 ea.
29	State Representatives	1 ea.	1 ea.
30	Principal Clerk -- Senate	1	1
31	Principal Clerk -- House	1	1
32	Reading Clerk -- Senate	1	1
33	Reading Clerk -- House	1	1
34	Sergeant at Arms -- House	1	1
35	Sergeant at Arms -- Senate	1	1
36	Enrolling Clerk	1	0
37	Engrossing Clerk	1	0
38	Indexer of the Laws	1	0
39	Legislative Building Library	35	15
40	Judicial System		
41	Justices of the Supreme Court	1 ea.	1 ea.
42	Judges of the Court of Appeals	1 ea.	1 ea.
43	Judges of the Superior Court	1 ea.	0
44	Emergency and Special Judges of the		

1	Superior Court	1 ea.	0
2	District Court Judges	1 ea.	0
3	District Attorneys	1 ea.	0
4	Clerk of the Supreme Court	1	1
5	Clerk of the Court of Appeals	1	1
6	Administrative Office of the Courts	4	1
7	Supreme Court Library	AS MANY AS REQUESTED	
8	Colleges and Universities		
9	The University of North Carolina System		
10	Administrative Offices	3	0
11	University of North Carolina,		
12	Chapel Hill	65	25
13	University of North Carolina,		
14	Charlotte	3	1
15	University of North Carolina,		
16	Greensboro	3	1
17	University of North Carolina,		
18	Asheville	2	1
19	University of North Carolina,		
20	Wilmington	2	1
21	North Carolina State University,		
22	Raleigh	5	3
23	Appalachian State University	2	1
24	East Carolina University	3	2
25	Elizabeth City State University	2	1
26	Fayetteville State University	2	1
27	North Carolina Agricultural and		
28	Technical University	2	1
29	North Carolina Central University	5	5
30	Western Carolina University	2	1
31	University of North Carolina,		
32	Pembroke	2	1
33	Winston-Salem State University	2	1
34	North Carolina School of the Arts	1	1
35	Private Institutions		
36	Duke University	6	6
37	Davidson College	3	2
38	Wake Forest University	5	5
39	Lenoir Rhyne College	1	1
40	Elon College	1	1
41	Guilford College	1	1
42	Campbell University	5	5
43	Wingate College	1	1
44	Pfeiffer College	1	1

1	Barber Scotia College	1	1
2	Barton College	1	1
3	Shaw University	1	1
4	St. Augustine's College	1	1
5	J. C. Smith University	1	1
6	Belmont Abbey College	1	1
7	Bennett College	1	1
8	Catawba College	1	1
9	Gardner-Webb College	1	1
10	Greensboro College	1	1
11	High Point College	1	1
12	Livingstone College	1	1
13	Mars Hill College	1	1
14	Meredith College	1	1
15	Methodist College	1	1
16	North Carolina Wesleyan College	1	1
17	Queens College	1	1
18	Sacred Heart College	1	1
19	St. Andrews Presbyterian College	1	1
20	Salem College	1	1
21	Warren Wilson College	1	1
22	County and Local Officials		
23	Clerks of the Superior Court	1 ea.	1 ea.
24	Register of Deeds	1 ea.	1 ea.
25	Federal, Out-of-State and Foreign		
26	Secretary to the President	1	0
27	Secretary of State	1	1
28	Secretary of Defense	1	0
29	Secretary of Agriculture	1	0
30	Secretary of the Interior	1	0
31	Secretary of Labor	1	1
32	Secretary of Commerce	1	1
33	Secretary of the Treasury	1	0
34	Secretary of Health, Education and		
35	Welfare	1	0
36	Secretary of Housing and Urban		
37	Development	1	0
38	Secretary of Transportation	1	0
39	Attorney General	1	0
40	Postmaster General	1	0
41	Bureau of Census	1	0
42	Bureau of Public Roads	1	0
43	Department of Justice	1	0
44	Department of Internal Revenue	1	0

1	Veterans' Administration	1	0
2	Farm Credit Administration	1	0
3	Securities and Exchange Commission	1	0
4	Social Security Board	1	0
5	Environmental Protection Agency	1	0
6	Library of Congress	8	2
7	Federal Judges resident in North		
8	Carolina	1 ea.	0
9	Federal District Attorneys resident in		
10	North Carolina	1 ea.	0
11	Marshal of the United States		
12	Supreme Court	1	0
13	Federal Clerks of Court resident in		
14	North Carolina	1 ea.	0
15	Supreme Court Library exchange list	1 ea.	0

16 One copy of the Session Laws shall be furnished the head of any department of
17 State government created in the future.

18 State agencies, institutions, etc., not found in or covered by this list may, upon
19 written request from their respective department head to the Secretary of State, and
20 upon the discretion of the Secretary of State as to need, be issued copies of the
21 Session Laws on a permanent loan basis with the understanding that should said
22 copies be needed they will be recalled."

23 **PART II. JUVENILE CODE STATUTORY RECOMMENDATIONS.**

24 Section 3. Subchapter XI, Articles 41 through 59 of Chapter 7A of the
25 General Statutes, the North Carolina Juvenile Code, Articles 24B and 39 of Chapter
26 7A of the General Statutes, Articles 2A, 4, 4A, and 10 of Chapter 110 of the General
27 Statutes, and Article 62 of Chapter 143 of the General Statutes are repealed.

28 Section 4. The General Statutes are amended by adding a new Chapter
29 to read:

30 "Chapter 7B.

31 "Juvenile Code.

32 "SUBCHAPTER I. ABUSE, NEGLECT, DEPENDENCY.

33 "ARTICLE 1.

34 "Purposes; Definitions.

35 "§ 7B-100. Purpose.

36 This Subchapter shall be interpreted and construed so as to implement the
37 following purposes and policies:

- 38 (1) To provide procedures for the hearing of juvenile cases that assure
39 fairness and equity and that protect the constitutional rights of
40 juveniles and parents;
41 (2) To develop a disposition in each juvenile case that reflects
42 consideration of the facts, the needs and limitations of the juvenile,
43 the strengths and weaknesses of the family, and the protection of
44 the public safety;

1 (3) To provide for services for the protection of juveniles by means
2 that respect both the right to family autonomy and juveniles' needs
3 for safety, continuity, and permanence; and

4 (4) To provide standards for the removal, when necessary, of juveniles
5 from their homes and for the return of juveniles to their homes
6 consistent with preventing the unnecessary or inappropriate
7 separation of juveniles from their parents.

8 **"§ 7B-101. Definitions.**

9 As used in this Subchapter, unless the context clearly requires otherwise, the
10 following words have the listed meanings:

11 (1) Abused juveniles. -- Any juvenile less than 18 years of age whose
12 parent, guardian, custodian, or caretaker:

13 a. Inflicts or allows to be inflicted upon the juvenile a serious
14 physical injury by other than accidental means;

15 b. Creates or allows to be created a substantial risk of serious
16 physical injury to the juvenile by other than accidental
17 means;

18 c. Uses or allows to be used upon the juvenile cruel or grossly
19 inappropriate procedures or cruel or grossly inappropriate
20 devices to modify behavior;

21 d. Commits, permits, or encourages the commission of a
22 violation of the following laws by, with, or upon the
23 juvenile: first-degree rape, as provided in G.S. 14-27.2;
24 second degree rape as provided in G.S. 14-27.3; first-degree
25 sexual offense, as provided in G.S. 14-27.4; second degree
26 sexual offense, as provided in G.S. 14-27.5; sexual act by a
27 custodian, as provided in G.S. 14-27.7; crime against nature,
28 as provided in G.S. 14-177; incest, as provided in G.S. 14-
29 178 and G.S. 14-179; preparation of obscene photographs,
30 slides or motion pictures of the juvenile, as provided in G.S.
31 14-190.5; employing or permitting the juvenile to assist in a
32 violation of the obscenity laws as provided in G.S. 14-190.6;
33 dissemination of obscene material to the juvenile as
34 provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or
35 disseminating material harmful to the juvenile as provided
36 in G.S. 14-190.14 and G.S. 14-190.15; first and second
37 degree sexual exploitation of the juvenile as provided in
38 G.S. 14-190.16 and G.S. 14-190.17;. promoting the
39 prostitution of the juvenile as provided in G.S. 14-190.18;
40 and taking indecent liberties with the juvenile, as provided
41 in G.S. 14-202.1, regardless of the age of the parties;

42 e. Creates or allows to be created serious emotional damage to
43 the juvenile. Serious emotional damage is evidenced by a

- 1 juvenile's severe anxiety, depression, withdrawal, or
2 aggressive behavior toward himself or others; or
3 f. Encourages, directs, or approves of delinquent acts involving
4 moral turpitude committed by the juvenile.
5 (2) Caretaker. -- Any person other than a parent, guardian, or
6 custodian who has responsibility for the health and welfare of a
7 juvenile in a residential setting. A person responsible for a
8 juvenile's health and welfare means a stepparent, foster parent, an
9 adult member of the juvenile's household, an adult relative
10 entrusted with the juvenile's care, or any person such as a house
11 parent or cottage parent who has primary responsibility for
12 supervising a juvenile's health and welfare in a residential child
13 care facility or residential educational facility. 'Caretaker' also
14 means any person who has the responsibility for the care of a
15 juvenile in a child care facility as defined in Article 7 of Chapter
16 110 of the General Statutes and includes any person who has the
17 approval of the care provider to assume responsibility for the
18 juveniles under the care of the care provider. Nothing in this
19 subdivision shall be construed to impose a legal duty of support
20 under Chapter 50 or Chapter 110 of the General Statutes. The
21 duty imposed upon a caretaker as defined in this subdivision shall
22 be for the purpose of this Subchapter only.
23 (3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
24 deputy clerk.
25 (4) Community-based program. -- A program providing nonresidential
26 or residential treatment to a juvenile in the community where the
27 juvenile's family lives. A community-based program may include
28 specialized foster care, family counseling, shelter care, and other
29 appropriate treatment.
30 (5) Court. -- The district court division of the General Court of
31 Justice.
32 (6) Custodian. -- The person or agency that has been awarded legal
33 custody of a juvenile by a court.
34 (7) Dependent juvenile. -- A juvenile in need of assistance or
35 placement because the juvenile has no parent, guardian, or
36 custodian responsible for the juvenile's care or supervision or
37 whose parent, guardian, or custodian is unable to provide for the
38 care or supervision and lacks an appropriate alternative child care
39 arrangement.
40 (8) Director. -- The director of the county department of social
41 services in the county in which the juvenile resides or is found, or
42 the director's representative as authorized in G.S. 108A-14.
43 (9) District. -- Any district court district as established by G.S. 7A-133.

- 1 (10) In loco parentis. -- A person acting in loco parentis means one,
2 other than parents or legal guardian, who has assumed the status
3 and obligation of a parent without being awarded the legal custody
4 of a juvenile by a court.
5 (11) Judge. -- Any district court judge.
6 (12) Judicial district. -- Any district court district as established by G.S.
7 7A-133.
8 (13) Juvenile. -- A person who has not reached the person's eighteenth
9 birthday and is not married, emancipated, or a member of the
10 armed services of the United States.
11 (14) Neglected juvenile. -- A juvenile who does not receive proper care,
12 supervision, or discipline from the juvenile's parent, guardian,
13 custodian, or caretaker; or who has been abandoned; or who is not
14 provided necessary medical care; or who is not provided necessary
15 remedial care; or who lives in an environment injurious to the
16 juvenile's welfare; or who has been placed for care or adoption in
17 violation of law. In determining whether a juvenile is a neglected
18 juvenile, it is relevant whether that juvenile lives in a home where
19 another juvenile has been subjected to abuse or neglect by an adult
20 who regularly lives in the home.
21 (15) Petitioner. -- The individual who initiates court action, whether by
22 the filing of a petition or of a motion for review alleging the matter
23 for adjudication.
24 (16) Prosecutor. -- The district attorney or assistant district attorney
25 assigned by the district attorney to juvenile proceedings.
26 (17) Reasonable efforts. -- The diligent use of preventive or
27 reunification services by a department of social services when a
28 juvenile's remaining at home or returning home is consistent with
29 achieving a safe, permanent home for the juvenile within a
30 reasonable period of time.
31 (18) Safe home. -- A home in which the juvenile is not at substantial
32 risk of physical or emotional abuse or neglect.
33 (19) Shelter care. -- The temporary care of a juvenile in a physically
34 unrestricting facility pending court disposition.

35 The singular includes the plural, the masculine singular includes the feminine
36 singular and masculine and feminine plural unless otherwise specified.

37 "ARTICLE 2.

38 "Jurisdiction.

39 "§ 7B-200. Jurisdiction.

40 (a) The court has exclusive, original jurisdiction over any case involving a juvenile
41 who is alleged to be abused, neglected, or dependent. This jurisdiction does not
42 extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

43 The court also has exclusive original jurisdiction of the following proceedings:

1 the juvenile; the name and address of the juvenile's parent, guardian, or caretaker;
2 the age of the juvenile; the names and ages of other juveniles in the home; the
3 present whereabouts of the juvenile if not at the home address; the nature and extent
4 of any injury or condition resulting from abuse, neglect, or dependency; and any
5 other information which the person making the report believes might be helpful in
6 establishing the need for protective services or court intervention. If the report is
7 made orally or by telephone, the person making the report shall give the person's
8 name, address, and telephone number. Refusal of the person making the report to
9 give a name shall not preclude the department's investigation of the alleged abuse,
10 neglect, dependency, or death as a result of maltreatment.

11 Upon receipt of any report of sexual abuse of the juvenile in a child care facility,
12 the director shall notify the State Bureau of Investigation within 24 hours or on the
13 next workday. If sexual abuse in a child care facility is not alleged in the initial
14 report, but during the course of the investigation there is reason to suspect that sexual
15 abuse has occurred, the director shall immediately notify the State Bureau of
16 Investigation. Upon notification that sexual abuse may have occurred in a child care
17 facility, the State Bureau of Investigation may form a task force to investigate the
18 report.

19 **"§ 7B-302. Investigation by director; access to confidential information; notification of**
20 **person making the report.**

21 When a report of abuse, neglect, or dependency is received, the director of the
22 department of social services shall make a prompt and thorough investigation in
23 order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk
24 of harm to the juvenile, in order to determine whether protective services should be
25 provided or the complaint filed as a petition. When the report alleges abuse, the
26 director shall immediately, but no later than 24 hours after receipt of the report,
27 initiate the investigation. When the report alleges neglect or dependency, the director
28 shall initiate the investigation within 72 hours following receipt of the report. The
29 investigation and evaluation shall include a visit to the place where the juvenile
30 resides. All information received by the department of social services, including the
31 identity of the reporter, shall be held in strictest confidence by the department.

32 When a report of suspected abuse, neglect, or dependency of a juvenile is received,
33 the director of the department of social services shall immediately ascertain if other
34 juveniles remain in the home, and, if so, initiate an investigation in order to
35 determine whether they require protective services or whether immediate removal of
36 the juveniles from the home is necessary for their protection.

37 If the investigation indicates that abuse, neglect, or dependency has occurred, the
38 director shall decide whether immediate removal of the juvenile or any other
39 juveniles in the home is necessary for their protection. If immediate removal does not
40 seem necessary, the director shall immediately provide or arrange for protective
41 services. If the parent or other caretaker refuses to accept the protective services
42 provided or arranged by the director, the director shall sign a complaint seeking to
43 invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

1 If immediate removal seems necessary for the protection of the juvenile or other
2 juveniles in the home, the director shall sign a complaint which alleges the applicable
3 facts to invoke the jurisdiction of the court. Where the investigation shows that it is
4 warranted, a protective services worker may assume temporary custody of the
5 juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

6 In performing any duties related to the investigation of the complaint or the
7 provision or arrangement for protective services, the director may consult with any
8 public or private agencies or individuals, including the available State or local law
9 enforcement officers who shall assist in the investigation and evaluation of the
10 seriousness of any report of abuse, neglect, or dependency when requested by the
11 director. The director or the director's representative may make a written demand for
12 any information or reports, whether or not confidential, that may in the director's
13 opinion be relevant to the investigation of or the provision for protective services.
14 Upon the director's or the director's representative's request and unless protected by
15 the attorney-client privilege, any public or private agency or individual shall provide
16 access to and copies of this confidential information and these records to the extent
17 permitted by federal law and regulations. If a custodian of criminal investigative
18 information or records believes that release of the information will jeopardize the
19 right of the State to prosecute a defendant or the right of a defendant to receive a fair
20 trial or will undermine an ongoing or future investigation, it may seek an order from
21 a court of competent jurisdiction to prevent disclosure of the information. In such an
22 action, the custodian of the records shall have the burden of showing by a
23 preponderance of the evidence that disclosure of the information in question will
24 jeopardize the right of the State to prosecute a defendant or the right of a defendant
25 to receive a fair trial or will undermine an ongoing or future investigation. Actions
26 brought pursuant to this paragraph shall be set down for immediate hearing, and
27 subsequent proceedings in the actions shall be accorded priority by the trial and
28 appellate courts.

29 Within five working days after receipt of the report of abuse, neglect, or
30 dependency, the director shall give written notice to the person making the report,
31 unless requested by that person not to give notice, as to whether the report was
32 accepted for investigation and whether the report was referred to the appropriate
33 State or local law enforcement agency.

34 Within five working days after completion of the protective services investigation,
35 the director shall give subsequent written notice to the person making the report,
36 unless requested by that person not to give notice, as to whether there is a finding of
37 abuse, neglect, or dependency, whether the county department of social services is
38 taking action to protect the juvenile, and what action it is taking, including whether
39 or not a petition was filed. The person making the report shall be informed of
40 procedures necessary to request a review by the prosecutor of the director's decision
41 not to file a petition. A request for review by the prosecutor shall be made within five
42 working days of receipt of the second notification. The second notification shall
43 include notice that, if the person making the report is not satisfied with the director's
44 decision, the person may request review of the decision by the prosecutor within five

1 working days of receipt. The person making the report may waive the person's right
2 to this notification, and no notification is required if the person making the report
3 does not identify himself to the director.

4 **"§ 7B-303. Interference with investigation.**

5 (a) If any person obstructs or interferes with an investigation required by G.S. 7B-
6 302, the director may file a petition naming said person as respondent and requesting
7 an order directing the respondent to cease such obstruction or interference. The
8 petition shall contain the name and date of birth and address of the juvenile who is
9 the subject of the investigation, shall specifically describe the conduct alleged to
10 constitute obstruction of or interference with the investigation, and shall be verified.

11 (b) For purposes of this section, obstruction of or interference with an
12 investigation means refusing to disclose the whereabouts of the juvenile, refusing to
13 allow the director to have personal access to the juvenile, refusing to allow the
14 director to observe or interview the juvenile in private, refusing to allow the director
15 access to confidential information and records upon request pursuant to G.S. 7B-302,
16 refusing to allow the director to arrange for an evaluation of the juvenile by a
17 physician or other expert, or other conduct that makes it impossible for the director
18 to carry out the duty to investigate.

19 (c) Upon filing of the petition, the court shall schedule a hearing to be held not
20 less than five days after service of the petition and summons on the respondent.
21 Service of the petition and summons and notice of hearing shall be made as provided
22 by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian,
23 custodian, or caretaker; and any other person determined by the court to be a
24 necessary party. If at the hearing on the petition the court finds by clear, cogent, and
25 convincing evidence that the respondent, without lawful excuse, has obstructed or
26 interfered with an investigation required by G.S. 7B-302, the court may order the
27 respondent to cease such obstruction or interference. The burden of proof shall be
28 on the petitioner.

29 (d) If the director has reason to believe that the juvenile is in need of immediate
30 protection or assistance, the director shall so allege in the petition and may seek an
31 ex parte order from the court. If the court, from the verified petition and any inquiry
32 the court makes of the director, finds probable cause to believe both that the juvenile
33 is at risk of immediate harm and that the respondent is obstructing or interfering with
34 the director's ability to investigate to determine the juvenile's condition, the court
35 may enter an ex parte order directing the respondent to cease such obstruction or
36 interference. The order shall be limited to provisions necessary to enable the director
37 to conduct an investigation sufficient to determine whether the juvenile is in need of
38 immediate protection or assistance. Within 10 days after the entry of an ex parte
39 order under this subsection, a hearing shall be held to determine whether there is
40 good cause for the continuation of the order or the entry of a different order. An
41 order entered under this subsection shall be served on the respondent along with a
42 copy of the petition, summons, and notice of hearing.

1 (e) The director may be required at a hearing under this section to reveal the
2 identity of any person who made a report of suspected abuse, neglect, or dependency
3 as required by G.S. 7B-301.

4 (f) An order entered pursuant to this section is enforceable by civil or criminal
5 contempt as provided in Chapter 5A of the General Statutes.

6 **"§ 7B-304. Evaluation for court.**

7 In all cases in which a petition is filed, the director of the department of social
8 services shall prepare a report for the court containing a home placement plan and a
9 treatment plan deemed by the director to be appropriate to the needs of the juvenile.
10 The report shall be available to the court immediately following the adjudicatory
11 hearing.

12 **"§ 7B-305. Request for review by prosecutor.**

13 The person making the report shall have five working days, from receipt of the
14 decision of the director of the department of social services not to petition the court,
15 to notify the prosecutor that the person is requesting a review. The prosecutor shall
16 notify the person making the report and the director of the time and place for the
17 review, and the director shall immediately transmit to the prosecutor a copy of the
18 investigation report.

19 **"§ 7B-306. Review by prosecutor.**

20 The prosecutor shall review the director's determination that a petition should not
21 be filed within 20 days after the person making the report is notified. The review
22 shall include conferences with the person making the report, the protective services
23 worker, the juvenile, if practicable, and other persons known to have pertinent
24 information about the juvenile or the juvenile's family. At the conclusion of the
25 conferences, the prosecutor may affirm the decision made by the director, may
26 request the appropriate local law enforcement agency to investigate the allegations, or
27 may direct the director to file a petition.

28 **"§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local**
29 **law enforcement; notification of Department of Health and Human Services and State**
30 **Bureau of Investigation.**

31 (a) If the director finds evidence that a juvenile may have been abused as defined
32 by G.S. 7B-101, the director shall make an immediate oral and subsequent written
33 report of the findings to the district attorney or the district attorney's designee and
34 the appropriate local law enforcement agency within 48 hours after receipt of the
35 report. The local law enforcement agency shall immediately, but no later than 48
36 hours after receipt of the information, initiate and coordinate a criminal investigation
37 with the protective services investigation being conducted by the county department
38 of social services. Upon completion of the investigation, the district attorney shall
39 determine whether criminal prosecution is appropriate and may request the director
40 or the director's designee to appear before a magistrate.

41 If the director receives information that a juvenile may have been physically
42 harmed in violation of any criminal statute by any person other than the juvenile's
43 parent, guardian, custodian, or caretaker, the director shall make an immediate oral
44 and subsequent written report of that information to the district attorney or the

1 district attorney's designee and to the appropriate local law enforcement agency
2 within 48 hours after receipt of the information. The local law enforcement agency
3 shall immediately, but no later than 48 hours after receipt of the information, initiate
4 a criminal investigation. Upon completion of the investigation, the district attorney
5 shall determine whether criminal prosecution is appropriate.

6 If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a
7 juvenile in child care, the director shall notify the Department of Health and Human
8 Services within 24 hours or on the next working day of receipt of the report.

9 (b) If the director finds evidence that a juvenile has been abused or neglected as
10 defined by G.S. 7B-101 in a child care facility, the director shall immediately so
11 notify the Department of Health and Human Services and, in the case of sexual
12 abuse, the State Bureau of Investigation, in such a way as does not violate the law
13 guaranteeing the confidentiality of the records of the department of social services.

14 (c) Upon completion of the investigation, the director shall give the department
15 written notification of the results of the investigation required by G.S. 7B-302. Upon
16 completion of an investigation of sexual abuse in a child care facility, the director
17 shall also make written notification of the results of the investigation to the State
18 Bureau of Investigation.

19 The director of the department of social services shall submit a report of alleged
20 abuse, neglect, or dependency cases or child fatalities that are the result of alleged
21 maltreatment to the central registry under the policies adopted by the Social Services
22 Commission.

23 **"§ 7B-308. Authority of medical professionals in abuse cases.**

24 (a) Any physician or administrator of a hospital, clinic, or other medical facility to
25 which a suspected abused juvenile is brought for medical diagnosis or treatment shall
26 have the right, when authorized by the chief district court judge of the district or the
27 judge's designee, to retain physical custody of the juvenile in the facility when the
28 physician who examines the juvenile certifies in writing that the juvenile who is
29 suspected of being abused should remain for medical treatment or that, according to
30 the juvenile's medical evaluation, it is unsafe for the juvenile to return to the
31 juvenile's parent, guardian, custodian, or caretaker. This written certification must be
32 signed by the certifying physician and must include the time and date that the judicial
33 authority to retain custody is given. Copies of the written certification must be
34 appended to the juvenile's medical and judicial records and another copy must be
35 given to the juvenile's parent, guardian, custodian, or caretaker. The right to retain
36 custody in the facility shall exist for up to 12 hours from the time and date contained
37 in the written certification.

38 (b) Immediately upon receipt of judicial authority to retain custody, the physician,
39 the administrator, or that person's designee shall so notify the director of social
40 services for the county in which the facility is located. The director shall treat this
41 notification as a report of suspected abuse and shall immediately begin an
42 investigation of the case.

43 (1) If the investigation reveals (i) that it is the opinion of the certifying
44 physician that the juvenile is in need of medical treatment to cure

1 or alleviate physical distress, or to prevent the juvenile from
2 suffering serious physical injury, and (ii) that it is the opinion of
3 the physician that the juvenile should for these reasons remain in
4 the custody of the facility for 12 hours, but (iii) that the juvenile's
5 parent, guardian, custodian, or caretaker cannot be reached or,
6 upon request, will not consent to the treatment within the facility,
7 the director shall within the initial 12-hour period file a juvenile
8 petition alleging abuse and setting forth supporting allegations and
9 shall seek a nonsecure custody order. A petition filed and a
10 nonsecure custody order obtained in accordance with this
11 subdivision shall come on for hearing under the regular provisions
12 of this Subchapter unless the director and the certifying physician
13 together voluntarily dismiss the petition.

14 (2) In all cases except those described in subdivision (1) above, the
15 director shall conduct the investigation and may initiate juvenile
16 proceedings and take all other steps authorized by the regular
17 provisions of this Subchapter. If the director decides not to file a
18 petition, the physician, the administrator, or that person's designee
19 may ask the prosecutor to review this decision according to the
20 provisions of G.S. 7B-305 and G.S. 7B-306.

21 (c) If, upon hearing, the court determines that the juvenile is found in a county
22 other than the county of legal residence, in accord with G.S. 153A-257, the juvenile
23 may be transferred, in accord with G.S. 7B-903(2), to the custody of the department
24 of social services in the county of residence.

25 (d) If the court, upon inquiry, determines that the medical treatment rendered was
26 necessary and appropriate, the cost of that treatment may be charged to the parents,
27 guardian, custodian, or caretaker, or, if the parents are unable to pay, to the county
28 of residence in accordance with G.S. 7B-903 and G.S. 7B-904.

29 (e) Except as otherwise provided, a petition begun under this section shall
30 proceed in like manner with petitions begun under G.S. 7B-302.

31 (f) The procedures in this section are in addition to, and not in derogation of, the
32 abuse and neglect reporting provisions of G.S. 7B-301 and the temporary custody
33 provisions of G.S. 7B-500. Nothing in this section shall preclude a physician or
34 administrator and a director of social services from following the procedures of G.S.
35 7B-301 and G.S. 7B-500 whenever these procedures are more appropriate to the
36 juvenile's circumstances.

37 **"§ 7B-309. Immunity of persons reporting and cooperating in an investigation.**

38 Anyone who makes a report pursuant to this Article, cooperates with the county
39 department of social services in a protective services inquiry or investigation, testifies
40 in any judicial proceeding resulting from a protective services report or investigation,
41 or otherwise participates in the program authorized by this Article, is immune from
42 any civil or criminal liability that might otherwise be incurred or imposed for that
43 action provided that the person was acting in good faith. In any proceeding involving
44 liability, good faith is presumed.

1 **"§ 7B-310. Privileges not grounds for failing to report or for excluding evidence.**

2 No privilege shall be grounds for any person or institution failing to report that a
3 juvenile may have been abused, neglected, or dependent, even if the knowledge or
4 suspicion is acquired in an official professional capacity, except when the knowledge
5 or suspicion is gained by an attorney from that attorney's client during representation
6 only in the abuse, neglect, or dependency case. No privilege, except the attorney-
7 client privilege, shall be grounds for excluding evidence of abuse, neglect, or
8 dependency in any judicial proceeding (civil, criminal, or juvenile) in which a
9 juvenile's abuse, neglect, or dependency is in issue nor in any judicial proceeding
10 resulting from a report submitted under this Article, both as this privilege relates to
11 the competency of the witness and to the exclusion of confidential communications.

12 **"§ 7B-311. Central registry.**

13 The Department of Health and Human Services shall maintain a central registry of
14 abuse, neglect, and dependency cases and child fatalities that are the result of alleged
15 maltreatment that are reported under this Article in order to compile data for
16 appropriate study of the extent of abuse and neglect within the State and to identify
17 repeated abuses of the same juvenile or of other juveniles in the same family. This
18 data shall be furnished by county directors of social services to the Department of
19 Health and Human Services and shall be confidential, subject to policies adopted by
20 the Social Services Commission providing for its use for study and research and for
21 other appropriate disclosure. Data shall not be used at any hearing or court
22 proceeding unless based upon a final judgment of a court of law.

23 **"ARTICLE 4.**

24 **"Venue; Petitions.**

25 **"§ 7B-400. Venue; pleading.**

26 A proceeding in which a juvenile is alleged to be abused, neglected, or dependent
27 may be commenced in the district in which the juvenile resides or is present. When a
28 proceeding is commenced in a district other than that of the juvenile's residence, the
29 court, on its own motion or upon motion of any party, may transfer the proceeding to
30 the court in the district where the juvenile resides. A transfer under this subsection
31 may be made at any time.

32 **"§ 7B-401. Pleading and process.**

33 The pleading in an abuse, neglect, or dependency action is the petition. The
34 process in an abuse, neglect, or dependency action is the summons.

35 **"§ 7B-402. Petition.**

36 (a) The petition shall contain the name, date of birth, address of the juvenile, the
37 name and last known address of the juvenile's parent, guardian, or custodian and
38 shall allege the facts which invoke jurisdiction over the juvenile. The petition may
39 contain information on more than one juvenile when the juveniles are from the same
40 home and are before the court for the same reason.

41 Sufficient copies of the petition shall be prepared so that copies will be available
42 for each juvenile, each parent if living separate and apart, the guardian ad litem, the
43 social worker, and any person determined by the court to be a necessary party.

44 **"§ 7B-403. Receipt of reports; filing of petition.**

1 (a) All reports concerning a juvenile alleged to be abused, neglected, or
2 dependent shall be referred to the director of the department of social services for
3 screening. Thereafter, if it is determined by the director that a report should be filed
4 as a petition, the petition shall be drawn by the director, verified before an official
5 authorized to administer oaths, and filed by the clerk, recording the date of filing.

6 (b) A decision of the director of social services not to file a report as a petition
7 shall be reviewed by the prosecutor if review is requested pursuant to G.S. 7B-305.

8 **"§ 7B-404. Immediate need for petition when clerk's office is closed.**

9 (a) When the office of the clerk is closed, a magistrate may be authorized by the
10 chief district court judge to draw, verify, and issue petitions as follows:

11 (1) When the director of the department of social services requests a
12 petition alleging a juvenile to be abused, neglected, or dependent,

13 or

14 (2) When the director of the department of social services requests a
15 petition alleging the obstruction of or interference with an
16 investigation required by G.S. 7B-302.

17 (b) The authority of the magistrate under this section is limited to emergency
18 situations when a petition is required in order to obtain a nonsecure custody order or
19 an order under G.S. 7B-303. Any petition issued under this section shall be delivered
20 to the clerk's office for processing as soon as that office is open for business.

21 **"§ 7B-405. Commencement of action.**

22 An action is commenced by the filing of a petition in the clerk's office when that
23 office is open, or by the issuance of a juvenile petition by a magistrate when the
24 clerk's office is closed, which issuance shall constitute filing.

25 **"§ 7B-406. Issuance of summons.**

26 (a) Immediately after a petition has been filed alleging that a juvenile is abused,
27 neglected, or dependent, the clerk shall issue a summons to the parent, guardian,
28 custodian, or caretaker requiring them to appear for a hearing at the time and place
29 stated in the summons. A copy of the petition shall be attached to each summons.

30 (b) A summons shall be on a printed form supplied by the Administrative Office
31 of the Courts and shall include:

32 (1) Notice of the nature of the proceeding;

33 (2) Notice of any right to counsel and information about how to seek
34 the appointment of counsel prior to a hearing;

35 (3) Notice that, if the court determines at the hearing that the
36 allegations of the petition are true, the court will conduct a
37 dispositional hearing to consider the needs of the juvenile and
38 enter an order designed to meet those needs and the objectives of
39 the State; and

40 (4) Notice that the dispositional order or a subsequent order:

41 a. May remove the juvenile from the custody of the parent,
42 guardian, or custodian.

- 1 **b.** May require that the juvenile receive medical, psychiatric,
2 psychological, or other treatment and that the parent
3 participate in the treatment.
- 4 **c.** May require the parent to undergo psychiatric,
5 psychological, or other treatment or counseling for the
6 purpose of remedying the behaviors or conditions that are
7 alleged in the petition or that contributed to the removal of
8 the juvenile from the custody of the parent.
- 9 **d.** May order the parent to pay for treatment that is ordered
10 for the juvenile or the parent.

11 (c) The summons shall advise the parent that upon service, jurisdiction over the
12 parent is obtained and that failure to comply with any order of the court pursuant to
13 G.S. 7B-904 may cause the court to issue a show cause order for contempt.

14 (d) A summons shall be directed to the person summoned to appear and shall be
15 delivered to any person authorized to serve process.

16 **"§ 7B-407. Service of summons.**

17 The summons shall be personally served upon the parent, guardian, custodian, or
18 caretaker, and the juvenile or counsel or guardian ad litem, not less than five days
19 prior to the date of the scheduled hearing. The time for service may be waived in the
20 discretion of the court.

21 If the parent, guardian, custodian, or caretaker entitled to receive a summons
22 cannot be found by a diligent effort, the court may authorize service of the summons
23 and petition by mail or by publication. The cost of the service by publication shall be
24 advanced by the petitioner and may be charged as court costs as the court may direct.

25 If the parent, guardian, custodian, or caretaker is personally served as herein
26 provided and fails without reasonable cause to appear and to bring the juvenile
27 before the court, the parent, guardian, custodian, or caretaker may be proceeded
28 against as for contempt of court.

29 **"ARTICLE 5.**

30 **"Temporary Custody; Nonsecure Custody; Custody Hearings.**

31 **"§ 7B-500. Taking a juvenile into temporary custody.**

32 Temporary custody means the taking of physical custody and providing personal
33 care and supervision until a court order for nonsecure custody can be obtained. A
34 juvenile may be taken into temporary custody without a court order by a law
35 enforcement officer or a department of social services worker if there are reasonable
36 grounds to believe that the juvenile is abused, neglected, or dependent and that the
37 juvenile would be injured or could not be taken into custody if it were first necessary
38 to obtain a court order. If a department of social services worker takes a juvenile
39 into temporary custody under this section, the worker may arrange for the placement,
40 care, supervision, and transportation of the juvenile.

41 **"§ 7B-501. Duties of person taking juvenile into temporary custody.**

42 (a) A person who takes a juvenile into custody without a court order under G.S.
43 7B-500 shall proceed as follows:

- 1 (1) Notify the juvenile's parent, guardian, custodian, or caretaker that
2 the juvenile has been taken into temporary custody and advise the
3 parent, guardian, custodian, or caretaker of the right to be present
4 with the juvenile until a determination is made as to the need for
5 nonsecure custody. Failure to notify the parent that the juvenile is
6 in custody shall not be grounds for release of the juvenile.
- 7 (2) Release the juvenile to the juvenile's parent, guardian,
8 or caretaker if the person having the juvenile in temporary custody
9 decides that continued custody is unnecessary.
- 10 (3) The person having temporary custody shall communicate with the
11 director of the department of social services who shall consider
12 prehearing diversion. If the decision is made to file a petition, the
13 director shall contact the judge or person delegated authority
14 pursuant to G.S. 7B-502 for a determination of the need for
15 continued custody.

16 **(b) A juvenile taken into temporary custody under this Article shall not be held**
17 **for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a**
18 **Saturday, Sunday, or legal holiday, unless:**

- 19 (1) A petition or motion for review has been filed by the director of
20 the department of social services, and
- 21 (2) An order for nonsecure custody has been entered by the court.

22 **"§ 7B-502. Authority to issue custody orders; delegation.**

23 In the case of any juvenile alleged to be within the jurisdiction of the court, the
24 court may order that the juvenile be placed in nonsecure custody pursuant to criteria
25 set out in G.S. 7B-503 when custody of the juvenile is necessary.

26 Any district court judge shall have the authority to issue nonsecure custody orders
27 pursuant to G.S. 7B-503. The chief district court judge may delegate the court's
28 authority to persons other than district court judges by administrative order which
29 shall be filed in the office of the clerk of superior court. The administrative order
30 shall specify which persons shall be contacted for approval of a nonsecure custody
31 order pursuant to G.S. 7B-503.

32 **"§ 7B-503. Criteria for nonsecure custody.**

33 When a request is made for nonsecure custody, the court shall first consider
34 release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other
35 responsible adult. An order for nonsecure custody shall be made only when there is
36 a reasonable factual basis to believe the matters alleged in the petition are true, and

- 37 (1) The juvenile has been abandoned; or
- 38 (2) The juvenile has suffered physical injury or sexual abuse; or
- 39 (3) The juvenile is exposed to a substantial risk of physical injury or
40 sexual abuse because the parent, guardian, custodian, or caretaker
41 has created the conditions likely to cause injury or abuse or has
42 failed to provide, or is unable to provide, adequate supervision or
43 protection; or

1 (4) The juvenile is in need of medical treatment to cure, alleviate, or
2 prevent suffering serious physical harm which may result in death,
3 disfigurement, or substantial impairment of bodily functions, and
4 the juvenile's parent, guardian, custodian, or caretaker is unwilling
5 or unable to provide or consent to the medical treatment; or

6 (5) The parent, guardian, custodian, or caretaker consents to the
7 nonsecure custody order; or

8 (6) The juvenile is a runaway and consents to nonsecure custody.

9 A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure
10 custody only when there is a reasonable factual basis to believe that there is no other
11 reasonable means available to protect the juvenile. In no case shall a juvenile alleged
12 to be abused, neglected, or dependent be placed in secure custody.

13 **§ 7B-504. Order for nonsecure custody.**

14 The custody order shall be in writing and shall direct a law enforcement officer or
15 other authorized person to assume custody of the juvenile and to make due return on
16 the order. A copy of the order shall be given to the juvenile's parent, guardian,
17 custodian, or caretaker by the official executing the order.

18 An officer receiving an order for custody which is complete and regular on its face
19 may execute it in accordance with its terms. The officer is not required to inquire
20 into the regularity or continued validity of the order and shall not incur criminal or
21 civil liability for its due service.

22 **§ 7B-505. Place of nonsecure custody.**

23 A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure
24 custody with the department of social services or a person designated in the order for
25 temporary residential placement in:

26 (1) A licensed foster home or a home otherwise authorized by law to
27 provide such care; or

28 (2) A facility operated by the department of social services; or

29 (3) Any other home or facility approved by the court and designated
30 in the order.

31 In placing a juvenile in nonsecure custody under this section, the court shall first
32 consider whether a relative of the juvenile is willing and able to provide proper care
33 and supervision of the juvenile in a safe home. If the court finds that the relative is
34 willing and able to provide proper care and supervision in a safe home, then the
35 court shall order placement of the juvenile with the relative. Prior to placement of a
36 juvenile with a relative outside of this State, the placement must be in accordance
37 with the Interstate Compact on the Placement of Children, Article 38 of this Chapter.

38 **§ 7B-506. Hearing to determine need for continued nonsecure custody.**

39 (a) No juvenile shall be held under a nonsecure custody order for more than
40 seven calendar days without a hearing on the merits or a hearing to determine the
41 need for continued custody. A hearing on nonsecure custody conducted under this
42 subsection may be continued for up to 10 business days with the consent of the
43 juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's
44 guardian ad litem. In addition, the court may require the consent of additional parties

1 or may schedule the hearing on custody despite a party's consent to a continuance. In
2 every case in which an order has been entered by an official exercising authority,
3 delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued
4 custody shall be conducted on the day of the next regularly scheduled session of
5 district court in the city or county where the order was entered if such session
6 precedes the expiration of the applicable time period set forth in this subsection:
7 Provided, that if such session does not precede the expiration of the time period, the
8 hearing may be conducted at another regularly scheduled session of district court in
9 the district where the order was entered.

10 (b) At a hearing to determine the need for continued custody, the court shall
11 receive testimony and shall allow the guardian ad litem, or juvenile, and the
12 juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce
13 evidence, to be heard in the person's own behalf, and to examine witnesses. The
14 State shall bear the burden at every stage of the proceedings to provide clear and
15 convincing evidence that the juvenile's placement in custody is necessary. The court
16 shall not be bound by the usual rules of evidence at such hearings.

17 (c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining
18 whether continued custody is warranted.

19 (d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and
20 should continue in custody, the court shall issue an order to that effect. The order
21 shall be in writing with appropriate findings of fact. The findings of fact shall include
22 the evidence relied upon in reaching the decision and the purposes which continued
23 custody is to achieve.

24 (e) If the court orders at the hearing required in subsection (a) of this section that
25 the juvenile remain in custody, a subsequent hearing on continued custody shall be
26 held within seven business days of that hearing, excluding Saturdays, Sundays, and
27 legal holidays, and pending a hearing on the merits, hearings thereafter shall be held
28 at intervals of no more than 30 calendar days.

29 (f) Hearings conducted under subsection (e) of this section may be waived only
30 with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if
31 appointed, the juvenile's guardian ad litem.

32 The court may require the consent of additional parties or schedule a hearing
33 despite a party's consent to waiver.

34 (g) Any order authorizing the continued custody of a juvenile shall include
35 findings as to whether reasonable efforts have been made to prevent or eliminate the
36 need for placement of the juvenile in custody and may provide for services or other
37 efforts aimed at returning the juvenile promptly to a safe home. A finding that
38 reasonable efforts have not been made shall not preclude the entry of an order
39 authorizing continued custody when the court finds that continued custody is
40 necessary for the protection of the juvenile. Where efforts to prevent the need for the
41 juvenile's placement were precluded by an immediate threat of harm to the juvenile,
42 the court may find that the placement of the juvenile in the absence of such efforts
43 was reasonable. If the court finds through written findings of fact that efforts to
44 eliminate the need for placement of the juvenile in custody clearly would be futile or

1 would be inconsistent with the juvenile's safety and need for a safe, permanent home
2 within a reasonable period of time, then the court shall specify in its order that
3 reunification efforts are not required or order that reunification efforts cease.

4 (h) At each hearing to determine the need for continued custody, the court shall:

5 (1) Inquire as to the identity and location of any missing parent. The
6 court shall include findings as to the efforts undertaken to locate
7 the missing parent and to serve that parent. The order may provide
8 for specific efforts aimed at determining the identity and location
9 of any missing parent;

10 (2) Inquire as to whether a relative of the juvenile is willing and able
11 to provide proper care and supervision of the juvenile in a safe
12 home. If the court finds that the relative is willing and able to
13 provide proper care and supervision in a safe home, then the court
14 shall order temporary placement of the juvenile with the relative.
15 Prior to placement of a juvenile with a relative outside of this
16 State, the placement must be in accordance with the Interstate
17 Compact on the Placement of Children set forth in Article 38 of
18 this Chapter; and

19 (3) Inquire as to whether there are other juveniles remaining in the
20 home from which the juvenile was removed and, if there are,
21 inquire as to the specific findings of the investigation conducted
22 under G.S. 7B-302 and any actions taken or services provided by
23 the director for the protection of the other juveniles.

24 **"§ 7B-507. Telephonic communication authorized.**

25 All communications, notices, orders, authorizations, and requests authorized or
26 required by G.S. 7B-501, 7B-503, and 7B-504 may be made by telephone when other
27 means of communication are impractical. All written orders pursuant to telephonic
28 communication shall bear the name and the title of the person communicating by
29 telephone, the signature and the title of the official entering the order, and the hour
30 and the date of the authorization.

31 "ARTICLE 6.

32 "Basic Rights.

33 **"§ 7B-600. Appointment of guardian.**

34 In any case when no parent appears in a hearing with the juvenile or when the
35 court finds it would be in the best interests of the juvenile, the court may appoint a
36 guardian of the person for the juvenile. The guardian shall operate under the
37 supervision of the court with or without bond and shall file only such reports as the
38 court shall require. The guardian shall have the care, custody, and control of the
39 juvenile or may arrange a suitable placement for the juvenile and may represent the
40 juvenile in legal actions before any court. The guardian may consent to certain
41 actions on the part of the juvenile in place of the parent including (i) marriage, (ii)
42 enlisting in the armed forces, and (iii) enrollment in school. The guardian may also
43 consent to any necessary remedial, psychological, medical, or surgical treatment for
44 the juvenile. The authority of the guardian shall continue until the guardianship is

1 terminated by court order, until the juvenile is emancipated pursuant to Article 35 of
2 Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

3 **"§ 7B-601. Appointment and duties of guardian ad litem.**

4 (a) When in a petition a juvenile is alleged to be abused or neglected, the court
5 shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged
6 to be dependent, the court may appoint a guardian ad litem to represent the juvenile.
7 The guardian ad litem and attorney advocate have standing to represent the juvenile
8 in all actions under this Subchapter where they have been appointed. The
9 appointment shall be made pursuant to the program established by Article 12 of this
10 Chapter unless representation is otherwise provided legally made. The appointment
11 shall terminate at the end of two years. The court may reappoint the guardian ad
12 litem pursuant to a showing of good cause upon motion of any party, including the
13 guardian ad litem, or of the court. In every case where a nonattorney is appointed as
14 a guardian ad litem, an attorney shall be appointed in the case in order to assure
15 protection of the juvenile's legal rights through the dispositional phase of the
16 proceedings, and after disposition when necessary to further the best interests of the
17 juvenile. The duties of the guardian ad litem program shall be to make an
18 investigation to determine the facts, the needs of the juvenile, and the available
19 resources within the family and community to meet those needs; to facilitate, when
20 appropriate, the settlement of disputed issues; to offer evidence and examine
21 witnesses at adjudication; to explore options with the court at the dispositional
22 hearing; and to protect and promote the best interests of the juvenile until formally
23 relieved of the responsibility by the court.

24 (b) The court may order the department of social services or the guardian ad
25 litem to conduct follow-up investigations to ensure that the orders of the court are
26 being properly executed and to report to the court when the needs of the juvenile are
27 not being met. The court may also authorize the guardian ad litem to accompany the
28 juvenile to court in any criminal action wherein the juvenile may be called on to
29 testify in a matter relating to abuse.

30 (c) The court may grant the guardian ad litem the authority to demand any
31 information or reports, whether or not confidential, that may in the guardian ad
32 litem's opinion be relevant to the case. Neither the physician-patient privilege nor the
33 husband-wife privilege may be invoked to prevent the guardian ad litem and the
34 court from obtaining such information. The confidentiality of the information or
35 reports shall be respected by the guardian ad litem and no disclosure of any
36 information or reports shall be made to anyone except by order of the court or unless
37 otherwise provided by law.

38 **"§ 7B-602. Parent's right to counsel.**

39 In cases where the juvenile petition alleges that a juvenile is abused, neglected, or
40 dependent, the parent has the right to counsel and to appointed counsel in cases of
41 indigency unless the parent waives the right. In no case may the court appoint a
42 county attorney, prosecutor, or public defender.

43 **"§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

1 An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 or G.S. 7B-
2 602 pursuant to any other provision of the Juvenile Code shall be paid a reasonable
3 fee fixed by the court in the same manner as fees for attorneys appointed in cases of
4 indigency or by direct engagement for specialized guardian ad litem services through
5 the Administrative Office of the Courts. The court may require payment of the
6 attorney or guardian ad litem fee from a person other than the juvenile as provided
7 in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be
8 required to pay the fees for a court-appointed attorney or guardian ad litem in an
9 abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to
10 be abused, neglected, or dependent, or, in a proceeding to terminate parental rights,
11 unless the parent's rights have been terminated. A person who does not comply with
12 the court's order of payment may be punished for contempt as provided in G.S. 5A-
13 21.

14 "ARTICLE 7.

15 "Discovery.

16 "§ 7B-700. Regulation of discovery; protective orders.

17 (a) Upon written motion of a party and a finding of good cause, the court may at
18 any time order that discovery be denied, restricted, or deferred.

19 (b) The court may permit a party seeking relief under subsection (a) of this section
20 to submit supporting affidavits or statements to the court for in camera inspection. If,
21 thereafter, the court enters an order granting relief under subsection (a) of this
22 section, the material submitted in camera must be available to the Court of Appeals
23 in the event of an appeal.

24 "ARTICLE 8.

25 "Hearing Procedures.

26 "§ 7B-800. Amendment of petition.

27 The court may permit a petition to be amended when the amendment does not
28 change the nature of the offense alleged or the conditions upon which the petition is
29 based.

30 "§ 7B-801. Adjudicatory hearing.

31 The adjudicatory hearing shall be held in the district at such time and place as the
32 chief district court judge shall designate. The court may exclude the public from the
33 hearing unless the juvenile moves that the hearing be open, which motion shall be
34 granted.

35 "§ 7B-802. Conduct of hearing.

36 The adjudicatory hearing shall be a judicial process designed to adjudicate the
37 existence or nonexistence of any of the conditions alleged in a petition. In the
38 adjudicatory hearing, the court shall protect the following rights of the juvenile and
39 the juvenile's parent to assure due process of law.

40 "§ 7B-803. Continuances.

41 The court may, for good cause, continue the hearing for as long as is reasonably
42 required to receive additional evidence, reports, or assessments that the court has
43 requested, or other information needed in the best interests of the juvenile and to
44 allow for a reasonable time for the parties to conduct expeditious discovery.

1 Otherwise, continuances shall be granted only in extraordinary circumstances when
2 necessary for the proper administration of justice or in the best interests of the
3 juvenile.

4 **"§ 7B-804. Rules of evidence.**

5 Where the juvenile is alleged to be abused, neglected, or dependent, the rules of
6 evidence in civil cases shall apply.

7 **"§ 7B-805. Quantum of proof in adjudicatory hearing.**

8 The allegations in a petition alleging abuse, neglect, or dependence shall be proved
9 by clear and convincing evidence.

10 **"§ 7B-806. Record of proceedings.**

11 All adjudicatory and dispositional hearings shall be recorded by stenographic notes
12 or by electronic or mechanical means. Records shall be reduced to a written
13 transcript only when timely notice of appeal has been given. The court may order
14 that other hearings be recorded.

15 **"§ 7B-807. Adjudication.**

16 If the court finds that the allegations in the petition have been proven by clear and
17 convincing evidence, the court shall so state. If the court finds that the allegations
18 have not been proven, the court shall dismiss the petition with prejudice and the
19 juvenile shall be released from nonsecure custody.

20 **"§ 7B-808. Predisposition investigation and report.**

21 The court shall proceed to the dispositional hearing upon receipt of sufficient
22 social, medical, psychiatric, psychological, and educational information. No
23 predisposition report shall be submitted to or considered by the court prior to the
24 completion of the adjudicatory hearing. The court shall permit the guardian ad litem
25 or juvenile to inspect any predisposition report to be considered by the court in
26 making the disposition unless the court determines that disclosure would seriously
27 harm the juvenile's treatment or rehabilitation or would violate a promise of
28 confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the
29 guardian ad litem or juvenile, and the juvenile's parent, guardian, custodian, or
30 caretaker at the dispositional hearing. The court may order counsel not to disclose
31 parts of the report to the guardian ad litem or juvenile, or the juvenile's parent,
32 guardian, custodian, or caretaker if the court finds that disclosure would seriously
33 harm the treatment or rehabilitation of the juvenile or would violate a promise of
34 confidentiality given to a source of information.

35 **"ARTICLE 9.**

36 **"Dispositions.**

37 **"§ 7B-900. Purpose.**

38 The purpose of dispositions in juvenile actions is to design an appropriate plan to
39 meet the needs of the juvenile and to achieve the objectives of the State in exercising
40 jurisdiction. If possible, the initial approach should involve working with the juvenile
41 and the juvenile's family in their own home so that the appropriate community
42 resources may be involved in care, supervision, and treatment according to the needs
43 of the juvenile. Thus, the court should arrange for appropriate community-level

1 services to be provided to the juvenile and the juvenile's family in order to strengthen
2 the home situation.

3 **"§ 7B-901. Dispositional hearing.**

4 The dispositional hearing may be informal and the court may consider written
5 reports or other evidence concerning the needs of the juvenile. The juvenile and the
6 juvenile's parent, guardian, custodian, or caretaker shall have an opportunity to
7 present evidence, and they may advise the court concerning the disposition they
8 believe to be in the best interests of the juvenile. The court may exclude the public
9 from the hearing unless the juvenile moves that the hearing be open, which motion
10 shall be granted.

11 **"§ 7B-902. Consent judgment in abuse, neglect, or dependency proceeding.**

12 Nothing in this Article precludes the court from entering a consent order or
13 judgment on a petition for abuse, neglect, or dependency when all parties are present,
14 the juvenile is represented by counsel, and all other parties are either represented by
15 counsel or have waived counsel, and sufficient findings of fact are made by the court.

16 **"§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

17 The following alternatives for disposition shall be available to any court exercising
18 jurisdiction, and the court may combine any of the applicable alternatives when the
19 court finds the disposition to be in the best interests of the juvenile:

20 (1) The court may dismiss the case or continue the case in order to
21 allow the parent or others to take appropriate action.

22 (2) In the case of any juvenile who needs more adequate care or
23 supervision or who needs placement, the court may:

24 a. Require that the juvenile be supervised in the juvenile's own
25 home by the department of social services in the juvenile's
26 county, or by other personnel as may be available to the
27 court, subject to conditions applicable to the parent,
28 guardian, custodian, or caretaker as the court may specify;
29 or

30 b. Place the juvenile in the custody of a parent, relative,
31 private agency offering placement services, or some other
32 suitable person; or

33 c. Place the juvenile in the custody of the department of social
34 services in the county of the juvenile's residence, or in the
35 case of a juvenile who has legal residence outside the State,
36 in the physical custody of the department of social services
37 in the county where the juvenile is found so that agency
38 may return the juvenile to the responsible authorities in the
39 juvenile's home state. The director may, unless otherwise
40 ordered by the court, arrange for, provide, or consent to,
41 needed routine or emergency medical or surgical care or
42 treatment. In the case where the parent is unknown,
43 unavailable, or unable to act on behalf of the juvenile, the
44 director may, unless otherwise ordered by the court, arrange

1 for, provide, or consent to any psychiatric, psychological,
2 educational, or other remedial evaluations or treatment for
3 the juvenile placed by a court or the court's designee in the
4 custody or physical custody of a county department of social
5 services under the authority of this or any other Chapter of
6 the General Statutes. Prior to exercising this authority, the
7 director shall make reasonable efforts to obtain consent from
8 a parent or guardian of the affected juvenile. If the director
9 cannot obtain such consent, the director shall promptly
10 notify the parent or guardian that care or treatment has
11 been provided and shall give the parent frequent status
12 reports on the circumstances of the juvenile. Upon request
13 of a parent or guardian of the affected juvenile, the results
14 or records of the aforementioned evaluations, findings, or
15 treatment shall be made available to such parent or guardian
16 by the director unless prohibited by G.S. 122C-53(d).

17 (3) In any case, the court may order that the juvenile be examined by
18 a physician, psychiatrist, psychologist, or other qualified expert as
19 may be needed for the court to determine the needs of the
20 juvenile:

21 a. Upon completion of the examination, the court shall
22 conduct a hearing to determine whether the juvenile is in
23 need of medical, surgical, psychiatric, psychological, or other
24 treatment and who should pay the cost of the treatment. The
25 county manager, or such person who shall be designated by
26 the chairman of the county commissioners, of the juvenile's
27 residence shall be notified of the hearing, and allowed to be
28 heard. If the court finds the juvenile to be in need of
29 medical, surgical, psychiatric, psychological, or other
30 treatment, the court shall permit the parent or other
31 responsible persons to arrange for treatment. If the parent
32 declines or is unable to make necessary arrangements, the
33 court may order the needed treatment, surgery, or care, and
34 the court may order the parent to pay the cost of the care
35 pursuant to G.S. 7B-904. If the court finds the parent is
36 unable to pay the cost of treatment, the court shall order the
37 county to arrange for treatment of the juvenile and to pay
38 for the cost of the treatment. The county department of
39 social services shall recommend the facility that will provide
40 the juvenile with treatment.

41 b. If the court believes, or if there is evidence presented to the
42 effect that the juvenile is mentally ill or is developmentally
43 disabled, the court shall refer the juvenile to the area mental
44 health, developmental disabilities, and substance abuse

1 services director for appropriate action. A juvenile shall not
2 be committed directly to a State hospital or mental
3 retardation center; and orders purporting to commit a
4 juvenile directly to a State hospital or mental retardation
5 center except for an examination to determine capacity to
6 proceed shall be void and of no effect. The area mental
7 health, developmental disabilities, and substance abuse
8 director shall be responsible for arranging an
9 interdisciplinary evaluation of the juvenile and mobilizing
10 resources to meet the juvenile's needs. If institutionalization
11 is determined to be the best service for the juvenile,
12 admission shall be with the voluntary consent of the parent
13 or guardian. If the parent, guardian, custodian, or caretaker
14 refuses to consent to a mental hospital or retardation center
15 admission after such institutionalization is recommended by
16 the area mental health, developmental disabilities, and
17 substance abuse director, the signature and consent of the
18 court may be substituted for that purpose. In all cases in
19 which a regional mental hospital refuses admission to a
20 juvenile referred for admission by a court and an area
21 mental health, developmental disabilities, and substance
22 abuse director or discharges a juvenile previously admitted
23 on court referral prior to completion of treatment, the
24 hospital shall submit to the court a written report setting out
25 the reasons for denial of admission or discharge and setting
26 out the juvenile's diagnosis, indications of mental illness,
27 indications of need for treatment, and a statement as to the
28 location of any facility known to have a treatment program
29 for the juvenile in question.

30 **"§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or**
31 **dependent.**

32 (a) If the court orders medical, surgical, psychiatric, psychological, or other
33 treatment pursuant to G.S. 7B-903, the court may order the parent or other
34 responsible parties to pay the cost of the treatment or care ordered.

35 (b) At the dispositional hearing or a subsequent hearing in the case of a juvenile
36 who has been adjudicated abused, neglected, or dependent, if the court finds that it is
37 in the best interests of the juvenile for the parent to be directly involved in the
38 juvenile's treatment, the court may order the parent to participate in medical,
39 psychiatric, psychological, or other treatment of the juvenile. The cost of the
40 treatment shall be paid pursuant to G.S. 7B-903.

41 (c) At the dispositional hearing or a subsequent hearing in the case of a juvenile
42 who has been adjudicated abused, neglected, or dependent, the court may determine
43 whether the best interests of the juvenile requires that the parent undergo psychiatric,
44 psychological, or other treatment or counseling directed toward remediating or

1 remedying behaviors or conditions that led to or contributed to the juvenile's
2 adjudication or to the court's decision to remove custody of the juvenile from the
3 parent. If the court finds that the best interests of the juvenile require the parent
4 undergo treatment, it may order the parent to comply with a plan of treatment
5 approved by the court or condition legal custody or physical placement of the
6 juvenile with the parent upon the parent's compliance with the plan of treatment.
7 The court may order the parent to pay the cost of treatment ordered pursuant to this
8 subsection. In cases in which the court has conditioned legal custody or physical
9 placement of the juvenile with the parent upon the parent's compliance with a plan
10 of treatment, the court may charge the cost of the treatment to the county of the
11 juvenile's residence if the court finds the parent is unable to pay the cost of the
12 treatment. In all other cases, if the court finds the parent is unable to pay the cost of
13 the treatment ordered pursuant to this subsection, the court may order the parent to
14 receive treatment currently available from the area mental health program that serves
15 the parent's catchment area.

16 (d) Whenever legal custody of a juvenile is vested in someone other than the
17 juvenile's parent, after due notice to the parent and after a hearing, the court may
18 order that the parent pay a reasonable sum that will cover, in whole or in part, the
19 support of the juvenile after the order is entered. If the court requires the payment of
20 child support, the amount of the payments shall be determined as provided in G.S.
21 50-13.4(c). If the court places a juvenile in the custody of a county department of
22 social services and if the court finds that the parent is unable to pay the cost of the
23 support required by the juvenile, the cost shall be paid by the county department of
24 social services in whose custody the juvenile is placed, provided the juvenile is not
25 receiving care in an institution owned or operated by the State or federal government
26 or any subdivision thereof.

27 (e) Failure of a parent who is personally served to participate in or comply with
28 this section may result in a civil proceeding for contempt.

29 "§ 7B-905. Dispositional order.

30 (a) The dispositional order shall be in writing and shall contain appropriate
31 findings of fact and conclusions of law. The court shall state with particularity, both
32 orally and in the written order of disposition, the precise terms of the disposition
33 including the kind, duration, and the person who is responsible for carrying out the
34 disposition and the person or agency in whom custody is vested.

35 (b) A dispositional order under which a juvenile is removed from the custody of a
36 parent or person standing in loco parentis shall direct that the review hearing
37 required by G.S. 7B-906 be held within six months of the date of the juvenile's
38 placement in custody and, if practicable, shall set the date and time for the review
39 hearing.

40 (c) Any order directing placement of a juvenile in foster care shall also contain:

41 (1) A finding that the juvenile's continuation in or return to the
42 juvenile's home would be contrary to the juvenile's best interests;
43 and

1 (2) Findings as to whether reasonable efforts have been made to
2 prevent or eliminate the need for placement of the juvenile in
3 foster care. A finding that reasonable efforts were not made shall
4 not preclude entry of a dispositional order authorizing placement
5 in foster care when the court finds that such placement is needed
6 for protection of the juvenile. When efforts to prevent the need for
7 the juvenile's placement are precluded by an immediate threat of
8 harm to the juvenile, the court may find that placement of the
9 juvenile in the absence of such efforts is reasonable.

10 The order may provide for services or other efforts aimed at returning the juvenile
11 promptly to a safe home. If the court finds through written findings of fact that efforts
12 to eliminate the need for placement of the juvenile in custody clearly would be futile
13 or would be inconsistent with the juvenile's safety and need for a safe, permanent
14 home within a reasonable period of time, the court shall specify in its order that
15 reunification efforts are not required or order that reunification efforts cease.

16 (d) An order that places a juvenile in the custody of a county department of social
17 services for placement shall specify that the juvenile's placement and care are the
18 responsibility of the county department of social services and that the county
19 department is to provide or arrange for the foster care or other placement of the
20 juvenile.

21 **"§ 7B-906. Review of custody order.**

22 (a) In any case where custody is removed from a parent, the court shall conduct a
23 review within six months of the date the order was entered, shall conduct a second
24 review within six months after the first review, and shall conduct subsequent reviews
25 at least every year thereafter. The director of social services shall make timely
26 requests to the clerk to calendar the case at a session of court scheduled for the
27 hearing of juvenile matters within six months of the date the order was entered. The
28 director shall make timely requests for calendaring subsequent reviews. The clerk
29 shall give 15 days' notice of the review to the parent or the person standing in loco
30 parentis, the juvenile, if 12 years of age or more, the guardian, foster parent,
31 custodian or agency with custody, the guardian ad litem, and any other person the
32 court may specify, indicating the court's impending review.

33 (b) Notwithstanding other provisions of this Article, the court may waive the
34 holding of review hearings required by subsection (a) of this section, may require
35 written reports to the court by the agency or person holding custody in lieu of review
36 hearings, or order that review hearings be held less often than every 12 months, if the
37 court finds by clear, cogent, and convincing evidence that:

38 (1) The juvenile has resided with a relative or has been in the custody
39 of another suitable person for a period of at least one year;

40 (2) The placement is stable and continuation of the placement is in the
41 juvenile's best interests;

42 (3) Neither the juvenile's best interests nor the rights of any party
43 require that review hearings be held every 12 months;

1 (4) All parties are aware that the matter may be brought before the
2 court for review at any time by the filing of a motion for review or
3 on the court's own motion; and

4 (5) The court order has designated the relative or other suitable
5 person as the juvenile's permanent caretaker or guardian of the
6 person.

7 The court may not waive or refuse to conduct a review hearing if a party files a
8 motion seeking the review.

9 (c) At every review hearing, the court shall consider information from the
10 department of social services, the juvenile, the parent or person standing in loco
11 parentis, the custodian, the foster parent, the guardian ad litem, and any public or
12 private agency which will aid it in its review.

13 In each case the court shall consider the following criteria and make written
14 findings regarding those that are relevant:

15 (1) Services which have been offered to reunite the family, or whether
16 efforts to reunite the family clearly would be futile or inconsistent
17 with the juvenile's safety and need for a safe, permanent home
18 within a reasonable period of time.

19 (2) Where the juvenile's return home is unlikely, the efforts which
20 have been made to evaluate or plan for other methods of care.

21 (3) Goals of the foster care placement and the appropriateness of the
22 foster care plan.

23 (4) A new foster care plan, if continuation of care is sought, that
24 addresses the role the current foster parent will play in the
25 planning for the juvenile.

26 (5) Reports on the placements the juvenile has had and any services
27 offered to the juvenile and the parent.

28 (6) When and if termination of parental rights should be considered.

29 (7) Any other criteria the court deems necessary.

30 (d) The court, after making findings of fact, may appoint a guardian of the person
31 for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by
32 G.S. 7B-903, including the authority to place the juvenile in the custody of either
33 parent or any relative found by the court to be suitable and found by the court to be
34 in the best interests of the juvenile. If the juvenile is placed in or remains in the
35 custody of the department of social services, the court may authorize the department
36 to arrange and supervise a visitation plan. Except for such visitation, the juvenile
37 shall not be returned to the parent or person standing in loco parentis without a
38 hearing at which the court finds sufficient facts to show that the juvenile will receive
39 proper care and supervision. The court may enter an order continuing the placement
40 under review or providing for a different placement as is deemed to be in the best
41 interests of the juvenile. If at any time custody is restored to a parent, the court shall
42 be relieved of the duty to conduct periodic judicial reviews of the placement.

43 (e) At a hearing designated by the court, but at least within 12 months after the
44 juvenile's placement, a review hearing shall be held under this section and designated

1 as a permanency-planning hearing. The purpose of the hearing shall be to develop a
2 plan to achieve a safe, permanent home for the juvenile within a reasonable period of
3 time. Notice of the hearing shall inform the parties of the purpose of the hearing. At
4 the conclusion of the hearing, if the juvenile is not returned home, the court shall
5 make specific findings as to the best plan of care to achieve a safe, permanent home
6 for the juvenile within a reasonable period of time and shall enter an order consistent
7 with those findings.

8 (f) The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any
9 order entered under this section which continues the foster care placement of a
10 juvenile.

11 **"§ 7B-907. Posttermination of parental rights' placement court review.**

12 (a) The purpose of each placement review is to ensure that every reasonable effort
13 is being made to provide for a permanent placement plan for the juvenile who has
14 been placed in the custody of a county director or licensed child-placing agency,
15 which is consistent with the juvenile's best interests. At each review hearing the court
16 may consider information from the department of social services, the licensed
17 child-placing agency, the guardian ad litem, the juvenile, the foster parent, and any
18 other person or agency the court determines is likely to aid in the review.

19 (b) The court shall conduct a placement review not later than six months from the
20 date of the termination hearing when parental rights have been terminated by a
21 petition brought by any person or agency designated in G.S. 7B-1102(2) through (5)
22 and a county director or licensed child-placing agency has custody of the juvenile.
23 The court shall conduct reviews every six months until the juvenile is placed for
24 adoption and the adoption petition is filed by the adoptive parents:

25 (1) No more than 30 days and no less than 15 days prior to each
26 review, the clerk shall give notice of the review to the juvenile if
27 the juvenile is at least 12 years of age, the legal custodian of the
28 juvenile, the foster parent, the guardian ad litem, if any, and any
29 other person the court may specify. Only the juvenile, if the
30 juvenile is at least 12 years of age, the legal custodian of the
31 juvenile, the foster parent, and the guardian ad litem shall attend
32 the review hearings, except as otherwise directed by the court.

33 (2) If a guardian ad litem for the juvenile has not been appointed
34 previously by the court in the termination proceeding, the court, at
35 the initial six-month review hearing, may appoint a guardian ad
36 litem to represent the juvenile. The court may continue the case
37 for such time as is necessary for the guardian ad litem to become
38 familiar with the facts of the case.

39 (c) The court shall consider at least the following in its review:

40 (1) The adequacy of the plan developed by the county department of
41 social services or a licensed child-placing agency for a permanent
42 placement relative to the juvenile's best interests and the efforts of
43 the department or agency to implement such plan;

1 (2) Whether the juvenile has been listed for adoptive placement with
2 the North Carolina Adoption Resource Exchange, the North
3 Carolina Photo Adoption Listing Service (PALS), or any other
4 specialized adoption agency; and

5 (3) The efforts previously made by the department or agency to find a
6 permanent home for the juvenile.

7 (d) The court, after making findings of fact, shall affirm the county department's
8 or child-placing agency's plans or require specific additional steps which are
9 necessary to accomplish a permanent placement which is in the best interests of the
10 juvenile.

11 (e) If the juvenile has been placed for adoption prior to the date scheduled for
12 the review, written notice of said placement shall be given to the clerk to be placed
13 in the court file, and the review hearing shall be cancelled with notice of said
14 cancellation given by the clerk to all persons previously notified.

15 (f) The process of selection of specific adoptive parents shall be the responsibility
16 of and within the discretion of the county department of social services or licensed
17 child-placing agency. The guardian ad litem may request information from and
18 consult with the county department or child-placing agency concerning the selection
19 process. If the guardian ad litem requests information about the selection process, the
20 county shall provide the information within five days. Any issue of abuse of
21 discretion by the county department or child-placing agency in the selection process
22 must be raised by the guardian ad litem within 10 days following the date the agency
23 notifies the court and the guardian ad litem in writing of the filing of the adoption
24 petition.

25 **"§ 7B-908. Review of agency's plan for placement.**

26 (a) The director of social services or the director of the licensed private child-
27 placing agency shall promptly notify the clerk to calendar the case for review of the
28 department's or agency's plan for the juvenile at a session of court scheduled for the
29 hearing of juvenile matters in any case where:

30 (1) One parent has surrendered a juvenile for adoption under the
31 provisions of Part 7 of Article 3 of Chapter 48 of the General
32 Statutes and the termination of parental rights proceedings have
33 not been instituted against the nonsurrendering parent within six
34 months of the surrender by the other parent, or

35 (2) Both parents have surrendered a juvenile for adoption under the
36 provisions of Part 7 of Article 3 of Chapter 48 of the General
37 Statutes and that juvenile has not been placed for adoption within
38 six months from the date of the more recent parental surrender.

39 (b) In any case where an adoption is dismissed or withdrawn and the juvenile
40 returns to foster care with a department of social services or a licensed private child-
41 placing agency, then the department of social services or licensed child-placing
42 agency shall notify the clerk, within 30 days from the date the juvenile returns to
43 care, to calendar the case for review of the agency's plan for the child at a session of
44 court scheduled for the hearing of juvenile matters.

1 (c) Notification of the court required under subsection (a) or (b) of this section
2 shall be by a petition for review. The petition shall set forth the circumstances
3 necessitating the review under subsection (a) or (b) of this section. The review shall
4 be conducted within 30 days following the filing of the petition for review unless the
5 court shall otherwise direct. The court shall conduct reviews every six months until
6 the juvenile is placed for adoption and the adoption petition is filed by the adoptive
7 parents. The initial review and all subsequent reviews shall be conducted pursuant to
8 G.S. 7B-907.

9 **"§ 7B-909. Review of voluntary foster care placements.**

10 (a) The court shall review the placement of any juvenile in foster care made
11 pursuant to a voluntary agreement between the juvenile's parents or guardian and a
12 county department of social services and shall make findings from evidence presented
13 at a review hearing with regard to:

- 14 (1) The voluntariness of the placement;
- 15 (2) The appropriateness of the placement;
- 16 (3) Whether the placement is in the best interests of the juvenile; and
- 17 (4) The services that have been or should be provided to the parents,
18 guardian, foster parents, and juvenile, as the case may be, either (i)
19 to improve the placement or (ii) to eliminate the need for the
20 placement.

21 (b) The court may approve the continued placement of the juvenile in foster care
22 on a voluntary agreement basis, disapprove the continuation of the voluntary
23 placement, or direct the department of social services to petition the court for legal
24 custody if the placement is to continue.

25 (c) An initial review hearing shall be held not more than 180 days after the
26 juvenile's placement and shall be calendared by the clerk for hearing within such
27 period upon timely request by the director of social services. Additional review
28 hearings shall be held at such times as the court shall deem appropriate and shall
29 direct, either upon its own motion or upon written request of the parents, guardian,
30 foster parents, or director of social services. A juvenile placed under a voluntary
31 agreement between the juvenile's parent or guardian and the county department of
32 social services shall not remain in placement more than 12 months without the filing
33 of a petition alleging abuse, neglect, or dependency.

34 (d) The clerk shall give at least 15 days' advance written notice of the initial and
35 subsequent review hearings to the parents or guardian of the juvenile, to the juvenile
36 if 12 or more years of age, to the director of social services, and to any other persons
37 whom the court may specify.

38 **"ARTICLE 10.**

39 **"Modification and Enforcement of Dispositional Orders; Appeals.**

40 **"§ 7B-1000. Authority to modify or vacate.**

41 (a) Upon motion in the cause or petition, and after notice, the court may conduct
42 a review hearing to determine whether the order of the court is in the best interests
43 of the juvenile, and the court may modify or vacate the order in light of changes in
44 circumstances or the needs of the juvenile.

1 (b) In any case where the court finds the juvenile to be abused, neglected, or
2 dependent, the jurisdiction of the court to modify any order or disposition made in
3 the case shall continue during the minority of the juvenile, until terminated by order
4 of the court, or until the juvenile is otherwise emancipated.

5 **"§ 7B-1001. Right to appeal.**

6 Upon motion of a proper party as defined in G.S. 7B-1002, review of any final
7 order of the court in a juvenile matter under this Article shall be before the Court of
8 Appeals. Notice of appeal shall be given in open court at the time of the hearing or
9 in writing within 10 days after entry of the order. However, if no disposition is made
10 within 60 days after entry of the order, written notice of appeal may be given within
11 70 days after such entry. A final order shall include:

12 (1) Any order finding absence of jurisdiction;

13 (2) Any order which in effect determines the action and prevents a
14 judgment from which appeal might be taken;

15 (3) Any order of disposition after an adjudication that a juvenile is
16 abused, neglected, or dependent; or

17 (4) Any order modifying custodial rights.

18 **"§ 7B-1002. Proper parties for appeal.**

19 An appeal may be taken by the guardian ad litem, or juvenile, the juvenile's
20 parent, guardian, custodian, or caretaker, or the petitioner. The State's appeal is
21 limited to any final order.

22 **"§ 7B-1003. Disposition pending appeal.**

23 Pending disposition of an appeal, the return of the juvenile to the custody of the
24 parent, guardian, custodian, or caretaker of the juvenile, with or without conditions,
25 should issue in every case unless the court orders otherwise. For compelling reasons
26 which must be stated in writing, the court may enter a temporary order affecting the
27 custody or placement of the juvenile as the court finds to be in the best interests of
28 the juvenile or the State. The provisions of subsections (b), (c), and (d) of G.S. 7B-
29 905 shall apply to any order entered under this section which provides for the
30 placement or continued placement of a juvenile in foster care.

31 **"§ 7B-1004. Disposition after appeal.**

32 Upon the affirmation of the order of adjudication or disposition of the court by the
33 Court of Appeals or by the Supreme Court in the event of an appeal, the court shall
34 have authority to modify or alter the original order of adjudication or disposition as
35 the court finds to be in the best interests of the juvenile to reflect any adjustment
36 made by the juvenile or change in circumstances during the period of time the appeal
37 was pending. If the modifying order is entered ex parte, the court shall give notice to
38 interested parties to show cause within 10 days thereafter as to why the modifying
39 order should be vacated or altered.

40 **"ARTICLE 11.**

41 **"Termination of Parental Rights.**

42 **"§ 7B-1100. Legislative intent; construction of Article.**

43 The General Assembly hereby declares as a matter of legislative policy with
44 respect to termination of parental rights:

- 1 (1) The general purpose of this Article is to provide judicial
2 procedures for terminating the legal relationship between a
3 juvenile and the juvenile's biological or legal parents when the
4 parents have demonstrated that they will not provide the degree of
5 care which promotes the healthy and orderly physical and
6 emotional well-being of the juvenile.
- 7 (2) It is the further purpose of this Article to recognize the necessity
8 for any juvenile to have a permanent plan of care at the earliest
9 possible age, while at the same time recognizing the need to
10 protect all juveniles from the unnecessary severance of a
11 relationship with biological or legal parents.
- 12 (3) Action which is in the best interests of the juvenile should be taken
13 in all cases where the interests of the juvenile and those of the
14 juvenile's parents or other persons are in conflict.
- 15 (4) This Article shall not be used to circumvent the provisions of
16 Chapter 50A of the General Statutes, the Uniform Child Custody
17 Jurisdiction Act.

18 **"§ 7B-1101. Jurisdiction.**

19 The court shall have exclusive original jurisdiction to hear and determine any
20 petition relating to termination of parental rights to any juvenile who resides in, is
21 found in, or is in the legal or actual custody of a county department of social services
22 or licensed child-placing agency in the district at the time of filing of the petition.
23 The court shall have jurisdiction to terminate the parental rights of any parent
24 irrespective of the age of the parent. The parent has the right to counsel and to
25 appointed counsel in cases of indigency unless the parent waives the right. The fees
26 of appointed counsel shall be borne by the Administrative Office of the Courts. In
27 addition to the right to appointed counsel set forth above, a guardian ad litem shall
28 be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a
29 parent in the following cases:

- 30 (1) Where it is alleged that a parent's rights should be terminated
31 pursuant to G.S. 7B-1110(7); or
32 (2) Where the parent is under the age of 18 years.

33 The fees of the guardian ad litem shall be borne by the Administrative Office of the
34 Courts when the court finds that the respondent is indigent. In other cases the fees of
35 the court-appointed guardian ad litem shall be a proper charge against the
36 respondent if the respondent does not secure private legal counsel. Provided, that
37 before exercising jurisdiction under this Article, the court shall find that it would
38 have jurisdiction to make a child-custody determination under the provisions of G.S.
39 50A-3. Provided, further, that the clerk of superior court shall have jurisdiction for
40 adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General
41 Statutes generally.

42 **"§ 7B-1102. Who may petition.**

43 A petition to terminate the parental rights of either or both parents to his, her, or
44 their minor juvenile may only be filed by:

- 1 (1) Either parent seeking termination of the right of the other parent;
2 or
3 (2) Any person who has been judicially appointed as the guardian of
4 the person of the juvenile; or
5 (3) Any county department of social services, consolidated county
6 human services agency, or licensed child-placing agency to whom
7 custody of the juvenile has been given by a court of competent
8 jurisdiction; or
9 (4) Any county department of social services, consolidated county
10 human services agency, or licensed child-placing agency to which
11 the juvenile has been surrendered for adoption by one of the
12 parents or by the guardian of the person of the juvenile, pursuant
13 to G.S. 48-9(a)(1); or
14 (5) Any person with whom the juvenile has resided for a continuous
15 period of two years or more next preceding the filing of the
16 petition; or
17 (6) Any guardian ad litem appointed to represent the minor juvenile
18 pursuant to G.S. 7B-601 who has not been relieved of this
19 responsibility and who has served in this capacity for at least one
20 continuous year; or
21 (7) Any person who has filed a petition for adoption pursuant to
22 Chapter 48 of the General Statutes.

23 **"§ 7B-1103. Petition.**

24 The petition shall be verified by the petitioner and shall be entitled 'In Re (last
25 name of juvenile)', a minor juvenile; and shall set forth such of the following facts as
26 are known; and with respect to the facts which are unknown the petitioner shall so
27 state:

- 28 (1) The name of the juvenile as it appears on the juvenile's birth
29 certificate, the date and place of birth, and the county where the
30 juvenile is presently residing.
31 (2) The name and address of the petitioner and facts sufficient to
32 identify the petitioner as one entitled to petition under G.S. 7B-
33 1102.
34 (3) The name and address of the parents of the juvenile. If the name
35 or address of one or both parents is unknown to the petitioner, the
36 petitioner shall set forth with particularity the petitioner's efforts to
37 ascertain the identity or whereabouts of the parent or parents. The
38 information may be contained in an affidavit attached to the
39 petition and incorporated therein by reference.
40 (4) The name and address of any person appointed as guardian of the
41 person of the juvenile pursuant to the provisions of Chapter 35A of
42 the General Statutes, or of G.S. 7B-600.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition has not been filed to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child Custody Jurisdiction Act.

§ 7B-1104. Preliminary hearing; unknown parent.

(a) If either the name or identity of any parent whose parental rights the petitioner seeks to terminate is not known to the petitioner, the court shall, within 10 days from the date of filing of the petition, or during the next term of court in the county where the petition is filed if there is no court in the county in that 10-day period, conduct a preliminary hearing to ascertain the name or identity of such parent.

(b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may appoint a guardian ad litem for the unknown parent to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1105.

(c) Notice of the preliminary hearing need be given only to the petitioner who shall appear at the hearing; but the court may cause summons to be issued to any person directing the person to appear and testify.

(d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the juvenile to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

(1) Designate the court in which the petition is pending;

(2) Be directed to 'the father (mother) (father and mother) of a male (female) juvenile born on or aboutin

(date)

.....County,

(city)

..... respondent';

(State)

(3) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words 'In Re Doe' substituted therefor);

(4) State that a petition seeking to terminate the parental rights of the respondent has been filed;

(5) Direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so

1 stated shall be the date of first publication of notice and be
2 substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and
3 (6) State that the respondent's parental rights to the juvenile will be
4 terminated upon failure to answer the petition within the time
5 prescribed.

6 Upon completion of the service, an affidavit of the publisher shall be filed with the
7 court.

8 (e) The court shall issue the order required by subsections (b) and (d) of this
9 section within 30 days from the date of the preliminary hearing unless the court shall
10 determine that additional time for investigation is required.

11 (f) Upon the failure of the parent served by publication pursuant to subsection (d)
12 of this section to answer the petition within the time prescribed, the court shall issue
13 an order terminating all parental rights of the unknown parent.

14 "§ 7B-1105. Issuance of summons.

15 (a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court
16 shall cause a summons to be issued. The summons shall be directed to the following
17 persons or agency, not otherwise a party petitioner, who shall be named as
18 respondents:

19 (1) The parents of the juvenile;

20 (2) Any person who has been judicially appointed as guardian of the
21 person of the juvenile;

22 (3) The custodian of the juvenile appointed by a court of competent
23 jurisdiction;

24 (4) Any county department of social services or licensed child-placing
25 agency to whom a juvenile has been released by one parent
26 pursuant to Part 7 of Article 3 of Chapter 48 of the General
27 Statutes; and

28 (5) The juvenile, if the juvenile is 12 years of age or older at the time
29 the petition is filed.

30 Provided, no summons need be directed to or served upon any parent who has
31 previously surrendered the juvenile to a county department of social services or
32 licensed child-placing agency nor to any parent who has consented to the adoption of
33 the juvenile by the petitioner. The summons shall notify the respondents to file a
34 written answer within 30 days after service of the summons and petition. Service of
35 the summons shall be completed as provided under the procedures established by
36 G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under
37 disability even though the parent is a minor.

38 (b) The summons shall be issued for the purpose of terminating parental rights
39 pursuant to the provisions of subsection (a) of this section and shall include:

40 (1) The name of the minor juvenile;

41 (2) Notice that a written answer to the petition must be filed with the
42 clerk who signed the petition within 30 days after service of the
43 summons and a copy of the petition, or the parent's rights may be
44 terminated;

1 (3) Notice that if they are indigent, the parents are entitled to
2 appointed counsel. The parents may contact the clerk immediately
3 to request counsel;

4 (4) Notice that this is a new case. Any attorney appointed previously
5 will not represent the parents in this proceeding unless ordered by
6 the court;

7 (5) Notice that the date, time, and place of the hearing will be mailed
8 by the clerk upon filing of the answer or 30 days from the date of
9 service if no answer is filed; and

10 (6) Notice of the purpose of the hearing and notice that the parents
11 may attend the termination hearing.

12 **"§ 7B-1106. Failure of respondents to answer.**

13 Upon the failure of the respondents to file written answer to the petition with the
14 court within 30 days after service of the summons and petition, or within the time
15 period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by
16 publication, the court shall issue an order terminating all parental and custodial rights
17 of the respondent or respondents with respect to the juvenile; provided the court
18 shall order a hearing on the petition and may examine the petitioner or others on the
19 facts alleged in the petition.

20 **"§ 7B-1107. Answer of respondents.**

21 (a) Any respondent may file a written answer to the petition. The answer shall
22 admit or deny the allegations of the petition and shall set forth the name and address
23 of the answering respondent or the respondent's attorney.

24 (b) If an answer denies any material allegation of the petition, the court shall
25 appoint a guardian ad litem for the juvenile to represent the best interests of the
26 juvenile, unless the petition was filed by the guardian ad litem pursuant to G.S. 7B-
27 1102. A licensed attorney shall be appointed to assist those guardians ad litem who
28 are not attorneys licensed to practice in North Carolina. The appointment, duties,
29 and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S.
30 7B-603. The court shall conduct a special hearing after notice of not less than 10 days
31 nor more than 30 days to the petitioner, the answering respondent, and the guardian
32 ad litem for the juvenile to determine the issues raised by the petition and answer.
33 Notice of the hearing shall be deemed to have been given upon the depositing thereof
34 in the United States mail, first-class postage prepaid, and addressed to the petitioner,
35 respondent, and guardian ad litem or their counsel of record, at the addresses
36 appearing in the petition and responsive pleading.

37 (c) In proceedings under this Article, the appointment of a guardian ad litem shall
38 not be required except, as provided above, in cases in which an answer is filed
39 denying material allegations, or as required under G.S. 7B-1101; but the court may, in
40 its discretion, appoint a guardian ad litem for a juvenile, either before or after
41 determining the existence of grounds for termination of parental rights, in order to
42 assist the court in determining the best interests of the juvenile.

43 (d) If a guardian ad litem has previously been appointed for the juvenile under
44 G.S. 7B-601, and the appointment of a guardian ad litem could also be made under

1 this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney
2 appointed to assist that guardian, shall also represent the juvenile in all proceedings
3 under this Article and shall have the duties and payment of a guardian ad litem
4 appointed under this section, unless the court determines that the best interests of the
5 juvenile require otherwise.

6 **"§ 7B-1108. Adjudicatory hearing on termination.**

7 (a) The hearing on the termination of parental rights shall be conducted by the
8 court sitting without a jury. Reporting of the hearing shall be as provided by G.S.
9 7A-198 for reporting civil trials.

10 (b) The court shall inquire whether the juvenile's parents are present at the
11 hearing and, if so, whether they are represented by counsel. If the parents are not
12 represented by counsel, the court shall inquire whether the parents desire counsel but
13 are indigent. In the event that the parents desire counsel but are indigent as defined
14 in G.S. 7A-450(a) and are unable to obtain counsel to represent them, the court shall
15 appoint counsel to represent them. The court shall grant the parents such an
16 extension of time as is reasonable to permit their appointed counsel to prepare their
17 defense to the termination petition. In the event that the parents do not desire
18 counsel and are present at the hearing, the court shall examine each parent and make
19 findings of fact sufficient to show that the waivers were knowing and voluntary. This
20 examination shall be reported as provided in G.S. 7A-198.

21 (c) The court may, upon finding that reasonable cause exists, order the juvenile to
22 be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or
23 private agency, or any other expert in order that the juvenile's psychological or
24 physical condition or needs may be ascertained or, in the case of a parent whose
25 ability to care for the juvenile is at issue, the court may order a similar examination
26 of any parent of the juvenile.

27 (d) The court may for good cause shown continue the hearing for such time as is
28 required for receiving additional evidence, any reports or assessments which the court
29 has requested, or any other information needed in the best interests of the juvenile.

30 (e) The court shall take evidence, find the facts, and shall adjudicate the existence
31 or nonexistence of any of the circumstances set forth in G.S. 7B-1110 which authorize
32 the termination of parental rights of the respondent.

33 (f) All findings of fact shall be based on clear, cogent, and convincing evidence.
34 No husband-wife or physician-patient privilege shall be grounds for excluding any
35 evidence regarding the existence or nonexistence of any circumstance authorizing the
36 termination of parental rights.

37 **"§ 7B-1109. Disposition.**

38 (a) Should the court determine that any one or more of the conditions authorizing
39 a termination of the parental rights of a parent exist, the court shall issue an order
40 terminating the parental rights of such parent with respect to the juvenile unless the
41 court shall further determine that the best interests of the juvenile require that the
42 parental rights of the parent not be terminated.

43 (b) Should the court conclude that, irrespective of the existence of one or more
44 circumstances authorizing termination of parental rights, the best interests of the

1 juvenile require that rights should not be terminated, the court shall dismiss the
2 petition, but only after setting forth the facts and conclusions upon which the
3 dismissal is based.

4 (c) Should the court determine that circumstances authorizing termination of
5 parental rights do not exist, the court shall dismiss the petition, making appropriate
6 findings of fact and conclusions.

7 (d) Counsel for the petitioner shall serve a copy of the termination of parental
8 rights order upon the guardian ad litem for the juvenile, if any, and upon the
9 juvenile if the juvenile is 12 years of age or older.

10 (e) The court may tax the cost of the proceeding to any party.

11 "§ 7B-1110. Grounds for terminating parental rights.

12 The court may terminate the parental rights upon a finding of one or more of the
13 following:

14 (1) The parent has abused or neglected the juvenile. The juvenile
15 shall be deemed to be abused or neglected if the court finds the
16 juvenile to be an abused juvenile within the meaning of G.S. 7B-
17 101 or a neglected juvenile within the meaning of G.S. 7B-101.

18 (2) The parent has willfully left the juvenile in foster care for more
19 than 12 months without showing to the satisfaction of the court
20 that reasonable progress under the circumstances has been made
21 within 12 months in correcting those conditions which led to the
22 removal of the juvenile. Provided, however, that no parental rights
23 shall be terminated for the sole reason that the parents are unable
24 to care for the juvenile on account of their poverty.

25 (3) The burden in such proceedings shall be upon the petitioner to
26 prove the facts justifying such termination by clear and convincing
27 evidence.

28 (4) The juvenile has been placed in the custody of a county
29 department of social services, a licensed child-placing agency, a
30 child-caring institution, or a foster home, and the parent, for a
31 continuous period of six months next preceding the filing of the
32 petition, has willfully failed for such period to pay a reasonable
33 portion of the cost of care for the juvenile although physically and
34 financially able to do so.

35 (5) One parent has been awarded custody of the juvenile by judicial
36 decree or has custody by agreement of the parents, and the other
37 parent whose parental rights are sought to be terminated has for a
38 period of one year or more next preceding the filing of the petition
39 willfully failed without justification to pay for the care, support,
40 and education of the juvenile, as required by said decree or
41 custody agreement.

42 (6) The father of a juvenile born out of wedlock has not, prior to the
43 filing of a petition to terminate parental rights:

- 1 a. Established paternity judicially or by affidavit which has
2 been filed in a central registry maintained by the
3 Department of Health and Human Services; provided, the
4 court shall inquire of the Department of Health and Human
5 Services as to whether such an affidavit has been so filed
6 and shall incorporate into the case record the Department's
7 certified reply; or
8 b. Legitimated the juvenile pursuant to provisions of G.S. 49-
9 10 or filed a petition for this specific purpose; or
10 c. Legitimated the juvenile by marriage to the mother of the
11 juvenile; or
12 d. Provided substantial financial support or consistent care with
13 respect to the juvenile and mother.
14 (7) That the parent is incapable of providing for the proper care and
15 supervision of the juvenile, such that the juvenile is a dependent
16 juvenile within the meaning of G.S. 7B-101, and that there is a
17 reasonable probability that such incapability will continue for the
18 foreseeable future. Incapability under this subdivision may be the
19 result of substance abuse, mental retardation, mental illness,
20 organic brain syndrome, or any other similar cause or condition.
21 (8) The parent has willfully abandoned the juvenile for at least six
22 consecutive months immediately preceding the filing of the
23 petition. For the purpose of this subdivision, a juvenile may be
24 willfully abandoned by the juvenile's natural father if the mother
25 of the juvenile had been willfully abandoned by and was living
26 separate and apart from the father at the time of the juvenile's
27 birth, although the father may not have known of such birth; but in
28 any event the juvenile must be over the age of three months at the
29 time of the filing of the petition.

30 **§ 7B-1111. Effects of termination order.**

31 An order terminating the parental rights completely and permanently terminates
32 all rights and obligations of the parent to the juvenile and of the juvenile to the
33 parent arising from the parental relationship, except that the juvenile's right of
34 inheritance from the juvenile's parent shall not terminate until a final order of
35 adoption is issued. The parent is not thereafter entitled to notice of proceedings to
36 adopt the juvenile and may not object thereto or otherwise participate therein;

- 37 (1) If the juvenile had been placed in the custody of or released for
38 adoption by one parent to a county department of social services
39 or licensed child-placing agency and is in the custody of the agency
40 at the time of the filing of the petition, including a petition filed
41 pursuant to G.S. 7B-1102(6), that agency shall, upon entry of the
42 order terminating parental rights, acquire all of the rights for
43 placement of the juvenile as the agency would have acquired had
44 the parent whose rights are terminated released the juvenile to

1 that agency pursuant to the provisions of Part 7 of Article 3 of
2 Chapter 48 of the General Statutes, including the right to consent
3 to the adoption of the juvenile.

4 (2) Except as provided in subdivision (1) above, upon entering an
5 order terminating the parental rights of one or both parents, the
6 court may place the juvenile in the custody of the petitioner, or
7 some other suitable person, or in the custody of the department of
8 social services or licensed child-placing agency, as may appear to
9 be in the best interests of the juvenile.

10 **"§ 7B-1112. Appeals; modification of order after affirmation.**

11 Any juvenile, parent, guardian, custodian, caretaker, or agency who is a party to a
12 proceeding under this Article may appeal from an adjudication or any order of
13 disposition to the Court of Appeals, provided that notice of appeal is given in open
14 court at the time of the hearing or in writing within 10 days after the hearing.
15 Pending disposition of an appeal, the court may enter a temporary order affecting the
16 custody or placement of the juvenile as the court finds to be in the best interests of
17 the juvenile or the best interests of the State. Upon the affirmation of the order of
18 adjudication or disposition of the court in a juvenile case by the Court of Appeals, or
19 by the Supreme Court in the event of an appeal, the court shall have authority to
20 modify or alter its original order of adjudication or disposition as the court finds to
21 be in the best interests of the juvenile to reflect any adjustment made by the
22 juvenile or change in circumstances during the period of time the case on appeal was
23 pending, provided that if the modifying order be entered ex parte, the court shall give
24 notice to interested parties to show cause, if any there be, within 10 days thereafter,
25 as to why the modifying order should be vacated or altered.

26 **"ARTICLE 12.**

27 **"Guardian ad Litem Program.**

28 **"§ 7B-1200. Office of Guardian ad Litem Services established.**

29 There is established within the Administrative Office of the Courts an Office of
30 Guardian ad Litem Services to provide services in accordance with G.S. 7B-601 to
31 abused, neglected, or dependent juveniles involved in judicial proceedings and to
32 assure that all participants in these proceedings are adequately trained to carry out
33 their responsibilities. Each local program shall consist of volunteer guardians ad
34 litem, at least one program attorney, a program coordinator who is a paid State
35 employee, and any clerical staff as the Administrative Office of the Courts in
36 consultation with the local program deems necessary. The Administrative Office of
37 the Courts shall adopt rules and regulations necessary and appropriate for the
38 administration of the program.

39 **"§ 7B-1201. Implementation and administration.**

40 (a) Local Programs. -- The Administrative Office of the Courts shall, in
41 cooperation with each chief district court judge and other personnel in the district,
42 implement and administer the program mandated by this Article. Where a local
43 program has not yet been established in accordance with this Article, the district

1 court district shall operate a guardian ad litem program approved by the
2 Administrative Office of the Courts.

3 (b) Advisory Committee Established. -- The Director of the Administrative Office
4 of the Courts shall appoint a Guardian ad Litem Advisory Committee consisting of at
5 least five members to advise the Office of Guardian ad Litem Services in matters
6 related to this program. The members of the Advisory Committee shall receive the
7 same per diem and reimbursement for travel expenses as members of State boards
8 and commissions generally.

9 **"§ 7B-1202. Conflict of interest or impracticality of implementation.**

10 If a conflict of interest prohibits a local program from providing representation to
11 an abused, neglected, or dependent juvenile, the court may appoint any member of
12 the district bar to represent the juvenile. If the Administrative Office of the Courts
13 determines that within a particular district court district the implementation of a local
14 program is impractical, or that an alternative plan meets the conditions of G.S. 7B-
15 1203, the Administrative Office of the Courts shall waive the establishment of the
16 program within the district.

17 **"§ 7B-1203. Alternative plans.**

18 A district court district shall be granted a waiver from the implementation of a
19 local program if the Administrative Office of the Courts determines that the following
20 conditions are met:

- 21 (1) An alternative plan has been developed to provide adequate
22 guardian ad litem services for every juvenile consistent with the
23 duties stated in G.S. 7B-601; and
24 (2) The proposed alternative plan will require no greater proportion of
25 State funds than the district court district's abuse and neglect
26 caseload represents to the State's abuse and neglect caseload.
27 Computation of abuse and neglect caseloads shall include such
28 factors as the juvenile population, number of substantiated abuse
29 and neglect reports, number of abuse and neglect petitions, number
30 of abused and neglected juveniles in care to be reviewed pursuant
31 to G.S. 7B-906, nature of the district's district court caseload, and
32 number of petitions to terminate parental rights.

33 When an alternative plan is approved pursuant to this section, the Administrative
34 Office of the Courts shall retain authority to monitor implementation of the said plan
35 in order to assure compliance with the requirements of this Article and G.S. 7B-601.
36 In any district court district where the Administrative Office of the Courts determines
37 that implementation of an alternative plan is not in compliance with the requirements
38 of this section, the Administrative Office of the Courts may implement and
39 administer a program authorized by this Article.

40 **"§ 7B-1204. Civil liability of volunteers.**

41 Any volunteer participating in a judicial proceeding pursuant to the program
42 authorized by this Article shall not be civilly liable for acts or omissions committed in
43 connection with the proceeding if the volunteer acted in good faith and was not
44 guilty of gross negligence.

"ARTICLE 13."Prevention of Abuse and Neglect."§ 7B-1300. Purpose.

It is the expressed intent of this Article to make the prevention of abuse and neglect, as defined in G.S. 7B-101, a priority of this State and to establish the Children's Trust Fund as a means to that end.

"§ 7B-1301. Council on Prevention of Abuse and Neglect.

(a) For purposes of implementing this program, the State Board of Education shall designate the Interagency Advisory Council on Community Schools in the Department of Public Instruction as the Advisory Council on Prevention of Child Abuse and Neglect, hereinafter called the Council.

(b) Staff and support services for implementing this program shall be provided by the Division of Community Schools in the Department of Public Instruction.

(c) In order to carry out the purposes of this Article:

(1) The Council shall, with the assistance of the Division of Community Schools, review applications and make recommendations to the State Board of Education concerning the awarding of contracts pursuant to this Article.

(2) The State Board of Education shall contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to operate community-based educational and service programs designed to prevent the occurrence of abuse and neglect. Every contract entered into by the State Board of Education shall contain provisions that at least twenty-five percent (25%) of the total funding required for a program be provided by the administering organization in the form of in-kind or other services and that a mechanism for evaluation of services provided under the contract be included in the services to be performed. In addition, every proposal to the Council for funding pursuant to this Article shall include assurances that the proposal has been forwarded to the local department of social services for comment so that the Council may consider coordination and duplication of effort on the local level as criteria in making recommendations to the State Board of Education.

(3) The State Board of Education shall, with the assistance of the Division of Community Schools, develop appropriate guidelines and criteria for awarding contracts pursuant to this Article. These criteria shall include, but not be limited to: documentation of need within the proposed geographical impact area; diversity of geographical areas of programs funded pursuant to this Article; demonstrated effectiveness of the proposed strategy or program for preventing abuse and neglect; reasonableness of implementation plan for achieving stated objectives; utilization of community resources including volunteers; provision for an evaluation

- 1 component that will provide outcome data; plan for dissemination
2 of the program for implementation in other communities; and
3 potential for future funding from private sources.
4 (4) The State Board of Education shall, with the assistance of the
5 Division of Community Schools, develop guidelines for regular
6 monitoring of contracts awarded pursuant to this Article in order
7 to maximize the investments in prevention programs by the
8 Children's Trust Fund and to establish appropriate accountability
9 measures for administration of contracts.
10 (5) The State Board of Education shall develop a State plan for the
11 prevention of abuse and neglect for submission to the Governor,
12 the President of the Senate, and the Speaker of the House of
13 Representatives.

14 (d) To assist in implementing this Article, the State Board of Education may
15 accept contributions, grants, or gifts in cash or otherwise from persons, associations,
16 or corporations. All moneys received by the State Board of Education from
17 contributions, grants, or gifts and not through appropriation by the legislature shall be
18 deposited in the Children's Trust Fund. Disbursements of the funds shall be on the
19 authorization of the State Board of Education or a duly authorized representative
20 thereof. In order to maintain an effective expenditure and revenue control, such
21 funds shall be subject in all respects to State law and regulations, but no
22 appropriation shall be required to permit expenditure of the funds.

23 **"§ 7B-1302. Programs.**

24 (a) Programs contracted for under this Article are intended to prevent abuse and
25 neglect of juveniles. Abuse and neglect prevention programs are defined to be those
26 programs and services which impact on juveniles and families before any
27 substantiated incident of abuse or neglect has occurred. These programs may include,
28 but are not limited to:

- 29 (1) Community-based educational programs on prenatal care, perinatal
30 bonding, child development, basic child care, care of children with
31 special needs, and coping with family stress; and
32 (2) Community-based programs relating to crisis care, aid to parents,
33 and support groups for parents and their children experiencing
34 stress within the family unit.

35 (b) No more than twenty percent (20%) of each year's total awards may be
36 utilized for funding State-level programs to coordinate community-based programs.

37 **"§ 7B-1303. Children's Trust Fund.**

38 There is established a fund to be known as the 'Children's Trust Fund,' in the
39 Department of State Treasurer, which shall be funded pursuant to G.S. 161-11.1, and
40 which shall be used by the State Board of Education to fund abuse and neglect
41 prevention programs so authorized by this Article.

42 **"ARTICLE 14.**

43 **"North Carolina Child Fatality Prevention System.**

44 **"§ 7B-1400. Declaration of public policy.**

1 The General Assembly finds that it is the public policy of this State to prevent the
2 abuse, neglect, and death of juveniles. The General Assembly further finds that the
3 prevention of the abuse, neglect, and death of juveniles is a community responsibility;
4 that professionals from disparate disciplines have responsibilities for children or
5 juveniles and have expertise that can promote their safety and well-being; and that
6 multidisciplinary reviews of the abuse, neglect, and death of juveniles can lead to a
7 greater understanding of the causes and methods of preventing these deaths. It is,
8 therefore, the intent of the General Assembly, through this Article, to establish a
9 statewide multidisciplinary, multiagency child fatality prevention system consisting of
10 the State Team established in G.S. 7B-1404 and the Local Teams established in G.S.
11 7B-1406. The purpose of the system is to assess the records of selected cases in which
12 children are being served by child protective services and the records of all deaths of
13 children in North Carolina from birth to age 18 in order to (i) develop a
14 communitywide approach to the problem of child abuse and neglect, (ii) understand
15 the causes of childhood deaths, (iii) identify any gaps or deficiencies that may exist in
16 the delivery of services to children and their families by public agencies that are
17 designed to prevent future child abuse, neglect, or death, and (iv) make and
18 implement recommendations for changes to laws, rules, and policies that will support
19 the safe and healthy development of our children and prevent future child abuse,
20 neglect, and death.

21 "§ 7B-1401. Definitions.

22 The following definitions apply in this Article:

- 23 (1) Additional Child Fatality. -- Any death of a child that did not
24 result from suspected abuse or neglect and about which no report
25 of abuse or neglect had been made to the county department of
26 social services within the previous 12 months.
27 (2) Local Team. -- A Community Child Protection Team or a Child
28 Fatality Prevention Team.
29 (3) State Team. -- The North Carolina Child Fatality Prevention
30 Team.
31 (4) Task Force. -- The North Carolina Child Fatality Task Force.
32 (5) Team Coordinator. -- The Child Fatality Prevention Team
33 Coordinator.

34 "§ 7B-1402. Task Force -- creation; membership; vacancies.

35 (a) There is created the North Carolina Child Fatality Task Force within the
36 Department of Health and Human Services for budgetary purposes only.

37 (b) The Task Force shall be composed of 35 members, 11 of whom shall be ex
38 officio members, four of whom shall be appointed by the Governor, 10 of whom shall
39 be appointed by the Speaker of the House of Representatives, and 10 of whom shall
40 be appointed by the President Pro Tempore of the Senate. The ex officio members
41 other than the Chief Medical Examiner shall be nonvoting members and may
42 designate representatives from their particular departments, divisions, or offices to
43 represent them on the Task Force. The members shall be as follows:

- 44 (1) The Chief Medical Examiner;

- 1 (2) The Attorney General;
- 2 (3) The Director of the Division of Social Services;
- 3 (4) The Director of the State Bureau of Investigation;
- 4 (5) The Director of the Division of Maternal and Child Health of the
5 Department of Health and Human Services;
- 6 (6) The Director of the Governor's Youth Advocacy and Involvement
7 Office;
- 8 (7) The Superintendent of Public Instruction;
- 9 (8) The Chairman of the State Board of Education;
- 10 (9) The Director of the Division of Mental Health, Developmental
11 Disabilities, and Substance Abuse Services;
- 12 (10) The Secretary of the Department of Health and Human Services;
- 13 (11) The Director of the Administrative Office of the Courts;
- 14 (12) A director of a county department of social services, appointed by
15 the Governor upon recommendation of the President of the North
16 Carolina Association of County Directors of Social Services;
- 17 (13) A representative from a Sudden Infant Death Syndrome counseling
18 and education program, appointed by the Governor upon
19 recommendation of the Director of the Division of Maternal and
20 Child Health of the Department of Health and Human Services;
- 21 (14) A representative from the North Carolina Child Advocacy
22 Institute, appointed by the Governor upon recommendation of the
23 President of the Institute;
- 24 (15) A director of a local department of health, appointed by the
25 Governor upon the recommendation of the President of the North
26 Carolina Association of Local Health Directors;
- 27 (16) A representative from a private group, other than the North
28 Carolina Child Advocacy Institute, that advocates for children,
29 appointed by the Speaker of the House of Representatives upon
30 recommendation of private child advocacy organizations;
- 31 (17) A pediatrician, licensed to practice medicine in North Carolina,
32 appointed by the Speaker of the House of Representatives upon
33 recommendation of the North Carolina Pediatric Society;
- 34 (18) A representative from the North Carolina League of
35 Municipalities, appointed by the Speaker of the House of
36 Representatives upon recommendation of the League;
- 37 (19) Two public members, appointed by the Speaker of the House of
38 Representatives;
- 39 (20) A county or municipal law enforcement officer, appointed by the
40 President Pro Tempore of the Senate upon recommendation of
41 organizations that represent local law enforcement officers;
- 42 (21) A district attorney, appointed by the President Pro Tempore of the
43 Senate upon recommendation of the President of the North
44 Carolina Conference of District Attorneys;

1 (22) A representative from the North Carolina Association of County
2 Commissioners, appointed by the President Pro Tempore of the
3 Senate upon recommendation of the Association;

4 (23) Two public members, appointed by the President Pro Tempore of
5 the Senate; and

6 (24) Five members of the Senate, appointed by the President Pro
7 Tempore of the Senate, and five members of the House of
8 Representatives, appointed by the Speaker of the House of
9 Representatives.

10 (c) All members of the Task Force are voting members. Vacancies in the
11 appointed membership shall be filled by the appointing officer who made the initial
12 appointment. At the first meeting the members shall elect a chair who shall preside
13 for the duration of the Task Force.

14 **"§ 7B-1403. Task Force -- duties.**

15 The Task Force shall:

16 (1) Undertake a statistical study of the incidences and causes of child
17 deaths in this State during 1988 and 1989 and establish a profile of
18 child deaths. The study shall include (i) an analysis of all
19 community and private and public agency involvement with the
20 decedents and their families prior to death, and (ii) an analysis of
21 child deaths by age, cause, and geographic distribution;

22 (2) Develop a system for multidisciplinary review of child deaths. In
23 developing such a system, the Task Force shall study the operation
24 of existing Local Teams. The Task Force shall also consider the
25 feasibility and desirability of local or regional review teams and,
26 should it determine such teams to be feasible and desirable,
27 develop guidelines for the operation of the teams. The Task Force
28 shall also examine the laws, rules, and policies relating to
29 confidentiality of and access to information that affect those
30 agencies with responsibilities for children, including State and local
31 health, mental health, social services, education, and law
32 enforcement agencies, to determine whether those laws, rules, and
33 policies inappropriately impede the exchange of information
34 necessary to protect children from preventable deaths, and, if so,
35 recommend changes to them;

36 (3) Receive and consider reports from the State Team; and

37 (4) Perform any other studies, evaluations, or determinations the Task
38 Force considers necessary to carry out its mandate.

39 **"§ 7B-1404. State Team -- creation; membership; vacancies.**

40 (a) There is created the North Carolina Child Fatality Prevention Team within
41 the Department of Health and Human Services for budgetary purposes only.

42 (b) The State Team shall be composed of the following 11 members of whom nine
43 members are ex officio and two are appointed:

44 (1) The Chief Medical Examiner, who shall chair the State Team;

- 1 (2) The Attorney General;
2 (3) The Director of the Division of Social Services, Department of
3 Health and Human Services;
4 (4) The Director of the State Bureau of Investigation;
5 (5) The Director of the Division of Maternal and Child Health of the
6 Department of Health and Human Services;
7 (6) The Superintendent of Public Instruction;
8 (7) The Director of the Division of Mental Health, Developmental
9 Disabilities, and Substance Abuse Services, Department of Health
10 and Human Services;
11 (8) The Director of the Administrative Office of the Courts;
12 (9) The pediatrician appointed pursuant to G.S. 7B-1402(b) to the
13 Task Force;
14 (10) A public member, appointed by the Governor; and
15 (11) The Team Coordinator.

16 The ex officio members other than the Chief Medical Examiner may designate a
17 representative from their departments, divisions, or offices to represent them on the
18 State Team.

19 (c) All members of the State Team are voting members. Vacancies in the
20 appointed membership shall be filled by the appointing officer who made the initial
21 appointment.

22 "§ 7B-1405. State Team -- duties.

23 The State Team shall:

- 24 (1) Review current deaths of children when those deaths are attributed
25 to child abuse or neglect or when the decedent was reported as an
26 abused or neglected juvenile pursuant to G.S. 7B-301 at any time
27 before death;
28 (2) Report to the Task Force during the existence of the Task Force,
29 in the format and at the time required by the Task Force, on the
30 State Team's activities and its recommendations for changes to any
31 law, rule, and policy that would promote the safety and well-being
32 of children;
33 (3) Upon request of a Local Team, provide technical assistance to the
34 Team;
35 (4) Periodically assess the operations of the multidisciplinary child
36 fatality prevention system and make recommendations for changes
37 as needed;
38 (5) Work with the Team Coordinator to develop guidelines for
39 selecting child deaths to receive detailed, multidisciplinary death
40 reviews by Local Teams that review cases of additional child
41 fatalities; and
42 (6) Receive reports of findings and recommendations from Local
43 Teams that review cases of additional child fatalities and work with
44 the Team Coordinator to implement recommendations.

1 "§ 7B-1406. Community Child Protection Teams; Child Fatality Prevention Teams;
2 creation and duties.

3 (a) Community Child Protection Teams are established in every county of the
4 State. Each Community Child Protection Team shall:

5 (1) Review, in accordance with the procedures established by the
6 director of the county department of social services under G.S. 7B-
7 1409:

8 a. Selected active cases in which children are being served by
9 child protective services; and

10 b. Cases in which a child died as a result of suspected abuse or
11 neglect, and

12 1. A report of abuse or neglect has been made about the
13 child or the child's family to the county department
14 of social services within the previous 12 months, or

15 2. The child or the child's family was a recipient of
16 child protective services within the previous 12
17 months.

18 (2) Submit annually to the board of county commissioners
19 recommendations, if any, and advocate for system improvements
20 and needed resources where gaps and deficiencies may exist.

21 In addition, each Community Child Protection Team may review the records of all
22 additional child fatalities and report findings in connection with these reviews to the
23 Team Coordinator.

24 (b) Any Community Child Protection Team that determines it will not review
25 additional child fatalities shall notify the Team Coordinator. In accordance with the
26 plan established under G.S. 7B-1408(1), a separate Child Fatality Prevention Team
27 shall be established in that county to conduct these reviews. Each Child Fatality
28 Prevention Team shall:

29 (1) Review the records of all cases of additional child fatalities.

30 (2) Submit annually to the board of county commissioners
31 recommendations, if any, and advocate for system improvements
32 and needed resources where gaps and deficiencies may exist.

33 (3) Report findings in connection with these reviews to the Team
34 Coordinator.

35 (c) All reports to the Team Coordinator under this section shall include:

36 (1) A listing of the system problems identified through the review
37 process and recommendations for preventive actions;

38 (2) Any changes that resulted from the recommendations made by the
39 Local Team;

40 (3) Information about each death reviewed; and

41 (4) Any additional information requested by the Team Coordinator.

42 "§ 7B-1407. Local Teams; composition.

43 (a) Each Local Team shall consist of representatives of public and nonpublic
44 agencies in the community that provide services to children and their families and

1 other individuals who represent the community. No single team shall encompass a
2 geographic or governmental area larger than one county.

3 (b) Each Local Team shall consist of the following persons:

- 4 (1) The director of the county department of social services and a
5 member of the director's staff;
- 6 (2) A local law enforcement officer, appointed by the board of county
7 commissioners;
- 8 (3) An attorney from the district attorney's office, appointed by the
9 district attorney;
- 10 (4) The executive director of the local community action agency, as
11 defined by the Department of Health and Human Services, or the
12 executive director's designee;
- 13 (5) The superintendent of each local school administrative unit located
14 in the county, or the superintendent's designee;
- 15 (6) A member of the county board of social services, appointed by the
16 chair of that board;
- 17 (7) A local mental health professional, appointed by the director of the
18 area authority established under Chapter 122C of the General
19 Statutes;
- 20 (8) The local guardian ad litem coordinator, or the coordinator's
21 designee;
- 22 (9) The director of the local department of public health; and
- 23 (10) A local health care provider, appointed by the local board of
24 health.

25 (c) In addition, a Local Team that reviews the records of additional child fatalities
26 shall include the following four additional members:

- 27 (1) An emergency medical services provider or firefighter, appointed
28 by the board of county commissioners;
- 29 (2) A district court judge, appointed by the chief district judge in that
30 district;
- 31 (3) A county medical examiner, appointed by the Chief Medical
32 Examiner;
- 33 (4) A representative of a local child care facility or Head Start
34 program, appointed by the director of the county department of
35 social services; and
- 36 (5) A parent of a child who died before reaching the child's
37 eighteenth birthday, to be appointed by the board of county
38 commissioners.

39 (d) The Team Coordinator shall serve as an ex officio member of each Local
40 Team that reviews the records of additional child fatalities. The board of county
41 commissioners may appoint a maximum of five additional members to represent
42 county agencies or the community at large to serve on any Local Team. Vacancies on
43 a Local Team shall be filled by the original appointing authority.

1 (e) Each Local Team shall elect a member to serve as chair at the Team's
2 pleasure.

3 (f) Each Local Team shall meet at least four times each year.

4 (g) The director of the local department of social services shall call the first
5 meeting of the Community Child Protection Team. The director of the local
6 department of health, upon consultation with the Team Coordinator, shall call the
7 first meeting of the Child Fatality Prevention Team. Thereafter, the chair of each
8 Local Team shall schedule the time and place of meetings, in consultation with these
9 directors, and shall prepare the agenda. The chair shall schedule Team meetings no
10 less often than once per quarter and often enough to allow adequate review of the
11 cases selected for review. Within three months of election, the chair shall participate
12 in the appropriate training developed under this Article.

13 **§ 7B-1408. Child Fatality Prevention Team Coordinator; duties.**

14 The Child Fatality Prevention Team Coordinator shall serve as liaison between the
15 State Team and the Local Teams that review records of additional child fatalities and
16 shall provide technical assistance to these Local Teams. The Team Coordinator shall:

17 (1) Develop a plan to establish Local Teams that review the records of
18 additional child fatalities in each county.

19 (2) Develop model operating procedures for these Local Teams that
20 address when public meetings should be held, what items should
21 be addressed in public meetings, what information may be released
22 in written reports, and any other information the Team
23 Coordinator considers necessary.

24 (3) Provide structured training for these Local Teams at the time of
25 their establishment, and continuing technical assistance thereafter.

26 (4) Provide statistical information on all child deaths occurring in each
27 county to the appropriate Local Team, and assure that all child
28 deaths in a county are assessed through the multidisciplinary
29 system.

30 (5) Monitor the work of these Local Teams.

31 (6) Receive reports of findings, and other reports that the Team
32 Coordinator may require, from these Local Teams.

33 (7) Report the aggregated findings of these Local Teams to each Local
34 Team that reviews the records of additional child fatalities and to
35 the State Team.

36 (8) Evaluate the impact of local efforts to identify problems and make
37 changes.

38 **§ 7B-1409. Community Child Protection Teams; duties of the director of the county**
39 **department of social services.**

40 In addition to any other duties as a member of the Community Child Protection
41 Team, and in connection with the reviews under G.S. 7B-1406(a)(1), the director of
42 the county department of social services shall:

43 (1) Assure the development of written operating procedures in
44 connection with these reviews, including frequency of meetings,

- 1 confidentiality policies, training of members, and duties and
2 responsibilities of members;
3 (2) Assure that the Team defines the categories of cases that are
4 subject to its review;
5 (3) Determine and initiate the cases for review;
6 (4) Bring for review any case requested by a Team member;
7 (5) Provide staff support for these reviews;
8 (6) Maintain records, including minutes of all official meetings, lists of
9 participants for each meeting of the Team, and signed
10 confidentiality statements required under G.S. 7B-1413, in
11 compliance with applicable rules and law; and
12 (7) Report quarterly to the county board of social services, or as
13 required by the board, on the activities of the Team.

14 **"§ 7B-1410. Local Teams; duties of the director of the local department of health.**

15 In addition to any other duties as a member of the Local Team and in connection
16 with reviews of additional child fatalities, the director of the local department of
17 health shall:

- 18 (1) Distribute copies of the written procedures developed by the Team
19 Coordinator under G.S. 7B-1408 to the administrators of all
20 agencies represented on the Local Team and to all members of the
21 Local Team;
22 (2) Maintain records, including minutes of all official meetings, lists of
23 participants for each meeting of the Local Team, and signed
24 confidentiality statements required under G.S. 7B-1413, in
25 compliance with applicable rules and law;
26 (3) Provide staff support for these reviews; and
27 (4) Report quarterly to the local board of health, or as required by the
28 board, on the activities of the Local Team.

29 **"§ 7B-1411. Community Child Protection Teams; responsibility for training of team**
30 **members.**

31 The Division of Social Services, Department of Health and Human Services, shall
32 develop and make available, on an ongoing basis, for the members of Local Teams
33 that review active cases in which children are being served by child protective
34 services, training materials that address the role and function of the Local Team,
35 confidentiality requirements, an overview of child protective services law and policy,
36 and Team record keeping.

37 **"§ 7B-1412. Task Force -- reports.**

38 (a) The Task Force may make a written report to the Governor and General
39 Assembly within one week of the convening of the 1998 Regular Session of the 1997
40 General Assembly. The Task Force shall make a final written report to the Governor
41 and General Assembly within the first week of the convening of the 1999 General
42 Assembly. The final report shall include final conclusions and recommendations for
43 each of the Task Force's duties, as well as any other recommendations for changes to
44 any law, rule, and policy that it has determined will promote the safety and well-

1 being of children. Any recommendations of changes to law, rule, or policy shall be
2 accompanied by specific legislative or policy proposals and detailed fiscal notes
3 setting forth the costs to the State.

4 (b) After the Task Force provides its final report to the Governor and General
5 Assembly, the Task Force shall cease to be in existence.

6 "§ 7B-1413. Access to records.

7 (a) The State Team, the Local Teams, and the Task Force during its existence,
8 shall have access to all medical records, hospital records, and records maintained by
9 this State, any county, or any local agency as necessary to carry out the purposes of
10 this Article, including police investigations data, medical examiner investigative data,
11 health records, mental health records, and social services records. The State Team,
12 the Task Force, and the Local Teams shall not, as part of the reviews authorized
13 under this Article, contact, question, or interview the child, the parent of the child, or
14 any other family member of the child whose record is being reviewed. Any member
15 of a Local Team may share, only in an official meeting of that Local Team, any
16 information available to that member that the Local Team needs to carry out its
17 duties.

18 (b) Meetings of the State Team and the Local Teams are not subject to the
19 provisions of Article 33C of Chapter 143 of the General Statutes. However, the
20 Local Teams may hold periodic public meetings to discuss, in a general manner not
21 revealing confidential information about children and families, the findings of their
22 reviews and their recommendations for preventive actions. Minutes of all public
23 meetings, excluding those of executive sessions, shall be kept in compliance with
24 Article 33C of Chapter 143 of the General Statutes. Any minutes or any other
25 information generated during any closed session shall be sealed from public
26 inspection.

27 (c) All otherwise confidential information and records acquired by the State
28 Team, the Local Teams, and the Task Force during its existence, in the exercise of
29 their duties are confidential; are not subject to discovery or introduction into
30 evidence in any proceedings; and may only be disclosed as necessary to carry out the
31 purposes of the State Team, the Local Teams, and the Task Force. In addition, all
32 otherwise confidential information and records created by a Local Team in the
33 exercise of its duties are confidential; are not subject to discovery or introduction into
34 evidence in any proceedings; and may only be disclosed as necessary to carry out the
35 purposes of the Local Team. No member of the State Team, a Local Team, nor any
36 person who attends a meeting of the State Team or a Local Team, may testify in any
37 proceeding about what transpired at the meeting, about information presented at the
38 meeting, or about opinions formed by the person as a result of the meetings. This
39 subsection shall not, however, prohibit a person from testifying in a civil or criminal
40 action about matters within that person's independent knowledge.

41 (d) Each member of a Local Team and invited participant shall sign a statement
42 indicating an understanding of and adherence to confidentiality requirements,
43 including the possible civil or criminal consequences of any breach of confidentiality.

1 (e) Cases receiving child protective services at the time of review by a Local
2 Team shall have an entry in the child's protective services record to indicate that the
3 case was received by that Team. Additional entry into the record shall be at the
4 discretion of the director of the county department of social services.

5 (f) The Social Services Commission shall adopt rules to implement this section in
6 connection with reviews conducted by Community Child Protection Teams. The
7 Health Services Commission shall adopt rules to implement this section in connection
8 with Local Teams that review additional child fatalities. In particular, these rules
9 shall allow information generated by an executive session of a Local Team to be
10 accessible for administrative or research purposes only.

11 **"§ 7B-1414. Administration; funding.**

12 (a) To the extent of funds available, the chairs of the Task Force and State Team
13 may hire staff or consultants to assist the Task Force and the State Team in
14 completing their duties.

15 (b) Members, staff, and consultants of the Task Force or State Team shall receive
16 travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or
17 G.S. 138-6, as the case may be, paid from funds appropriated to implement this
18 Article and within the limits of those funds.

19 (c) With the approval of the Legislative Services Commission, legislative staff and
20 space in the Legislative Building and the Legislative Office Building may be made
21 available to the Task Force.

22
23 **BOLDED TYPE INDICATES NEW STATUTORY LANGUAGE:**

24
25 **"SUBCHAPTER II. UNDISCIPLINED AND DELINQUENT JUVENILES.**

26 **"ARTICLE 15.**

27 **"Purposes; Definitions.**

28 **"§ 7B-1500. Purpose.**

29 **This Subchapter shall be interpreted and construed so as to implement the following**
30 **purposes and policies:**

31 **(1) To protect the public from acts of delinquency.**

32 **(2) To deter delinquency and crime, including patterns of repeat**
33 **offending:**

34 **a. By providing swift, effective dispositions that emphasize the**
35 **juvenile offender's accountability for the juvenile's actions;**
36 **and**

37 **b. By providing appropriate rehabilitative services to juveniles**
38 **and their families.**

39 **(3) To provide an effective system of intake services for the screening**
40 **and evaluation of complaints and, in appropriate cases, where court**
41 **intervention is not necessary to ensure public safety, to refer**
42 **juveniles to community-based resources.**

43 **(4) To provide uniform procedures that assure fairness and equity; that**
44 **protect the constitutional rights of juveniles, parents, and victims;**

1 and that encourage the court and others involved with juvenile
2 offenders to proceed with all possible speed in making and
3 implementing determinations required by this Subchapter.

4 **"§ 7B-1501. Definitions.**

5 In this Subchapter, unless the context clearly requires otherwise, the following
6 words have the listed meanings:

- 7 (1) Chief court counselor. -- The person responsible for administration
8 and supervision of juvenile intake, probation, and post-release
9 supervision in each judicial district, operating under the
10 supervision of the Secretary of the Department of Juvenile Justice.
11 (2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
12 deputy clerk.
13 (3) Community-based program. -- A program providing nonresidential
14 or residential treatment to a juvenile under the jurisdiction of the
15 juvenile court in the community where the juvenile's family lives.
16 A community-based program may include specialized foster care,
17 family counseling, shelter care, and other appropriate treatment.
18 (4) Court. -- The district court division of the General Court of
19 Justice.
20 (5) Court counselor. -- A person responsible for probation and post-
21 release supervision to juveniles under the supervision of the chief
22 court counselor.
23 (6) Custodian. -- The person or agency that has been awarded legal
24 custody of a juvenile by a court.
25 (7) Delinquent juvenile. -- Any juvenile who, while less than 16 years
26 of age but at least 6 years of age, commits a crime or infraction
27 under State law or under an ordinance of local government,
28 including violation of the motor vehicle laws.
29 (8) Department. -- The North Carolina Department of Juvenile Justice.
30 (9) Detention. -- The secure confinement of a juvenile pursuant to a
31 court order.
32 (10) Detention facility. -- A facility authorized to provide secure
33 confinement and care for juveniles. Detention facilities include
34 both State and locally administered detention homes, centers, and
35 facilities.
36 (11) District. -- Any district court district as established by G.S. 7A-133.
37 (12) Extended jurisdiction. -- Juvenile court jurisdiction, pursuant to a
38 court order, over a person who is at least 18 years of age and has
39 not reached the person's nineteenth birthday.
40 (13) Holdover facility. -- A place in a jail which has been approved by
41 the Department of Health and Human Services as meeting the
42 State standards for detention as required in G.S. 153A-221
43 providing close supervision where the juvenile cannot converse
44 with, see, or be seen by the adult population.

- 1 (14) House arrest. -- A requirement that the juvenile remain at the
2 juvenile's residence unless the court or the juvenile court counselor
3 authorizes the juvenile to leave for specific purposes such as
4 employment, counseling, a course of study, or vocational training.
5 The juvenile may be required to wear a device that permits the
6 supervising agency to monitor electronically the juvenile's
7 compliance.
- 8 (15) In loco parentis. -- A person acting in loco parentis means one,
9 other than parents or legal guardian, who has assumed the status
10 and obligation of a parent without being awarded the legal custody
11 of a juvenile by a court.
- 12 (16) Intake counselor. -- A person who screens and evaluates a
13 complaint alleging that a juvenile is delinquent or undisciplined to
14 determine whether the complaint should be filed as a petition.
- 15 (17) Interstate Compact on Juveniles. -- An agreement ratified by 50
16 states and the District of Columbia providing a formal means of
17 returning a juvenile, who is an absconder, escapee, or runaway, to
18 the juvenile's home state, and codified in Article 28 of this
19 Chapter.
- 20 (18) Judge. -- Any district court judge.
- 21 (19) Judicial district. -- Any district court district as established by G.S.
22 7A-133.
- 23 (20) Juvenile. -- Except as provided in subdivisions (7) and (28) of this
24 section, any person who has not reached the person's eighteenth
25 birthday and is not married, emancipated, or a member of the
26 armed services of the United States. Wherever the term 'juvenile'
27 is used with reference to rights and privileges, that term
28 encompasses the attorney for the juvenile as well.
- 29 (21) Juvenile court. -- Any district court exercising jurisdiction pursuant
30 to this Chapter.
- 31 (22) Petitioner. -- The individual who initiates court action by the filing
32 of a petition or a motion for review alleging the matter for
33 adjudication.
- 34 (23) Post-release supervision. -- The supervision of a juvenile who has
35 been returned to the community after having been committed to
36 the Department of Juvenile Justice.
- 37 (24) Probation. -- The status of a juvenile who has been adjudicated
38 delinquent, is subject to specified conditions under the supervision
39 of a court counselor, and may be returned to the court for
40 violation of those conditions during the period of probation.
- 41 (25) Prosecutor. -- The district attorney or assistant district attorney
42 assigned by the district attorney to juvenile proceedings.
- 43 (26) Secretary. -- The Secretary of the Department of Juvenile Justice.

1 (d) When the court has not obtained jurisdiction over a juvenile before the
2 juvenile reaches the age of 18, for a felony and any related misdemeanors the juvenile
3 allegedly committed on or after the juvenile's thirteenth birthday and prior to the
4 juvenile's sixteenth birthday, the court has jurisdiction for the sole purpose of
5 conducting proceedings pursuant to Article 22 of this Chapter and either transferring
6 the case to superior court for trial as an adult or dismissing the petition.

7 (e) The court has jurisdiction over delinquent juveniles in the custody of the
8 Department and over proceedings to determine whether a juvenile who is under the
9 post-release supervision of the court counselor has violated the terms of the juvenile's
10 post-release supervision.

11 (f) The court has jurisdiction over persons 18 years of age or older who are under
12 the extended jurisdiction of the juvenile court.

13 (g) The court has jurisdiction over the parent, guardian, or custodian of a juvenile
14 who is under the jurisdiction of the court pursuant to this section if the parent,
15 guardian, or custodian has been served with a summons pursuant to G.S. 7B-1805.

16 "§ 7B-1602. Extended jurisdiction over a delinquent juvenile under certain
17 circumstances.

18 If the court orders that jurisdiction be extended pursuant to G.S. 7B-2513,
19 jurisdiction over a juvenile shall continue after the juvenile reaches the age of 18
20 years until (i) jurisdiction is terminated by order of the court or (ii) the juvenile
21 reaches the age of 19 years.

22 "§ 7B-1603. Jurisdiction in certain circumstances.

23 The court has exclusive original jurisdiction of the following proceedings:

24 (1) Proceedings under the Interstate Compact on the Placement of
25 Children set forth in Article 38 of this Chapter;

26 (2) Proceedings involving judicial consent for emergency surgical or
27 medical treatment for a juvenile when the juvenile's parent,
28 guardian, custodian, or other person standing in loco parentis
29 refuses to consent for treatment to be rendered; and

30 (3) Proceedings to determine whether a juvenile should be
31 emancipated.

32 "§ 7B-1604. Limitations on juvenile court jurisdiction.

33 (a) Any juvenile, including a juvenile who is under the jurisdiction of the court,
34 who commits a criminal offense after the juvenile's sixteenth birthday is subject to
35 prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an
36 adult for the commission of a criminal offense.

37 (b) A juvenile who is transferred to and convicted in superior court shall be
38 prosecuted as an adult for any criminal offense the juvenile commits after the
39 superior court conviction.

40 "ARTICLE 17.

41 "Screening of Delinquency and Undisciplined Complaints.

42 "§ 7B-1700. Intake services.

1 The chief court counselor, under the direction of the Secretary, shall establish
2 intake services in each judicial district of the State for all delinquency and
3 undisciplined cases.

4 The purpose of intake services shall be to determine from available evidence
5 whether there are reasonable grounds to believe the facts alleged are true, to
6 determine whether the facts alleged constitute a delinquent or undisciplined offense
7 within the jurisdiction of the court, to determine whether the facts alleged are
8 sufficiently serious to warrant court action, and to obtain assistance from community
9 resources when court referral is not necessary. The intake counselor shall not engage
10 in field investigations to substantiate complaints or to produce supplementary
11 evidence but may refer complainants to law enforcement agencies for those purposes.

12 **"§ 7B-1701. Preliminary inquiry.**

13 When a complaint is received, the intake counselor shall make a preliminary
14 determination as to whether the juvenile is within the jurisdiction of the court as a
15 delinquent or undisciplined juvenile. If the intake counselor finds that the facts
16 contained in the complaint do not state a case within the jurisdiction of the court,
17 that legal sufficiency has not been established, or that the matters alleged are
18 frivolous, the intake counselor, without further inquiry, shall refuse authorization to
19 file the complaint as a petition.

20 When requested by the intake counselor, the prosecutor shall assist in determining
21 the sufficiency of evidence as it affects the quantum of proof and the elements of
22 offenses.

23 The intake counselor, without further inquiry, shall authorize the complaint to be
24 filed as a petition if the intake counselor finds reasonable grounds to believe that the
25 juvenile has committed one of the following nondivertible offenses:

- 26 (1) Murder;
27 (2) First-degree rape or second degree rape;
28 (3) First-degree sexual offense or second degree sexual offense;
29 (4) Arson;
30 (5) Any violation of Article 5, Chapter 90 of the General Statutes that
31 would constitute a felony if committed by an adult;
32 (6) First degree burglary;
33 (7) Crime against nature; or
34 (8) Any felony which involves the willful infliction of serious bodily
35 injury upon another or which was committed by use of a deadly
36 weapon.

37 **"§ 7B-1702. Evaluation.**

38 Upon a finding of legal sufficiency, except in cases involving nondivertible offenses
39 set out in G.S. 7B-1701, the intake counselor shall determine whether a complaint
40 should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the
41 case resolved without further action. In making the decision, the counselor shall
42 consider criteria provided by the Secretary. The intake process shall include the
43 following steps if practicable:

- 1 (1) Interviews with the complainant and the victim if someone other
2 than the complainant;
3 (2) Interviews with the juvenile and the juvenile's parent, guardian, or
4 custodian;
5 (3) Interviews with persons known to have relevant information about
6 the juvenile or the juvenile's family.
7 Interviews required by this section shall be conducted in person unless it is necessary
8 to conduct them by telephone.

9 **"§ 7B-1703. Evaluation decision.**

10 (a) The intake counselor shall complete evaluation of a complaint within 15 days
11 of receipt of the complaint, with an extension for a maximum of 15 additional days at
12 the discretion of the chief court counselor. The intake counselor shall decide within
13 this time period whether a complaint shall be filed as a juvenile petition.

14 (b) If the intake counselor determines that a complaint should be filed as a
15 petition, the counselor shall file the petition as soon as practicable, but in any event
16 within 15 days after the complaint is received, with an extension for a maximum of 15
17 additional days at the discretion of the chief court counselor. The intake counselor
18 shall assist the complainant when necessary with the preparation and filing of the
19 petition, shall include on it the date and the words 'Approved for Filing', shall sign
20 it, and shall transmit it to the clerk of superior court.

21 (c) If the intake counselor determines that a petition should not be filed, the
22 intake counselor shall notify the complainant immediately in writing with reasons for
23 the decision and shall include notice of the complainant's right to have the decision
24 reviewed by the prosecutor. The intake counselor shall sign the complaint after
25 indicating on it:

- 26 (1) The date of the determination;
27 (2) The words 'Not Approved for Filing'; and
28 (3) Whether the matter is 'Closed' or 'Diverted and Retained'.

29 Except as provided in G.S. 7B-1706, any complaint not approved for filing as a
30 juvenile petition shall be destroyed by the intake counselor after holding the
31 complaint for a temporary period to allow review as provided in G.S. 7B-1705.

32 **"§ 7B-1704. Request for review by prosecutor.**

33 The complainant has five calendar days, from receipt of the intake counselor's
34 decision not to approve the filing of a petition, to request review by the prosecutor.
35 The intake counselor shall notify the prosecutor immediately of such request and
36 shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify
37 the complainant and the intake counselor of the time and place for the review.

38 **"§ 7B-1705. Review of determination that petition should not be filed.**

39 No later than 20 days after the complainant is notified, the prosecutor shall review
40 the intake counselor's determination that a juvenile petition should not be filed.
41 Review shall include conferences with the complainant and the intake counselor. At
42 the conclusion of the review, the prosecutor shall: (i) affirm the decision of the intake
43 counselor or direct the filing of a petition and (ii) notify the complainant of the
44 prosecutor's action.

1 "§ 7B-1706. Diversion plans and referral.

2 (a) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon
3 a finding of legal sufficiency the intake counselor may divert the juvenile pursuant to
4 a diversion plan, which may include referring the juvenile to any of the following
5 resources:

6 (1) An appropriate public or private resource;

7 (2) Restitution;

8 (3) Community service;

9 (4) Victim-offender mediation;

10 (5) Regimented physical training;

11 (6) Counseling;

12 (7) A teen court program, as set forth in subsection (c) of this section.

13 As part of a diversion plan, the intake counselor may enter into a diversion contract
14 with the juvenile and the juvenile's parent, guardian, or custodian.

15 (b) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon
16 a finding of legal sufficiency the intake counselor may enter into a diversion contract
17 with the juvenile and the parent, guardian, or custodian; provided, a diversion
18 contract requires the consent of the juvenile and the juvenile's parent, guardian, or
19 custodian. A diversion contract shall:

20 (1) State conditions by which the juvenile agrees to abide and any
21 actions the juvenile agrees to take;

22 (2) State conditions by which the parent, guardian, or custodian agrees
23 to abide and any actions the parent, guardian, or custodian agrees
24 to take;

25 (3) Describe the role of the court counselor in relation to the juvenile
26 and the parent, guardian, or custodian;

27 (4) Specify the length of the contract, which shall not exceed six
28 months;

29 (5) Indicate that all parties understand and agree that:

30 a. The juvenile's violation of the contract may result in the
31 filing of the complaint as a petition; and

32 b. The juvenile's successful completion of the contract shall
33 preclude the filing of a petition.

34 After a diversion contract is signed by the parties, the intake counselor shall
35 provide copies of the contract to the juvenile and the juvenile's parent, guardian, or
36 custodian. The intake counselor shall notify any agency or other resource from which
37 the juvenile or the juvenile's parent, guardian, or custodian will be seeking services or
38 treatment pursuant to the terms of the contract. At any time during the term of the
39 contract if the court counselor determines that the juvenile has failed to comply
40 substantially with the terms of the contract, the court counselor shall file the
41 complaint as a petition. Unless the court counselor has filed the complaint as a
42 petition, the counselor shall close the juvenile's file in regard to the diverted matter
43 within six months after the date of the contract.

1 (c) If a teen court program has been established in the district, the intake
2 counselor, upon a finding of legal sufficiency, may refer any case in which a juvenile
3 has allegedly committed an offense that would be an infraction or misdemeanor if
4 committed by an adult to a teen court program. However, the counselor shall not
5 refer a case to a teen court program (i) if the juvenile has been referred to a teen
6 court program previously, or (ii) if the juvenile is alleged to have committed any of
7 the following offenses:

8 (1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-
9 138.5, or 20-138.7, or any other motor vehicle violation;

10 (2) A Class A1 misdemeanor;

11 (3) An assault in which a weapon is used; or

12 (4) A controlled substance offense under Article 5 of Chapter 90 of the
13 General Statutes, other than simple possession of a Schedule VI
14 drug or alcohol.

15 (d) The intake counselor shall maintain diversion plans and contracts entered into
16 pursuant to this section to allow intake counselors to determine when a juvenile has
17 had a complaint diverted previously. Diversion plans and contracts are not public
18 records under Chapter 132 of the General Statutes, shall not be included in the clerk's
19 record pursuant to G.S. 7B-3000, and shall be withheld from public inspection or
20 examination. Diversion plans and contracts shall be destroyed when the juvenile
21 reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of
22 the court, whichever is longer.

23 (e) No later than 60 days after the intake counselor diverts a juvenile, the intake
24 counselor shall determine whether the juvenile and the juvenile's parent, guardian, or
25 custodian have complied with the terms of the diversion plan or contract. In making
26 this determination, the intake counselor shall contact any referral resources to
27 determine whether the juvenile and the juvenile's parent, guardian, or custodian
28 complied with any recommendations for treatment or services made by the resource.
29 If the juvenile and the juvenile's parent, guardian, or custodian have not complied, the
30 intake counselor shall reconsider the decision to divert and may authorize the filing of
31 the complaint as a petition within 10 days after making the determination. If the
32 intake counselor does not file a petition, the intake counselor may continue to monitor
33 the case for up to six months from the date of the diversion plan or contract. At any
34 point during that time period if the juvenile and the juvenile's parent, guardian, or
35 custodian fail to comply, the intake counselor shall reconsider the decision to divert
36 and may authorize the filing of the complaint as a petition. After six months, the
37 intake counselor shall close the diversion plan or contract file.

38 "ARTICLE 18.

39 "Venue; Petition; Summons.

40 "§ 7B-1800. Venue.

41 A proceeding in which a juvenile is alleged to be delinquent or undisciplined shall
42 be commenced and adjudicated in the district in which the offense is alleged to have
43 occurred. When a proceeding is commenced in a district other than that of the

1 juvenile's residence, the court shall proceed to adjudication in that district. After
2 adjudication, these procedures shall be available to the court:

3 (1) The court may transfer the proceeding to the court in the district
4 where the juvenile resides for disposition.

5 (2) Where the proceeding is not transferred under subdivision (1) of
6 this section, the court shall immediately notify the chief district
7 judge in the district in which the juvenile resides. If the chief
8 district judge requests a transfer within five days after receipt of
9 notification, the court shall transfer the proceeding.

10 (3) Where the proceeding is not transferred under subdivision (1) or
11 (2), the court, upon motion of the juvenile, shall transfer the
12 proceeding to the court in the district where the juvenile resides
13 for disposition. The court shall advise the juvenile of the juvenile's
14 right to transfer under this section.

15 **"§ 7B-1801. Pleading and process.**

16 The pleading in a juvenile action is the petition. The process in a juvenile action is
17 the summons.

18 **"§ 7B-1802. Petition.**

19 The petition shall contain the name, date of birth, and address of the juvenile and
20 the name and last known address of the juvenile's parent, guardian, or custodian.
21 The petition shall allege the facts which invoke jurisdiction over the juvenile. The
22 petition shall not contain information on more than one juvenile.

23 A petition in which delinquency is alleged shall contain a plain and concise
24 statement, without allegations of an evidentiary nature, asserting facts supporting
25 every element of a criminal offense and the juvenile's commission thereof with
26 sufficient precision clearly to apprise the juvenile of the conduct which is the subject
27 of the allegation.

28 Sufficient copies of the petition shall be prepared so that copies will be available
29 for the juvenile, for each parent if living separate and apart, for the court counselor,
30 for the prosecutor, and for any person determined by the court to be a necessary
31 party.

32 **"§ 7B-1803. Receipt of complaints; filing of petition.**

33 (a) All complaints concerning a juvenile alleged to be delinquent or undisciplined
34 shall be referred to the intake counselor for screening and evaluation. Thereafter, if
35 the intake counselor determines that a petition should be filed, the petition shall be
36 drawn by the intake counselor or the clerk, signed by the complainant, and verified
37 before an official authorized to administer oaths. If the circumstances indicate a need
38 for immediate attachment of jurisdiction and if the intake counselor is out of the
39 county or otherwise unavailable to receive a complaint and to draw a petition when
40 it is needed, the clerk shall assist the complainant in communicating the complaint to
41 the intake counselor by telephone and, with the approval of the intake counselor,
42 shall draw a petition and file it when signed and verified. A copy of the complaint
43 and petition shall be transmitted to the intake counselor. Procedures for receiving
44 delinquency and undisciplined complaints and drawing petitions thereon, consistent

1 with this Article and Article 17 of this Chapter shall be established by administrative
2 order of the chief judge in each judicial district.

3 (b) If review is requested pursuant to G.S. 7B-1704, the prosecutor shall review a
4 complaint and any decision of the intake counselor not to authorize that the
5 complaint be filed as a petition. If the prosecutor, after review, authorizes a
6 complaint to be filed as a petition, the prosecutor shall prepare the complaint to be
7 filed by the clerk as a petition, recording the day of filing.

8 **"§ 7B-1804. Commencement of action.**

9 (a) An action is commenced by the filing of a petition in the clerk's office when
10 that office is open, or by a magistrate's acceptance of a petition for filing pursuant to
11 subsection (b) of this section when the clerk's office is closed.

12 (b) When the office of the clerk is closed and an intake counselor requests a
13 petition alleging a juvenile to be delinquent or undisciplined, a magistrate may draw
14 and verify the petition and accept it for filing, which acceptance shall constitute
15 filing. The magistrate's authority under this subsection is limited to emergency
16 situations when a petition is required in order to obtain a secure or nonsecure
17 custody order. Any petition accepted for filing under this subsection shall be
18 delivered to the clerk's office for processing as soon as that office is open for
19 business.

20 **"§ 7B-1805. Issuance of summons.**

21 (a) Immediately after a petition has been filed alleging that a juvenile is
22 undisciplined or delinquent, the clerk shall issue a summons to the juvenile and to
23 the parent, guardian, or custodian requiring them to appear for a hearing at the time
24 and place stated in the summons. A copy of the petition shall be attached to each
25 summons.

26 (b) A summons shall be on a printed form supplied by the Administrative Office
27 of the Courts and shall include:

- 28 (1) Notice of the nature of the proceeding and the purpose of the
29 hearing scheduled on the summons.
30 (2) Notice of any right to counsel and information about how to seek
31 the appointment of counsel prior to a hearing.
32 (3) Notice that, if the court determines at the adjudicatory hearing that
33 the allegations of the petition are true, the court will conduct a
34 dispositional hearing and will have jurisdiction to enter orders
35 affecting substantial rights of the juvenile and of the parent,
36 guardian, or custodian, including orders that:
37 a. Affect the juvenile's custody;
38 b. Impose conditions on the juvenile;
39 c. Require that the juvenile receive medical, psychiatric,
40 psychological, or other treatment and that the parent,
41 guardian, or custodian participate in the treatment;
42 d. Require the parent, guardian, or custodian to undergo
43 psychiatric, psychological, or other treatment or counseling;

1 e. Order the parent to pay for treatment that is ordered for the
2 juvenile or the parent; and

3 f. Order the parent to pay support for the juvenile for any
4 period the juvenile does not reside with the parent or to pay
5 attorneys' fees or other expenses as ordered by the court.

6 (4) Notice that the parent, guardian, or custodian shall be required to
7 attend scheduled hearings and that failure without reasonable cause
8 to attend may result in proceedings for contempt of court.

9 (5) Notice that the parent, guardian, or custodian shall be responsible
10 for bringing the juvenile before the court at any hearing the
11 juvenile is required to attend and that failure without reasonable
12 cause to bring the juvenile before the court may result in
13 proceedings for contempt of court.

14 (c) The summons shall advise the parent, guardian, or custodian that upon
15 service, jurisdiction over the parent, guardian, or custodian is obtained and that
16 failure of the parent, guardian, or custodian to appear or bring the juvenile before the
17 court without reasonable cause or to comply with any order of the court pursuant to
18 Article 27 of this Chapter may cause the court to issue a show cause order for
19 contempt. The summons shall contain the following language in bold type:

20 **'TO THE PARENT, GUARDIAN, OR CUSTODIAN: YOUR FAILURE TO APPEAR**
21 **IN COURT FOR A SCHEDULED HEARING OR TO COMPLY WITH AN ORDER**
22 **OF THE COURT MAY RESULT IN A FINDING OF CONTEMPT.'**

23 (d) A summons shall be directed to the person summoned to appear and shall be
24 delivered to any person authorized to serve process.

25 **"§ 7B-1806. Service of summons.**

26 The summons and petition shall be personally served upon the parent, the
27 guardian, or custodian and the juvenile not less than five days prior to the date of the
28 scheduled hearing. The time for service may be waived in the discretion of the court.

29 If the parent, guardian, or custodian entitled to receive a summons cannot be
30 found by a diligent effort, the court may authorize service of the summons and
31 petition by mail or by publication. The cost of the service by publication shall be
32 advanced by the petitioner and may be charged as court costs as the court may direct.

33 The court may issue a show cause order for contempt against a parent, guardian,
34 or custodian who is personally served and fails without reasonable cause to appear
35 and to bring the juvenile before the court.

36 The provisions of G.S. 15A-301(a), (c), (d), and (e) relating to criminal process
37 apply to juvenile process; provided the period of time for return of an unserved
38 summons is 30 days.

39 **"§ 7B-1806.1. Notice to parent and juvenile of scheduled hearings.**

40 The clerk shall give to all parties, including both parents of the juvenile, five days
41 written notice of the date and time of all scheduled hearings unless the party is
42 notified in open court or the court orders otherwise.

43 **"§ 7B-1807. First appearance for felony cases.**

1 (a) A juvenile who is alleged in the petition to have committed an offense that
2 would be a felony if committed by an adult shall be summoned to appear before the
3 court for a first appearance within 10 days of the filing of the petition. If the juvenile
4 is in secure or nonsecure custody, the first appearance shall take place at the initial
5 hearing required by G.S. 7B-1906. Unless the juvenile is in secure or nonsecure
6 custody, the court may continue the first appearance to a time certain for good cause.

7 (b) At the first appearance, the court shall:

8 (1) Inform the juvenile of the allegations set forth in the petition;

9 (2) Determine whether the juvenile has retained counsel or has been
10 assigned counsel and, if the juvenile is not represented by counsel,
11 appoint counsel for the juvenile;

12 (3) If applicable, inform the juvenile of the date of the probable cause
13 hearing, which shall be within 15 days of the first appearance; and

14 (4) Inform the parent, guardian, or custodian that the parent,
15 guardian, or custodian is required to attend all hearings scheduled
16 in the matter and may be held in contempt of court for failure to
17 attend any scheduled hearing.

18 "ARTICLE 19.

19 "Temporary Custody; Secure and Nonsecure Custody;
20 Custody Hearings.

21 "§ 7B-1900. Taking a juvenile into temporary custody.

22 Temporary custody means the taking of physical custody and providing personal
23 care and supervision until a court order for secure or nonsecure custody can be
24 obtained. A juvenile may be taken into temporary custody without a court order
25 under the following circumstances:

26 (1) By a law enforcement officer if grounds exist for the arrest of an
27 adult in identical circumstances under G.S. 15A-401(b).

28 (2) By a law enforcement officer or a court counselor if there are
29 reasonable grounds to believe that the juvenile is an undisciplined
30 juvenile.

31 (3) By a law enforcement officer, by a court counselor, by a member
32 of the Black Mountain Center, Alcohol Rehabilitation Center, and
33 Juvenile Evaluation Center Joint Security Force established
34 pursuant to G.S. 122C-421, or by personnel of the Department if
35 there are reasonable grounds to believe the juvenile is an
36 absconder from any residential facility operated by the Department
37 or from an approved detention facility.

38 "§ 7B-1901. Duties of person taking juvenile into temporary custody.

39 (a) A person who takes a juvenile into custody without a court order under G.S.
40 7B-1900(1) or (2) shall proceed as follows:

41 (1) Notify the juvenile's parent, guardian, or custodian that the
42 juvenile has been taken into temporary custody and advise the
43 parent, guardian, or custodian of the right to be present with the
44 juvenile until a determination is made as to the need for secure or

1 nonsecure custody. Failure to notify the parent, guardian, or
2 custodian that the juvenile is in custody shall not be grounds for
3 release of the juvenile.

4 (2) Release the juvenile to the juvenile's parent, guardian, or custodian
5 if the person having the juvenile in temporary custody decides that
6 continued custody is unnecessary. In the case of a juvenile
7 unlawfully absent from school, if continued custody is unnecessary,
8 the person having temporary custody may deliver the juvenile to
9 the juvenile's school or, if the local city or county government and
10 the local school board adopt a policy, to a place in the local school
11 administrative unit.

12 (3) If the juvenile is not released, request that a petition be drawn
13 pursuant to G.S. 7B-1803 or G.S. 7B-1804. Once the petition has
14 been drawn and verified, the person shall communicate with the
15 intake counselor. If the intake counselor approves the filing of the
16 petition, the intake counselor shall contact the judge, or the person
17 delegated authority pursuant to G.S. 7B-1902 if other than the
18 intake counselor, for a determination of the need for continued
19 custody.

20 (b) A juvenile taken into temporary custody under this Article shall not be held
21 for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a
22 Saturday, Sunday, or legal holiday, unless a petition or motion for review has been
23 filed and an order for secure or nonsecure custody has been entered.

24 (c) A person who takes a juvenile into custody under G.S. 7B-1900(3), after
25 receiving an order for secure custody, shall transport the juvenile to the nearest
26 approved facility providing secure custody. The person then shall contact the
27 administrator of the facility from which the juvenile absconded, who shall be
28 responsible for returning the juvenile to that facility.

29 **"§ 7B-1902. Authority to issue custody orders; delegation.**

30 In the case of any juvenile alleged to be within the jurisdiction of the court, when
31 the court finds it necessary to place the juvenile in custody, the court may order that
32 the juvenile be placed in secure or nonsecure custody pursuant to criteria set out in
33 G.S. 7B-1903.

34 Any district court judge may issue secure and nonsecure custody orders pursuant
35 to G.S. 7B-1903. The chief district court judge may delegate the court's authority to
36 the chief court counselor or the chief court counselor's counseling staff by
37 administrative order filed in the office of the clerk of superior court. The
38 administrative order shall specify which persons may be contacted for approval of a
39 secure or nonsecure custody order. The chief district court judge shall not delegate
40 the court's authority to detain or house juveniles in holdover facilities pursuant to
41 G.S. 7B-1905 or G.S. 7B-2509.

42 **"§ 7B-1903. Criteria for secure or nonsecure custody.**

43 (a) When a request is made for nonsecure custody, the court shall first consider
44 release of the juvenile to the juvenile's parent, guardian, custodian, or other

1 responsible adult. An order for nonsecure custody shall be made only when there is a
2 reasonable factual basis to believe the matters alleged in the petition are true, and
3 that:

- 4 (1) The juvenile is a runaway and consents to nonsecure custody; or
5 (2) The juvenile meets one or more of the criteria for secure custody,
6 but the court finds it in the best interests of the juvenile that the
7 juvenile be placed in a nonsecure placement.

8 (b) When a request is made for secure custody, the court may order secure custody
9 only where the court finds there is a reasonable factual basis to believe that the
10 juvenile committed the offense as alleged in the petition, and that:

- 11 (1) The juvenile is charged with a felony and has demonstrated that
12 the juvenile is a danger to property or persons;
13 (2) The juvenile is charged with a misdemeanor at least one element
14 of which is assault on a person;
15 (3) The juvenile has willfully failed to appear on a pending
16 delinquency charge or on charges of violation of probation or post-
17 release supervision, providing the juvenile was properly notified;
18 (4) A delinquency charge is pending against the juvenile, and there is
19 reasonable cause to believe the juvenile will not appear in court;
20 (5) The juvenile is an absconder from (i) any residential facility
21 operated by the Department or any detention facility in this State
22 or (ii) any comparable facility in another state;
23 (6) There is reasonable cause to believe the juvenile should be
24 detained for the juvenile's own protection because the juvenile has
25 recently suffered or attempted self-inflicted physical injury. In such
26 case, the juvenile must have been refused admission by one
27 appropriate hospital, and the period of secure custody is limited to
28 24 hours to determine the need for inpatient hospitalization. If the
29 juvenile is placed in secure custody, the juvenile shall receive
30 continuous supervision and a physician shall be notified
31 immediately;
32 (7) The juvenile is alleged to be undisciplined by virtue of the
33 juvenile's being a runaway and is inappropriate for nonsecure
34 custody placement or refuses nonsecure custody, and the court
35 finds that the juvenile needs secure custody for up to 24 hours,
36 excluding Saturdays, Sundays, and State holidays, or where
37 circumstances require, for a period not to exceed 72 hours to
38 evaluate the juvenile's need for medical or psychiatric treatment or
39 to facilitate reunion with the juvenile's parents; or
40 (8) The juvenile is alleged to be undisciplined and has willfully failed
41 to appear in court after proper notice; the juvenile shall be brought
42 to court as soon as possible and in no event should be held more
43 than 24 hours, excluding Saturdays, Sundays, and State holidays or
44 where circumstances require for a period not to exceed 72 hours.

1 (c) When a juvenile has been adjudicated delinquent, the court may order secure
2 custody pending the dispositional hearing or pending placement of the juvenile
3 pursuant to G.S. 7B-2504.

4 (d) The court may order secure custody for a juvenile who is alleged to have
5 violated the conditions of the juvenile's probation or post-release supervision, but
6 only if the juvenile is alleged to have committed acts that damage property or injure
7 persons.

8 (e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this
9 section are met, the court may enter an order directing an officer or other authorized
10 person to assume custody of the juvenile and to take the juvenile to the place
11 designated in the order.

12 **"§ 7B-1904. Order for secure or nonsecure custody.**

13 The custody order shall be in writing and shall direct a law enforcement officer or
14 other authorized person to assume custody of the juvenile and to make due return on
15 the order. The official executing the order shall give a copy of the order to the
16 juvenile's parent, guardian, or custodian. If the order is for secure custody, copies of
17 the petition and custody order shall accompany the juvenile to the detention facility
18 or holdover facility of the jail. A message of the Division of Criminal Information,
19 State Bureau of Investigation, stating that a juvenile petition and secure custody order
20 relating to a specified juvenile are on file in a particular county shall be authority to
21 detain the juvenile in secure custody until a copy of the juvenile petition and secure
22 custody order can be forwarded to the juvenile detention facility. The copies of the
23 juvenile petition and secure custody order shall be transmitted to the detention
24 facility no later than 72 hours after the initial detention of the juvenile.

25 An officer receiving an order for custody which is complete and regular on its face
26 may execute it in accordance with its terms and need not inquire into its regularity or
27 continued validity, nor does the officer incur criminal or civil liability for its
28 execution.

29 **"§ 7B-1905. Place of secure or nonsecure custody.**

30 (a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in
31 nonsecure custody with a department of social services or a person designated in the
32 order for temporary residential placement in:

- 33 (1) A licensed foster home or a home otherwise authorized by law to
34 provide such care;
- 35 (2) A facility operated by a department of social services; or
- 36 (3) Any other home or facility approved by the court and designated
37 in the order.

38 In placing a juvenile in nonsecure custody, the court shall first consider whether a
39 relative of the juvenile is willing and able to provide proper care and supervision of
40 the juvenile. If the court finds that the relative is willing and able to provide proper
41 care and supervision, the court shall order placement of the juvenile with the relative.
42 Placement of a juvenile outside of this State shall be in accordance with the Interstate
43 Compact on the Placement of Children set forth in Article 38 of this Chapter.

1 (b) A juvenile meeting the criteria set out in G.S. 7B-1903(b), (c), or (d) may be
2 temporarily detained in an approved detention facility which shall be separate from
3 any jail, lockup, prison, or other adult penal institution, except as provided in
4 subsection (c) of this section. It shall be unlawful for a county or any unit of
5 government to operate a juvenile detention facility unless the facility meets the
6 standards and rules adopted by the Department of Health and Human Services.

7 (c) A juvenile who has allegedly committed an offense that would be a Class A, B1,
8 B2, C, D, or E felony if committed by an adult may be detained in secure custody in a
9 holdover facility up to 72 hours, if the court, based on information provided by the
10 court counselor, determines that no acceptable alternative placement is available and
11 the protection of the public requires the juvenile be housed in a holdover facility.

12 "§ 7B-1906. Secure or nonsecure custody hearings.

13 (a) No juvenile shall be held under a secure custody order for more than five
14 calendar days or under a nonsecure custody order for more than seven calendar days
15 without a hearing on the merits or an initial hearing to determine the need for
16 continued custody. A hearing conducted under this subsection may not be continued
17 or waived. In every case in which an order has been entered by an official exercising
18 authority delegated pursuant to G.S. 7B-1902, a hearing to determine the need for
19 continued custody shall be conducted on the day of the next regularly scheduled
20 session of district court in the city or county where the order was entered if the
21 session precedes the expiration of the applicable time period set forth in this
22 subsection. If the session does not precede the expiration of the time period, the
23 hearing may be conducted at another regularly scheduled session of district court in
24 the district where the order was entered.

25 (b) As long as the juvenile remains in secure or nonsecure custody, further
26 hearings to determine the need for continued secure custody shall be held at intervals
27 of no more than 10 calendar days. A subsequent hearing on continued nonsecure
28 custody shall be held within seven business days, excluding Saturdays, Sundays, and
29 legal holidays, of the initial hearing required in subsection (a) of this section and
30 hearings thereafter shall be held at intervals of no more than 30 calendar days. In the
31 case of a juvenile alleged to be delinquent, further hearings may be waived only with
32 the consent of the juvenile, through counsel for the juvenile.

33 (c) The court shall determine whether a juvenile who is alleged to be delinquent
34 has retained counsel or has been assigned counsel; and, if the juvenile is not
35 represented by counsel, appoint counsel for the juvenile.

36 (d) At a hearing to determine the need for continued custody, the court shall
37 receive testimony and shall allow the juvenile and the juvenile's parent, guardian, or
38 custodian an opportunity to introduce evidence, to be heard in their own behalf, and
39 to examine witnesses. The State shall bear the burden at every stage of the
40 proceedings to provide clear and convincing evidence that restraints on the juvenile's
41 liberty are necessary and that no less intrusive alternative will suffice. The court shall
42 not be bound by the usual rules of evidence at the hearings.

43 (e) The court shall be bound by criteria set forth in G.S. 7B-1903 in determining
44 whether continued custody is warranted.

1 (f) The court may impose appropriate restrictions on the liberty of a juvenile who
2 is released from secure custody, including:

3 (1) Release on the written promise of the juvenile's parent, guardian,
4 or custodian to produce the juvenile in court for subsequent
5 proceedings;

6 (2) Release into the care of a responsible person or organization;

7 (3) Release conditioned on restrictions on activities, associations,
8 residence, or travel if reasonably related to securing the juvenile's
9 presence in court; or

10 (4) Any other conditions reasonably related to securing the juvenile's
11 presence in court.

12 (g) If the court determines that the juvenile meets the criteria in G.S. 7B-1903 and
13 should continue in custody, the court shall issue an order to that effect. The order
14 shall be in writing with appropriate findings of fact. The findings of fact shall include
15 the evidence relied upon in reaching the decision and the purposes which continued
16 custody is to achieve.

17 (h) The court may conduct a hearing to determine the need to continue custody by
18 audio and video transmission between the court and the juvenile in which the parties
19 can see and hear each other. If the juvenile has counsel, the juvenile may
20 communicate fully and confidentially with the juvenile's attorney during the
21 proceeding. Prior to the use of audio and video transmission, the procedures and type
22 of equipment for audio and video transmission shall be submitted to the
23 Administrative Office of the Courts by the chief district court judge and approved by
24 the Administrative Office of the Courts.

25 "§ 7B-1907. Telephonic communication authorized.

26 All communications, notices, orders, authorizations, and requests authorized or
27 required by G.S. 7B-1901, 7B-1903, and 7B-1904 may be made by telephone when
28 other means of communication are impractical. All written orders pursuant to
29 telephonic communication shall bear the name and the title of the person
30 communicating by telephone, the signature and the title of the official entering the
31 order, and the hour and the date of the authorization.

32 "ARTICLE 20.

33 "Basic Rights.

34 "§ 7B-2000. Juvenile's right to counsel; presumption of indigence.

35 (a) A juvenile alleged to be within the jurisdiction of the court has the right to be
36 represented by counsel in all proceedings. The court shall appoint counsel for the
37 juvenile, unless counsel is retained for the juvenile, in any proceeding in which the
38 juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or
39 adjudicated to be undisciplined.

40 (b) All juveniles shall be conclusively presumed to be indigent, and it shall not be
41 necessary for the court to receive from any juvenile an affidavit of indigency.

42 "§ 7B-2001. Appointment of guardian.

43 In any case when no parent, guardian, or custodian appears in a hearing with the
44 juvenile or when the court finds it would be in the best interests of the juvenile, the

1 court may appoint a guardian of the person for the juvenile. The guardian shall
2 operate under the supervision of the court with or without bond and shall file only
3 such reports as the court shall require. Unless the court orders otherwise, the
4 guardian:

- 5 (1) Shall have the care, custody, and control of the juvenile or may
6 arrange a suitable placement for the juvenile.
7 (2) May represent the juvenile in legal actions before any court.
8 (3) May consent to certain actions on the part of the juvenile in place
9 of the parent, guardian, or custodian, including (i) marriage, (ii)
10 enlisting in the armed forces, and (iii) enrollment in school.
11 (4) May consent to any necessary remedial, psychological, medical, or
12 surgical treatment for the juvenile.

13 The authority of the guardian shall continue until the guardianship is terminated by
14 court order, until the juvenile is emancipated pursuant to Subchapter IV of this
15 Chapter, or until the juvenile reaches the age of majority.

16 **"§ 7B-2002. Payment of court-appointed attorney.**

17 An attorney appointed pursuant to G.S. 7B-2000 or pursuant to any other
18 provision of this Subchapter shall be paid a reasonable fee fixed by the court in the
19 same manner as fees for attorneys appointed in cases of indigency through the
20 Administrative Office of the Courts. The court may require payment of the
21 attorneys' fees from a person other than the juvenile as provided in G.S. 7A-450.1,
22 7A-450.2, and 7A-450.3. A person who does not comply with the court's order of
23 payment may be found in civil contempt as provided in G.S. 5A-21.

24 **"ARTICLE 21.**

25 **"Law Enforcement Procedures in Delinquency Proceedings.**

26 **"§ 7B-2100. Role of the law enforcement officer.**

27 A law enforcement officer who takes a juvenile into temporary custody should
28 select the most appropriate course of action to the situation, the needs of the juvenile,
29 and the protection of the public safety. The officer may:

- 30 (1) Release the juvenile, with or without first counseling the juvenile;
31 (2) Release the juvenile to the juvenile's parent, guardian, or
32 custodian;
33 (3) Refer the juvenile to community resources;
34 (4) Seek a petition; or
35 (5) Seek a petition and request a custody order.

36 **"§ 7B-2101. Interrogation procedures.**

37 **(a) Any juvenile in custody must be advised prior to questioning:**

- 38 (1) That the juvenile has a right to remain silent;
39 (2) That any statement the juvenile does make can be and may be
40 used against the juvenile;
41 (3) That the juvenile has a right to have a parent, guardian, or
42 custodian present during questioning; and

1 (4) That the juvenile has a right to consult with an attorney and that
2 one will be appointed for the juvenile if the juvenile is not
3 represented and wants representation.

4 (b) When the juvenile is less than 14 years of age, no in-custody admission or
5 confession resulting from interrogation may be admitted into evidence unless the
6 confession or admission was made in the presence of the juvenile's parent, guardian,
7 custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian
8 as well as the juvenile must be advised of the juvenile's rights as set out in subsection
9 (a) of this section; however, a parent, guardian, or custodian may not waive any right
10 on behalf of the juvenile.

11 (c) If the juvenile indicates in any manner and at any stage of questioning pursuant
12 to this section that the juvenile does not wish to be questioned further, the officer
13 shall cease questioning.

14 (d) Before admitting into evidence any statement resulting from custodial
15 interrogation, the court shall find that the juvenile knowingly, willingly, and
16 understandingly waived the juvenile's rights.

17 **"§ 7B-2102. Fingerprinting and photographing juveniles.**

18 (a) A law enforcement officer or agency may fingerprint and photograph a juvenile
19 in custody who is alleged to have committed an offense that would be a felony if
20 committed by an adult.

21 (b) If a law enforcement officer or agency does not take the fingerprints or a
22 photograph of the juvenile pursuant to subsection (a) of this section or the fingerprints
23 or photograph have been destroyed pursuant to subsection (e) of this section, a law
24 enforcement officer or agency shall fingerprint and photograph a juvenile who has
25 been adjudicated delinquent if the juvenile was 10 years of age or older at the time
26 the juvenile committed an offense that would be a felony if committed by an adult.

27 (c) A law enforcement officer or agency who fingerprints or photographs a
28 juvenile pursuant to this section shall do so in a proper format for transfer to the
29 State Bureau of Investigation and the Federal Bureau of Investigation. Fingerprints
30 obtained pursuant to this section shall be transferred to the State Bureau of
31 Investigation and placed in the Automated Fingerprint Identification System (AFIS)
32 to be used for all investigative and comparison purposes. Photographs obtained
33 pursuant to this section shall be placed in a format approved by the State Bureau of
34 Investigation and may be used for all investigative or comparison purposes.
35 Fingerprints of a juvenile who has been adjudicated delinquent for an offense that
36 would be a Class A, B1, B2, C, D, or E felony if committed by an adult, and who was
37 10 years of age or older at the time the juvenile committed the offense, shall be
38 transferred to the Federal Bureau of Investigation to be used for all investigative or
39 comparison purposes.

40 (d) Fingerprints and photographs taken pursuant to this section are not public
41 records under Chapter 132 of the General Statutes, shall not be included in the
42 clerk's record pursuant to G.S. 7B-3000, shall be withheld from public inspection or
43 examination, and shall not be eligible for expunction pursuant to G.S. 7B-3200.
44 Fingerprints and photographs taken pursuant to this section shall be maintained

1 separately from any juvenile record, other than the electronic file maintained by the
2 State Bureau of Investigation.

3 (e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of this
4 section, the custodian of records shall destroy all fingerprints and photographs at the
5 earlier of the following:

6 (1) The intake counselor or prosecutor does not file a petition against
7 the juvenile;

8 (2) The court does not find probable cause pursuant to G.S. 7B-2202; or

9 (3) The juvenile is not adjudicated delinquent.

10 The chief court counselor shall notify the local custodian of records, and the local
11 custodian of records shall notify any other record-holding agencies, when a decision is
12 made not to file a petition, the court does not find probable cause, or the court does
13 not adjudicate the juvenile delinquent.

14 "§ 7B-2103. Authority to issue nontestimonial identification order where juvenile
15 alleged to be delinquent.

16 Except as provided in G.S. 7B-2102, nontestimonial identification procedures shall
17 not be conducted on any juvenile without a court order issued pursuant to this
18 Article unless the juvenile has been charged as an adult or transferred to superior
19 court for trial as an adult in which case procedures applicable to adults, as set out in
20 Articles 14 and 23 of Chapter 15A of the General Statutes, shall apply. A
21 nontestimonial identification order authorized by this Article may be issued by any
22 judge of the district court or of the superior court upon request of a prosecutor. As
23 used in this Article, 'nontestimonial identification' means identification by
24 fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens,
25 saliva samples, hair samples, or other reasonable physical examination, handwriting
26 exemplars, voice samples, photographs, and lineups or similar identification
27 procedures requiring the presence of a juvenile.

28 "§ 7B-2104. Time of application for nontestimonial identification order.

29 A request for a nontestimonial identification order may be made prior to taking a
30 juvenile into custody or after custody and prior to the adjudicatory hearing.

31 "§ 7B-2105. Grounds for nontestimonial identification order.

32 (a) Except as provided in subsection (b) of this section, a nontestimonial
33 identification order may issue only on affidavit or affidavits sworn to before the court
34 and establishing the following grounds for the order:

35 (1) That there is probable cause to believe that an offense has been
36 committed that would be a felony if committed by an adult;

37 (2) That there are reasonable grounds to suspect that the juvenile
38 named or described in the affidavit committed the offense; and

39 (3) That the results of specific nontestimonial identification procedures
40 will be of material aid in determining whether the juvenile named
41 in the affidavit committed the offense.

42 (b) A nontestimonial identification order to obtain a blood specimen from a
43 juvenile may issue only on affidavit or affidavits sworn to before the court and
44 establishing the following grounds for the order:

- 1 (1) That there is probable cause to believe that an offense has been
2 committed that would be a felony if committed by an adult;
3 (2) That there is probable cause to believe that the juvenile named or
4 described in the affidavit committed the offense; and
5 (3) That there is probable cause to believe that obtaining a blood
6 specimen from the juvenile will be of material aid in determining
7 whether the juvenile named in the affidavit committed the offense.

8 **"§ 7B-2106. Issuance of order.**

9 Upon a showing that the grounds specified in G.S. 7B-2105 exist, the judge may
10 issue an order following the same procedure as in the case of adults under G.S.
11 15A-274, 15A-275, 15A-276, 15A-277, 15A-278, 15A-279, 15A-280, and 15A-282.

12 **"§ 7B-2107. Nontestimonial identification order at request of juvenile.**

13 A juvenile in custody for or charged with an offense which if committed by an
14 adult would be a felony offense may request that nontestimonial identification
15 procedures be conducted. If it appears that the results of specific nontestimonial
16 identification procedures will be of material aid to the juvenile's defense, the judge to
17 whom the request was directed must order the State to conduct the identification
18 procedures.

19 **"§ 7B-2108. Destruction of records resulting from nontestimonial identification**
20 **procedures.**

21 The results of any nontestimonial identification procedures shall be retained or
22 disposed of as follows:

- 23 (1) If a petition is not filed against a juvenile who has been the subject
24 of nontestimonial identification procedures, all records of the
25 evidence shall be destroyed.
26 (2) If the juvenile is not adjudicated delinquent or convicted in
27 superior court following transfer, all records resulting from a
28 nontestimonial order shall be destroyed. Further, in the case of a
29 juvenile who is under 13 years of age and who is adjudicated
30 delinquent for an offense that would be less than a felony if
31 committed by an adult, all records shall be destroyed.
32 (3) If a juvenile 13 years of age or older is adjudicated delinquent for
33 an offense that would be a felony if committed by an adult, all
34 records resulting from a nontestimonial order may be retained in
35 the court file. Special precautions shall be taken to ensure that
36 these records will be maintained in a manner and under sufficient
37 safeguards to limit their use to inspection by law enforcement
38 officers for comparison purposes in the investigation of a crime.
39 (4) If the juvenile is transferred to and convicted in superior court, all
40 records resulting from nontestimonial identification procedures
41 shall be processed as in the case of an adult.
42 (5) Any evidence seized pursuant to a nontestimonial order shall be
43 retained by law enforcement officers until further order is entered
44 by the court.

1 (6) Destruction of nontestimonial identification records pursuant to
2 this section shall be performed by the law enforcement agency
3 having possession of the records. Following destruction, the law
4 enforcement agency shall make written certification to the court of
5 the destruction.

6 **"§ 7B-2109. Penalty for willful violation.**

7 Any person who willfully violates provisions of this Article which prohibit
8 conducting nontestimonial identification procedures without an order issued by the
9 court shall be guilty of a Class 1 misdemeanor.

10 **"ARTICLE 22.**

11 **"Probable Cause Hearing and Transfer Hearing.**

12 **"§ 7B-2200. Transfer of jurisdiction of juvenile to superior court; direct filing in**
13 **superior court.**

14 **(a) Except as provided in subsection (b) of this section, after notice, hearing, and a**
15 **finding of probable cause the court may, upon motion of the prosecutor or the**
16 **juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to**
17 **superior court if the juvenile was 13 years of age or older at the time the juvenile**
18 **allegedly committed an offense that would be a felony if committed by an adult. If**
19 **the alleged felony constitutes a Class A felony and the court finds probable cause, the**
20 **court shall transfer the case to the superior court for trial as in the case of adults.**

21 **(b) Notwithstanding G.S. 7B-1601, the prosecutor may file charges in superior court**
22 **against a juvenile who was 15 years of age at the time the juvenile allegedly**
23 **committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed**
24 **by an adult.**

25 **"§ 7B-2201. Fingerprinting juvenile transferred to superior court.**

26 When jurisdiction over a juvenile is transferred to the superior court, the juvenile
27 shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau
28 of Investigation.

29 **"§ 7B-2202. Probable cause hearing.**

30 **(a) The court shall conduct a hearing to determine probable cause in all felony**
31 **cases in which a juvenile was 13 years of age or older when the offense was allegedly**
32 **committed. The hearing shall be conducted within 15 days of the date of the juvenile's**
33 **first appearance. The court may continue the hearing for good cause.**

34 **(b) At the probable cause hearing:**

35 **(1) A prosecutor shall represent the State;**

36 **(2) The juvenile shall be represented by counsel;**

37 **(3) The juvenile may testify, call, and examine witnesses, and present**
38 **evidence; and**

39 **(4) Each witness shall testify under oath or affirmation and be subject**
40 **to cross-examination.**

41 **(c) The State shall by nonhearsay evidence, or by evidence that satisfies an**
42 **exception to the hearsay rule, show that there is probable cause to believe that the**
43 **offense charged has been committed and that there is probable cause to believe that**
44 **the juvenile committed it, except:**

- 1 (1) A report or copy of a report made by a physicist, chemist, firearms
2 identification expert, fingerprint technician, or an expert or
3 technician in some other scientific, professional, or medical field,
4 concerning the results of an examination, comparison, or test
5 performed in connection with the case in issue, when stated by that
6 person in a report made by the juvenile, is admissible in evidence;
7 (2) If there is no serious contest, reliable hearsay is admissible to prove
8 value, ownership of property, possession of property in a person
9 other than the juvenile, lack of consent of the owner, possessor, or
10 custodian of property to the breaking or entering of premises,
11 chain of custody, and authenticity of signatures.

12 (d) Counsel for the juvenile may waive in writing the right to the hearing and
13 stipulate to a finding of probable cause.

14 (e) If probable cause is found and transfer to superior court is not required by G.S.
15 7B-2200, upon motion of the prosecutor or the juvenile's attorney or upon its own
16 motion, the court shall either proceed to a transfer hearing or set a date for that
17 hearing. If the juvenile has not received notice of the intention to seek transfer at
18 least five days prior to the probable cause hearing, the court shall continue the
19 transfer hearing.

20 (f) If the court does not find probable cause for a felony offense, the court shall:

- 21 (1) Dismiss the proceeding, or
22 (2) If the court finds probable cause to believe that the juvenile
23 committed a lesser included offense that would constitute a
24 misdemeanor if committed by an adult, either proceed to an
25 adjudicatory hearing or set a date for that hearing.

26 **"§ 7B-2203. Transfer hearing.**

27 (a) At the transfer hearing, the prosecutor and the juvenile may be heard and may
28 offer evidence, and the juvenile's attorney may examine any court or probation
29 records, or other records the court may consider in determining whether to transfer
30 the case.

31 (b) In the transfer hearing, the court shall determine whether the protection of the
32 public and the needs of the juvenile will be served by transfer of the case to superior
33 court and shall consider the following factors:

- 34 (1) The age of the juvenile;
35 (2) The maturity of the juvenile;
36 (3) The intellectual functioning of the juvenile;
37 (4) The prior record of the juvenile;
38 (5) Prior attempts to rehabilitate the juvenile;
39 (6) Facilities or programs available to the court prior to the expiration
40 of the court's jurisdiction under this Subchapter and the likelihood
41 that the juvenile would benefit from treatment or rehabilitative
42 efforts;
43 (7) Whether the alleged offense was committed in an aggressive,
44 violent, premeditated, or willful manner; and

1 record of witnesses under the age of 16 shall be provided by the petitioner to the
2 juvenile upon the juvenile's motion if accessible to the petitioner.

3 (c) Documents and Tangible Objects. -- Upon motion of the juvenile, the court
4 shall order the petitioner to permit the juvenile to inspect and copy books, papers,
5 documents, photographs, motion pictures, mechanical or electronic recordings,
6 tangible objects, or portions thereof:

7 (1) Which are within the possession, custody, or control of the
8 petitioner, the prosecutor, or any law enforcement officer
9 conducting an investigation of the matter alleged; and

10 (2) Which are material to the preparation of the defense, are intended
11 for use by the petitioner as evidence, or were obtained from or
12 belong to the juvenile.

13 (d) Reports of Examinations and Tests. -- Upon motion of a juvenile, the court
14 shall order the petitioner to permit the juvenile to inspect and copy results of physical
15 or mental examinations or of tests, measurements, or experiments made in connection
16 with the case, within the possession, custody, or control of the petitioner. In addition
17 upon motion of a juvenile, the court shall order the petitioner to permit the juvenile
18 to inspect, examine, and test, subject to appropriate safeguards, any physical evidence
19 or a sample of it or tests or experiments made in connection with the evidence in the
20 case if it is available to the petitioner, the prosecutor, or any law enforcement officer
21 conducting an investigation of the matter alleged and if the petitioner intends to offer
22 the evidence at trial.

23 (e) Except as provided in subsections (a) through (d) of this section, this Article
24 does not require the production of reports, memoranda, or other internal documents
25 made by the petitioner, law enforcement officers, or other persons acting on behalf of
26 the petitioner in connection with the investigation or prosecution of the case or of
27 statements made by witnesses or the petitioner to anyone acting on behalf of the
28 petitioner.

29 (f) Nothing in this section prohibits a petitioner from making voluntary disclosures
30 in the interest of justice.

31 **§ 7B-2301. Disclosure of evidence by juvenile.**

32 (a) Names of Witnesses. -- Upon motion of the petitioner, the court shall order the
33 juvenile to furnish to the petitioner the names of persons to be called as witnesses.

34 (b) Documents and Tangible Objects. -- If the court grants any relief sought by the
35 juvenile under G.S. 7B-2300, upon motion of the petitioner, the court shall order the
36 juvenile to permit the petitioner to inspect and copy books, papers, documents,
37 photographs, motion pictures, mechanical or electronic recordings, tangible objects,
38 or portions thereof which are within the possession, custody, or control of the
39 juvenile and which the juvenile intends to introduce in evidence.

40 (c) Reports of Examinations and Tests. -- If the court grants any relief sought by
41 the juvenile under G.S. 7B-2300, upon motion of the petitioner, the court shall order
42 the juvenile to permit the petitioner to inspect and copy results of physical or mental
43 examinations or of tests, measurements, or experiments made in connection with the
44 case within the possession and control of the juvenile which the juvenile intends to

1 introduce in evidence or which were prepared by a witness whom the juvenile
2 intends to call if the results relate to the witness's testimony. In addition, upon
3 motion of a petitioner, the court shall order the juvenile to permit the petitioner to
4 inspect, examine, and test, subject to appropriate safeguards, any physical evidence or
5 a sample of it if the juvenile intends to offer the evidence or tests or experiments
6 made in connection with the evidence in the case.

7 **"§ 7B-2302. Regulation of discovery; protective orders.**

8 (a) Upon written motion of a party and a finding of good cause, the court may at
9 any time order that discovery or inspection be denied, restricted, or deferred.

10 (b) The court may permit a party seeking relief under subsection (a) of this section
11 to submit supporting affidavits or statements to the court for in camera inspection. If
12 thereafter the court enters an order granting relief under subsection (a) of this
13 section, the material submitted in camera must be available to the Court of Appeals
14 in the event of an appeal.

15 **"§ 7B-2303. Continuing duty to disclose.**

16 If a party, subject to compliance with an order issued pursuant to this Article,
17 discovers additional evidence prior to or during the hearing or decides to use
18 additional evidence, and if the evidence is or may be subject to discovery or
19 inspection under this Article, the party shall promptly notify the other party of the
20 existence of the additional evidence or of the name of each additional witness.

21 **"ARTICLE 24.**

22 **"Hearing Procedures.**

23 **"§ 7B-2400. Amendment of petition.**

24 The court may permit a petition to be amended when the amendment does not
25 change the nature of the offense alleged. If a motion to amend is allowed, the
26 juvenile shall be given a reasonable opportunity to prepare a defense to the amended
27 allegations.

28 **"§ 7B-2401. Determination of incapacity to proceed; evidence; temporary**
29 **commitment; temporary orders.**

30 The provisions of G.S. 15A-1001, 15A-1002, and 15A-1003 apply to all cases in
31 which a juvenile is alleged to be delinquent. No juvenile committed under this
32 section may be placed in a situation where the juvenile will come in contact with
33 adults committed for any purpose.

34 **"§ 7B-2402. Open hearings.**

35 All hearings authorized or required pursuant to this Subchapter shall be open to the
36 public unless the court closes the hearing or part of the hearing for good cause, upon
37 motion of a party or its own motion.

38 **"§ 7B-2403. Adjudicatory hearing.**

39 The adjudicatory hearing shall be held within a reasonable time in the district at
40 the time and place the chief district judge designates.

41 **"§ 7B-2404. Participation of the prosecutor.**

42 A prosecutor shall represent the State in contested delinquency hearings including
43 first appearance, detention, probable cause, transfer, adjudicatory, dispositional,
44 probation revocation, post-release supervision, and extended jurisdiction hearings.

1 "§ 7B-2405. Conduct of the adjudicatory hearing.

2 The adjudicatory hearing shall be a judicial process designed to determine whether
3 the juvenile is undisciplined or delinquent. In the adjudicatory hearing, the court
4 shall protect the following rights of the juvenile and the juvenile's parent, guardian,
5 or custodian to assure due process of law:

6 (1) The right to written notice of the facts alleged in the petition;

7 (2) The right to counsel;

8 (3) The right to confront and cross-examine witnesses;

9 (4) The privilege against self-incrimination;

10 (5) The right of discovery; and

11 (6) All rights afforded adult offenders except the right to bail, the right
12 of self-representation, and the right of trial by jury.

13 "§ 7B-2406. Continuances.

14 The court for good cause may continue the hearing for as long as is reasonably
15 required to receive additional evidence, reports, or assessments that the court has
16 requested, or other information needed in the best interests of the juvenile and to
17 allow for a reasonable time for the parties to conduct expeditious discovery.
18 Otherwise, continuances shall be granted only in extraordinary circumstances when
19 necessary for the proper administration of justice or in the best interests of the
20 juvenile.

21 "§ 7B-2407. When admissions by juvenile may be accepted.

22 (a) The court may accept an admission from a juvenile only after first addressing
23 the juvenile personally and:

24 (1) Informing the juvenile that the juvenile has a right to remain silent
25 and that any statement the juvenile makes may be used against the
26 juvenile;

27 (2) Determining that the juvenile understands the nature of the charge;

28 (3) Informing the juvenile that the juvenile has a right to deny the
29 allegations;

30 (4) Informing the juvenile that by the juvenile's admissions the
31 juvenile waives the juvenile's right to be confronted by the
32 witnesses against the juvenile;

33 (5) Determining that the juvenile is satisfied with the juvenile's
34 representation; and

35 (6) Informing the juvenile of the most restrictive disposition on the
36 charge.

37 (b) By inquiring of the prosecutor, the juvenile's attorney, and the juvenile
38 personally, the court shall determine whether there were any prior discussions
39 involving admissions, whether the parties have entered into any arrangement with
40 respect to the admissions and the terms thereof, and whether any improper pressure
41 was exerted. The court may accept an admission from a juvenile only after
42 determining that the admission is a product of informed choice.

43 (c) The court may accept an admission only after determining that there is a
44 factual basis for the admission. This determination may be based upon any of the

1 following information: a statement of the facts by the prosecutor; a written statement
2 of the juvenile; sworn testimony which may include reliable hearsay; or a statement of
3 facts by the juvenile's attorney.

4 **"§ 7B-2408. Rules of evidence.**

5 If the juvenile denies the allegations of the petition, the court shall proceed in
6 accordance with the rules of evidence applicable to criminal cases. In addition, no
7 statement made by a juvenile to the intake counselor during the preliminary inquiry
8 and evaluation process shall be admissible prior to the dispositional hearing.

9 **"§ 7B-2409. Quantum of proof in adjudicatory hearing.**

10 The allegations of a petition alleging the juvenile is delinquent shall be proved
11 beyond a reasonable doubt. The allegations in a petition alleging undisciplined
12 behavior shall be proved by clear and convincing evidence.

13 **"§ 7B-2410. Record of proceedings.**

14 All adjudicatory and dispositional hearings and hearings on probable cause and
15 transfer to superior court shall be recorded by stenographic notes or by electronic or
16 mechanical means. Records shall be reduced to a written transcript only when timely
17 notice of appeal has been given. The court may order that other hearings be
18 recorded.

19 **"§ 7B-2411. Adjudication.**

20 If the court finds that the allegations in the petition have been proved as provided
21 in G.S. 7B-2409, the court shall so state. If the court finds that the allegations have
22 not been proved, the court shall dismiss the petition with prejudice and the juvenile
23 shall be released from secure or nonsecure custody if the juvenile is in custody.

24 **"§ 7B-2412. Legal effect of adjudication of delinquency.**

25 An adjudication that a juvenile is delinquent or commitment of a juvenile to the
26 Department shall neither be considered conviction of any criminal offense nor cause
27 the juvenile to forfeit any citizenship rights.

28 **"§ 7B-2413. Predisposition investigation and report.**

29 The court shall proceed to the dispositional hearing upon receipt of sufficient
30 social, medical, psychiatric, psychological, and educational information. No
31 predisposition report shall be submitted to or considered by the court prior to the
32 completion of the adjudicatory hearing. The court shall permit the juvenile to inspect
33 any predisposition report to be considered by the court in making the disposition
34 unless the court determines that disclosure would seriously harm the juvenile's
35 treatment or rehabilitation or would violate a promise of confidentiality. Opportunity
36 to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent,
37 guardian, or custodian at the dispositional hearing. The court may order counsel not
38 to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or
39 custodian if the court finds that disclosure would seriously harm the treatment or
40 rehabilitation of the juvenile or would violate a promise of confidentiality given to a
41 source of information.

42

"ARTICLE 25.

43

"Dispositions.

44 **"§ 7B-2500. Purpose.**

1 The purpose of dispositions in juvenile actions is to design an appropriate plan to
2 meet the needs of the juvenile and to achieve the objectives of the State in exercising
3 jurisdiction, including the protection of the public. The court should develop a
4 disposition in each case that:

5 (1) Promotes public safety;

6 (2) Emphasizes accountability and responsibility of both the parent,
7 guardian, or custodian and the juvenile for the juvenile's conduct;
8 and

9 (3) Provides the appropriate consequences, treatment, training, and
10 rehabilitation to assist the juvenile toward becoming a
11 nonoffending, responsible, and productive member of the
12 community.

13 "§ 7B-2500.1. Dispositional hearing.

14 (a) The dispositional hearing may be informal, and the court may consider written
15 reports or other evidence concerning the needs of the juvenile.

16 (b) The juvenile and the juvenile's parent, guardian, or custodian shall have an
17 opportunity to present evidence, and they may advise the court concerning the
18 disposition they believe to be in the best interests of the juvenile.

19 (c) In choosing among statutorily permissible dispositions, the court shall select the
20 most appropriate disposition both in terms of kind and duration for the delinquent
21 juvenile. Within the guidelines set forth in G.S. 7B-2505, the court shall select a
22 disposition that is designed to protect the public and to meet the needs and best
23 interests of the juvenile, based upon:

24 (1) The seriousness of the offense;

25 (2) The need to hold the juvenile accountable;

26 (3) The importance of protecting the public safety;

27 (4) The degree of culpability indicated by the circumstances of the
28 particular case; and

29 (5) The rehabilitative and treatment needs of the juvenile.

30 (d) The court may dismiss the case, or continue the case for no more than six
31 months in order to allow the family an opportunity to meet the needs of the juvenile
32 through more adequate home supervision, through placement in a private or
33 specialized school or agency, through placement with a relative, or through some
34 other plan approved by the court.

35 "§ 7B-2500.2. Evaluation and treatment of undisciplined and delinquent juveniles.

36 (a) In any case, the court may order that the juvenile be examined by a physician,
37 psychiatrist, psychologist, or other qualified expert as may be needed for the court to
38 determine the needs of the juvenile.

39 (b) Upon completion of the examination, the court shall conduct a hearing to
40 determine whether the juvenile is in need of medical, surgical, psychiatric,
41 psychological, or other evaluation or treatment and who should pay the cost of the
42 evaluation or treatment. The county manager, or any other person who is designated
43 by the chair of the board of county commissioners, of the county of the juvenile's
44 residence shall be notified of the hearing, and allowed to be heard. If the court finds

1 the juvenile to be in need of medical, surgical, psychiatric, psychological, or other
2 evaluation or treatment, the court shall permit the parent, guardian, custodian, or
3 other responsible persons to arrange for evaluation or treatment. If the parent,
4 guardian, or custodian declines or is unable to make necessary arrangements, the
5 court may order the needed evaluation or treatment, surgery, or care, and the court
6 may order the parent to pay the cost of the care pursuant to Article 27 of this
7 Chapter. If the court finds the parent is unable to pay the cost of evaluation or
8 treatment, the court shall order the county to arrange for evaluation or treatment of
9 the juvenile and to pay for the cost of the evaluation or treatment. The county
10 department of social services shall recommend the facility that will provide the
11 juvenile with evaluation or treatment.

12 (c) If the court believes, or if there is evidence presented to the effect that the
13 juvenile is mentally ill or is developmentally disabled, the court shall refer the
14 juvenile to the area mental health, developmental disabilities, and substance abuse
15 services director for appropriate action. A juvenile shall not be committed directly to
16 a State hospital or mental retardation center; and orders purporting to commit a
17 juvenile directly to a State hospital or mental retardation center except for an
18 examination to determine capacity to proceed shall be void and of no effect. The area
19 mental health, developmental disabilities, and substance abuse director shall be
20 responsible for arranging an interdisciplinary evaluation of the juvenile and
21 mobilizing resources to meet the juvenile's needs. If institutionalization is determined
22 to be the best service for the juvenile, admission shall be with the voluntary consent
23 of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a
24 mental hospital or retardation center admission after such institutionalization is
25 recommended by the area mental health, developmental disabilities, and substance
26 abuse director, the signature and consent of the court may be substituted for that
27 purpose. In all cases in which a regional mental hospital refuses admission to a
28 juvenile referred for admission by the court and an area mental health,
29 developmental disabilities, and substance abuse director or discharges a juvenile
30 previously admitted on court referral prior to completion of the juvenile's treatment,
31 the hospital shall submit to the court a written report setting out the reasons for
32 denial of admission or discharge and setting out the juvenile's diagnosis, indications
33 of mental illness, indications of need for treatment, and a statement as to the location
34 of any facility known to have a treatment program for the juvenile in question.

35 **"§ 7B-2501. Dispositional alternatives for undisciplined juveniles.**

36 The following alternatives for disposition shall be available to the court exercising
37 jurisdiction over a juvenile who has been adjudicated undisciplined. The court may
38 combine any of the applicable alternatives when the court finds it to be in the best
39 interests of the juvenile:

- 40 (1) In the case of any juvenile who needs more adequate care or
41 supervision or who needs placement, the judge may:
42 a. Require that the juvenile be supervised in the juvenile's own
43 home by a department of social services in the juvenile's
44 county of residence, a court counselor, or other personnel as

1 may be available to the court, subject to conditions
2 applicable to the parent, guardian, or custodian or the
3 juvenile as the judge may specify; or

4 b. Place the juvenile in the custody of a parent, guardian,
5 custodian, relative, private agency offering placement
6 services, or some other suitable person; or

7 c. Place the juvenile in the custody of a department of social
8 services in the county of the juvenile's residence, or in the
9 case of a juvenile who has legal residence outside the State,
10 in the physical custody of a department of social services in
11 the county where the juvenile is found so that agency may
12 return the juvenile to the responsible authorities in the
13 juvenile's home state. The director may, unless otherwise
14 ordered by the judge, arrange for, provide, or consent to,
15 needed routine or emergency medical or surgical care or
16 treatment. In the case where the parent is unknown,
17 unavailable, or unable to act on behalf of the child or
18 children, the director may, unless otherwise ordered by the
19 judge, arrange for, provide or consent to any psychiatric,
20 psychological, educational, or other remedial evaluations or
21 treatment for the juvenile placed by a judge or the judge's
22 designee in the custody or physical custody of a county
23 department of social services under the authority of this or
24 any other Chapter of the General Statutes. Prior to
25 exercising this authority, the director shall make reasonable
26 efforts to obtain consent from a parent or guardian of the
27 affected child. If the director cannot obtain consent, the
28 director shall promptly notify the parent or guardian that
29 care or treatment has been provided and shall give the
30 parent or guardian frequent status reports on the
31 circumstances of the child. Upon request of a parent or
32 guardian of the affected child, the results or records of the
33 aforementioned evaluations, findings, or treatment shall be
34 made available to the parent or guardian by the director
35 unless prohibited by G.S. 122C-53(d).

36 (2) Place the juvenile under the protective supervision of a court
37 counselor for no more than one year.

38 (3) Excuse the juvenile from compliance with the compulsory school
39 attendance law when the court finds that suitable alternative plans
40 can be arranged by the family through other community resources
41 for one of the following: an education related to the needs or
42 abilities of the juvenile including vocational education or special
43 education; a suitable plan of supervision or placement; or some

1 other plan that the court finds to be in the best interests of the
2 juvenile.

3 **"§ 7B-2502. Conditions of protective supervision for undisciplined juveniles.**

4 The court may place a juvenile on protective supervision pursuant to G.S. 7B-2501
5 so that the court counselor may (i) assist the juvenile in securing social, medical, and
6 educational services and (ii) visit and work with the family as a unit to ensure the
7 juvenile is provided proper supervision and care. The court may impose any
8 combination of the following conditions of protective supervision that are related to
9 the needs of the juvenile, including:

- 10 (1) That the juvenile shall remain on good behavior and not violate any
11 laws;
12 (2) That the juvenile attend school regularly;
13 (3) That the juvenile maintain passing grades in up to four courses
14 during each grading period and meet with the court counselor and
15 a representative of the school to make a plan for how to maintain
16 those passing grades;
17 (4) That the juvenile not associate with specified persons or be in
18 specified places;
19 (5) That the juvenile abide by a prescribed curfew;
20 (6) That the juvenile report to a court counselor as often as required by
21 a court counselor;
22 (7) That the juvenile be employed regularly if not attending school; and
23 (8) That the juvenile satisfy any other conditions determined
24 appropriate by the court.

25 **"§ 7B-2503. Contempt of court for undisciplined juveniles.**

26 Upon motion of the court counselor or on the court's own motion, the court may
27 issue an order directing a juvenile who has been adjudicated undisciplined to appear
28 and show cause why the juvenile should not be held in contempt for willfully failing to
29 comply with an order of the court. The first time the juvenile is held in contempt, the
30 court may order the juvenile confined in an approved detention facility for a period
31 not to exceed 24 hours. The second time the juvenile is held in contempt, the court
32 may order the juvenile confined in an approved detention facility for a period not to
33 exceed three days. The third time and all subsequent times the juvenile is held in
34 contempt, the court may order the juvenile confined in an approved detention facility
35 for a period not to exceed five days.

36 **"§ 7B-2504. Dispositional alternatives for delinquent juveniles.**

37 The court exercising jurisdiction over a juvenile who has been adjudicated
38 delinquent may use the following alternatives in accordance with the dispositional
39 structure set forth in G.S. 7B-2505:

- 40 (1) In the case of any juvenile who needs more adequate care or
41 supervision or who needs placement, the judge may:
42 a. Require that a juvenile be supervised in the juvenile's own
43 home by the department of social services in the juvenile's
44 county, a court counselor, or other personnel as may be

- 1 available to the court, subject to conditions applicable to the
2 parent, guardian, or custodian or the juvenile as the judge
3 may specify; or
4 b. Place the juvenile in the custody of a parent, guardian,
5 custodian, relative, private agency offering placement
6 services, or some other suitable person; or
7 c. Place the juvenile in the custody of the department of social
8 services in the county of his residence, or in the case of a
9 juvenile who has legal residence outside the State, in the
10 physical custody of a department of social services in the
11 county where the juvenile is found so that agency may
12 return the juvenile to the responsible authorities in the
13 juvenile's home state. The director may, unless otherwise
14 ordered by the judge, arrange for, provide, or consent to,
15 needed routine or emergency medical or surgical care or
16 treatment. In the case where the parent is unknown,
17 unavailable, or unable to act on behalf of the child or
18 children, the director may, unless otherwise ordered by the
19 judge, arrange for, provide, or consent to any psychiatric,
20 psychological, educational, or other remedial evaluations or
21 treatment for the juvenile placed by a judge or his designee
22 in the custody or physical custody of a county department of
23 social services under the authority of this or any other
24 Chapter of the General Statutes. Prior to exercising this
25 authority, the director shall make reasonable efforts to
26 obtain consent from a parent or guardian of the affected
27 child. If the director cannot obtain such consent, the
28 director shall promptly notify the parent or guardian that
29 care or treatment has been provided and shall give the
30 parent or guardian frequent status reports on the
31 circumstances of the child. Upon request of a parent or
32 guardian of the affected child, the results or records of the
33 mentioned evaluations, findings, or treatment shall be
34 made available to such parent or guardian by the director
35 unless prohibited by G.S. 122C-53(d).
36 (2) Excuse the juvenile from compliance with the compulsory school
37 attendance law when the court finds that suitable alternative plans
38 can be arranged by the family through other community resources
39 for one of the following: an education related to the needs or
40 abilities of the juvenile including vocational education or special
41 education; a suitable plan of supervision or placement; or some
42 other plan that the court finds to be in the best interests of the
43 juvenile.

- 1 (3) Order the juvenile to cooperate with a community-based program
2 or a professional residential or nonresidential treatment program.
3 Participation in the programs shall not exceed 12 months.
- 4 (4) Require restitution, full or partial, payable within a 12-month
5 period to any person who has suffered loss or damage as a result of
6 the offense committed by the juvenile. The court may determine
7 the amount, terms, and conditions of the restitution. If the juvenile
8 participated with another person or persons, all participants should
9 be jointly and severally responsible for the payment of restitution;
10 however, the court shall not require the juvenile to make
11 restitution if the juvenile satisfies the court that the juvenile does
12 not have, and could not reasonably acquire, the means to make
13 restitution.
- 14 (5) Impose a fine related to the seriousness of the juvenile's offense. If
15 the juvenile has the ability to pay the fine, it shall not exceed the
16 maximum fine for the offense if committed by an adult.
- 17 (6) Order the juvenile to perform supervised community service
18 consistent with the juvenile's age, skill, and ability, specifying the
19 nature of the work and the number of hours required. The work
20 shall be related to the seriousness of the juvenile's offense and in
21 no event may the obligation to work exceed 12 months.
- 22 (7) Order the juvenile to participate in the victim-offender
23 reconciliation program.
- 24 (8) Place the juvenile on probation under the supervision of a court
25 counselor, as specified in G.S. 7B-2506.
- 26 (9) Order that the juvenile shall not be licensed to operate a motor
27 vehicle in the State of North Carolina for as long as the court
28 retains jurisdiction over the juvenile or for any shorter period of
29 time and notify the Division of Motor Vehicles of that order.
- 30 (10) Impose a curfew upon the juvenile.
- 31 (11) Order the juvenile to cooperate with placement in a residential
32 treatment facility or in a group home other than a multipurpose
33 group home operated by a State agency.
- 34 (12) Order the juvenile to cooperate with placement in a wilderness
35 program.
- 36 (13) Impose confinement on an intermittent basis in an approved
37 detention facility. Confinement shall be limited to not more than
38 five 24-hour periods, the timing of which is determined by the
39 court in its discretion.
- 40 (14) Place the juvenile on intensive probation under the supervision of
41 a court counselor.
- 42 (15) Order the juvenile to cooperate with a supervised day program
43 requiring the juvenile to be present at a specified place for all or
44 part of every day or of certain days. The court also may require the

1 juvenile to comply with any other reasonable conditions specified
2 in the dispositional order that are designed to facilitate supervision.

3 (16) Order the juvenile to participate in a regimented training program.

4 (17) Order the juvenile to submit to house arrest.

5 (18) Suspend imposition of a more severe, statutorily permissible
6 disposition with the provision that the juvenile meet certain
7 conditions agreed to by the juvenile and specified in the
8 dispositional order. The conditions shall not exceed the allowable
9 dispositions for the level under which disposition is being imposed.

10 (19) Order that the juvenile be confined in a secure juvenile detention
11 facility for a term of up to 14 24-hour periods, which confinement
12 shall not be imposed consecutively with intermittent confinement
13 pursuant to subdivision (13) of this section at the same
14 dispositional hearing.

15 (20) Order the residential placement of a juvenile in a multipurpose
16 group home operated by a State agency.

17 (21) Commit the juvenile to the Department in accordance with G.S.
18 7B-2509 for a period of not less than six months.

19 "§ 7B-2504.1. Delinquency history levels.

20 (a) Generally. -- The delinquency history level for a delinquent juvenile is
21 determined by calculating the sum of the points assigned to each of the juvenile's prior
22 adjudications and to the juvenile's probation status, if any, that the court finds to
23 have been proved in accordance with this section.

24 (b) Points. -- Points are assigned as follows:

25 (1) For each prior adjudication of a Class A through E felony offense, 4
26 points.

27 (2) For each prior adjudication of a Class F through I felony offense or
28 Class A1 misdemeanor offense, 2 points.

29 (3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor
30 offense, 1 point.

31 (4) If the juvenile was on probation at the time of adjudication, 2
32 points.

33 (c) Delinquency History Levels. -- The delinquency history levels are:

34 (1) Low -- No more than 1 point.

35 (2) Medium -- At least 2, but not more than 3 points.

36 (3) High -- At least 4 points.

37 In determining the delinquency history level, the classification of a prior offense is
38 the classification assigned to that offense at the time the juvenile committed the
39 offense for which disposition is being ordered.

40 (d) Multiple Prior Adjudications Obtained in One Court Session. -- For purposes of
41 determining the delinquency history level, if a juvenile is adjudicated delinquent for
42 more than one offense in a single session of district court, only the adjudication for the
43 offense with the highest point total is used.

1 (e) Classification of Prior Adjudications From Other Jurisdictions. -- Except as
2 otherwise provided in this subsection, an adjudication occurring in a jurisdiction other
3 than North Carolina is classified as a Class I felony if the jurisdiction in which the
4 offense occurred classifies the offense as a felony, or is classified as a Class 3
5 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as
6 a misdemeanor. If the juvenile proves by the preponderance of the evidence that an
7 offense classified as a felony in the other jurisdiction is substantially similar to an
8 offense that is a misdemeanor in North Carolina, the conviction is treated as that class
9 of misdemeanor for assigning delinquency history level points. If the State proves by
10 the preponderance of the evidence that an offense classified as either a misdemeanor
11 or a felony in the other jurisdiction is substantially similar to an offense in North
12 Carolina that is classified as a Class I felony or higher, the conviction is treated as
13 that class of felony for assigning delinquency history level points. If the State proves
14 by the preponderance of the evidence that an offense classified as a misdemeanor in
15 the other jurisdiction is substantially similar to an offense classified as a Class A1
16 misdemeanor in North Carolina, the adjudication is treated as a Class A1
17 misdemeanor for assigning delinquency history level points.

18 (f) Proof of Prior Adjudications. -- A prior adjudication shall be proved by any of
19 the following methods:

- 20 (1) Stipulation of the parties.
- 21 (2) An original or copy of the court record of the prior adjudication.
- 22 (3) A copy of records maintained by the Division of Criminal
23 Information or by the Department.
- 24 (4) Any other method found by the court to be reliable.

25 The State bears the burden of proving, by a preponderance of the evidence, that a
26 prior adjudication exists and that the juvenile before the court is the same person as
27 the juvenile named in the prior adjudication. The original or a copy of the court
28 records or a copy of the records maintained by the Division of Criminal Information
29 or of the Department, bearing the same name as that by which the juvenile is
30 charged, is prima facie evidence that the juvenile named is the same person as the
31 juvenile before the court, and that the facts set out in the record are true. For
32 purposes of this subsection, 'a copy' includes a paper writing containing a
33 reproduction of a record maintained electronically on a computer or other data
34 processing equipment, and a document produced by a facsimile machine. The
35 prosecutor shall make all feasible efforts to obtain and present to the court the
36 juvenile's full record. Evidence presented by either party at trial may be utilized to
37 prove prior adjudications. If asked by the juvenile, the prosecutor shall furnish the
38 juvenile's prior adjudications to the juvenile within a reasonable time sufficient to
39 allow the juvenile to determine if the record available to the prosecutor is accurate.
40 "§ 7B-2505. Dispositional limits for each class of offense and delinquency history
41 level.

42 (a) Offense Classification. -- The offense classifications are as follows:

- 43 (1) Violent -- adjudication of a Class A through E felony offense;

1
2 MINOR Level 1 Level 1 or 2 Level 2.
3

4 (g) The court may consider as a mitigating factor evidence of a juvenile's
5 cooperation with law enforcement in providing information about other persons with
6 whom the juvenile acted in the commission of the offense for which the juvenile was
7 adjudicated. A mitigating factor may be used in determining the appropriate
8 dispositional options within the level prescribed by the dispositional chart in subsection
9 (f) of this section.

10 (h) If a juvenile is adjudicated of more than one offense at the same time, the
11 court shall consolidate the offenses for disposition and impose a single disposition for
12 the consolidated offenses. The disposition shall be specified for the class of offense and
13 delinquency history level of the most serious offense.

14 "§ 7B-2506. Conditions of probation; violation of probation.

15 (a) In any case where a juvenile is placed on probation pursuant to G.S. 7B-2504(8),
16 the court counselor shall have the authority to visit the juvenile where the juvenile
17 resides. The court may impose conditions of probation that are related to the needs of
18 the juvenile and that are reasonably necessary to ensure that the juvenile will lead a
19 law-abiding life, including:

- 20 (1) That the juvenile shall remain on good behavior and not violate any
21 laws.
22 (2) That the juvenile attend school regularly.
23 (3) That the juvenile maintain passing grades in up to four courses
24 during each grading period and meet with the court counselor and
25 a representative of the school to make a plan for how to maintain
26 those passing grades.
27 (4) That the juvenile not associate with specified persons or be in
28 specified places.
29 (5) That the juvenile remain free of any controlled substance included
30 in any schedule of Article 5 of Chapter 90 of the General Statutes,
31 the Controlled Substances Act, and the juvenile submit to random
32 drug testing.
33 (6) That the juvenile abide by a prescribed curfew.
34 (7) That the juvenile submit to a warrantless search at reasonable
35 times.
36 (8) That the juvenile possess no firearm, explosive device, or other
37 deadly weapon.
38 (9) That the juvenile report to a court counselor as often as required by
39 a court counselor.
40 (10) That the juvenile make specified financial restitution or pay a fine
41 in accordance with G.S. 7B-2504(4) and (5).
42 (11) That the juvenile be employed regularly if not attending school.
43 (12) That the juvenile satisfy any other conditions determined
44 appropriate by the court.

1 (b) In addition to the regular conditions of probation specified in subsection (a) of
2 this section, the court may order the juvenile to comply, if directed to comply by the
3 court counselor, with one or more of the following conditions:

- 4 (1) Perform up to 20 hours of community service;
- 5 (2) Submit to substance abuse monitoring and treatment;
- 6 (3) Cooperate with electronic monitoring;
- 7 (4) Cooperate with intensive supervision; and
- 8 (5) Participate in a life skills or an educational skills program
9 administered by the Department.

10 (c) An order of probation shall remain in force for a period not to exceed two years
11 from the date entered. Prior to expiration of an order of probation, the court may
12 extend it for an additional period of one year after a hearing if the court finds that
13 the extension is necessary to protect the community or to safeguard the welfare of the
14 juvenile.

15 (d) If the juvenile violates the conditions of probation set by the court, the court
16 may elect to continue the original conditions of probation, modify the conditions of
17 probation, or, except as provided in subsection (e) of this section, order a new
18 disposition at the next higher level on the disposition chart in G.S. 7B-2505. In the
19 court's discretion, part of the new disposition may include an order of confinement in
20 a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-
21 2505.

22 "§ 7B-2507. Probation review.

23 The court may review the progress of any juvenile on probation at any time during
24 the period of probation or at the end of probation. Except as provided in G.S. 7B-
25 2506, the conditions or duration of probation may be modified only as provided in
26 this Subchapter and only after there is notice and a hearing. If a juvenile violates the
27 conditions of probation, the juvenile and the juvenile's parent, guardian, or custodian
28 after notice may be required to appear before the court and the court may make any
29 disposition of the matter authorized by this Subchapter. At the end of or at any time
30 during probation, the court may terminate probation by written order upon finding
31 that there is no further need for supervision. The finding and order terminating
32 probation may be entered in chambers in the absence of the juvenile and may be
33 based on a report from the court counselor or, at the election of the court, the order
34 may be entered with the juvenile present after notice and a hearing.

35 "§ 7B-2508. Dispositional order.

36 The dispositional order shall be in writing and shall contain appropriate findings of
37 fact and conclusions of law. The court shall state with particularity, both orally and in
38 the written order of disposition, the precise terms of the disposition including the
39 kind, duration, and the person who is responsible for carrying out the disposition and
40 the person or agency in whom custody is vested.

41 "§ 7B-2509. Commitment of delinquent juvenile to Department.

42 (a) Pursuant to G.S. 7B-2504 and G.S. 7B-2505, the court may commit a
43 delinquent juvenile who is at least 10 years of age to the Department for placement in
44 one of the residential facilities operated by the Department. Commitment shall be for

1 a definite or indefinite term of at least six months. In no event shall the term exceed
2 the nineteenth birthday of the juvenile.

3 (b) The court may commit a juvenile to a definite term of not more than two
4 years if the court finds that the juvenile is 14 years of age or older, has been
5 previously adjudicated delinquent for two or more felony offenses, and has been
6 previously committed to a residential facility operated by the Department.

7 (c) The chief court counselor shall have the responsibility for transporting the
8 juvenile to the residential facility designated by the Department. The juvenile shall be
9 accompanied to the residential facility by a person of the same sex.

10 (d) The chief court counselor shall ensure that the records requested by the
11 Secretary or the Secretary's designee accompany the juvenile upon transportation for
12 admittance to a training school or, if not obtainable at the time of admission, are sent
13 to the training school within 15 days of the admission. If records requested by the
14 Department for admission do not exist, to the best knowledge of the chief court
15 counselor, the chief court counselor shall so stipulate in writing to the training school.
16 If such records do exist, but the chief court counselor is unable to obtain copies of
17 them, a district court may order that the records from public agencies be made
18 available to the training school. Records that are confidential by law shall remain
19 confidential and the Department shall be bound by the specific laws governing the
20 confidentiality of these records. All records shall be used in a manner consistent with
21 the best interests of the juvenile.

22 (e) A commitment order accompanied by information requested by the Secretary
23 shall be forwarded to the Department. The Secretary shall place the juvenile in the
24 residential facility that would best provide for the juvenile's needs and shall notify the
25 committing court. The Secretary may assign a juvenile committed for delinquency to
26 any institution or other program of the Department or licensed by the Department,
27 which program is appropriate to the needs of the juvenile.

28 (f) When the court commits a juvenile to the Department, the Secretary shall
29 prepare a plan for care or treatment within 30 days after assuming custody of the
30 juvenile.

31 (g) Commitment of a juvenile to the Department does not terminate the court's
32 continuing jurisdiction over the juvenile and the juvenile's parent, guardian, or
33 custodian. Commitment of a juvenile to the Department transfers only physical
34 custody of the juvenile. Legal custody remains with the parent, guardian, custodian,
35 agency, or institution in whom it was vested.

36 (h) Pending placement of a juvenile with the Department, the court may house a
37 juvenile who has been adjudicated delinquent for an offense that would be a Class A,
38 B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72
39 hours if the court, based on the information provided by the court counselor,
40 determines that no acceptable alternative placement is available and the protection of
41 the public requires that the juvenile be housed in a holdover facility.

42 "§ 7B-2510. Post-release supervision planning; release.

43 (a) The Secretary shall be responsible for evaluation of the progress of each
44 juvenile at least once every six months as long as the juvenile remains in the care of

1 the Department. If the Secretary determines that a juvenile is ready for release, the
2 Secretary shall initiate a post-release supervision planning process. The post-release
3 supervision planning process shall be defined by rules and regulations of the
4 Department, but shall include the following:

5 (1) Written notification shall be given to the court that ordered
6 commitment.

7 (2) A post-release supervision planning conference shall be held
8 involving as many as possible of the following: the juvenile, the
9 juvenile's parent, guardian, or custodian, court counselors who
10 have supervised the juvenile on probation or will supervise the
11 juvenile on post-release supervision, and staff of the facility that
12 found the juvenile ready for release. The planning conference shall
13 include personal contact and evaluation rather than telephonic
14 notification.

15 (3) The planning conference participants shall consider, based on the
16 individual needs of the juvenile and pursuant to rules adopted by
17 the Department, placement of the juvenile in any program under
18 the auspices of the Department, including the Community-Based
19 Alternatives programs, that, in the judgment of the Department,
20 may serve as a transitional placement, pending release under G.S.
21 7B-2512.

22 (b) The Department shall develop the plan in writing and base the terms on the
23 needs of the juvenile and the protection of the public. Every plan shall require the
24 juvenile to complete at least 90 days of post-release supervision.

25 (c) The Department shall release a juvenile under a plan of post-release supervision
26 at least 90 days prior to the later of:

27 (1) Completion of the juvenile's definite term of commitment; or

28 (2) If the juvenile is committed for an indefinite term, either on the
29 juvenile's eighteenth birthday if no motion for extended jurisdiction
30 has been filed pursuant to G.S. 7B-2513 or on the juvenile's
31 nineteenth birthday.

32 (d) Notwithstanding Articles 30 and 31 of Subchapter III of this Chapter, before
33 the court releases a juvenile who is serving a commitment for a Class A or B1 felony
34 to post-release supervision, the Department shall notify, at least 45 days in advance of
35 the scheduled release date, by first-class mail at the last known address:

36 (1) The juvenile;

37 (2) The juvenile's parent, guardian, or custodian;

38 (3) The district attorney of the district where the juvenile was
39 adjudicated;

40 (4) The head law enforcement agency that took the juvenile into
41 custody; and

42 (5) The victim and any of the victim's immediate family members who
43 have requested in writing to be notified.

1 The notification shall include only the juvenile's name, offense, date of
2 commitment, and date of consideration for release. A copy of the notice shall be
3 placed in the juvenile's file.

4 (e) The Department may release a juvenile under an indefinite commitment to
5 post-release supervision only after the juvenile has been committed for a period of at
6 least six months.

7 (f) A juvenile committed to the Department for a definite term shall receive credit
8 toward that term for the time the juvenile spends on post-release supervision.

9 "§ 7B-2511. Revocation of post-release supervision.

10 If a juvenile fails to complete the terms of post-release supervision, the court
11 counselor providing post-release supervision may make a motion for review in the
12 court in the district where the juvenile has been residing during post-release
13 supervision. The court shall hold a hearing to determine whether there has been a
14 violation. With respect to any hearing pursuant to this section, the juvenile:

15 (1) Shall have reasonable notice in writing of the nature and content
16 of the allegations in the motion, including notice that the purpose
17 of the hearing is to determine whether the juvenile has violated the
18 terms of post-release supervision to the extent that post-release
19 supervision should be revoked;

20 (2) Shall be represented by an attorney at the hearing;

21 (3) Shall have the right to confront and cross-examine any persons
22 who have made allegations against the juvenile; and

23 (4) May admit, deny, or explain the violation alleged and may present
24 proof, including affidavits or other evidence, in support of the
25 juvenile's contentions. A record of the proceeding shall be made
26 and preserved in the juvenile's record.

27 If the court determines that the juvenile has violated the terms of post-release
28 supervision, the court may revoke the post-release supervision or make any other
29 disposition authorized by this Subchapter.

30 If the court revokes the post-release supervision, the chief court counselor shall
31 have the responsibility for returning the juvenile to the facility specified by the
32 Department.

33 "§ 7B-2512. Final discharge.

34 (a) The Department shall release a juvenile only after the juvenile completes post-
35 release supervision or when the juvenile is released to the Department of Correction
36 pursuant to G.S. 15A-1340.16B.

37 (b) Notwithstanding the provisions of this section, in no event shall a juvenile
38 remain committed after the juvenile's eighteenth birthday except pursuant to G.S.
39 7B-2513.

40 "§ 7B-2513. Extended jurisdiction under certain circumstances; review hearing.

41 (a) By order of the court, juvenile court jurisdiction over a juvenile may be
42 extended past the age of 18 years until the person reaches the person's nineteenth
43 birthday. The provisions of this Subchapter shall apply to any person under the

1 jurisdiction of the juvenile court pursuant to this section, regardless of whether the
2 term 'person' or 'juvenile' is used in the provision.

3 (b) When the chief court counselor, or the Department if the juvenile is committed
4 to the Department, determines a juvenile should remain under the jurisdiction of the
5 court for a period of time after the age of 18 years, the chief court counselor or
6 Department shall file a motion for a review hearing in the judicial district where the
7 juvenile was adjudicated. This motion shall be filed at least 180 days prior to the
8 eighteenth birthday of the juvenile. The chief court counselor or Department shall
9 notify the juvenile, the juvenile's attorney, and the juvenile's parent, guardian, or
10 custodian in writing of the date and time of the scheduled hearing at least 10 days
11 prior to the scheduled hearing date.

12 (c) Within 30 days after the motion is filed, the court shall conduct a review
13 hearing to determine whether the juvenile shall remain under the jurisdiction of the
14 court. The court counselor and the prosecutor shall attend the hearing and, if the
15 court requests, present testimony or evidence as to whether the juvenile continues to
16 be in need of and can benefit from further treatment or services.

17 (d) In determining whether to order that the juvenile remain under the
18 jurisdiction of the court, the court shall consider:

- 19 (1) The recommendation of the chief court counselor or the Secretary
20 based on the juvenile's progress;
- 21 (2) The likelihood that continued jurisdiction will lead to further
22 rehabilitation;
- 23 (3) The safety and protection of the facility's juvenile population, if
24 applicable; and
- 25 (4) The protection of the public.

26 (e) If the court orders the juvenile remain under the jurisdiction of the court and
27 the juvenile is committed to the Department, commitment shall be for a definite term
28 or an indefinite term not to exceed the nineteenth birthday of the person.

29 (f) The Secretary shall modify the plan for care or treatment of the juvenile
30 prepared pursuant to G.S. 7B-2509.

31 "§ 7B-2514. Transfer authority of Governor.

32 The Governor may order transfer of any person less than 18 years of age from any
33 jail or penal facility of the State to one of the residential facilities operated by the
34 Department in appropriate circumstances, provided the Governor shall consult with
35 the Department concerning the feasibility of the transfer in terms of available space,
36 staff, and suitability of program.

37 When an inmate, committed to the Department of Correction, is transferred by the
38 Governor to a residential program operated by the Department, the Department may
39 release the juvenile based on the needs of the juvenile and the best interests of the
40 State. Transfer shall not divest the probation or parole officer of the officer's
41 responsibility to supervise the inmate on release.

42 "ARTICLE 26.

43 "Modification and Enforcement of Dispositional Orders; Appeals.

44 "§ 7B-2600. Authority to modify or vacate.

1 (a) Upon motion in the cause or petition, and after notice, the court may conduct
2 a review hearing to determine whether the order of the court is in the best interests
3 of the juvenile, and the court may modify or vacate the order in light of changes in
4 circumstances or the needs of the juvenile.

5 (b) In a case of delinquency, the court may reduce the nature or the duration of
6 the disposition on the basis that it was imposed in an illegal manner or is unduly
7 severe with reference to the seriousness of the offense, the culpability of the juvenile,
8 or the dispositions given to juveniles convicted of similar offenses.

9 (c) In any case where the court finds the juvenile to be delinquent or
10 undisciplined, the jurisdiction of the court to modify any order or disposition made in
11 the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile
12 reaches the age of 19 years, if the court has extended jurisdiction, or (iii) until
13 terminated by order of the court.

14 **"§ 7B-2601. Request for modification for lack of suitable services.**

15 If the Secretary finds that any juvenile committed to the Department's care is not
16 suitable for its program, the Secretary may make a motion in the cause so that the
17 court may make an alternative disposition that is consistent with G.S. 7B-2505.

18 **"§ 7B-2602. Right to appeal.**

19 Upon motion of a proper party as defined in G.S. 7B-2603, review of any final
20 order of the court in a juvenile matter under this Article shall be before the Court of
21 Appeals. Notice of appeal shall be given in open court at the time of the hearing or
22 in writing within 10 days after entry of the order. However, if no disposition is made
23 within 60 days after entry of the order, written notice of appeal may be given within
24 70 days after such entry. A final order shall include:

25 (1) Any order finding absence of jurisdiction;

26 (2) Any order which in effect determines the action and prevents a
27 judgment from which appeal might be taken;

28 (3) Any order of disposition after an adjudication that a juvenile is
29 delinquent or undisciplined; or

30 (4) Any order modifying custodial rights.

31 **"§ 7B-2603. Proper parties for appeal.**

32 An appeal may be taken by the juvenile, the juvenile's parent, guardian, or
33 custodian, or the State or county agency. The State's appeal is limited to the
34 following orders in delinquency or undisciplined cases:

35 (1) An order finding a State statute to be unconstitutional; and

36 (2) Any order which terminates the prosecution of a petition by
37 upholding the defense of double jeopardy, by holding that a cause
38 of action is not stated under a statute, or by granting a motion to
39 suppress.

40 **"§ 7B-2604. Disposition pending appeal.**

41 Pending disposition of an appeal, the release of the juvenile, with or without
42 conditions, should issue in every case unless the court orders otherwise. For
43 compelling reasons which must be stated in writing, the court may enter a temporary

1 order affecting the custody or placement of the juvenile as the court finds to be in the
2 best interests of the juvenile or the State.

3 "§ 7B-2605. Disposition after appeal.

4 Upon the affirmation of the order of adjudication or disposition of the court by the
5 Court of Appeals or by the Supreme Court in the event of an appeal, the court shall
6 have authority to modify or alter the original order of adjudication or disposition as
7 the court finds to be in the best interests of the juvenile to reflect any adjustment
8 made by the juvenile or change in circumstances during the period of time the appeal
9 was pending. If the modifying order is entered ex parte, the court shall give notice to
10 interested parties to show cause within 10 days thereafter as to why the modifying
11 order should be vacated or altered.

12 "ARTICLE 27.

13 "Authority Over Parents of Juveniles

14 Adjudicated Delinquent or Undisciplined.

15 "§ 7B-2700. Appearance in court.

16 (a) The parent, guardian, or custodian of a juvenile under the jurisdiction of the
17 juvenile court shall attend the hearings of which the parent, guardian, or custodian
18 receives notice. The court may excuse the appearance of either or both parents or the
19 guardian or custodian at subsequent hearings. Unless so excused, the willful failure of
20 a parent, guardian, or custodian to attend a hearing of which the parent, guardian, or
21 custodian has notice shall be grounds for contempt.

22 (b) No employer may discharge or demote any employee because the employee is
23 required to appear in court pursuant to this section. Any employer who violates any
24 provision of this section shall be liable in a civil action for reasonable damages
25 suffered by an employee as a result of the violation, and an employee discharged or
26 demoted in violation of this section shall be entitled to be reinstated to the employee's
27 former position. The burden of proof shall be upon the employee. The statute of
28 limitations for actions under this section shall be one year pursuant to G.S. 1-54.

29 "§ 7B-2701. Parental responsibility classes.

30 The court may order the parent of a juvenile who has been adjudicated
31 undisciplined or delinquent to attend parental responsibility classes if those classes are
32 available in the judicial district in which the parent resides.

33 "§ 7B-2702. Medical, surgical, psychiatric, or psychological evaluation or treatment of
34 juvenile or parent.

35 (a) If the court orders medical, surgical, psychiatric, psychological, or other
36 evaluation or treatment pursuant to G.S. 7B-2500.2, the court may order the parent
37 or other responsible parties to pay the cost of the treatment or care ordered.

38 (b) At the dispositional hearing or a subsequent hearing, if the court finds that it
39 is in the best interests of the juvenile for the parent, guardian, or custodian to be
40 directly involved in the juvenile's evaluation or treatment, the court may order that
41 person to participate in medical, psychiatric, psychological, or other evaluation or
42 treatment of the juvenile. The cost of the evaluation or treatment shall be paid
43 pursuant to G.S. 7B-2500.2.

1 (c) At the dispositional hearing or a subsequent hearing, the court may determine
2 whether the best interests of the juvenile require that the parent, guardian, or
3 custodian undergo psychiatric, psychological, or other evaluation or treatment or
4 counseling directed toward remedying behaviors or conditions that led to or
5 contributed to the juvenile's adjudication or to the court's decision to remove custody
6 of the juvenile from the parent, guardian, or custodian. If the court finds that the best
7 interests of the juvenile require the parent, guardian, or custodian undergo evaluation
8 or treatment, it may order that person to comply with a plan of evaluation or
9 treatment approved by the court or condition legal custody or physical placement of
10 the juvenile with the parent, guardian, or custodian upon that person's compliance
11 with the plan of evaluation or treatment.

12 (d) In cases in which the court has ordered the parent of the juvenile, rather than
13 a guardian or custodian, to comply with or undergo evaluation or treatment, the
14 court may order the parent to pay the cost of evaluation or treatment ordered
15 pursuant to this subsection. In cases in which the court has conditioned legal custody
16 or physical placement of the juvenile with the parent upon the parent's compliance
17 with a plan of evaluation or treatment, the court may charge the cost of the
18 evaluation or treatment to the county of the juvenile's residence if the court finds the
19 parent is unable to pay the cost of the evaluation or treatment. In all other cases, if
20 the court finds the parent is unable to pay the cost of the evaluation or treatment
21 ordered pursuant to this subsection, the court may order the parent to receive
22 evaluation or treatment currently available from the area mental health program that
23 serves the parent's catchment area.

24 **"§ 7B-2703. Compliance with orders of court.**

25 (a) The court may order the parent, guardian, or custodian, to the extent that
26 person is able to do so, to provide transportation for a juvenile to keep an
27 appointment with a court counselor or to comply with other orders of the court.

28 (b) The court may order a parent, guardian, or custodian to cooperate with and
29 assist the juvenile in complying with the terms and conditions of probation or other
30 orders of the court.

31 **"§ 7B-2704. Payment of support or other expenses; assignment of insurance coverage.**

32 At the dispositional hearing or a subsequent hearing, if the court finds that the
33 parent is able to do so, the court may order the parent to:

34 (1) Pay a reasonable sum that will cover in whole or in part the
35 support of the juvenile. If the court requires the payment of child
36 support, the amount of the payments shall be determined as
37 provided in G.S. 50-13.4;

38 (2) Pay a fee for probation supervision or residential facility costs;

39 (3) Assign private insurance coverage to cover medical costs while the
40 juvenile is in secure detention, training school, or other out-of-home
41 placement; and

42 (4) Pay court-appointed attorneys' fees.

43 If the court places a juvenile in the custody of a county department of social services
44 and if the court finds that the parent is unable to pay the cost of the support required

1 by the juvenile, the cost shall be paid by the county department of social services in
2 whose custody the juvenile is placed, provided the juvenile is not receiving care in an
3 institution owned or operated by the State or federal government or any subdivision
4 thereof.

5 **"§ 7B-2705. Contempt for failure to comply.**

6 Upon motion of the court counselor or prosecutor or upon the court's own
7 motion, the court may issue an order directing the parent, guardian, or custodian to
8 appear and show cause why the parent, guardian, or custodian should not be found or
9 held in civil or criminal contempt for willfully failing to comply with an order of the
10 court. Chapter 5A of the General Statutes shall govern contempt proceedings initiated
11 pursuant to this Article.

12 **"ARTICLE 28.**

13 **"Interstate Compact on Juveniles.**

14 **"§ 7B-2800. Execution of Compact.**

15 The Governor is hereby authorized and directed to execute a Compact on behalf
16 of this State with any other state or states legally joining therein in the form
17 substantially as follows: The contracting states solemnly agree.

18 **"§ 7B-2801. Findings and purposes.**

19 Juveniles who are not under proper supervision and control, or who have
20 absconded, escaped, or run away, are likely to endanger their own health, morals,
21 and welfare, and the health, morals, and welfare of others. The cooperation of the
22 states party to this Compact is therefore necessary to provide for the welfare and
23 protection of juveniles and of the public with respect to:

- 24 (1) Cooperative supervision of delinquent juveniles on probation or
25 parole;
26 (2) The return, from one state to another, of delinquent juveniles who
27 have escaped or absconded;
28 (3) The return, from one state to another, of nondelinquent juveniles
29 who have run away from home; and
30 (4) Additional measures for the protection of juveniles and of the
31 public, which any two or more of the party states may find
32 desirable to undertake cooperatively.

33 In carrying out the provisions of this Compact, the party states shall be guided by
34 the noncriminal, reformatory, and protective policies which guide their laws
35 concerning delinquent, neglected, or dependent juveniles generally. It shall be the
36 policy of the states party to this Compact to cooperate and observe their respective
37 responsibilities for the prompt return and acceptance of juveniles and delinquent
38 juveniles who become subject to the provisions of this Compact. The provisions of
39 this Compact shall be reasonably and liberally construed to accomplish the foregoing
40 purposes.

41 **"§ 7B-2802. Existing rights and remedies.**

42 All remedies and procedures provided by this Compact are in addition to and not
43 in substitution for other rights, remedies, and procedures and are not in derogation of
44 parental rights and responsibilities.

1 "§ 7B-2803. Definitions.

2 For the purposes of this Compact, 'delinquent juvenile' means any juvenile who
3 has been adjudged delinquent and who, at the time the provisions of this Compact
4 are invoked, is still subject to the jurisdiction of the court that has made adjudication
5 or to the jurisdiction or supervision of an agency or institution pursuant to an order
6 of the court; 'probation or parole' means any kind of post-release supervision of
7 juveniles authorized under the laws of the states party hereto; 'court' means any court
8 having jurisdiction over delinquent, neglected, or dependent children; 'state' means
9 any state, territory, or possession of the United States, the District of Columbia, and
10 the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a
11 place at which a home or regular place of abode is maintained.

12 "§ 7B-2804. Return of runaways.

13 (a) The parent, guardian, person, or agency entitled to legal custody of a juvenile
14 who has not been adjudged delinquent but who has run away without the consent of
15 the parent, guardian, person, or agency may petition the appropriate court in the
16 demanding state for the issuance of a requisition for the juvenile's return. The
17 petition shall state the name and age of the juvenile, the name of the petitioner and
18 the basis of entitlement to the juvenile's custody, the circumstances of the running
19 away, the juvenile's location if known at the time application is made, and any other
20 facts that may tend to show that the juvenile who has run away is endangering the
21 juvenile's own welfare or the welfare of others and is not an emancipated minor. The
22 petition shall be verified by affidavit, shall be executed in duplicate, and shall be
23 accompanied by two certified copies of the document or documents on which the
24 petitioner's entitlement to the juvenile's custody is based, such as birth certificates,
25 letters of guardianship, or custody decrees. Any further affidavits and other
26 documents as may be deemed proper may be submitted with the petition. The judge
27 of the court to which this application is made may hold a hearing thereon to
28 determine whether for the purposes of this Compact the petitioner is entitled to the
29 legal custody of the juvenile, whether or not it appears that the juvenile has in fact
30 run away without consent, whether or not the juvenile is an emancipated minor, and
31 whether or not it is in the best interests of the juvenile to compel the juvenile's return
32 to the state. If the judge determines, either with or without a hearing, that the
33 juvenile should be returned, the judge shall present to the appropriate court or to the
34 executive authority of the state where the juvenile is alleged to be located a written
35 requisition for the return of the juvenile. The requisition shall set forth the name and
36 age of the juvenile, the determination of the court that the juvenile has run away
37 without the consent of a parent, guardian, person, or agency entitled to legal custody,
38 and that it is in the best interests and for the protection of the juvenile that the
39 juvenile be returned. In the event that a proceeding for the adjudication of the
40 juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at
41 the time when the juvenile runs away, the court may issue a requisition for the return
42 of the juvenile upon its own motion, regardless of the consent of the parent, guardian,
43 person, or agency entitled to legal custody, reciting therein the nature and
44 circumstances of the pending proceeding. The requisition shall in every case be

1 executed in duplicate and shall be signed by the judge. One copy of the requisition
2 shall be filed with the Compact Administrator of the demanding state, there to
3 remain on file subject to the provisions of law governing records of the court. Upon
4 the receipt of a requisition demanding the return of a juvenile who has run away, the
5 court or the executive authority to whom the requisition is addressed shall issue an
6 order to any peace officer or other appropriate person directing that person to take
7 into custody and detain the juvenile. The detention order must substantially recite the
8 facts necessary to the validity of its issuance hereunder. No juvenile detained upon
9 the order shall be delivered over to the officer whom the court has appointed to
10 receive the juvenile unless the juvenile first is taken before a judge of a court in the
11 state, who shall inform the juvenile of the demand made for the juvenile's return, and
12 who may appoint counsel or guardian ad litem for the juvenile. If the court finds that
13 the requisition is in order, the court shall deliver the juvenile over to the officer
14 appointed to receive the juvenile by the court demanding the juvenile. The court,
15 however, may fix a reasonable time to be allowed for the purpose of testing the
16 legality of the proceeding.

17 Upon reasonable information that a person is a juvenile who has run away from
18 another state party to this Compact without the consent of a parent, guardian, person,
19 or agency entitled to legal custody, the juvenile may be taken into custody without a
20 requisition and brought before a judge of the appropriate court who may appoint
21 counsel or guardian ad litem for the juvenile and who shall determine after a hearing
22 whether sufficient cause exists to hold the person, subject to the order of the court,
23 for the juvenile's own protection and welfare, for such a time not exceeding 90 days
24 as will enable the return of the juvenile to another state party to this Compact
25 pursuant to a requisition for return from a court of that state. If, at the time when a
26 state seeks the return of a juvenile who has run away, there is pending in the state
27 wherein the juvenile is found, any criminal charge, or any proceeding to have the
28 juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the
29 juvenile is suspected of having committed within the state a criminal offense or an act
30 of juvenile delinquency, the juvenile shall not be returned without the consent of the
31 state until discharged from prosecution or other form of proceeding, imprisonment,
32 detention, or supervision for the offense or juvenile delinquency. The duly accredited
33 officers of any state party to this Compact, upon the establishment of their authority
34 and the identity of the juvenile being returned, shall be permitted to transport the
35 juvenile through any and all states party to this Compact, without interference. Upon
36 return of the juvenile to the state from which the juvenile ran away, the juvenile shall
37 be subject to such further proceedings as may be appropriate under the laws of that
38 state.

39 (b) The state to which the juvenile is returned under this Article shall be
40 responsible for payment of the transportation costs of return.

41 (c) The term 'juvenile' as used in this Article means any person who is a minor
42 under the law of the state of residence of the parent, guardian, person, or agency
43 entitled to the legal custody of the minor.

44 "§ 7B-2805. Return of escapees and absconders.

1 (a) The appropriate person or authority from whose probation or parole
2 supervision a delinquent juvenile has absconded or from whose institutional custody a
3 delinquent juvenile has escaped shall present to the appropriate court or to the
4 executive authority of the state where the delinquent juvenile is alleged to be located
5 a written requisition for the return of the delinquent juvenile. The requisition shall
6 state the name and age of the delinquent juvenile, the particulars of the juvenile's
7 adjudication as a delinquent juvenile, the circumstances of the breach of the terms of
8 probation or parole or of the juvenile's escape from an institution or agency vested
9 with legal custody or supervision, and the location of the delinquent juvenile, if
10 known, at the time the requisition is made. The requisition shall be verified by
11 affidavit, shall be executed in duplicate, and shall be accompanied by two certified
12 copies of the judgment, formal adjudication, or order of commitment which subjects
13 the delinquent juvenile to probation or parole or to the legal custody of the
14 institution or agency concerned. Any further affidavits and documents as may be
15 deemed proper may be submitted with the requisition. One copy of the requisition
16 shall be filed with the Compact Administrator of the demanding state, there to
17 remain on file subject to the provisions of the law governing records of the
18 appropriate court. Upon the receipt of a requisition demanding the return of a
19 delinquent juvenile who has absconded or escaped, the court or the executive
20 authority to whom the requisition is addressed shall issue an order to any peace
21 officer or other appropriate person directing the person to take into custody and
22 detain such delinquent juvenile. The detention order must substantially recite the
23 facts necessary to the validity of its issuance hereunder. No delinquent juvenile
24 detained upon the order shall be delivered over to the officer whom the appropriate
25 person or authority demanding the juvenile has appointed to receive the juvenile,
26 unless the juvenile is first taken forthwith before a judge of an appropriate court in
27 the state, who shall inform the juvenile of the demand made for the return and who
28 may appoint counsel or guardian ad litem for the juvenile. If the judge of the court
29 finds that the requisition is in order, the judge shall deliver the delinquent juvenile
30 over to the officer whom the appropriate person or authority demanding the juvenile
31 appointed to receive the juvenile. The judge, however, may fix a reasonable time to
32 be allowed for the purpose of testing the legality of the proceeding.

33 Upon reasonable information that a person is a delinquent juvenile who has
34 absconded while on probation or parole, or escaped from an institution or agency
35 vested with legal custody or supervision in any state party to this Compact, the
36 person may be taken into custody in any other state party to this Compact without a
37 requisition. But in that event, the juvenile shall be taken forthwith before a judge of
38 the appropriate court, who may appoint counsel or guardian ad litem for the person
39 and who shall determine after a hearing, whether sufficient cause exists to hold the
40 person subject to the order of the court for a length of time, not exceeding 90 days, as
41 will enable detention of the juvenile under a detention order issued on a requisition
42 pursuant to this Article. If, at the time when a state seeks the return of a delinquent
43 who has either absconded while on probation or parole or escaped from an
44 institution or agency vested with legal custody or supervision, there is pending in the

1 state wherein the juvenile is detained any criminal charge or any proceeding to have
2 the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if
3 the juvenile is suspected of having committed a criminal offense or an act of juvenile
4 delinquency within the state, the juvenile shall not be returned without the consent of
5 the state until discharged from prosecution or other form of proceeding,
6 imprisonment, detention, or supervision for the offense or juvenile delinquency. The
7 duly accredited officers of any state party to this Compact, upon the establishment of
8 their authority and the identity of the delinquent juvenile being returned, shall be
9 permitted to transport the delinquent juvenile through any and all states party to this
10 Compact, without interference. Upon return to the state from which the juvenile
11 escaped or absconded, the delinquent juvenile shall be subject to any further
12 proceedings appropriate under the laws of that state.

13 (b) The state to which a delinquent juvenile is returned under this Article shall be
14 responsible for the payment of transportation costs of the return.

15 **"§ 7B-2806. Voluntary return procedure.**

16 Any delinquent juvenile who has absconded while on probation or parole, or
17 escaped from an institution or agency vested with legal custody or supervision in any
18 state party to this Compact, and any juvenile who has run away from any state party
19 to this Compact, who is taken into custody without a requisition in another state
20 party to this Compact under the provisions of G.S. 7B-2804(a) or G.S. 7B-2805(a),
21 may consent to the immediate return of the juvenile to the state from which the
22 juvenile absconded, escaped, or ran away. Consent shall be given by the juvenile or
23 delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, by
24 executing or subscribing a writing in the presence of a judge of the appropriate court,
25 which states that the juvenile or delinquent juvenile and the juvenile's counsel or
26 guardian ad litem, if any, consent to return of the juvenile to the demanding state.
27 Before consent is executed or subscribed, however, the judge, in the presence of
28 counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile
29 of the juvenile's rights under this Compact. When the consent has been duly
30 executed, it shall be forwarded to and filed with the Compact Administrator of the
31 state in which the court is located, and the judge shall direct the officer having the
32 juvenile or delinquent juvenile in custody to deliver the juvenile to the duly
33 accredited officer or officers of the state demanding return of the juvenile and shall
34 cause to be delivered to the officer or officers a copy of the consent. The court may,
35 however, upon the request of the state to which the juvenile or delinquent juvenile is
36 being returned, order the juvenile to return unaccompanied to the state and shall
37 provide the juvenile with a copy of the court order; in that event a copy of the
38 consent shall be forwarded to the Compact Administrator of the state to which the
39 juvenile or delinquent juvenile is ordered to return.

40 **"§ 7B-2807. Cooperative supervision of probationers and parolees.**

41 (a) That the duly constituted judicial and administrative authorities of a state party
42 to this Compact (herein called 'sending state') may permit any delinquent juvenile
43 within such state, placed on probation or parole, to reside in any other state party to
44 this Compact (herein called 'receiving state') while on probation or parole, and the

1 receiving state shall accept the delinquent juvenile, if the parent, guardian, or person
2 entitled to the legal custody of the delinquent juvenile is residing or undertakes to
3 reside within the receiving state. Before granting permission, opportunity shall be
4 given to the receiving state to make investigations as it deems necessary. The
5 authorities of the sending state shall send to the authorities of the receiving state
6 copies of pertinent court orders, social case studies, and all other available
7 information which may be of value to and assist the receiving state in supervising a
8 probationer or parolee under this Compact. A receiving state, in its discretion, may
9 agree to accept supervision of a probationer or parolee in cases where the parent,
10 guardian, or person entitled to the legal custody of the delinquent juvenile is not a
11 resident of the receiving state, and if so accepted, the sending state may transfer the
12 supervision accordingly.

13 (b) That each receiving state will assume the duties of visitation and of supervision
14 over any delinquent juvenile and in the exercise of those duties will be governed by
15 the same standards of visitation and supervision that prevail for its own delinquent
16 juveniles released on probation or parole.

17 (c) That, after consultation between the appropriate authorities of the sending state
18 and of the receiving state as to the desirability and necessity of returning the
19 delinquent juvenile, the duly accredited officers of a sending state may enter a
20 receiving state and there apprehend and retake any delinquent juvenile on probation
21 or parole. For that purpose, no formalities will be required other than establishing the
22 authority of the officer and the identity of the delinquent juvenile to be retaken and
23 returned. The decision of the sending state to retake a delinquent juvenile on
24 probation or parole shall be conclusive upon and not reviewable within the receiving
25 state, but if, at the time the sending state seeks to retake a delinquent juvenile on
26 probation or parole, there is pending against the juvenile within the receiving state
27 any criminal charge or any proceeding to have the juvenile adjudicated a delinquent
28 juvenile for any act committed in the state or if the juvenile is suspected of having
29 committed within the state a criminal offense or an act of juvenile delinquency, the
30 juvenile shall not be returned without the consent of the receiving state until
31 discharged from prosecution or other form of proceeding, imprisonment, detention,
32 or supervision for the offense or juvenile delinquency. The duly accredited officers of
33 the sending state shall be permitted to transport delinquent juveniles being so
34 returned through any and all states party to this Compact without interference.

35 (d) The sending state shall be responsible under this Article for paying the costs of
36 transporting any delinquent juvenile to the receiving state or of returning any
37 delinquent juvenile to the sending state.

38 **§ 7B-2808. Responsibility for costs.**

39 (a) The provisions of G.S. 7B-2804(b), 7B-2805(b), and 7B-2807(d) shall not be
40 construed to alter or affect any internal relationship among the departments, agencies,
41 and officers of and in the government of a party state, or between a party state and its
42 subdivisions, as to the payment of costs or responsibilities therefor.

43 (b) Nothing in this Compact shall be construed to prevent any party state or
44 subdivision thereof from asserting any right against any person, agency, or other

1 entity in regard to costs for which such party state or subdivision thereof may be
2 responsible pursuant to G.S. 7B-2804(b), 7B-2805(b), and 7B-2807(d).

3 **"§ 7B-2809. Detention practices.**

4 To every extent possible, it shall be the policy of states party to this Compact that
5 no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or
6 lockup, nor be detained or transported in association with criminal, vicious, or
7 dissolute persons.

8 **"§ 7B-2810. Supplementary agreements.**

9 The duly constituted administrative authorities of a state party to this Compact
10 may enter into supplementary agreements with any other state or states party hereto
11 for the cooperative care, treatment, and rehabilitation of delinquent juveniles
12 whenever they find that the agreements will improve the facilities or programs
13 available for care, treatment, and rehabilitation. Care, treatment, and rehabilitation
14 may be provided in an institution located within any state entering into a
15 supplementary agreement. Supplementary agreements shall:

16 (1) Provide the rates to be paid for the care, treatment, and custody of
17 delinquent juveniles taking into consideration the character of
18 facilities, services, and subsistence furnished;

19 (2) Provide that the delinquent juvenile shall be given a court hearing
20 prior to the juvenile being sent to another state for care, treatment,
21 and custody;

22 (3) Provide that the state receiving a delinquent juvenile in one of its
23 institutions shall act solely as agent for the state sending the
24 delinquent juvenile;

25 (4) Provide that the sending state shall at all times retain jurisdiction
26 over delinquent juveniles sent to an institution in another state;

27 (5) Provide for reasonable inspection of the institutions by the sending
28 state;

29 (6) Provide that the consent of the parent, guardian, person, or agency
30 entitled to the legal custody of the delinquent juvenile shall be
31 secured prior to the juvenile being sent to another state; and

32 (7) Make provisions for any other matters and details as shall be
33 necessary to protect the rights and equities of delinquent juveniles
34 and of the cooperating states.

35 **"§ 7B-2811. Acceptance of federal and other aid.**

36 Any state party to this Compact may accept any and all donations, gifts, and grants
37 of money, equipment, and services from the federal or any local government, or any
38 agency thereof and from any person, firm, or corporation, for any of the purposes and
39 functions of this Compact, and may receive and utilize, the same subject to the terms,
40 conditions, and regulations governing such donations, gifts, and grants.

41 **"§ 7B-2812. Compact administrators.**

42 The governor of each state party to this Compact shall designate an officer who,
43 acting jointly with like officers of other party states, shall promulgate rules and
44 regulations to carry out more efficiently the terms and provisions of this Compact.

1 **"§ 7B-2813. Execution of Compact.**

2 This Compact shall become operative immediately upon its execution by any state
3 as between it and any other state or states so executing. When executed it shall have
4 the full force and effect of law within the state, the form of execution to be in
5 accordance with the laws of the executing state.

6 **"§ 7B-2814. Renunciation.**

7 This Compact shall continue in force and remain binding upon each executing
8 state until renounced by it. Renunciation of this Compact shall be by the same
9 authority which executed it, by sending six months' notice in writing of its intention
10 to withdraw from the Compact to the other states party hereto. The duties and
11 obligations of a renouncing state under G.S. 7B-2807 hereof shall continue as to
12 parolees and probationers residing therein at the time of withdrawal until retaken or
13 finally discharged. Supplementary agreements entered into under G.S. 7B-2810 hereof
14 shall be subject to renunciation as provided by supplementary agreements and shall
15 not be subject to the six months' renunciation notice of the present section.

16 **"§ 7B-2815. Severability.**

17 The provisions of this Compact shall be severable and if any phrase, clause,
18 sentence, or provision of this Compact is declared to be contrary to the constitution
19 of any participating state or of the United States or the applicability thereof to any
20 government, agency, person, or circumstances is held invalid, the validity of the
21 remainder of this Compact and the applicability thereof to any government, agency,
22 person, or circumstances shall not be affected thereby. If this Compact shall be held
23 contrary to the constitution of any state participating therein, the Compact shall
24 remain in full force and effect as to the remaining states and in full force and effect
25 as to the state affected as to all severable matters.

26 **"§ 7B-2816. Authority of Governor to designate Compact Administrator.**

27 Pursuant to said Compact, the Governor is hereby authorized and empowered to
28 designate an officer who shall be the Compact Administrator and who, acting jointly
29 with like officers of other party states, shall adopt rules and regulations to carry out
30 more effectively the terms of the Compact. The Compact Administrator shall serve
31 subject to the pleasure of the Governor. The Compact Administrator is hereby
32 authorized, empowered, and directed to cooperate with all departments, agencies,
33 and officers of and in the government of this State and its subdivisions in facilitating
34 the proper administration of the Compact or of any supplementary agreement or
35 agreements entered into by this State hereunder.

36 **"§ 7B-2817. Authority of Compact Administrator to enter into supplementary**
37 **agreements.**

38 The Compact Administrator is hereby authorized and empowered to enter into
39 supplementary agreements with appropriate officials of other states pursuant to the
40 Compact. In the event that the supplementary agreement shall require or contemplate
41 the use of any institution or facility of this State or require or contemplate the
42 provision of any service by this State, the supplementary agreement shall have no
43 force or effect until approved by the head of the department or agency under whose

1 jurisdiction said institution or facility is operated or whose department or agency will
2 be charged with the rendering of the service.

3 **"§ 7B-2818. Discharging financial obligations imposed by Compact or agreement.**

4 The Compact Administrator, subject to the approval of the Director of the Budget,
5 may make or arrange for any payments necessary to discharge any financial
6 obligations imposed upon this State by the Compact or by any supplementary
7 agreement entered into thereunder.

8 **"§ 7B-2819. Enforcement of Compact.**

9 The courts, departments, agencies, and officers of this State and subdivisions shall
10 enforce this Compact and shall do all things appropriate to the effectuation of its
11 purposes and intent which may be within their respective jurisdictions.

12 **"§ 7B-2820. Additional procedure for returning runaways not precluded.**

13 In addition to any procedure provided in G.S. 7B-2804 and G.S. 7B-2806 of the
14 Compact for the return of any runaway juvenile, the particular states, the juvenile or
15 the juvenile's parents, the courts, or other legal custodian involved may agree upon
16 and adopt any other plan or procedure legally authorized under the laws of this State
17 and the other respective party states for the return of any runaway juvenile.

18 **"§ 7B-2821. Proceedings for return of runaways under G.S. 7B-2804 of Compact;**
19 **'juvenile' construed.**

20 The judge of any court in North Carolina to which an application is made for the
21 return of a runaway under the provisions of G.S. 7B-2804 of the Interstate Compact
22 on Juveniles shall hold a hearing thereon to determine whether for the purposes of
23 the Compact the petitioner is entitled to the legal custody of the juvenile, whether or
24 not it appears that the juvenile has in fact run away without consent, whether or not
25 the juvenile is an emancipated minor and whether or not it is in the best interests of
26 the juvenile to compel the return of the juvenile to the state. The judge of any court
27 in North Carolina, finding that a requisition for the return of a juvenile under the
28 provisions of G.S. 7B-2804 of the Compact is in order, shall upon request fix a
29 reasonable time to be allowed for the purpose of testing the legality of the
30 proceeding. The period of time for holding a juvenile in custody under the provisions
31 of G.S. 7B-2804 of the Compact for the protection and welfare of the juvenile, subject
32 to the order of a court of this State, to enable the juvenile's return to another state
33 party to the Compact pursuant to a requisition for return from a court of that state,
34 shall not exceed 30 days. In applying the provisions of G.S. 7B-2804 of the Compact
35 to secure the return of a runaway from North Carolina, the courts of this State shall
36 construe the word 'juvenile' as used in this Article to mean any person who has not
37 reached the person's eighteenth birthday.

38 **"§ 7B-2822. Interstate parole and probation hearing procedures for juveniles.**

39 Where supervision of a parolee or probationer is being administered pursuant to
40 the Interstate Compact on Juveniles, the appropriate judicial or administrative
41 authorities in this State shall notify the Compact Administrator of the sending state
42 whenever, in their view, consideration should be given to retaking or reincarceration
43 for a parole or a probation violation. Prior to giving of notification, a hearing shall be
44 held in accordance with this Article within a reasonable time, unless the hearing is

1 waived by the parolee or probationer. The appropriate officer or officers of this State
2 shall, as soon as practicable, following termination of any hearing, report to the
3 sending state, furnish a copy of the hearing record, and make recommendations
4 regarding the disposition to be made of the parolee or probationer by the sending
5 state. Pending any proceeding pursuant to this section, the appropriate officers of this
6 State may take custody of and detain the parolee or probationer involved for a period
7 not to exceed 10 days prior to the hearing and, if it appears to the hearing officer or
8 officers that retaking or reincarceration is likely to follow, for a reasonable period
9 after the hearing or waiver as may be necessary to arrange for retaking or the
10 reincarceration.

11 **"§ 7B-2823. Hearing officers.**

12 Any hearing pursuant to this Article may be before the Administrator of the
13 Interstate Compact on Juveniles, a deputy of the Administrator, or any other person
14 authorized pursuant to the juvenile laws of this State to hear cases of alleged juvenile
15 parole or probation violations, except that no hearing officer shall be the person
16 making the allegation of violation.

17 **"§ 7B-2824. Due process at parole or probation violation hearing.**

18 With respect to any hearing pursuant to this Article, the parolee or probationer:

- 19 (1) Shall have reasonable notice in writing of the nature and content
20 of the allegations to be made, including notice that the purpose of
21 the hearing is to determine whether there is probable cause to
22 believe that the parolee or probationer has committed a violation
23 that may lead to a revocation of parole or probation;
- 24 (2) Shall be permitted to advise with any persons whose assistance the
25 parolee or probationer reasonably desires, prior to the hearing;
- 26 (3) Shall have the right to confront and examine any persons who
27 have made allegations against the parolee or probationer, unless
28 the hearing officer determines that confrontation would present a
29 substantial present or subsequent danger of harm to the person or
30 persons; and
- 31 (4) May admit, deny, or explain the violation alleged and may present
32 proof, including affidavits and other evidence, in support of the
33 parolee's or probationer's contentions.

34 A record of the proceedings shall be made and preserved.

35 **"§ 7B-2825. Effect of parole or probation violation hearing outside State.**

36 In any case of alleged parole or probation violation by a person being supervised
37 in another state pursuant to the Interstate Compact on Juveniles, any appropriate
38 judicial or administrative officer or agency in another state is authorized to hold a
39 hearing on the alleged violation. Upon receipt of the record of a parole or probation
40 violation hearing held in another state pursuant to a statute substantially similar to
41 this Article, such record shall have the same standing and effect as though the
42 proceeding of which it is a record was had before the appropriate officer or officers
43 in this State, and any recommendations contained in or accompanying the record

1 shall be fully considered by the appropriate officer or officers of this State in making
2 disposition of the matter.

3 "§ 7B-2826. Amendment to Interstate Compact on Juveniles concerning interstate
4 rendition of juveniles alleged to be delinquent.

5 (a) This amendment shall provide additional remedies and shall be binding only as
6 among and between those party states which specifically execute the same.

7 (b) All provisions and procedures of G.S. 7B-2805 and G.S. 7B-2806 of the
8 Interstate Compact on Juveniles shall be construed to apply to any juvenile charged
9 with being a delinquent by reason of a violation of any criminal law. Any juvenile,
10 charged with being a delinquent by reason of violating any criminal law, shall be
11 returned to the requesting state upon a requisition to the state where the juvenile may
12 be found. A petition in the case shall be filed in a court of competent jurisdiction in
13 the requesting state where the violation of criminal law is alleged to have been
14 committed. The petition may be filed regardless of whether the juvenile has left the
15 state before or after the filing of the petition. The requisition described in G.S. 7B-
16 2805 of the Compact shall be forwarded by the judge of the court in which the
17 petition has been filed.

18 "§ 7B-2827. Out-of-State Confinement Amendment.

19 (a) The Out-of-State Confinement Amendment to the Interstate Compact on
20 Juveniles is hereby enacted into law and entered into by this State with all other
21 states legally joining therein in the form substantially as follows:

22 (1) Whenever the fully constituted judicial or administrative
23 authorities in a sending state shall determine that confinement of a
24 probationer or reconfinement of a parolee is necessary or
25 desirable, the officials may direct that the confinement or
26 reconfinement be in an appropriate institution for delinquent
27 juveniles within the territory of the receiving state, the receiving
28 state to act in that regard solely as agent for the sending state.

29 (2) Escapees and absconders who would otherwise be returned
30 pursuant to G.S. 7B-2805 of the Compact may be confined or
31 reconfined in the receiving state pursuant to this amendment. In
32 any case in which the information and allegations are required to
33 be made and furnished in a requisition pursuant to G.S. 7B-2805,
34 the sending state shall request confinement or reconfinement in the
35 receiving state. Whenever applicable, detention orders, as provided
36 in G.S. 7B-2805, may be employed pursuant to this paragraph
37 preliminary to disposition of the escapee or absconder.

38 (3) The confinement or reconfinement of a parolee, probationer,
39 escapee, or absconder pursuant to this amendment shall require
40 the concurrence of the appropriate judicial or administrative
41 authorities of the receiving state.

42 (4) As used in this amendment: (i) 'sending state' means a sending
43 state as that term is used in G.S. 7B-2807 of the Compact or the
44 state from which a delinquent juvenile has escaped or absconded

- 1 within the meaning of G.S. 7B-2805 of the Compact; (ii) 'receiving
2 state' means any state, other than the sending state, in which a
3 parolee, probationer, escapee, or absconder may be found,
4 provided that the state is a party to this amendment.
- 5 (5) Every state which adopts this amendment shall designate at least
6 one of its institutions for delinquent juveniles as a 'Compact
7 Institution' and shall confine persons therein as provided in
8 subdivision (1) of this subsection unless the sending and receiving
9 state in question shall make specific contractual arrangements to
10 the contrary. All states party to this amendment shall have access
11 to 'Compact Institutions' at all reasonable hours for the purpose of
12 inspecting the facilities thereof and for the purpose of visiting such
13 of the State's delinquents as may be confined in the institution.
- 14 (6) Persons confined in 'Compact Institutions' pursuant to the terms of
15 this Compact shall at all times be subject to the jurisdiction of the
16 sending state and may at any time be removed from the 'Compact
17 Institution' for transfer to an appropriate institution within the
18 sending state, for return to probation or parole, for discharge, or
19 for any purpose permitted by the laws of the sending state.
- 20 (7) All persons who may be confined in a 'Compact Institution'
21 pursuant to the provisions of this amendment shall be treated in a
22 reasonable and humane manner. The fact of confinement or
23 reconfinement in a receiving state shall not deprive any person so
24 confined or reconfined of any rights which the person would have
25 had if confined or reconfined in an appropriate institution of the
26 sending state. No agreement to submit to confinement or
27 reconfinement pursuant to the terms of this amendment may be
28 construed as a waiver of any rights which the delinquent would
29 have had if the person had been confined or reconfined in any
30 appropriate institution of the sending state, except that the hearing
31 or hearings, if any, to which a parolee, probationer, escapee, or
32 absconder may be entitled (prior to confinement or reconfinement)
33 by the laws of the sending state may be had before the appropriate
34 judicial or administrative officers of the receiving state. In this
35 event, said judicial and administrative officers shall act as agents of
36 the sending state after consultation with appropriate officers of the
37 sending state.
- 38 (8) Any receiving state incurring costs or other expenses under this
39 amendment shall be reimbursed in the amount of the costs or other
40 expenses by the sending state unless the states concerned shall
41 specifically otherwise agree. Any two or more states party to this
42 amendment may enter into supplementary agreements determining
43 a different allocation of costs as among themselves.

1 (9) This amendment shall take initial effect when entered into by any
2 two or more states party to the Compact and shall be effective as
3 to those states which have specifically enacted this amendment.
4 Rules and regulations necessary to effectuate the terms of this
5 amendment may be adopted by the appropriate officers of those
6 states which have enacted this amendment.

7 (b) In addition to any institution in which the authorities of this State may
8 otherwise confine or order the confinement of a delinquent juvenile, the authorities
9 may, pursuant to the Out-of-State Confinement Amendment to the Interstate
10 Compact on Juveniles, confine or order the confinement of a delinquent juvenile in a
11 Compact Institution within another party state.

12 "SUBCHAPTER III. JUVENILE RECORDS.

13 "ARTICLE 29.

14 "Records and Social Reports of Cases of Abuse,
15 Neglect, and Dependency.

16 "§ 7B-2900. Definitions.

17 The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this Subchapter.

18 "§ 7B-2901. Confidentiality of records.

19 (a) The clerk shall maintain a complete record of all juvenile cases filed in the
20 clerk's office alleging abuse, neglect, or dependency. The records shall be withheld
21 from public inspection and, except as provided in this subsection, may be examined
22 only by order of the court. The record shall include the summons, petition, custody
23 order, court order, written motions, the electronic or mechanical recording of the
24 hearing, and other papers filed in the proceeding. The recording of the hearing shall
25 be reduced to a written transcript only when notice of appeal has been timely given.
26 After the time for appeal has expired with no appeal having been filed, the recording
27 of the hearing may be erased or destroyed upon the written order of the court.

28 (b) The Director of the Department of Social Services shall maintain a record of
29 the cases of juveniles under protective custody by the Department or under
30 placement by the court, which shall include family background information; reports
31 of social, medical, psychiatric, or psychological information concerning a juvenile or
32 the juvenile's family; interviews with the juvenile's family; or other information which
33 the court finds should be protected from public inspection in the best interests of the
34 juvenile. The records maintained pursuant to this subsection may be examined only
35 by order of the court except that the guardian ad litem, or juvenile, shall have the
36 right to examine them.

37 (c) In the case of a child victim, the court may order the sharing of information
38 among such public agencies as the court deems necessary to reduce the trauma to the
39 child victim.

40 (d) The court's entire record of a proceeding involving consent for an abortion on
41 an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General
42 Statutes is not a matter of public record, shall be maintained separately from any
43 juvenile record, shall be withheld from public inspection, and may be examined only

1 by order of the court, by the unemancipated minor, or by the unemancipated minor's
2 attorney or guardian ad litem.

3 "§ 7B-2902. Disclosure in child fatality or near fatality cases.

4 (a) The following definitions apply in this section:

5 (1) Child fatality. -- The death of a child from suspected abuse,
6 neglect, or maltreatment.

7 (2) Findings and information. -- A written summary, as allowed by
8 subsections (c) through (f) of this section, of actions taken or
9 services rendered by a public agency following receipt of
10 information that a child might be in need of protection. The
11 written summary shall include any of the following information the
12 agency is able to provide:

13 a. The dates, outcomes, and results of any actions taken or
14 services rendered.

15 b. The results of any review by the State Child Fatality
16 Prevention Team, a local child fatality prevention team, a
17 local community child protection team, the Child Fatality
18 Task Force, or any public agency.

19 c. Confirmation of the receipt of all reports, accepted or not
20 accepted by the county department of social services, for
21 investigation of suspected child abuse, neglect, or
22 maltreatment, including confirmation that investigations
23 were conducted, the results of the investigations, a
24 description of the conduct of the most recent investigation
25 and the services rendered, and a statement of basis for the
26 department's decision.

27 (3) Near fatality. -- A case in which a physician determines that a child
28 is in serious or critical condition as the result of sickness or injury
29 caused by suspected abuse, neglect, or maltreatment.

30 (4) Public agency. -- Any agency of State government or its
31 subdivisions as defined in G.S. 132-1(a).

32 (b) Notwithstanding any other provision of law and subject to the provisions of
33 subsections (c) through (f) of this section, a public agency shall disclose to the public,
34 upon request, the findings and information related to a child fatality or near fatality
35 if:

36 (1) A person is criminally charged with having caused the child
37 fatality or near fatality; or

38 (2) The district attorney has certified that a person would be charged
39 with having caused the child fatality or near fatality but for that
40 person's prior death.

41 (c) Nothing herein shall be deemed to authorize access to the confidential records
42 in the custody of a public agency, or the disclosure to the public of the substance or
43 content of any psychiatric, psychological, or therapeutic evaluations or like materials
44 or information pertaining to the child or the child's family unless directly related to

1 the cause of the child fatality or near fatality, or the disclosure of information that
2 would reveal the identities of persons who provided information related to the
3 suspected abuse, neglect, or maltreatment of the child.

4 (d) Within five working days from the receipt of a request for findings and
5 information related to a child fatality or near fatality, a public agency shall consult
6 with the appropriate district attorney and provide the findings and information unless
7 the agency has a reasonable belief that release of the information:

8 (1) Is not authorized by subsections (a) and (b) of this section;

9 (2) Is likely to cause mental or physical harm or danger to a minor
10 child residing in the deceased or injured child's household;

11 (3) Is likely to jeopardize the State's ability to prosecute the defendant;

12 (4) Is likely to jeopardize the defendant's right to a fair trial;

13 (5) Is likely to undermine an ongoing or future criminal investigation;

14 or

15 (6) Is not authorized by federal law and regulations.

16 (e) Any person whose request is denied may apply to the appropriate superior
17 court for an order compelling disclosure of the findings and information of the public
18 agency. The application shall set forth, with reasonable particularity, factors
19 supporting the application. The superior court shall have jurisdiction to issue such
20 orders. Actions brought pursuant to this section shall be set down for immediate
21 hearing, and subsequent proceedings in such actions shall be accorded priority by the
22 appellate courts. After the court has reviewed the specific findings and information,
23 in camera, the court shall issue an order compelling disclosure unless the court finds
24 that one or more of the circumstances in subsection (d) of this section exist.

25 (f) Access to criminal investigative reports and criminal intelligence information
26 of public law enforcement agencies and confidential information in the possession of
27 the State Child Fatality Prevention Team, the local teams, and the Child Fatality
28 Task Force, shall be governed by G.S. 132-1.4 and G.S. 7B-1413 respectively.
29 Nothing herein shall be deemed to require the disclosure or release of any
30 information in the possession of a district attorney.

31 (g) Any public agency or its employees acting in good faith in disclosing or
32 declining to disclose information pursuant to this section shall be immune from any
33 criminal or civil liability that might otherwise be incurred or imposed for such action.

34 (h) Nothing herein shall be deemed to narrow or limit the definition of 'public
35 records' as set forth in G.S. 132-1(a).

36 "ARTICLE 30.

37 "Juvenile Records and Social Reports of
38 Delinquency and Undisciplined Cases.

39 "§ 7B-3000. Juvenile court records.

40 (a) The clerk shall maintain a complete record of all juvenile cases filed in the
41 clerk's office to be known as the juvenile record. The record shall include the
42 summons and petition, any secure or nonsecure custody order, any electronic or
43 mechanical recording of hearings, and any written motions, orders, or papers filed in
44 the proceeding.

1 (b) All juvenile records shall be withheld from public inspection and, except as
2 provided in this subsection, may be examined only by order of the court. Except as
3 provided in subsection (c) of this section, the following persons may examine the
4 juvenile's record and obtain copies of written parts of the record without an order of
5 the court:

6 (1) The juvenile and the juvenile's attorney;

7 (2) The juvenile's parent, guardian, or custodian, or authorized
8 representative;

9 (3) The prosecutor; and

10 (4) Court counselors.

11 Except as provided in subsection (c) of this section, law enforcement officers sworn in
12 this State may examine, but not photocopy, the juvenile's record without an order of
13 the court.

14 (c) The court may direct the clerk to 'seal' any portion of a juvenile's record. The
15 clerk shall secure any sealed portion of a juvenile record in an envelope clearly
16 marked 'SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT', or
17 with similar notice, and shall permit examination or copying of sealed portions of a
18 juvenile's record only pursuant to a court order specifically authorizing inspection or
19 copying.

20 (d) Any portion of a juvenile's record consisting of an electronic or mechanical
21 recording of a hearing shall be transcribed only when notice of appeal has been
22 timely given and shall be copied electronically or mechanically, only by order of the
23 court. After the time for appeal has expired with no appeal having been filed, the
24 court may enter a written order directing the clerk to destroy the recording of the
25 hearing.

26 (e) The juvenile's record of an adjudication of delinquency for an offense that
27 would be a felony if committed by an adult may be used by law enforcement, the
28 magistrate, and the prosecutor for pretrial release and plea negotiating decisions.

29 (f) The juvenile's record of an adjudication of delinquency for an offense that
30 would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used
31 in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule
32 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a),
33 G.S. 15A-1340.16(d), or G.S. 15A-2000(e). The record may be so used only by order
34 of the court in the subsequent criminal proceeding, upon motion of the prosecutor,
35 after an in camera hearing to determine whether the record in question is admissible.

36 (g) Except as provided in subsection (d) of this section, a juvenile's record shall
37 be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the
38 Department of Juvenile Justice.

39 "§ 7B-3001. Other records relating to juveniles.

40 (a) The chief court counselor shall maintain a record of all cases of juveniles under
41 supervision of court counselors, to be known as the court counselor's record. The
42 court counselor's record shall include family background information; reports of
43 social, medical, psychiatric, or psychological information concerning a juvenile or the
44 juvenile's family; probation reports; interviews with the juvenile's family; or other

1 information the court finds should be protected from public inspection in the best
2 interests of the juvenile.

3 (b) Unless jurisdiction of the juvenile has been transferred to superior court, all
4 law enforcement records and files concerning a juvenile shall be kept separate from
5 the records and files of adults and shall be withheld from public inspection. The
6 following persons may examine and obtain copies of law enforcement records and
7 files concerning a juvenile without an order of the court;

8 (1) The juvenile and the juvenile's attorney;

9 (2) The juvenile's parent, guardian, custodian, or authorized
10 representative;

11 (3) The district attorney or prosecutor;

12 (4) Court counselors; and

13 (5) Law enforcement officers sworn in this State.

14 Otherwise, the records and files may be examined or copied only by order of the
15 court.

16 (c) All records and files maintained by the Department pursuant to this Chapter
17 shall be withheld from public inspection. The following persons may examine and
18 obtain copies of the Department records and files concerning a juvenile without an
19 order of the court;

20 (1) The juvenile and the juvenile's attorney;

21 (2) The juvenile's parent, guardian, custodian, or authorized
22 representative;

23 (3) Professionals in the agency who are directly involved in the
24 juvenile's case; and

25 (4) Court counselors.

26 Otherwise, the records and files may be examined or copied only by order of the
27 court. The court may inspect and order the release of records maintained by the
28 Department.

29 **"ARTICLE 31.**

30 **"Disclosure of Juvenile Information.**

31 **"§ 7B-3100. Disclosure of information about juveniles.**

32 The chief district court judge in each district shall designate by standing order
33 certain agencies in the district as 'agencies authorized to share information'.
34 Agencies so designated shall share with one another, upon request, information that
35 is in their possession that is relevant to any case in which a petition is filed alleging
36 that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall
37 continue to do so until the juvenile is no longer subject to the jurisdiction of juvenile
38 court. Agencies that may be designated as 'agencies authorized to share information'
39 include local mental health facilities, local health departments, local departments of
40 social services, local law enforcement agencies, local school administrative units, the
41 district's district attorney's office, and the Office of Guardian ad Litem Services of
42 the Administrative Office of the Courts. Any information shared among agencies
43 pursuant to this section shall remain confidential, shall be withheld from public
44 inspection, and shall be used only for the protection of the juvenile. Nothing in this

1 section or any other provision of law shall preclude any other necessary sharing of
2 information among agencies. Nothing herein shall be deemed to require the
3 disclosure or release of any information in the possession of a district attorney.

4 "§ 7B-3101. Notification of schools when juveniles are alleged or found to be
5 delinquent.

6 (a) Notwithstanding G.S. 7B-3000, the juvenile court counselor shall deliver verbal
7 and written notification of the following actions to the principal of the school that the
8 juvenile attends:

9 (1) A petition is filed under G.S. 7B-1802 that alleges delinquency for
10 an offense that would be a felony if committed by an adult;

11 (2) The court transfers jurisdiction over a juvenile to superior court
12 under G.S. 7B-2200;

13 (3) The court dismisses under G.S. 7B-2411 the petition that alleges
14 delinquency for an offense that would be a felony if committed by
15 an adult;

16 (4) The court issues a dispositional order under Article 25 of Chapter
17 7B of the General Statutes including, but not limited to, an order
18 of probation that requires school attendance, concerning a juvenile
19 alleged or found delinquent for an offense that would be a felony if
20 committed by an adult; or

21 (5) The court modifies or vacates any order or disposition under G.S.
22 7B-2600 concerning a juvenile alleged or found delinquent for an
23 offense that would be a felony if committed by an adult.

24 Notification of the school principal in person or by telephone shall be made before
25 the beginning of the next school day. Delivery shall be made as soon as practicable
26 but at least within five days of the action. Delivery shall be made in person or by
27 certified mail. Notification that a petition has been filed shall describe the nature of
28 the offense. Notification of a dispositional order, a modified or vacated order, or a
29 transfer to superior court shall describe the court's action and any applicable
30 disposition requirements. As used in this subsection, the term 'offense' shall not
31 include any offense under Chapter 20 of the General Statutes.

32 (b) If the principal of the school the juvenile attends returns any notification as
33 required by G.S. 115C-404, and if the juvenile court counselor learns that the juvenile
34 is transferring to another school, the juvenile court counselor shall deliver the
35 notification to the principal of the school to which the juvenile is transferring.
36 Delivery shall be made as soon as practicable and shall be made in person or by
37 certified mail.

38 (c) Principals shall handle any notification delivered under this section in
39 accordance with G.S. 115C-404.

40 (d) For the purpose of this section, 'school' means any public or private school in
41 the State that is authorized under Chapter 115C of the General Statutes.

42 "ARTICLE 32.

43 "Expunction of Juvenile Records.

1 "§ 7B-3200. Expunction of records of juveniles alleged or adjudicated delinquent and
2 undisciplined.

3 (a) Any person who has attained the age of 18 years may file a petition in the
4 court where the person was adjudicated undisciplined for expunction of all records of
5 that adjudication.

6 (b) Any person who has attained the age of 16 years may file a petition in the
7 court where the person was adjudicated delinquent for expunction of all records of
8 that adjudication provided:

9 (1) The offense for which the person was adjudicated would have been
10 a crime other than a Class A, B1, B2, C, D, or E felony if
11 committed by an adult.

12 (2) The person has not subsequently been adjudicated delinquent or
13 convicted as an adult of any felony or misdemeanor other than a
14 traffic violation under the laws of the United States or the laws of
15 this State or any other state.

16 Records relating to an adjudication for an offense that would be a Class A, B1, B2,
17 C, D, or E felony if committed by an adult shall not be expunged.

18 (c) The petition shall contain, but not be limited to, the following:

19 (1) An affidavit by the petitioner that the petitioner has been of good
20 behavior since the adjudication and, in the case of a petition based
21 on a delinquency adjudication, that the petitioner has not
22 subsequently been adjudicated delinquent or convicted as an adult
23 of any felony or misdemeanor other than a traffic violation under
24 the laws of the United States, or the laws of this State or any other
25 state;

26 (2) Verified affidavits of two persons, who are not related to the
27 petitioner or to each other by blood or marriage, that they know
28 the character and reputation of the petitioner in the community in
29 which the petitioner lives and that the petitioner's character and
30 reputation are good;

31 (3) A statement that the petition is a motion in the cause in the case
32 wherein the petitioner was adjudicated delinquent or
33 undisciplined.

34 The petition shall be served upon the district attorney in the district wherein
35 adjudication occurred. The district attorney shall have 10 days thereafter in which to
36 file any objection thereto and shall be duly notified as to the date of the hearing on
37 the petition.

38 (d) If the court, after hearing, finds that the petitioner satisfies the conditions set
39 out in subsections (a) or (b) of this section, the petitioner shall order and direct the
40 clerk and all law enforcement agencies to expunge their records of the adjudication
41 including all references to arrests, complaints, referrals, petitions, and orders.

42 (e) The clerk shall forward a certified copy of the order to the sheriff, chief of
43 police, or other law enforcement agency.

1 (f) Records of a juvenile adjudicated delinquent or undisciplined being
2 maintained by the chief court counselor, an intake counselor or a court counselor
3 shall be retained or disposed of as provided by the Department.

4 (g) Records of a juvenile adjudicated delinquent or undisciplined being
5 maintained by personnel at a residential facility operated by the Department, shall be
6 retained or disposed of as provided by the Department.

7 (h) Any person who was alleged to be delinquent as a juvenile and has attained
8 the age of 16 years, or was alleged to be undisciplined as a juvenile and has attained
9 the age of 18 years, may file a petition in the court in which the person was alleged
10 to be delinquent or undisciplined, for expunction of all juvenile records of the
11 juvenile having been alleged to be delinquent or undisciplined if the court dismissed
12 the juvenile petition without an adjudication that the juvenile was delinquent or
13 undisciplined. The petition shall be served on the chief court counselor in the district
14 where the juvenile petition was filed. The chief court counselor shall have 10 days
15 thereafter in which to file a written objection in the court. If no objection is filed, the
16 court may grant the petition without a hearing. If an objection is filed or the court so
17 directs, a hearing shall be scheduled and the chief court counselor shall be notified as
18 to the date of the hearing. If the court finds at the hearing that the petitioner satisfies
19 the conditions specified herein, the court shall order the clerk and the appropriate
20 law enforcement agencies to expunge their records of the allegations of delinquent or
21 undisciplined acts including all references to arrests, complaints, referrals, juvenile
22 petitions, and orders. The clerk shall forward a certified copy of the order of
23 expunction to the sheriff, chief of police, or other appropriate law enforcement
24 agency, and to the chief court counselor, and these specified officials shall
25 immediately destroy all records relating to the allegations that the juvenile was
26 delinquent or undisciplined.

27 **"§ 7B-3201. Effect of expunction.**

28 (a) Whenever a juvenile's record is expunged, with respect to the matter in which
29 the record was expunged, the juvenile who is the subject of the record and the
30 juvenile's parent may inform any person or organization including employers, banks,
31 credit companies, insurance companies, and schools that the juvenile was not
32 arrested, did not appear before the court, and was not adjudicated delinquent or
33 undisciplined.

34 (b) Notwithstanding subsection (a) of this section, in any delinquency case if the
35 juvenile is the defendant and chooses to testify or if the juvenile is not the defendant
36 and is called as a witness, the juvenile may be ordered to testify with respect to
37 whether the juvenile was adjudicated delinquent.

38 **"§ 7B-3202. Notice of expunction.**

39 Upon expunction of a juvenile's record, the clerk shall send a written notice to the
40 juvenile at the juvenile's last known address informing the juvenile that the record
41 has been expunged and with respect to the matter involved, the juvenile may inform
42 any person that the juvenile has no record. The notice shall inform the juvenile
43 further that if the matter involved is a delinquency record, the juvenile may inform
44 any person that the juvenile was not arrested or adjudicated delinquent except that

1 upon testifying in a delinquency proceeding, the juvenile may be required by a court
2 to disclose that the juvenile was adjudicated delinquent.

3 "ARTICLE 33.

4 "Computation of Recidivism Rates.

5 "§ 7B-3300. Juvenile recidivism rates.

6 (a) On an annual basis, the Department of Juvenile Justice shall compute the
7 recidivism rate of juveniles who are adjudicated delinquent for offenses that would be
8 Class A, B1, B2, C, D, or E felonies if committed by adults and who subsequently are
9 adjudicated delinquent or convicted and shall report the statistics to the Joint
10 Legislative Commission on Governmental Operations by December 31 each year.

11 (b) The chief court counselor of each judicial district shall forward to the
12 Department relevant information, as determined by the Department, regarding every
13 juvenile who is adjudicated delinquent for an offense that would be a Class A, B1,
14 B2, C, D, or E felony if committed by an adult for the purpose of computing the
15 statistics required by this section.

16 "SUBCHAPTER IV. PARENTAL AUTHORITY; EMANCIPATION.

17 "ARTICLE 34.

18 "Parental Authority Over Juveniles.

19 "§ 7B-3400. Juvenile under 18 subject to parents' control.

20 Notwithstanding any other provision of law, any juvenile under 18 years of age,
21 except as provided in G.S. 7B-3401 and G.S. 7B-3402, shall be subject to the
22 supervision and control of the juvenile's parents.

23 "§ 7B-3400.1. Definitions.

24 The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this Subchapter.

25 "§ 7B-3401. Exceptions.

26 This Article shall not apply to any juvenile under the age of 18 who is married or
27 who is serving in the armed forces of the United States, or who has been
28 emancipated.

29 "§ 7B-3402. No criminal liability created.

30 This Article shall not be interpreted to place any criminal liability on a parent for
31 any act of the parent's juvenile 16 years of age or older.

32 "§ 7B-3403. Enforcement.

33 The provisions of this Article may be enforced by the parent, guardian, or person
34 standing in loco parentis to the child by filing a civil action in the district court of the
35 county where the child can be found or the county of the plaintiff's residence. Upon
36 the institution of such action by a verified complaint, alleging that the defendant
37 juvenile has left home or has left the place where the juvenile has been residing and
38 refuses to return and comply with the direction and control of the plaintiff, the court
39 may issue an order directing the juvenile personally to appear before the court at a
40 specified time to be heard in answer to the allegations of the plaintiff and to comply
41 with further orders of the court. Such orders shall be served by the sheriff upon the
42 juvenile and upon any other person named as a party defendant in such action. At
43 the time of the issuance of the order directing the juvenile to appear, the court may
44 in the same order, or by separate order, order the sheriff to enter any house, building,

1 structure or conveyance for the purpose of searching for the juvenile and serving the
2 order and for the purpose of taking custody of the person of the juvenile in order to
3 bring the juvenile before the court. Any order issued at said hearing shall be treated
4 as a mandatory injunction and shall remain in full force and effect until the juvenile
5 reaches the age of 18, or until further orders of the court. Within 30 days after the
6 hearing on the original order, the juvenile, or anyone acting in the juvenile's behalf,
7 may file a verified answer to the complaint. Upon the filing of an answer by or on
8 behalf of the juvenile, any district court judge holding court in the county or district
9 court district as defined in G.S. 7A-133 where the action was instituted shall have
10 jurisdiction to hear the matter, without a jury, and to make findings of fact,
11 conclusions of law, and render judgment thereon. Appeals from the district court to
12 the Court of Appeals shall be allowed as in civil actions generally. The district court
13 issuing the original order or the district court hearing the matter after answer has
14 been filed shall also have authority to order that any person named defendant in the
15 order or judgment shall not harbor, keep, or allow the defendant juvenile to remain
16 on the person's premises or in the person's home. Failure of any defendant to
17 comply with the terms of said order or judgment shall be punishable as for contempt.

18 "ARTICLE 35.

19 "Emancipation.

20 "§ 7B-3500. Who may petition.

21 Any juvenile who is 16 years of age or older and who has resided in the same
22 county in North Carolina or on federal territory within the boundaries of North
23 Carolina for six months next preceding the filing of the petition may petition the
24 court in that county for a judicial decree of emancipation.

25 "§ 7B-3501. Petition.

26 The petition shall be signed and verified by the petitioner and shall contain the
27 following information:

- 28 (1) The full name of the petitioner and the petitioner's birth date, and
29 state and county of birth;
- 30 (2) A certified copy of the petitioner's birth certificate;
- 31 (3) The name and last known address of the parent, guardian, or
32 custodian;
- 33 (4) The petitioner's address and length of residence at that address;
- 34 (5) The petitioner's reasons for requesting emancipation; and
- 35 (6) The petitioner's plan for meeting the petitioner's needs and living
36 expenses which plan may include a statement of employment and
37 wages earned that is verified by the petitioner's employer.

38 "§ 7B-3502. Summons.

39 A copy of the filed petition along with a summons shall be served upon the
40 petitioner's parent, guardian, or custodian who shall be named as respondents. The
41 summons shall include the time and place of the hearing and shall notify the
42 respondents to file written answer within 30 days after service of the summons and
43 petition. In the event that personal service cannot be obtained, service shall be in
44 accordance with G.S. 1A-1, Rule 4(j).

1 "§ 7B-3503. Hearing.

2 The court, sitting without a jury, shall permit all parties to present evidence and to
3 cross-examine witnesses. The petitioner has the burden of showing by a
4 preponderance of the evidence that emancipation is in the petitioner's best interests.
5 Upon finding that reasonable cause exists, the court may order the juvenile to be
6 examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other
7 expert to evaluate the juvenile's mental or physical condition. The court may
8 continue the hearing and order investigation by a court counselor or by the county
9 department of social services to substantiate allegations of the petitioner or
10 respondents.

11 No husband-wife or physician-patient privilege shall be grounds for excluding any
12 evidence in the hearing.

13 "§ 7B-3504. Considerations for emancipation.

14 In determining the best interests of the petitioner and the need for emancipation,
15 the court shall review the following considerations:

- 16 (1) The parental need for the earnings of the petitioner;
17 (2) The petitioner's ability to function as an adult;
18 (3) The petitioner's need to contract as an adult or to marry;
19 (4) The employment status of the petitioner and the stability of the
20 petitioner's living arrangements;
21 (5) The extent of family discord which may threaten reconciliation of
22 the petitioner with the petitioner's family;
23 (6) The petitioner's rejection of parental supervision or support; and
24 (7) The quality of parental supervision or support.

25 "§ 7B-3505. Final decree of emancipation.

26 After reviewing the considerations for emancipation, the court may enter a decree
27 of emancipation if the court determines:

- 28 (1) That all parties are properly before the court or were duly served
29 and failed to appear and that time for filing an answer has expired;
30 and
31 (2) That the petitioner has shown a proper and lawful plan for
32 adequately providing for the petitioner's needs and living expenses;
33 and
34 (3) That the petitioner is knowingly seeking emancipation and fully
35 understands the ramifications of the act; and
36 (4) That emancipation is in the best interests of the petitioner.

37 The decree shall set out the court's findings.

38 If the court determines that the criteria in subdivisions (1) through (4) are not met,
39 the court shall order the proceeding dismissed.

40 "§ 7B-3506. Costs of court.

41 The court may tax the costs of the proceeding to any party or may, for good cause,
42 order the costs remitted.

43 The clerk may collect costs for furnishing to the petitioner a certificate of
44 emancipation which shall recite the name of the petitioner and the fact of the

1 petitioner's emancipation by court decree and shall have the seal of the clerk affixed
2 thereon.

3 **"§ 7B-3507. Legal effect of final decree.**

4 As of entry of the final decree of emancipation:

5 (1) The petitioner has the same right to make contracts and
6 conveyances, to sue and to be sued, and to transact business as if
7 the petitioner were an adult.

8 (2) The parent or guardian is relieved of all legal duties and
9 obligations owed to the petitioner and is divested of all rights with
10 respect to the petitioner.

11 (3) The decree is irrevocable.

12 Notwithstanding any other provision of this section, a decree of emancipation shall
13 not alter the application of G.S. 14-326.1 or the petitioner's right to inherit property
14 by intestate succession.

15 **"§ 7B-3508. Appeals.**

16 Any petitioner, parent, or guardian who is a party to a proceeding under this
17 Article may appeal from any order of disposition to the Court of Appeals provided
18 that notice of appeal is given in open court at the time of the hearing or in writing
19 within 10 days after the hearing. Pending disposition of an appeal, the court may
20 enter a temporary order affecting the custody or placement of the petitioner as the
21 court finds to be in the best interests of the petitioner or the State.

22 **"§ 7B-3509. Application of common law.**

23 A married juvenile is emancipated by this Article. All other common-law
24 provisions for emancipation are superseded by this Article.

25 **"ARTICLE 36.**

26 **"Judicial Consent for Emergency Surgical or Medical Treatment.**

27 **"§ 7B-3600. Judicial authorization of emergency treatment; procedure.**

28 A juvenile in need of emergency treatment under Article 1A of Chapter 90 of the
29 General Statutes, whose physician is barred from rendering necessary treatment by
30 reason of parental refusal to consent to treatment, may receive treatment with court
31 authorization under the following procedure:

32 (1) The physician shall sign a written statement setting out:

33 a. The treatment to be rendered and the emergency need for
34 treatment;

35 b. The refusal of the parent, guardian, or person standing in
36 loco parentis to consent to the treatment; and

37 c. The impossibility of contacting a second physician for a
38 concurring opinion on the need for treatment in time to
39 prevent immediate harm to the juvenile.

40 (2) Upon examining the physician's written statement prescribed in
41 subdivision (1) of this section and finding:

42 a. That the statement is in accordance with this Article, and

43 b. That the proposed treatment is necessary to prevent
44 immediate harm to the juvenile.

1 The court may issue a written authorization for the proposed
2 treatment to be rendered.

3 (3) In acute emergencies in which time may not permit
4 implementation of the written procedure set out in subdivisions (1)
5 and (2) of this section, the court may authorize treatment in person
6 or by telephone upon receiving the oral statement of a physician
7 satisfying the requirements of subdivision (1) of this section and
8 upon finding that the proposed treatment is necessary to prevent
9 immediate harm to the juvenile.

10 (4) The court's authorization for treatment overriding parental refusal
11 to consent should not be given without attempting to offer the
12 parent an opportunity to state the reasons for refusal; however,
13 failure of the court to hear the parent's objections shall not
14 invalidate judicial authorization under this Article.

15 (5) The court's authorization for treatment under subdivisions (1) and
16 (2) of this section shall be issued in duplicate. One copy shall be
17 given to the treating physician and the other copy shall be attached
18 to the physician's written statement and filed as a juvenile
19 proceeding in the office of the clerk of court.

20 (6) The court's authorization for treatment under subdivision (3) of
21 this section shall be reduced to writing as soon as possible,
22 supported by the physician's written statement as prescribed in
23 subdivision (1) of this section and shall be filed as prescribed in
24 subdivision (5) of this section.

25 The court's authorization for treatment under this Article shall have the same effect
26 as parental consent for treatment.

27 Following the court's authorization for treatment and after giving notice to the
28 juvenile's parent, the court shall conduct a hearing in order to provide for payment
29 for the treatment rendered. The court may order the parent or other responsible
30 parties to pay the cost of treatment. If the court finds the parent is unable to pay the
31 cost of treatment, the cost shall be a charge upon the county when so ordered.

32 This Article shall operate as a remedy in addition to the provisions in G.S. 7B-903,
33 7B-2501, and 7B-2504.

34 "SUBCHAPTER V. PLACEMENT OF JUVENILES.

35 "ARTICLE 37.

36 "Placing or Adoption of Juvenile Delinquents or Dependents.

37 "§ 7B-3700. Consent required for bringing child into State for placement or adoption.

38 (a) No person, agency, association, institution, or corporation shall bring or send
39 into the State any child for the purpose of giving custody of the child to some person
40 in the State or procuring adoption by some person in the State without first obtaining
41 the written consent of the Department of Health and Human Services.

42 (b) The person with whom a child is placed for either of the purposes set out in
43 subsection (a) of this section shall be responsible for the child's proper care and
44 training. The Department of Health and Human Services or its agents shall have the

1 same right of visitation and supervision of the child and the home in which it is
2 placed as in the case of a child placed by the Department or its agents as long as the
3 child shall remain within the State and until the child shall have reached the age of
4 18 years or shall have been legally adopted.

5 **"§ 7B-3701. Bond required.**

6 The Social Services Commission may, in its discretion, require of a person, agency,
7 association, institution, or corporation which brings or sends a child into the State
8 with the written consent of the Department of Health and Human Services, as
9 provided by G.S. 7B-3700, a continuing bond in a penal sum not in excess of one
10 thousand dollars (\$1,000) with such conditions as may be prescribed and such sureties
11 as may be approved by the Department of Health and Human Services. Said bond
12 shall be made in favor of and filed with the Department of Health and Human
13 Services with the premium prepaid by the said person, agency, association, institution
14 or corporation desiring to place such child in the State.

15 **"§ 7B-3702. Consent required for removing child from State.**

16 No child shall be taken or sent out of the State for the purpose of placing the child
17 in a foster home or in a child-caring institution without first obtaining the written
18 consent of the Department of Health and Human Services. The foster home or child-
19 caring institution in which the child is placed shall report to the Department of
20 Health and Human Services at such times as the Department of Health and Human
21 Services may direct as to the location and well-being of such child until the child
22 shall have reached the age of 18 years or shall have been legally adopted.

23 **"§ 7B-3703. Violation of Article a misdemeanor.**

24 Every person acting for himself or for an agency who violates any of the provisions
25 of this Article or who shall intentionally make any false statements to the Social
26 Services Commission or the Secretary or an employee thereof acting for the
27 Department of Health and Human Services in an official capacity in the placing or
28 adoption of juvenile delinquents or dependents shall, upon conviction thereof, be
29 guilty of a Class 2 misdemeanor.

30 **"§ 7B-3704. Definitions.**

31 The term 'Department' wherever used in this Article shall be construed to mean
32 the Department of Health and Human Services.

33 **"§ 7B-3705. Application of Article.**

34 None of the provisions of this Article shall apply when a child is brought into or
35 sent into, or taken out of, or sent out of the State, by the guardian of the person of
36 such child, or by a parent, stepparent, grandparent, uncle or aunt of such child, or by
37 a brother, sister, half brother, or half sister of such child, if such brother, sister, half
38 brother, or half sister is 18 years of age or older.

39 **"ARTICLE 38.**

40 **"Interstate Compact on the Placement of Children.**

41 **"§ 7B-3800. Adoption of Compact.**

42 The Interstate Compact on the Placement of Children is hereby enacted into law
43 and entered into with all other jurisdictions legally joining therein in a form
44 substantially as contained in this Article. It is the intent of the General Assembly that

1 Article 4 of this Chapter shall govern interstate placements of children between
2 North Carolina and any other jurisdictions not a party to this Compact. It is the
3 intent of the General Assembly that Chapter 48 of the General Statutes shall govern
4 the adoption of children within the boundaries of North Carolina.

5 Article I. Purpose and Policy.

6 It is the purpose and policy of the party states to cooperate with each other in the
7 interstate placement of children to the end that:

8 (a) Each child requiring placement shall receive the maximum opportunity to be
9 placed in a suitable environment and with persons or institutions having appropriate
10 qualifications and facilities to provide a necessary and desirable degree and type of
11 care.

12 (b) The appropriate authorities in a state where a child is to be placed may have
13 full opportunity to ascertain the circumstances of the proposed placement, thereby
14 promoting full compliance with applicable requirements for the protection of the
15 child.

16 (c) The proper authorities of the state from which the placement is made may
17 obtain the most complete information on the basis of which to evaluate a projected
18 placement before it is made.

19 (d) Appropriate jurisdictional arrangements for the care of children will be
20 promoted.

21 Article II. Definitions.

22 As used in this Compact:

23 (a) 'Child' means a person who, by reason of minority, is legally
24 subject to parental, guardianship or similar control.

25 (b) 'Sending agency' means a party state officer or employee thereof; a
26 subdivision of a party state, or officer or employee thereof; a court
27 of a party state; a person, corporation, association, charitable
28 agency or other entity which sends, brings, or causes to be sent or
29 brought any child to another party state.

30 (c) 'Receiving state' means the state to which a child is sent, brought,
31 or caused to be sent or brought, whether by public authorities or
32 private persons or agencies, and whether for placement with state
33 or local public authorities of [or] for placement with private
34 agencies or persons.

35 (d) 'Placement' means the arrangement for the care of a child in a
36 family free or boarding home or in a child-caring agency or
37 institution but does not include any institution caring for the
38 mentally ill, mentally defective or epileptic or any institution
39 primarily educational in character, and any hospital or other
40 medical facility.

41 (e) 'Appropriate public authorities' as used in Article III shall, with
42 reference to this State, mean the Department of Health and
43 Human Services and said agency shall receive and act with
44 reference to notices required by Article III.

1 (f) 'Appropriate authority in the receiving state' as used in paragraph
2 (a) of Article V shall, with reference to this State, means the
3 Secretary.

4 (g) 'Executive head' as used in Article VII means the Governor.

5 Article III. Conditions for Placement.

6 (a) No sending agency shall send, bring, or cause to be sent or brought into any
7 other party state any child for placement in foster care or as a preliminary to a
8 possible adoption unless the sending agency shall comply with each and every
9 requirement set forth in this Article and with the applicable laws of the receiving
10 state governing the placement of children therein.

11 (b) Prior to sending, bringing or causing any child to be sent or brought into a
12 receiving state for placement in foster care or as a preliminary to a possible adoption,
13 the sending agency shall furnish the appropriate public authorities in the receiving
14 state written notice of the intention to send, bring, or place the child in the receiving
15 state. The notice shall contain:

16 (1) The name, date, and place of birth of the child.

17 (2) The identity and address or addresses of the parents or legal
18 guardian.

19 (3) The name and address of the person, agency or institution to or
20 with which the sending agency proposes to send, bring, or place
21 the child.

22 (4) A full statement of the reasons for such proposed action and
23 evidence of the authority pursuant to which the placement is
24 proposed to be made.

25 (c) Any public officer or agency in a receiving state which is in receipt of a notice
26 pursuant to paragraph (b) of this Article may request of the sending agency, or any
27 other appropriate officer or agency of or in the sending agency's state, and shall be
28 entitled to receive therefrom, such supporting or additional information as it may
29 deem necessary under the circumstances to carry out the purpose and policy of this
30 Compact.

31 (d) The child shall not be sent, brought, or caused to be sent or brought into the
32 receiving state until the appropriate public authorities in the receiving state shall
33 notify the sending agency, in writing, to the effect that the proposed placement does
34 not appear to be contrary to the interests of the child.

35 Article IV. Penalty for Illegal Placement.

36 The sending, bringing, or causing to be sent or brought into any receiving state of
37 a child in violation of the terms of this Compact shall constitute a violation of the
38 laws respecting the placement of children of both the state in which the sending
39 agency is located or from which it sends or brings the child and of the receiving state.
40 Such violation may be punished or subjected to penalty in either jurisdiction in
41 accordance with its laws. In addition to liability for any such punishment or penalty,
42 any such violation shall constitute full and sufficient grounds for the suspension or
43 revocation of any license, permit, or other legal authorization held by the sending
44 agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this Compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this Compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child's being sent to such other party jurisdiction for institutional care and the court finds that:

- (1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (2) Institutional care in the other jurisdiction is in the best interests of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this Compact shall designate an officer who shall be general coordinator of activities under this Compact in the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article VIII. Limitations.

This Compact shall not apply to: (a) the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to

1 which both the state from which the child is sent or brought and the receiving state
2 are party, or to any other agreement between said states which has the force of law.

3 Article IX. Enactment and Withdrawal.

4 This Compact shall be open to joinder by any state, territory or possession of the
5 United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with
6 the consent of Congress, the government of Canada or any province thereof. It shall
7 become effective with respect to any such jurisdiction when such jurisdiction has
8 enacted the same into law. Withdrawal from this Compact shall be by the enactment
9 of a statute repealing the same, but shall not take effect until two years after the
10 effective date of such statute and until written notice of the withdrawal has been
11 given by the withdrawing state to the governor of each other party jurisdiction.
12 Withdrawal of a party state shall not affect the rights, duties and obligations under
13 this Compact of any sending agency therein with respect to a placement made prior
14 to the effective date of withdrawal.

15 Article X. Construction and Severability.

16 The provisions of this Compact shall be liberally construed to effectuate the
17 purposes thereof. The provisions of this Compact shall be severable and if any
18 phrase, clause, sentence or provision of this Compact is declared to be contrary to the
19 constitution of any party state or of the United States or the applicability thereof to
20 any government, agency, person or circumstance is held invalid, the validity of the
21 remainder of this Compact and the applicability thereof to any government, agency,
22 person or circumstance shall not be affected thereby. If this Compact shall be held
23 contrary to the constitution of any state party thereto, the Compact shall remain in
24 full force and effect as to the remaining states and in full force and effect as to the
25 state affected as to all severable matters.

26 "§ 7B-3801. Financial responsibility under Compact.

27 Financial responsibility for any child placed pursuant to the provisions of the
28 Interstate Compact on the Placement of Children shall be determined in accordance
29 with the provisions of Article V thereof in the first instance. However, in the event of
30 partial or complete default of performance thereunder, the provisions of any other
31 state laws fixing responsibility for the support of children also may be invoked.

32 "§ 7B-3802. Agreements under Compact.

33 The officers and agencies of this State and its subdivisions having authority to
34 place children are hereby empowered to enter into agreements with appropriate
35 officers or agencies of or in other party states pursuant to paragraph (b) of Article V
36 of the Interstate Compact on the Placement of Children. Any such agreement which
37 contains a financial commitment or imposes a financial obligation on this State or
38 subdivision or agency thereof shall not be binding unless it has the approval in
39 writing of the Secretary of the Department of Health and Human Services in the case
40 of the State and of the county director of social services in the case of a county or
41 other subdivision of the State.

42 "§ 7B-3803. Visitation, inspection or supervision.

43 Any requirements for visitation, inspection or supervision of children, homes,
44 institutions or other agencies in another party state which may apply under the laws

1 of this State shall be deemed to be met if performed pursuant to an agreement
2 entered into by appropriate officers or agencies of this State or a subdivision thereof
3 as contemplated by paragraph (b) of Article V of the Interstate Compact on the
4 Placement of Children.

5 **"§ 7B-3804. Compact to govern between party states.**

6 The provisions of Article 37 of this Chapter shall not apply to placements made
7 pursuant to the Interstate Compact on the Placement of Children.

8 **"§ 7B-3805. Placement of delinquents.**

9 Any court having jurisdiction to place delinquent children may place such a child
10 in an institution or in another state pursuant to Article VI of the Interstate Compact
11 on the Placement of Children and shall retain jurisdiction as provided in Article V
12 thereof.

13 **"§ 7B-3806. Compact Administrator.**

14 The Governor is hereby authorized to appoint a Compact Administrator in
15 accordance with the terms of said Article VII."

16 Section 5. Article 81B of Chapter 15A of the General Statutes is
17 amended by adding a new section to read:

18 **"§ 15A-1340.16B. Sentencing of juveniles.**

19 (a) If a juvenile was under 16 years of age at the time the juvenile committed a
20 felony offense and has been convicted of the offense, the court shall impose a
21 sentence in accordance with G.S. 15A-1340.17. Notwithstanding other requirements
22 of this Chapter, the court may suspend the sentence and place the juvenile on
23 probation on the condition that the juvenile successfully complete any of the
24 applicable terms and conditions set forth in G.S. 15A-1343 and G.S. 7B-2504 that the
25 court deems appropriate. In determining the appropriate terms and conditions, the
26 court shall consider the dispositional report of the chief court counselor.

27 (b) In no event shall a person placed on probation pursuant to this section be
28 confined by the Department past that person's nineteenth birthday.

29 (c) In determining whether to suspend the sentence and place the juvenile on
30 probation, the court shall consider:

31 (1) The age of the juvenile;

32 (2) The physical, mental, and emotional needs of the juvenile; and

33 (3) The resources available to the juvenile pursuant to G.S. 7B-2504
34 and the applicability of the resources to the needs of the juvenile.

35 (d) If the court suspends the sentence of the juvenile pursuant to subsection (a) of
36 this section, the court shall order that a probation officer and a juvenile court
37 counselor be assigned to supervise and monitor the progress of the juvenile. Except
38 as provided in subsection (d) of this section, any violations of probation shall be
39 determined and heard pursuant to Article 82 of Chapter 15A of the General Statutes.

40 (e) In the judgment suspending the sentence, the court shall limit jurisdiction to
41 alter or revoke the suspension. This limitation requires that the suspension may be
42 reduced, continued, extended, modified, or revoked only by the sentencing judge or,
43 if the sentencing judge is no longer on the bench, by a presiding judge in the court
44 where the juvenile was sentenced.

1 (f) Parts 1, 2, and 3 of Article 27A of Chapter 14 of the General Statutes applies
2 to juveniles sentenced for offenses set forth in G.S. 14-208.6(5)."

3 Section 6. G.S. 115C-404 reads as rewritten:

4 "**§ 115C-404. Use of juvenile court information.**

5 (a) Written notifications received in accordance with ~~G.S. 7A-675.1~~ G.S. 7B-3101
6 and information gained from examination of juvenile records in accordance with G.S.
7 7B-3100 are confidential records, are not public records as defined under G.S.132-1,
8 and shall not be made part of the student's official record under G.S. 115C-402.
9 Immediately upon receipt, the principal shall maintain these documents in a safe,
10 locked record storage that is separate from the student's other school records. ~~The~~
11 ~~principal shall maintain these documents until the principal receives notification that~~
12 ~~the judge dismissed the petition under G.S. 7A-637, the judge transferred jurisdiction~~
13 ~~over the student to superior court under G.S. 7A-608, or the judge granted the~~
14 ~~student's petition for expunction of the records. At that time, the~~ The principal shall
15 shred, burn, or otherwise destroy the documents received in accordance with G.S.
16 7B-3100 to protect the confidentiality of this information. the information when the
17 principal receives notification that the court dismissed the petition under G.S. 7B-
18 2411, the court transferred jurisdiction over the student to superior court under G.S.
19 7B-2200, or the court granted the student's petition for expunction of the records.
20 The principal shall shred, burn, or otherwise destroy all information gained from
21 examination of juvenile records in accordance with G.S. 7B-3100 when the principal
22 finds that the school no longer needs the information to protect the safety of or to
23 improve the education opportunities for the student or others. In no case shall the
24 principal make a copy of these documents.

25 (b) Documents received under this section ~~may~~ shall be used only to protect the
26 safety of or to improve the education opportunities for the student or others.
27 Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a
28 decision to suspend or expel a student. Upon receipt of each document, the principal
29 shall share the document with those individuals who have (i) direct guidance,
30 teaching, or supervisory responsibility for the student, and (ii) a specific need to
31 know in order to protect the safety of the student or others. Those individuals shall
32 indicate in writing that they have read the document and that they agree to maintain
33 its confidentiality. Failure to maintain the confidentiality of these documents as
34 required by this section is grounds for the dismissal of an employee who is not a
35 career employee and is grounds for dismissal of an employee who is a career
36 employee, in accordance with G.S. 115C-325(e)(1)i.

37 (c) If the student graduates, withdraws from school, is suspended for the
38 remainder of the school year, is expelled, or transfers to another school, the principal
39 shall return ~~the~~ all documents not destroyed in accordance with subsection (a) of this
40 section to the juvenile court counselor and, if applicable, shall provide the counselor
41 with the name and address of the school to which the student is transferring."

42 Section 7. G.S. 143-661(a) reads as rewritten:

43 "(a) The Criminal Justice Information Network Governing Board is established
44 within the Department of Justice, State Bureau of Investigation, to operate the State's

1 Criminal Justice Information Network, the purpose of which shall be to provide the
2 governmental and technical information systems infrastructure necessary for
3 accomplishing State and local governmental public safety and justice functions in the
4 most effective manner by appropriately and efficiently sharing criminal justice and
5 juvenile justice information among law enforcement, judicial, and corrections
6 agencies. The Board is established within the Department of Justice, State Bureau of
7 Investigation, for organizational and budgetary purposes only and the Board shall
8 exercise all of its statutory powers in this Article independent of control by the
9 Department of Justice."

10 Section 8. (a) G.S. 164-36 reads as rewritten:

11 "**§ 164-36. Powers and duties.**

12 (a) Sentences established for violations of the State's criminal laws should be based
13 on the established purposes of our criminal justice and corrections systems. The
14 Commission shall evaluate sentencing laws and policies in relationship to both the
15 stated purposes of the criminal justice and corrections systems and the availability of
16 sentencing options. The Commission shall make recommendations to the General
17 Assembly for the modification of sentencing laws and policies, and for the addition,
18 deletion, or expansion of sentencing options as necessary to achieve policy goals. The
19 Commission shall make a report of its recommendations, including any recommended
20 legislation, to the General Assembly annually.

21 (b) Dispositions established for violations by juveniles of the State's criminal laws
22 should be based on the established purposes set forth in Chapter 7B of the General
23 Statutes. The Commission shall evaluate dispositional laws and policies in
24 relationship to both the stated purposes of Chapter 7B of the General Statutes and
25 the availability of dispositional alternatives. The Commission shall make
26 recommendations to the General Assembly for the modification of dispositional laws
27 and policies, and for the addition, deletion, or expansion of dispositional alternatives
28 as necessary to achieve policy goals. The Commission shall make a report of its
29 recommendations, including any recommended legislation, to the General Assembly
30 annually."

31 (b) G.S. 164-40 reads as rewritten:

32 "**§ 164-40. Correction population simulation ~~model~~: model; Department of Juvenile**
33 **Justice facilities population simulation model.**

34 (a) The Commission shall develop a correctional population simulation model, and
35 shall have first priority to apply the model to a given fact situation, or theoretical
36 change in the sentencing laws, when requested to do so by the Chairman, the
37 Executive Director, or the Commission as a whole.

38 The Executive Director or the Chairman shall make the model available to
39 respond to inquiries by any State legislator, or by the Secretary of the Department of
40 Correction, in second priority to the work of the Commission.

41 (b) The Commission shall develop a Department of Juvenile Justice facilities
42 population simulation model, and shall have first priority to apply the model to a
43 given fact situation, or theoretical change in the dispositional laws set forth in

1 Chapter 7B of the General Statutes, when requested to do so by the Chairman, the
2 Executive Director, or the Commission as a whole.

3 The Executive Director or the Chairman shall make the model available to
4 respond to inquiries by any State legislator, or by the Secretary of the Department of
5 Juvenile Justice, in second priority to the work of the Commission."

6 (c) G.S. 164-42.1 reads as rewritten:

7 "**§ 164-42.1. Policy recommendations.**

8 (a) Using the studies of the Special Committee on Prisons, the Governor's Crime
9 Commission, and other analyses, including testimony from representatives of the
10 bodies that conducted the analyses, the Commission shall:

- 11 (1) Determine the long-range needs of the criminal justice and
12 corrections systems and recommend policy priorities for those
13 systems;
- 14 (2) Determine the long-range information needs of the criminal justice
15 and corrections systems and acquire that information as it becomes
16 available;
- 17 (3) Identify critical problems in the criminal justice and corrections
18 systems and recommend strategies to solve those problems;
- 19 (4) Assess the cost-effectiveness of the use of State and local funds in
20 the criminal justice and corrections systems;
- 21 (5) Recommend the goals, priorities, and standards for the allocation
22 of criminal justice and corrections funds;
- 23 (6) Recommend means to improve the deterrent and rehabilitative
24 capabilities of the criminal justice and corrections systems;
- 25 (7) Propose plans, programs, and legislation for improving the
26 effectiveness of the criminal justice and corrections systems;
- 27 (8) Determine the sentencing structures for parole decisions;
- 28 (9) Examine the impact of mandatory sentence lengths as opposed to
29 the deterrent effect of minimum mandatory terms of imprisonment;
- 30 (10) Examine good time and gain time practices;
- 31 (11) Study the value of presentence reports;
- 32 (12) Consider the rehabilitative potential of the offender and the
33 appropriate rehabilitative placement;
- 34 (13) Examine the impact of imprisonment on families of offenders;
- 35 (14) Examine the impact of imprisonment on the ability of the offender
36 to make restitution; ~~and~~
- 37 (15) Study the need for an amendment to Article XI, Section 1 of the
38 State Constitution to include restitution, restraints on liberty, work
39 programs, or other punishments to the list of punishments allowed
40 under that section; and
- 41 (16) Study the costs and consequences of criminal behavior in North
42 Carolina and consider the value of preventing crimes by using
43 incarceration to deter both prospective criminals and convicted
44 criminals from future crimes.

1 (b) Using the studies and analyses available, including testimony from
2 representatives of the bodies that conducted the analyses, the Commission shall:

3 (1) Determine the long-range needs of the juvenile justice system and
4 recommend policy priorities for that system;

5 (2) Determine the long-range information needs of the juvenile justice
6 system and acquire that information as it becomes available;

7 (3) Identify critical problems in the juvenile justice system and
8 recommend strategies to solve those problems;

9 (4) Assess the cost-effectiveness of the use of State and local funds in
10 the juvenile justice system; and

11 (5) Recommend the goals, priorities, and standards for the allocation
12 of juvenile justice funds."

13 (d) G.S. 164-43 reads as rewritten:

14 "**§ 164-43. Priority of duties; reports; continuing duties.**

15 (a) The Commission shall have two primary duties, and other secondary duties
16 essential to accomplishing the primary ones. The Commission may establish
17 subcommittees or advisory committees composed of Commission members to
18 accomplish duties imposed by this Article.

19 It is the legislative intent that the Commission attach priority to accomplish the
20 following primary duties:

21 (1) The classification of criminal offenses as described in G.S. 164-41
22 and the formulation of sentencing structures as described in G.S.
23 164-42; and

24 (2) The formulation of proposals and recommendations as described in
25 G.S. 164-42.1 and G.S. 164-42.2.

26 (b) The Commission shall report its findings and recommendations to the 1991
27 General Assembly, 1991 Regular Session. The report shall describe the status of the
28 Commission's work, and shall include any completed policy recommendations.

29 (c) The Commission shall report on its progress in formulating recommendations
30 for the classification and ranges of punishment for felonies and misdemeanors,
31 required by G.S. 164-41, and sentencing structures, established pursuant to G.S. 164-
32 42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final
33 report on these recommendations no later than 30 days after the convening of the
34 1993 Session of the General Assembly.

35 (d) Once the primary duties of the Commission have been accomplished, it shall
36 have the continuing duty to monitor and review the criminal justice and corrections
37 systems and the juvenile justice system in this State to ensure that ~~sentencing remains~~
38 sentences and dispositions remain uniform and consistent, and that the goals and
39 policies established by the State are being implemented by sentencing and
40 dispositional practices, and it shall recommend methods by which this ongoing work
41 may be accomplished and by which the correctional population simulation model and
42 the Department of Juvenile Justice facilities population simulation model developed
43 pursuant to G.S. 164-40 shall continue to be used by the State.

1 (e) Upon adoption of a system for the classification of offenses formulated
2 pursuant to G.S. 164-41, the Commission or its successor shall review all proposed
3 legislation which creates a new criminal offense, changes the classification of an
4 offense, or changes the range of punishment or dispositional level for a particular
5 classification, and shall make recommendations to the General Assembly.

6 (f) In the case of a new criminal offense, the Commission or its successor shall
7 determine whether the proposal places the offense in the correct classification, based
8 upon the considerations and principles set out in G.S. 164-41. If the proposal does
9 not assign the offense to a classification, it shall be the duty of the Commission or its
10 successor to recommend the proper classification placement.

11 (g) In the case of proposed changes in the classification of an offense or changes
12 in the range of punishment or dispositional level for a classification, the Commission
13 or its successor shall determine whether such a proposed change is consistent with the
14 considerations and principles set out in G.S. 164-41, and shall report its findings to
15 the General Assembly.

16 (h) The Commission or its successor shall meet within 10 days after the last day
17 for filing general bills in the General Assembly for the purpose of reviewing bills as
18 described in subsections (e), (f), and (g). The Commission or its successor shall
19 include in its report on a bill an analysis based on an application of the correctional
20 population simulation model or the Department of Juvenile Justice facilities
21 population simulation model to the provisions of the bill."

22 (e) G.S. 164-44 reads as rewritten:

23 "**§ 164-44. Statistical information; financial or other aid.**

24 (a) The Commission shall have the secondary duty of collecting, developing, and
25 maintaining statistical data relating to ~~sentencing and corrections~~ sentencing,
26 corrections, and juvenile justice so that the primary duties of the Commission will be
27 formulated using data that is valid, accurate, and relevant to this State. All State
28 agencies shall provide data as it is requested by the Commission. All meetings of the
29 Commission shall be open to the public and the information presented to the
30 Commission shall be available to any State agency or member of the General
31 Assembly.

32 (b) The Commission shall have the authority to apply for, accept, and use any
33 gifts, grants, or financial or other aid, in any form, from the federal government or
34 any agency or instrumentality thereof, or from the State or from any other source
35 including private associations, foundations, or corporations to accomplish any of the
36 duties set out in this Chapter."

37 **PART III. REGISTRATION OF CERTAIN JUVENILES.**

38 Section 9. Effective October 1, 1999, Article 25 of Chapter 7B of the
39 General Statutes is amended by adding a new section to read:

40 "**§ 7B-2505.1. Registration of certain delinquent juveniles.**

41 In any case in which a juvenile, who was at least eleven years of age at the time of
42 the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first-
43 degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sexual
44 offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape

1 or sexual offense), the judge, upon a finding that the juvenile is a danger to the
2 community, may order that the juvenile register in accordance with Part 4 of Article
3 27A of Chapter 14 of the General Statutes."

4 **PART IV. PREVENTION STATUTORY RECOMMENDATIONS EDUCATING**
5 **CHILDREN** **EXPELLED FROM SCHOOL**

6 Section 10. G.S. 115C-12(24) reads as rewritten:

7 "(24) Duty to Develop Guidelines for Alternative Learning Programs,
8 Provide Technical Assistance on Implementation of Programs, and
9 Evaluate Programs. -- The State Board of Education shall adopt
10 guidelines for assigning students to alternative learning programs.
11 These guidelines shall include (i) a description of the programs
12 and services that are recommended to be provided in alternative
13 learning ~~programs and programs~~, (ii) a process for ensuring that an
14 assignment is appropriate for the student and that the student's
15 parents are involved in the ~~decision~~, decision, and (iii) strategies
16 for providing alternative learning programs, when feasible and
17 appropriate, for students who are subject to long-term suspension
18 or expulsion.

19 The State Board of Education shall also adopt guidelines to
20 require that local school administrative units shall use (i) the
21 teachers allocated for students assigned to alternative learning
22 programs pursuant to the regular teacher allotment and (ii) the
23 teachers allocated for students assigned to alternative learning
24 programs only to serve the needs of these students.

25 The State Board of Education shall provide technical support to
26 local school administrative units to assist them in developing and
27 implementing plans for alternative learning programs.

28 The State Board shall evaluate the effectiveness of alternative
29 learning programs and, in its discretion, of any other programs
30 funded from the Alternative Schools/At-Risk Student allotment.
31 Local school administrative units shall report to the State Board of
32 Education on how funds in the Alternative Schools/At-Risk
33 Student allotment are spent and shall otherwise cooperate with the
34 State Board of Education in evaluating the alternative learning
35 programs."

36 Section 11. G.S. 115C-105.47(b) reads as rewritten:

37 "(b) Each plan shall include each of the following components:

38 (1) Clear statements of the standard of behavior expected of students
39 at different grade levels and of school personnel and clear
40 statements of the consequences that will result from one or more
41 violations of those standards. There shall be a statement of
42 consequences for students under the age of 13 who physically
43 assault and seriously injure a teacher or other individual on school

- 1 property or at a school-sponsored or school-related activity. The
2 consequences may include placement in an alternative setting.
- 3 (2) A clear statement of the responsibility of the superintendent for
4 coordinating the adoption and the implementation of the plan,
5 evaluating principals' performance regarding school safety,
6 monitoring and evaluating the implementation of safety plans at
7 the school level, and coordinating with local law enforcement and
8 court officials appropriate aspects of implementation of the plan.
9 The statement of responsibility shall provide appropriate
10 disciplinary consequences that may occur if the superintendent fails
11 to carry out these responsibilities. These consequences may include
12 a reprimand in the superintendent's personnel file or withholding
13 of the superintendent's salary, or both.
- 14 (3) A clear statement of the responsibility of the school principal for
15 restoring, if necessary, and maintaining a safe, secure, and orderly
16 school environment and of the consequences that may occur if the
17 principal fails to meet that responsibility. The principal's duties
18 shall include exhibiting appropriate leadership for school personnel
19 and students, providing for alternative placements for students who
20 are seriously disruptive, reporting all criminal acts under G.S.
21 115C-288(g), and providing appropriate disciplinary consequences
22 for disruptive students. The consequences to the principal that may
23 occur shall include a reprimand in the principal's personnel file
24 and disciplinary proceedings under G.S. 115C-325.
- 25 (4) Clear statements of the roles of other administrators, teachers, and
26 other school personnel in restoring, if necessary, and maintaining a
27 safe, secure, and orderly school environment.
- 28 (5) Procedures for identifying and serving the needs of students who
29 are at risk of academic failure or of engaging in disruptive or
30 disorderly behavior.
- 31 (6) Mechanisms for assessing the needs of disruptive and disorderly
32 students, providing them with services to assist them in achieving
33 academically and in modifying their behavior, and removing them
34 from the classroom when necessary.
- 35 (6a) Strategies for providing alternative learning programs, when
36 feasible and appropriate, for students who are subject to long-term
37 suspension or expulsion.
- 38 (7) Measurable objectives for improving school safety and order.
- 39 (8) Measures of the effectiveness of efforts to assist students at risk of
40 academic failure or of engaging in disorderly or disruptive
41 behavior.
- 42 (9) Professional development clearly matched to the goals and
43 objectives of the plan.

- 1 (10) A plan to work effectively with local law enforcement officials and
2 court officials to ensure that schools are safe and laws are enforced.
- 3 (11) A plan to provide access to information to the school community,
4 parents, and representatives of the local community on the ongoing
5 implementation of the local plan, monitoring of the local plan, and
6 the integration of educational and other services for students into
7 the total school program.
- 8 (12) The name and role description of the person responsible for
9 implementation of the plan.
- 10 (13) Direction to school improvement teams within the local school
11 administrative unit to consider the special conditions at their
12 schools and to incorporate into their school improvement plans the
13 appropriate components of the local plan for maintaining safe and
14 orderly schools.
- 15 (14) A clear and detailed statement of the planned use of federal, State,
16 and local funds allocated for at-risk students, alternative schools, or
17 both.
- 18 (15) Any other information the local board considers necessary or
19 appropriate to implement this Article.

20 A local board may develop its plan under this section by conducting a
21 comprehensive review of its existing policies, plans, statements, and procedures to
22 determine whether they: (i) are effective; (ii) have been updated to address recent
23 changes in the law; (iii) meet the current needs of each school in the local school
24 administrative unit; and (iv) address the components required to be included in the
25 local plan. The board then may consolidate and supplement any previously
26 developed policies, plans, statements, and procedures that the board determines are
27 effective and updated, meet the current needs of each school, and meet the
28 requirements of this subsection.

29 Once developed, the board shall submit the local plan to the State Board of
30 Education and shall ensure the plan is available and accessible to parents and the
31 school community. The board shall provide annually to the State Board information
32 that demonstrates how the At-Risk Student Services/Alternative Schools Funding
33 Allotment has been used to (i) prevent academic failure or (ii) promote school
34 safety."

35 PART V. CONFORMING STATUTORY CHANGES

36 Section 12. (a) G.S. 8-53.1 reads as rewritten:

37 "**§ 8-53.1. Physician-patient privilege waived in child abuse.**

38 Notwithstanding the provisions of G.S. 8-53, the physician-patient privilege shall
39 not be ground for excluding evidence regarding the abuse or neglect of a child under
40 the age of 16 years or regarding an illness of or injuries to such child or the cause
41 thereof in any judicial proceeding related to a report pursuant to the North Carolina
42 Juvenile Code, ~~Subchapter XI of Chapter 7A~~ 7B of the General Statutes of North
43 Carolina."

44 (b) G.S. 8-53.3 reads as rewritten:

1 **"§ 8-53.3. Communications between psychologist and client or patient.**

2 No person, duly authorized as a licensed psychologist or licensed psychological
3 associate, nor any of his or her employees or associates, shall be required to disclose
4 any information which he or she may have acquired in the practice of psychology and
5 which information was necessary to enable him or her to practice psychology. Any
6 resident or presiding judge in the district in which the action is pending may, subject
7 to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her
8 opinion disclosure is necessary to a proper administration of justice. If the case is in
9 district court the judge shall be a district court judge, and if the case is in superior
10 court the judge shall be a superior court judge.

11 Notwithstanding the provisions of this section, the psychologist-client or patient
12 privilege shall not be grounds for failure to report suspected child abuse or neglect to
13 the appropriate county department of social services, or for failure to report a
14 disabled adult suspected to be in need of protective services to the appropriate
15 county department of social services. Notwithstanding the provisions of this section,
16 the psychologist-client or patient privilege shall not be grounds for excluding
17 evidence regarding the abuse or neglect of a child, or an illness of or injuries to a
18 child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or
19 exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the
20 cause thereof, in any judicial proceeding related to a report pursuant to the Child
21 Abuse Reporting Law, ~~Article 44 of Chapter 7A~~, Article 3 of Chapter 7B of the
22 General Statutes, or to the Protection of the Abused, Neglected, or Exploited
23 Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

24 (c) G.S. 8-57.1 reads as rewritten:

25 **"§ 8-57.1. Husband-wife privilege waived in child abuse.**

26 Notwithstanding the provisions of G.S. 8-56 and G.S. 8-57, the husband-wife
27 privilege shall not be ground for excluding evidence regarding the abuse or neglect of
28 a child under the age of 16 years or regarding an illness of or injuries to such child or
29 the cause thereof in any judicial proceeding related to a report pursuant to the Child
30 Abuse Reporting Law, ~~Article 8 of Chapter 110~~ Article 3 of Chapter 7B of the
31 General Statutes of North Carolina."

32 (d) G.S. 14-208.6B reads as rewritten:

33 **"§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in
34 superior court.**

35 A juvenile transferred to superior court pursuant to ~~G.S. 7A-608~~ G.S. 7B-2200 who
36 is convicted of a sexually violent offense or an offense against a minor as defined in
37 G.S. 14-208.6 shall register in accordance with this Article just as an adult convicted
38 of the same offense must register."

39 (e) G.S. 15A-502(c) reads as rewritten:

40 "(c) This section does not authorize the taking of photographs or fingerprints of a
41 juvenile alleged to be delinquent except under ~~G.S. 7A-596 through 7A-601 and~~
42 ~~7A-603~~. Article 21 of Chapter 7B of the General Statutes."

43 (f) G.S. 35A-1371 reads as rewritten:

44 **"§ 35A-1371. Jurisdiction; limits.**

1 Notwithstanding the provisions of Subchapter II of this Chapter, the clerk of
2 superior court shall have original jurisdiction for the appointment of a standby
3 guardian for a minor child under this Article. Provided that the clerk shall have no
4 jurisdiction, no standby guardian may be appointed under this Article, and no
5 designation may become effective under this Article when a district court has
6 assumed jurisdiction over the minor child in an action under Chapter 50 of the
7 General Statutes or in an abuse, neglect, or dependency proceeding under
8 ~~Subchapter XI of Chapter 7A~~ Subchapter I of Chapter 7B of the General Statutes, or
9 when a court in another state has assumed such jurisdiction under a comparable
10 statute."

11 (g) G.S. 48-2-102(b) reads as rewritten:

12 "(b) If an adoptee is also the subject of a pending proceeding under ~~Subchapter~~
13 ~~XI of Chapter 7A~~ Chapter 7B of the General Statutes, then the district court having
14 jurisdiction under Chapter ~~7A~~ 7B shall retain jurisdiction until the final order of
15 adoption is entered. The district court may waive jurisdiction for good cause."

16 (h) G.S. 48-3-201(d) reads as rewritten:

17 "(d) An agency having legal and physical custody of a minor may place the minor
18 for adoption at any time after a relinquishment is executed by anyone as permitted by
19 G.S. 48-3-701. The agency may place the minor for adoption even if other consents
20 are required before an adoption can be granted, unless an individual whose consent is
21 required notifies the agency in writing of the individual's objections before the
22 placement. The agency shall act promptly after accepting a relinquishment to obtain
23 all other necessary consents, relinquishments, or terminations of any guardian's
24 authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant
25 to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes."

26 (i) G.S. 48-2-304(c) reads as rewritten:

27 "(c) A petition to adopt a minor under Article 3 of this Chapter shall also state:

- 28 (1) A description of the source of placement and the date of
29 placement of the adoptee with the petitioner; and
30 (2) That the provisions of the Interstate Compact on the Placement of
31 Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of Chapter 7B of the
32 General Statutes, were followed if the adoptee was brought into
33 this State from another state for purposes of adoption."

34 (j) G.S. 48-2-603 reads as rewritten:

35 "**§ 48-2-603. Hearing on, or disposition of, petition to adopt a minor.**

36 (a) At the hearing on, or disposition of, a petition to adopt a minor, the court
37 shall grant the petition upon finding by a preponderance of the evidence that the
38 adoption will serve the best interest of the adoptee, and that:

- 39 (1) At least 90 days have elapsed since the filing of the petition for
40 adoption, unless the court for cause waives this requirement;
41 (2) The adoptee has been in the physical custody of the petitioner for
42 at least 90 days, unless the court for cause waives this requirement;
43 (3) Notice of the filing of the petition has been served on any person
44 entitled to receive notice under Part 4 of this Article;

- 1 (4) Each necessary consent, relinquishment, waiver, or judicial order
2 terminating parental rights, has been obtained and filed with the
3 court and the time for revocation has expired;
- 4 (5) Any assessment required by this Chapter has been filed with and
5 considered by the court;
- 6 (6) If applicable, the requirements of the Interstate Compact on the
7 Placement of Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of Chapter
8 7B of the General Statutes, have been met;
- 9 (7) Any motion to dismiss the proceeding has been denied;
- 10 (8) Each petitioner is a suitable adoptive parent;
- 11 (9) Any accounting and affidavit required under G.S. 48-2-602 has
12 been reviewed by the court, and the court has denied, modified, or
13 ordered reimbursement of any payment or disbursement that
14 violates Article 10 or is unreasonable when compared with the
15 expenses customarily incurred in connection with an adoption;
- 16 (10) The petitioner has received information about the adoptee and the
17 adoptee's biological family if required by G.S. 48-3-205; and
- 18 (11) There has been substantial compliance with the provisions of this
19 Chapter.

20 (b) If the Court finds a violation of this Chapter pursuant to Article 10 or of the
21 Interstate Compact on the Placement of Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of
22 Chapter 7B of the General Statutes, but determines that in every other respect there
23 has been substantial compliance with the provisions of this Chapter, and the adoption
24 will serve the best interest of the adoptee, the court shall:

- 25 (1) Grant the petition to adopt; and
- 26 (2) Impose the sanctions provided by this Chapter against any
27 individual or entity who has committed a prohibited act or report
28 the violations to the appropriate legal authorities.

29 (c) The court on its own motion may continue the hearing for further evidence."

30 (j1) G.S. 48-2-305(7) reads as rewritten:

31 "(7) Any signed copy of the form required by the Interstate Compact
32 on the Placement of Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of
33 Chapter 7B of the General Statutes, authorizing a minor to come
34 into this State;"

35 (k) G.S. 48-3-207 reads as rewritten:

36 "**§ 48-3-207. Interstate placements.**

37 An interstate placement of a minor for purposes of adoption shall comply with the
38 Interstate Compact on the Placement of Children, ~~G.S. 110-57.1 et seq.~~ Article 38 of
39 Chapter 7B of the General Statutes."

40 (l) G.S. 48-3-603(a)(1) reads as rewritten:

41 " (1) An individual whose parental rights and duties have been
42 terminated under ~~Article 24B of Chapter 7A~~ Article 11 of Chapter
43 7B of the General Statutes or by a court of competent jurisdiction
44 in another state;"

1 (m) G.S. 50-13.1(f) reads as rewritten:

2 "(f) Neither the mediator nor any party or other person involved in mediation
3 sessions under this section shall be competent to testify to communications made
4 during or in furtherance of such mediation sessions; provided, there is no privilege as
5 to communications made in furtherance of a crime or fraud. Nothing in this
6 subsection shall be construed as permitting an individual to obtain immunity from
7 prosecution for criminal conduct or as excusing an individual from the reporting
8 requirements of ~~G.S. 7A-543~~ Article 3 of Chapter 7B of the General Statutes or G.S.
9 108A-102."

10 (n) G.S. 50A-25 reads as rewritten:

11 "**§ 50A-25. Emergency orders.**

12 Nothing in this Chapter shall be interpreted to limit the authority of the court to
13 issue an interlocutory order under the provisions of G.S. 50-13.5(d)(2); or a secure or
14 nonsecure custody order under the provisions of ~~G.S. 7A-573~~. G.S. 7B-502."

15 (o) G.S. 50B-6 reads as rewritten:

16 "**§ 50B-6. Construction of Chapter.**

17 This Chapter shall not be construed as granting a status to any person for any
18 purpose other than those expressly stated herein. This Chapter shall not be construed
19 as relieving any person or institution of the duty to report to the department of social
20 services, as required by ~~G.S. 7A-543~~, G.S. 7B-301, if the person or institution has
21 cause to suspect that a juvenile is abused or neglected."

22 (p) G.S. 51-2(a) reads as rewritten:

23 "(a) All unmarried persons of 18 years, or older, may lawfully marry, except as
24 hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of
25 age may marry, and the register of deeds may issue a license for such marriage, only
26 after there shall have been filed with the register of deeds a written consent to such
27 marriage, said consent having been signed by the appropriate person as follows:

- 28 (1) By the father if the male or female child applying to marry resides
29 with his or her father, but not with his or her mother;
- 30 (2) By the mother if the male or female child applying to marry
31 resides with his or her mother, but not with his or her father;
- 32 (3) By either the mother or father, without preference, if the male or
33 female child applying to marry resides with his or her mother and
34 father;
- 35 (4) By a person, agency, or institution having legal custody, standing in
36 loco parentis, or serving as guardian of such male or female child
37 applying to marry.

38 Such written consent shall not be required for an emancipated minor if a certificate
39 of emancipation issued pursuant to Article ~~56 of Chapter 7A~~ 35 of Chapter 7B of the
40 General Statutes or a certified copy of a final decree or certificate of emancipation
41 from this or any other jurisdiction is filed with the register of deeds."

42 (q) G.S. 90-21.6(1) reads as rewritten:

43 "(1) 'Unemancipated minor' or 'minor' means any person under the
44 age of 18 who has not been married or has not been emancipated

1 pursuant to Article ~~56 of Chapter 7A~~ 35 of Chapter 7B of the
2 General Statutes."

3 (r) G.S. 90-21.8(f) reads as rewritten:

4 "(f) The court shall make written findings of fact and conclusions of law
5 supporting its decision and shall order that a confidential record of the evidence be
6 maintained. If the court finds that the minor has been a victim of incest, whether
7 felonious or misdemeanor, it shall advise the Director of the Department of Social
8 Services of its findings for further action pursuant to Article ~~44 of Chapter 7A~~ 3 of
9 Chapter 7B of the General Statutes."

10 (s) G.S. 108A-14(a)(11) reads as rewritten:

11 "(11) To investigate reports of child abuse and neglect and to take
12 appropriate action to protect such children pursuant to the Child
13 Abuse Reporting Law, Article ~~44 of Chapter 7A~~; Article 3 of
14 Chapter 7B of the General Statutes:"

15 (t) G.S. 110-102 reads as rewritten:

16 **"§ 110-102. Information for parents.**

17 The Secretary shall provide to each operator of a child care facility a summary of
18 this Article for the parents, guardian, or full-time custodian of each child receiving
19 child care in the facility to be distributed by the operator. The summary shall include
20 the name and address of the Secretary and the address of the Commission. The
21 summary shall also include a statement regarding the mandatory duty prescribed in
22 ~~G.S. 7A-543~~ G.S. 7B-301 of any person suspecting child abuse or neglect has taken
23 place in child care, or elsewhere, to report to the county Department of Social
24 Services. The statement shall include the definitions of child abuse and neglect
25 described in the Juvenile Code in ~~G.S. 7A-517~~ 7B-101 and of child abuse described
26 in the Criminal Code in G.S. 14-318.2 and G.S. 14-318.4. The statement shall stress
27 that this reporting law does not require that the person reporting reveal the person's
28 identity."

29 (u) G.S. 110-105.2(a) reads as rewritten:

30 "(a) For purposes of this Article, child abuse and neglect, as defined in ~~G.S.~~
31 ~~7A-517~~ G.S. 7B-101 and in G.S. 14-318.2 and G.S. 14-318.4, occurring in child care
32 facilities, are violations of the licensure standards and of the licensure law."

33 (v) G.S. 110-147 reads as rewritten:

34 **"§ 110-147. Purpose.**

35 It is the expressed intent of this Article to make the prevention of child abuse and
36 neglect as defined in ~~G.S. 7A-517~~, G.S. 7B-101, a priority of this State and to
37 establish the Children's Trust Fund as a means to that end."

38 (w) G.S. 114-15.3 reads as rewritten:

39 **"§ 114-15.3. Investigations of child sexual abuse in child care.**

40 The Director of the Bureau may form a task force to investigate and gather
41 evidence following a notification by the director of a county department of social
42 services, pursuant to ~~G.S. 7A-543~~, G.S. 7B-301, that child sexual abuse may have
43 occurred in a child care facility."

44 (x) G.S. 115C-378 reads as rewritten:

1 **"§ 115C-378. Children required to attend.**

2 Every parent, guardian or other person in this State having charge or control of a
3 child between the ages of seven and 16 years shall cause such child to attend school
4 continuously for a period equal to the time which the public school to which the
5 child is assigned shall be in session. Every parent, guardian, or other person in this
6 State having charge or control of a child under age seven who is enrolled in a public
7 school in grades kindergarten through two shall also cause such child to attend school
8 continuously for a period equal to the time which the public school to which the
9 child is assigned shall be in session unless the child has withdrawn from school. No
10 person shall encourage, entice or counsel any such child to be unlawfully absent from
11 school. The parent, guardian, or custodian of a child shall notify the school of the
12 reason for each known absence of the child, in accordance with local school policy.

13 The principal, superintendent, or teacher who is in charge of such school shall
14 have the right to excuse a child temporarily from attendance on account of sickness
15 or other unavoidable cause which does not constitute unlawful absence as defined by
16 the State Board of Education. The term 'school' as used herein is defined to embrace
17 all public schools and such nonpublic schools as have teachers and curricula that are
18 approved by the State Board of Education.

19 All nonpublic schools receiving and instructing children of a compulsory school
20 age shall be required to keep such records of attendance and render such reports of
21 the attendance of such children and maintain such minimum curriculum standards as
22 are required of public schools; and attendance upon such schools, if the school
23 refuses or neglects to keep such records or to render such reports, shall not be
24 accepted in lieu of attendance upon the public school of the district to which the
25 child shall be assigned: Provided, that instruction in a nonpublic school shall not be
26 regarded as meeting the requirements of the law unless the courses of instruction run
27 concurrently with the term of the public school in the district and extend for at least
28 as long a term.

29 The principal or his designee shall notify the parent, guardian, or custodian of his
30 child's excessive absences after the child has accumulated three unexcused absences
31 in a school year. After not more than six unexcused absences, the principal shall
32 notify the parent, guardian, or custodian by mail that he may be in violation of the
33 Compulsory Attendance Law and may be prosecuted if the absences cannot be
34 justified under the established attendance policies of the State and local boards of
35 education. Once the parents are notified, the school attendance counselor shall work
36 with the child and his family to analyze the causes of the absences and determine
37 steps, including adjustment of the school program or obtaining supplemental services,
38 to eliminate the problem. The attendance counselor may request that a law-
39 enforcement officer accompany him if he believes that a home visit is necessary.

40 After 10 accumulated unexcused absences in a school year the principal shall
41 review any report or investigation prepared under G.S. 115C-381 and shall confer
42 with the student and his parent, guardian, or custodian if possible to determine
43 whether the parent, guardian, or custodian has received notification pursuant to this
44 section and made a good faith effort to comply with the law. If the principal

1 determines that parent, guardian, or custodian has not, he shall notify the district
2 attorney. If he determines that parent, guardian, or custodian has, he may file a
3 complaint with the juvenile intake counselor ~~under G.S. 7A-561~~ pursuant to Chapter
4 7B of the General Statutes that the child is habitually absent from school without a
5 valid excuse. Evidence that shows that the parents, guardian, or custodian were
6 notified and that the child has accumulated 10 absences which cannot be justified
7 under the established attendance policies of the local board shall establish a prima
8 facie case that the child's parent, guardian, or custodian is responsible for the
9 absences."

10 (y) G.S. 115C-400 reads as rewritten:

11 "**§ 115C-400. School personnel to report child abuse.**

12 Any person who has cause to suspect child abuse or neglect has a duty to report
13 the case of the child to the Director of Social Services of the county, as provided in
14 ~~G.S. 7A-543 to 7A-552. Article 3 of Chapter 7B of the General Statutes.~~"

15 (z) G.S. 115C-404(a) reads as rewritten:

16 "(a) Written notifications received in accordance with ~~G.S. 7A-675.1~~ Article 31 of
17 Chapter 7B of the General Statutes are confidential records, are not public records as
18 defined under G.S.132-1, and shall not be made part of the student's official record
19 under G.S. 115C-402. Immediately upon receipt, the principal shall maintain these
20 documents in a safe, locked record storage that is separate from the student's other
21 school records. The principal shall maintain these documents until the principal
22 receives notification that the judge dismissed the ~~petition under G.S. 7A-637, petition,~~
23 the judge transferred jurisdiction over the student to superior ~~court under G.S.~~
24 ~~7A-608, court,~~ or the judge granted the student's petition for expunction of the
25 ~~records.~~ records pursuant to Chapter 7B of the General Statutes. At that time, the
26 principal shall shred, burn, or otherwise destroy the documents to protect the
27 confidentiality of this information. In no case shall the principal make a copy of these
28 documents."

29 (aa) G.S. 122C-54(h) reads as rewritten:

30 "(h) A facility shall disclose confidential information for purposes of complying
31 with Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the General Statutes and Article 6
32 of Chapter 108A of the General Statutes, or as required by other State or federal
33 law."

34 (bb) G.S. 122C-66(e) reads as rewritten:

35 "(e) The duty imposed by this section is in addition to any duty imposed by G.S.
36 ~~7A-543~~ 7B-301 or G.S. 108A-102."

37 (cc) G.S. 122C-223(c) reads as rewritten:

38 "(c) If the legally responsible person cannot be located within 72 hours of
39 admission, the responsible professional shall initiate proceedings for juvenile
40 protective services as described in Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the
41 General Statutes in either the minor's county of residence or in the county in which
42 the facility is located."

43 (dd) G.S. 122C-421(a) reads as rewritten:

1 "(a) The Secretary may designate one or more special police officers who shall
2 make up a joint security force to enforce the law of North Carolina and any
3 ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or
4 pursuant to the authority granted the Department by any other law on the territory of
5 the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile
6 Evaluation Center, all in Buncombe County. After taking the oath of office for law
7 enforcement officers as set out in G.S. 11-11, these special police officers have the
8 same powers as peace officers now vested in sheriffs within the territory embraced by
9 the named centers. These special police officers shall also have the power prescribed
10 by ~~G.S. 7A-571(a)(4)~~ G.S. 7B-1900 outside the territory embraced by the named
11 centers but within the confines of Buncombe County. These special police officers
12 may arrest persons outside the territory of the named centers but within the confines
13 of Buncombe County when the person arrested has committed a criminal offense
14 within that territory, for which the officers could have arrested the person within that
15 territory, and the arrest is made during the person's immediate and continuous flight
16 from that territory."

17 (ee) G.S. 131D-10.2(3) reads as rewritten:

18 "(3) 'Child' means an individual less than 18 years of age, who has not
19 been emancipated under the provisions of ~~Article 56 of Chapter~~
20 7A Article 35 of Chapter 7B of the General Statutes."

21 (ff) G.S. 131D-10.4(3) reads as rewritten:

22 "(3) Secure detention facilities as specified in ~~Article 5 of Chapter~~
23 134A 40 of Chapter 7B of the General Statutes;"

24 (gg) G.S. 132-1.4(l) reads as rewritten:

25 "(l) Records of investigations of alleged child abuse shall be governed by ~~G.S.~~
26 7A-675: Article 29 of Chapter 7B of the General Statutes."

27 (hh) G.S. 143-576(1) reads as rewritten:

28 "(1) Review current deaths of children when those deaths are attributed
29 to child abuse or neglect or when the decedent was reported as an
30 abused or neglected juvenile pursuant to ~~G.S. 7A-543~~ G.S. 7B-301
31 at any time before death;"

32 (ii) G.S. 143B-168.14(a)(3) reads as rewritten:

33 "(3) Each local partnership shall adopt procedures to ensure that all
34 personnel who provide services to young children and their
35 families under this Part know and understand their responsibility
36 to report suspected child abuse, neglect, or dependency, as defined
37 in ~~G.S. 7A-517~~ G.S. 7B-101."

38 (jj) G.S. 143B-496 reads as rewritten:

39 "**§ 143B-496. Definitions.**

40 For the purpose of this Part:

41 (1) 'Missing child' means a juvenile as defined in ~~G.S. 7A-517(20)~~ 7B-
42 101 whose location has not been determined, who has been
43 reported as missing to a law-enforcement agency, and whose
44 parent's, spouse's, guardian's or legal custodian's temporary or

- 1 permanent residence is in North Carolina or is believed to be in
2 North Carolina.
- 3 (2) 'Missing person' means any individual who is 18 years of age or
4 older, whose temporary or permanent residence is in North
5 Carolina, or is believed to be in North Carolina, whose location
6 has not been determined, and who has been reported as missing to
7 a law-enforcement agency.
- 8 (3) 'Missing person report' is a report prepared on a prescribed form
9 for transmitting information about a missing person or a missing
10 child to an appropriate law-enforcement agency."

11 (kk) G.S. 153A-221.1 reads as rewritten:

12 **"§ 153A-221.1. Standards and inspections.**

13 The legal responsibility of the Secretary of Health and Human Services and the
14 Social Services Commission for State services to county juvenile detention homes
15 under this Article is hereby confirmed and shall include the following: development
16 of State standards under the prescribed procedures; inspection; consultation; technical
17 assistance; and training. Further, the legal responsibility of the Department of Health
18 and Human Services is hereby expanded to give said Department the same legal
19 responsibility as to the State-administered regional detention homes which shall be
20 developed by the State Department of Correction as provided by ~~G.S. 134A-37~~. G.S.
21 7B-4008.

22 The Secretary of Health and Human Services shall develop new standards which
23 shall be applicable to county detention homes and regional detention homes as
24 defined by ~~G.S. 134-36~~ Article 40 of Chapter 7B of the General Statutes in line with
25 the recommendations of the report entitled Juvenile Detention in North Carolina: A
26 Study Report (January, 1973) where practicable, and such new standards shall
27 become effective not later than July 1, 1977.

28 The Secretary of Health and Human Services shall also develop standards under
29 which a local jail may be approved as a holdover facility for not more than five
30 calendar days pending placement in a juvenile detention home which meets State
31 standards, providing the local jail is so arranged that any child placed in the holdover
32 facility cannot converse with, see, or be seen by the adult population of the jail while
33 in the holdover facility. The personnel responsible for the administration of a jail
34 with an approved holdover facility shall provide close supervision of any child placed
35 in the holdover facility for the protection of the child."

36 Section 13. Effective October 1, 1999, G.S. 14-208.31 reads as rewritten:

37 **"§ 14-208.31. File with Police Information Network.**

38 (a) The Division shall include the registration information in the Police
39 Information Network as set forth in G.S. 114-10.1.

40 (b) The Division shall maintain the registration information permanently even
41 after the registrant's reporting requirement expires; however, the records shall remain
42 confidential in accordance with ~~G.S. 7A-675~~. Article 32 of Chapter 7B of the General
43 Statutes."

44 **PART VI. UNCODIFIED RECOMMENDATIONS.**

1 Section 14. The Department of Justice shall revise the Division of
2 Criminal Information's juvenile arrest form that is used by State and local law
3 enforcement agencies to provide more realistic reporting options and case disposition
4 information. The Department of Justice shall rename the "Juvenile Arrest" form the
5 "Juvenile Contact Report", with instructions to law enforcement "Use to Record the
6 Handling of Juveniles Who Commit Criminal Offenses" and shall amend the report
7 based on the form included with Recommendation 51 of the March 10, 1998, final
8 report of the Governor's Commission on Juvenile Crime and Justice.

9 Section 15. (a) The Department of Justice shall develop and administer
10 minority sensitivity training for all law enforcement personnel throughout the State.
11 The Department shall ensure that all persons who work with minority juveniles in the
12 juvenile justice system are taught how to communicate effectively with minority
13 juveniles and how to recognize and address the needs of those juveniles. The
14 Department shall also advise all law enforcement and professionals who work within
15 the juvenile justice system of ways to improve the treatment of minority juveniles so
16 that all juveniles receive equal treatment. The Department shall conduct the
17 minority sensitivity training annually and, prior to the training each year, shall assess
18 whether minorities are receiving fair and equal treatment in the juvenile justice
19 system with regard to the administration of predisposition procedures, of diversion
20 methods, of dispositional alternatives, and of treatment and post-release supervision
21 plans.

22 (b) The Department of Juvenile Justice shall ensure that all juvenile
23 court counselors and other Department personnel receive the minority sensitivity
24 training specified in subsection (a) of this section. The Chief Justice of the North
25 Carolina Supreme Court shall consider ensuring that all judges who hear cases under
26 the jurisdiction of the juvenile court receive minority sensitivity training.

27 Section 16. The Legislative Research Commission may study the
28 recommendations of the Court Improvement Project regarding the statutory
29 procedures and mandates of Subchapter I. of Chapter 7B of the General Statutes, the
30 Juvenile Code. The study may include a review of the effectiveness of the juvenile
31 justice system with regard to the disposition of abuse, neglect, and dependency cases
32 and may consider whether the recommendations of the Court Improvement Project
33 will improve the procedures and disposition of those cases. The Legislative Research
34 Commission may report its findings, recommendations, and any legislative proposals
35 to the 1999 General Assembly on or before December 1, 1999.

36 Section 17. (a) The State Board of Education shall study the feasibility
37 and advisability of delaying the start of the school day in order to provide students
38 with constructive projects and tasks during late afternoon hours of the school week.
39 If the Board recommends that the school day be delayed, the Board shall consider
40 whether the local school administrative units should provide supervision of students
41 whose working parents do not have early morning child care available.

42 (b) The State Board of Education shall report its findings,
43 recommendations, and any legislative proposals to the Joint Legislative Education
44 Oversight Committee on or before April 1, 1999.

1 Section 18. (a) The Criminal Justice Information Network Governing
2 Board created pursuant to Section 23.3 of Chapter 18 of the Session Laws of the 1996
3 Second Extra Session shall develop a comprehensive juvenile justice information
4 system. The Board shall develop a system to collect data and information about every
5 juvenile who is alleged to be delinquent from the time a complaint is filed against the
6 juvenile, including:

- 7 (1) Fingerprints and photographs taken of the juvenile;
- 8 (2) Diversion agreements or plans entered into by the juvenile;
- 9 (3) Community services provided to the juvenile and any participation
10 of the juvenile in community-based programs;
- 11 (4) Court orders or dispositions of the juvenile; and
- 12 (5) Plans for care or treatment or for post-release supervision prepared
13 by the Department of Juvenile Justice.

14 The system shall allow for information and data on juveniles to be kept in a form to
15 be shared among appropriate agencies to develop treatment and intervention plans
16 based on specific data and to allow reliable assessment and evaluation of the
17 effectiveness of rehabilitative and preventive services provided to delinquent
18 juveniles.

19 (b) The Criminal Justice Information Network Governing Board shall
20 also study the most appropriate methods and procedures for obtaining, retaining, and
21 releasing fingerprints and photographs of juveniles alleged to be delinquent,
22 including:

- 23 (1) How to identify fingerprints and photographs of juveniles,
24 including the use of social security numbers;
- 25 (2) How long fingerprints and photographs of juveniles should be
26 maintained in the criminal justice information system;
- 27 (3) The extent to which juvenile fingerprints and photographs are kept
28 confidential;
- 29 (4) The circumstances or conditions under which juvenile fingerprints
30 and photographs should be disseminated;
- 31 (5) Whether juvenile fingerprints and photographs should be kept
32 separate from adult records and files; and
- 33 (6) When the juvenile fingerprints and photographs should be
34 destroyed.

35 (c) The Criminal Justice Information Network Governing Board shall
36 consider the issue of expunction of juvenile records, including the appropriate length
37 of time juvenile records should be available to law enforcement, prosecutors, and
38 service providers and under what limitations and conditions records should be
39 expunged.

40 (d) The Criminal Justice Information Network Governing Board shall
41 report to the Chairs of the Senate and House Appropriations Subcommittees on
42 Justice and Public Safety and to the Fiscal Research Division of the General
43 Assembly on the proposed system and any findings, recommendations, and legislative
44 proposals from its study on or before April 1, 1999.

1 Section 19. (a) The Department of Juvenile Justice shall develop a cost-
2 effective plan to establish statewide community-based dispositional alternatives for
3 juveniles who are adjudicated delinquent. The plan shall include a funding strategy to
4 encourage communities to provide local resources, services, and treatment options to
5 meet the physical, emotional, and mental needs of juveniles and their families. In
6 developing the plan, the Department shall consider the following community-based
7 alternatives:

- 8 (1) Home-based family counseling with family support groups that can
9 provide required intervention services;
- 10 (2) After-school activity programs for middle school juveniles targeted
11 at potential at-risk juveniles during the time when most juvenile
12 crimes occur;
- 13 (3) Inpatient and outpatient substance abuse and sex offender
14 treatment programs;
- 15 (4) Intensive supervision of high-risk juveniles;
- 16 (5) Group homes with psychological treatment and programs for
17 juveniles who do not pose a threat to the public but who need long
18 term intervention services.

19 In addition, in developing the plan, the Department shall recommend which judicial
20 districts with high crime rates should have non-residential day reporting centers to
21 provide intensive supervision.

22 (b) The Department shall report to the Chairs of the Senate and House
23 Appropriations Subcommittees on Justice and Public Safety and to the Fiscal
24 Research Division of the General Assembly on the proposed plan, the cost of the
25 plan, and on any legislative proposals required to implement the plan on or before
26 April 1, 1999.

27 Section 20. (a) The Administrative Office of the Courts shall establish
28 pilot programs for the holding of family court within district court districts to be
29 chosen by the Administrative Office of the Courts. Each pilot program shall be
30 conducted following the guidelines for the establishment of family courts contained in
31 the report of the Commission for the Future of Justice and the Courts in North
32 Carolina and shall be assigned to hear all matters involving intrafamily rights,
33 relationships, and obligations, and all juvenile justice matters, including:

- 34 (1) Child abuse, neglect, and dependency;
- 35 (2) Delinquent and undisciplined juvenile matters;
- 36 (3) Emancipation of minors and termination of parental rights;
- 37 (4) Divorce;
- 38 (5) Annulment;
- 39 (6) Equitable distribution;
- 40 (7) Alimony and postseparation support;
- 41 (8) Child custody;
- 42 (9) Child support;
- 43 (10) Paternity;
- 44 (11) Adoption;

- 1 (12) Domestic violence civil restraining orders;
2 (13) Abortion consent waivers;
3 (14) Adult protective services; and
4 (15) Guardianship, involuntary commitment, and voluntary
5 admissions to mental health facilities.

6 (b) The Administrative Office of the Courts shall report to the Chairs of
7 the Senate and House Appropriations Subcommittees on Justice and Public Safety
8 and to the Fiscal Research Division of the General Assembly by March 1, 1999, on
9 the success of the pilot programs in bringing consistency, efficiency, and fairness to
10 the resolution of family matters and on the impact of the programs on caseloads in
11 the district court division.

12 Section 21. (a) The General Assembly finds that there are multiple risk
13 factors that put youth at risk of becoming delinquent, such as aggression, school
14 failure, child abuse and neglect, substance abuse, extreme economic deprivation,
15 friends who engage in problem behavior, inconsistent, ineffective discipline, poor
16 parental supervision, and family conflict. There are currently a number of screening
17 programs available through a number of State and local entities that, if better
18 coordinated, can provide adequate identification of delinquency risk factors so that
19 delinquency prevention programs and services can be effective.

20 The General Assembly further finds that there are currently a number of
21 State and local entities that provide delinquency prevention programs to at-risk youth
22 and their families, including early intervention programs and programs improving
23 cognitive and social competence and self-control skills, improving parenting skills,
24 and providing a positive role model. Many of these programs are already available
25 and need only to be made more accessible and to be better coordinated with other
26 existing programs and services.

27 (b) The Department of Juvenile Justice shall ensure that existing
28 programs made available through a number of entities, both at the State and at the
29 local level, that provide screenings that can provide adequate identification of
30 delinquency risk factors, continue to be used in a consistent, coordinated, and cost-
31 effective way so as to enable delinquency prevention programs and services to be
32 utilized in a consistent, coordinated, and cost-effective way.

33 (c) In implementing this section, the Department shall cooperate with all
34 affected State and local public and private entities, including local education
35 agencies, local health departments, developmental evaluation centers, local
36 departments of social services, the Divisions of Women and Children's Health, of
37 Social Services, and Mental Health, Developmental Disabilities, and Substance Abuse
38 Services of the Department of Health and Human Services, law enforcement
39 agencies, and nonprofit agencies.

40 (d) The Department shall report to the General Assembly by April 1,
41 1999, on its implementation of this section. This report shall include an evaluation of
42 the screenings and prevention programs, an identification of any bars in the law or in
43 any agency's policy that preclude effective cooperation, together with any legislative
44 and rule recommendations that are needed, recommendations as to any new

1 screening or prevention programs and services that are needed, and a detailed cost
2 analysis of these recommendations.

3 Section 22. (a) The Department of Juvenile Justice, in cooperation with
4 the Department of Public Instruction, shall study more effective and efficient ways to:

- 5 (1) Coordinate case management of delinquency and undisciplined
6 cases;
- 7 (2) Provide services to juveniles who are in need of treatment,
8 counseling, or rehabilitation and to the families of those juveniles,
9 including court-ordered parenting responsibility classes; and
- 10 (3) Provide the maximum protection to the public and to local school
11 administrative units, in particular, through the sharing of
12 information between agencies that work with juveniles who are
13 delinquent or undisciplined and increased accountability of those
14 juveniles and their parents.

15 The study shall include a review of all the agencies, councils, and programs that
16 provide services to juveniles, including the Center for the Prevention of School
17 Violence, School Resource Officers, the Guardian ad Litem Program of the
18 Administrative Office of the Courts, the Department of Social Services, the
19 Department of Administration, the Division of Child and Family Services, the
20 Division of Mental Health, Developmental Disabilities, and Substance Abuse
21 Services, and the Willie M. Program, and whether the agencies, councils, or programs
22 should be eliminated, consolidated, or incorporated within the Department of
23 Juvenile Justice. In determining whether to incorporate any of the above-listed
24 programs or agencies in the new department, the Department of Juvenile Justice and
25 the Department of Public Instruction shall consider the funding mechanisms of those
26 programs and agencies in an effort to operate the Department of Juvenile Justice in a
27 cost-effective and efficient manner.

28 (b) The Department of Juvenile Justice in cooperation with the
29 Department of Public Instruction, shall develop proposed rules, forms, and policies
30 required to establish the Department of Juvenile Justice and to implement the
31 objectives and mandates of Article 12 of Chapter 143B of the General Statutes, as
32 enacted by this act.

33 (c) On or before April 1, 1999, the Department of Juvenile Justice and
34 the Department of Public Instruction shall report its findings and recommendations,
35 including any legislative proposals and funding requirements that are required to
36 implement Article 12 of Chapter 143B of the General Statutes, as enacted by this act,
37 to the 1999 General Assembly by April 1, 1999.

38 **PART VII. DEPARTMENT OF JUVENILE JUSTICE STUDY AND REPORT.**

39 Section 23. The Department of Juvenile Justice shall use funds within its
40 budget to evaluate the effectiveness of the reform measures implemented pursuant to
41 the provisions of this act. The Department shall report the results of the evaluation
42 and any recommended legislative amendments to Chapter 7B of the General Statutes
43 to the Joint Legislative Commission on Governmental Operations by April 1, 2001.

44 **PART VIII. DEPARTMENT TRANSITIONAL PERIOD.**

1 Section 24. Beginning October 1, 1998, the Department of Juvenile
2 Justice shall perform all functions and duties of the Division of Youth Services of the
3 Department of Health and Human Services and of the Division of Juvenile Services
4 of the Administrative Office of the Courts and shall have all powers and authority
5 vested in those Divisions pursuant to the General Statutes, notwithstanding that
6 Section 4 of this act amends the applicable sections of the General Statutes to revise
7 statutory references to "Division of Youth Services", "Division of Juvenile Services",
8 "Juvenile Services Division", "Administrative Office of the Courts", "Director of
9 Youth Services", and "Administrator of Juvenile Services", effective July 1, 1999.

10 **PART IX. FACILITIES CONSTRUCTION.**

11 Section 25. The Office of State Construction of the Department of
12 Administration may contract for and supervise all aspects of administration, technical
13 assistance, design, construction, or demolition of any juvenile facilities authorized for
14 the 1998-99 fiscal year, including renovation of existing adult facilities to juvenile
15 facilities.

16 The facilities authorized for the 1998-99 fiscal year shall be constructed in
17 accordance with the provisions of general law applicable to the construction of State
18 facilities. If the Secretary of Administration, after consultation with the Secretary of
19 the Department of Juvenile Justice, finds that the delivery of juvenile facilities must
20 be expedited for good cause, the Office of State Construction of the Department of
21 Administration shall be exempt from the following statutes and rules implementing
22 those statutes, to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128,
23 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-
24 66, 133-1.1(g), and 143-408.1 through 143-408.7.

25 Prior to exercising the exemptions allowable under this section, the
26 Secretary of Administration shall give reasonable notice in writing of the
27 Department's intent to exercise the exemptions to the Speaker of the House, the
28 President Pro Tempore of the Senate, the Chairs of the House and Senate
29 Appropriations Committees, the Joint Legislative Commission on Governmental
30 Operations, and the Fiscal Research Division. The written notice shall contain at
31 least the following information: (i) the specific statutory requirement or requirements
32 from which the Department intends to exempt itself; (ii) the reason the exemption is
33 necessary to expedite delivery of juvenile facilities; (iii) the way in which the
34 Department anticipates the exemption will expedite the delivery of facilities; and (iv)
35 a brief summary of the proposed contract for the project which is to be exempted.

36 The Office of State Construction of the Department of Administration
37 shall have a verifiable ten percent (10%) goal for participation by minority and
38 women-owned businesses. All contracts for the design, construction, or demolition of
39 juvenile facilities shall include a penalty for failure to complete the work by a
40 specified date.

41 The Office of State Construction of the Department of Administration
42 shall consult the Department of Juvenile Justice on these projects to the extent that
43 such involvement relates to the Department's program needs and to its responsibility
44 for the care of the population of the facility.

1 (b) The Office of State Construction of the Department of
2 Administration shall provide a report by May 1, 1999, to the Chairs of the Senate and
3 House Appropriations Committees, the Joint Legislative Commission on
4 Governmental Operations, and the Fiscal Research Division as to any changes in
5 projects and allocations authorized for the 1998-99 fiscal year. The report shall
6 include information on which contractors have been selected, what contracts have
7 been entered into, the projected and actual occupancy dates of facilities contracted
8 for, the number of beds to be constructed on each project, the location of each
9 project, and the projected and actual cost of each project.

10 **PART X. APPROPRIATIONS.**

11 Section 26. There is established in the Office of State Budget and
12 Management a reserve fund entitled the "Juvenile Justice Reserve Fund" to provide
13 funds to implement the provisions of this act. There is appropriated from the General
14 Fund to the Office of State Budget and Management the sum of forty-two million
15 four hundred thousand dollars (\$42,400,000) for the 1998-99 fiscal year for the
16 Juvenile Justice Reserve Fund. The Office of State Budget and Management shall
17 report to the Joint Legislative Commission on Governmental Operations on the
18 intended use of the funds prior to expenditure of any funds from the Juvenile Justice
19 Reserve Fund.

20 **PART XI. SEVERABILITY CLAUSE.**

21 Section 27. If any section or provision of this act is declared
22 unconstitutional or invalid by the courts, it does not affect the validity of this act as a
23 whole or any part other than the part so declared to be unconstitutional or invalid.

24 **PART XII. EFFECTIVE DATES.**

25 Section 28. (a) Sections 1, 2, 19, 21, and 22 of this act become effective
26 October 1, 1998.

27 (b) Sections 3 through 8, Sections 10 through 12, and Sections 14, 15, and
28 18 of this act become effective July 1, 1999.

29 (c) Sections 9 and 13 of this act become effective October 1, 1999.

30 (d) The remainder of this act becomes effective July 1, 1998.

31 (e) G.S. 7B-1402 and G.S. 7B-1403, as enacted by Section 4 of this act,
32 are repealed February 1, 1999.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 12, 1998

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

Senator Roy A. Cooper, III, Chairman
Senate Judiciary Committee

FROM: Susan L. Hayes, House Committee Counsel
Beth Barnes, Staff Attorney

RE: HB1373 and SB1260 - Amend and Recodify Juvenile Code

HB1373 and SB1260 amend and recodify the Juvenile Code based on the recommendations of the Commission on Juvenile Crime and Justice.

**PART I. ESTABLISHMENT OF THE DEPARTMENT OF JUVENILE JUSTICE AND
CONFORMING STATUTORY CHANGES.**

Section 1 - Effective October 1, 1998

Section 1(a) of the bill repeals the portions of Chapters 7A, 110, and 134A that are replaced by the new Article 12 of Chapter 143B created in Section 1(b).

Section 1(b) of the bill creates the new Department of Juvenile Justice which combines the functions of the existing Division of Youth Services and Division of Juvenile Services.

ARTICLE 12. Department of Juvenile Justice.

Part 1. General Provisions.

143B-511. Department of Juvenile Justice – creation.
Creates the new Department.

143B-512. Definitions.
Sets forth the definitions necessary for the new Article.

143B-513. Department of Juvenile Justice – duties.

Gives the Department the duty to perform all the functions currently covered by the two separate Divisions. The Department has the authority to transfer a juvenile from one secure custody facility to another after notice to the court. Several standard provisions for the establishment of a new Department are contained in this section.

143B-514. Department of Juvenile Justice – functions and organization.

This section transfers all the existing authority, powers, duties and functions, including statutory, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing of both the Division of Youth Services and the Division of Juvenile Services to the new Department. All institutions previously operated by either the Division of Youth Services or Division of Juvenile Services, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled for youth development purposes, are transferred to the new Department as well.

143B-515. Secretary of the Department of Juvenile Justice – powers and duties.

Creates the position of Secretary of the Department and provides for the Secretary's duties in running the Department.

143B-516. Secretary of the Department of Juvenile Justice requests for grants-in-aid from non-State agencies.

Requires that non-State human services agencies providing juvenile court and delinquency prevention programs submit requests for grants-in-aid through the Secretary of the new Department.

143B-517. Department of Juvenile Justice – authority to contract with other entities.

Allows the Department to contract with other entities in order to accomplish its duties, and to help counties recover moneys expended by the county.

143B-518. Department of Juvenile Justice; authority to assist private nonprofit foundations.

Allows Department employees to work with nonprofit foundations which work directly with services or programs of the Department and whose sole purpose is to support those services and programs.

Part 2. Juvenile Facilities.

143B-520. Juvenile facilities.

143B-521. Authority to provide necessary medical or surgical care.

143B-522. Compensation to children in care.

143B-523. Criminal offense to aid escapes.

143B-524. Visits and community activities.

143B-525. Regional detention services.

143B-526. State subsidy to county detention facilities.

143B-527. Authority for implementation.

These sections are restatements of Chapter 134A with minor modifications made to correspond with the new Department.

Part 3. Juvenile Court Services.

143B-530. Juvenile court services.

143B-531. Duties and powers of Secretary.

143B-532. Duties and powers of chief court counselors.

143B-533. Duties and powers of juvenile court counselors.

These sections are restatements of Article 24 of Chapter 7A and Article 2 of Chapter 110 with minor modifications to correspond with the new Department.

Part 4. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

143B-540. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

This section directs the Department to develop a comprehensive juvenile delinquency and substance abuse prevention plan and provides criteria and components for the plan.

Part 5. Juvenile Crime Prevention Councils.

143B-550. Juvenile Crime Prevention Councils; legislative intent.

This section creates the Juvenile Crime Prevention Councils as a State/local, private/public, cooperative and collaborative partnership to develop both streamlined and enhanced community-based alternatives to training school and detention commitment and unified, nonduplicative, coordinated, and collaborative community-based prevention strategies and programs. The organizational and objective requirements of the Councils are set out in this section as well as their duties and responsibilities.

143B-551. Purchase of care or services from programs meeting State standards.

This section allows the Department to purchase care or services in order to provide delinquency prevention services.

Part 6. State Advisory Council on Juvenile Justice and Delinquency Prevention.

143B-560. Findings.

This section states the reason for the formation of the State Advisory Council on Juvenile Justice and Delinquency Prevention.

143B-561. Creation of Council; purpose; members; duties.

This section creates the State Advisory Council on Juvenile Justice and Delinquency Prevention to advise State agencies providing services and supervision to court adjudicated youth regarding the coordination of services to juveniles. The membership, terms and compensation of the Council are set forth in this section.

143B-562. Powers and duties of the Council.

This section sets forth the duties of the Council, including advising the Department and state agencies, and reviewing their operations.

Section 2 - Effective October 1, 1998

Section 2 makes conforming changes to various statutes to reflect the creation of the new Department.

PART II. JUVENILE CODE STATUTORY RECOMMENDATIONS

Section 3 - Effective July 1, 1999

Section 3 of the bill repeals the portions of Chapters 7A, 110 and 143 that are recodified in the new Chapter 7B created in Section 4 of the bill, with the exception of Article 58 of Chapter 7A, Juvenile Law Study Commission, which is repealed completely.

Section 4 - Effective July 1, 1999

Section 4 of the bill creates a new Chapter 7B of the General Statutes entitled "Juvenile Code".

Chapter 7B separates the provisions regarding Abuse, Neglect, Dependency from the provisions regarding Delinquent and Undisciplined Juveniles, unlike Chapter 7A in which they were combined.

Chapter 7B, **Subchapter I. Abuse, Neglect, Dependency** is consistent with the existing portions of Chapter 7A relating to Abuse, Neglect, Dependency. No substantive changes have been made from the existing law, only technical and conforming changes that were required to separate these provisions from those relating to Delinquent and Undisciplined Juveniles. The former Article 62 of Chapter 143, North Carolina Child Fatality Prevention System, is also moved to this Subchapter.

Chapter 7B, Subchapter II. Undisciplined and Delinquent Juveniles

ARTICLE 15. Purposes; Definitions.

7B-1500. Purpose.

This section sets forth the purpose of the provisions regarding undisciplined and delinquent juveniles. The purpose was amended to place more emphasis on accountability for the actions of delinquent and undisciplined juveniles and the protection of the public.

7B-1501. Definitions.

Definitions were added for "Department", "Detention facility", "Extended Jurisdiction", "House Arrest", "Juvenile Court", "Post-release supervision", "Secretary", "Teen court program", "Undisciplined juvenile", and "Wilderness program". Several existing definitions were removed from this section and placed in Subchapter I, because they only apply to abuse, neglect, dependency cases. Some of the other existing definitions were amended to reflect changes made elsewhere in the delinquent and undisciplined juvenile provisions. The major substantive change made to existing definitions is contained in the definition for "undisciplined juvenile" which raised the age from 16 years old to 18 years old.

ARTICLE 16. Jurisdiction.

7B-1600. Jurisdiction over undisciplined juveniles.

This section sets forth the courts jurisdiction over undisciplined juveniles.

7B-1601. Jurisdiction over delinquent juveniles.

This section sets forth the courts jurisdiction over delinquent juveniles. The new subsection (e) clarifies that the court has jurisdiction over juveniles in training schools and on post-release supervision from a training school. The new subsection (f) provides for jurisdiction over persons over the age of 18 that are under the extended jurisdiction of the juvenile court.

7B-1602. Extended jurisdiction over a delinquent juvenile under certain circumstances.

This section sets forth the term of the courts jurisdiction over a delinquent juvenile subject to extended jurisdiction as defined in 7B-1501 and under the provisions set forth in 7B-2513.

7B-1603. Jurisdiction in certain circumstances.

There were no substantive changes made to this section.

7B-1604. Limitations on juvenile court jurisdiction.

This section sets forth the instances where the court does not have jurisdiction over a juvenile who otherwise may be under the jurisdiction of the court. The new language provides that an emancipated minor shall be prosecuted as an adult.

ARTICLE 17. Screening of Delinquency and Undisciplined Complaints.

7B-1700. Intake Services.

There were no substantive changes made to this section.

7B-1701. Preliminary Inquiry.

There were no substantive changes made to this section.

7B-1702. Evaluation.

There were no substantive changes made to this section.

7B-1703. Evaluation decision.

The new language in this section requires that a petition should be filed within 15 days of receipt of a complaint, with a possible extension of an additional 15 days.

7B-1704. Request for review by prosecutor.

There were no substantive changes made to this section.

7B-1705. Review of determination that petition should not be filed.

There were no substantive changes made to this section.

7B-1706. Diversion plans and referral.

This section provides for the establishment of diversion contracts and authorizes intake counselors to refer delinquent and undisciplined juveniles to a local teen court under certain circumstances.

ARTICLE 18. Venue; Petition; Summons.

7B-1800. Venue.

There were no substantive changes made to this section.

7B-1801. Pleading and process.

There were no substantive changes made to this section.

7B-1802. Petition.

There were no substantive changes made to this section.

7B-1803. Receipt of complaints; filing of petition.

There were no substantive changes made to this section.

7B-1804. Commencement of action.

There were no substantive changes made to this section.

7B-1805. Issuance of Summons.

This section was amended to add an emphasis in the summons to notify parents of parental responsibility and accountability under the statutes.

7B-1806. Service of summons.

There were no substantive changes made to this section.

7B1806.1 Notice to parent and juvenile of scheduled hearings.

This section requires the clerk to notify all parties in writing at least 5 days before a scheduled hearing.

7B-1807. First Appearance for felony cases.

This section creates a new hearing called a first appearance for all delinquent juveniles alleged to have committed a felony. This hearing is intended to ensure that all juveniles charged with a felony are required to appear before the court within 10 days of the filing of the petition.

ARTICLE 19. Temporary Custody; Secure and Nonsecure Custody; Custody Hearings.

7B-1900. Taking a juvenile into temporary custody.

A conforming change was made to reflect the change in the definition of undisciplined juvenile.

7B-1901. Duties of person taking juvenile into temporary custody.

There were no substantive changes made to this section.

7B-1902. Authority to issue custody orders; delegation.

New language was added to clarify that the chief district court judge may not delegate the decision to use a holdover facility to the chief court counselor or staff.

7B-1903. Criteria for secure or nonsecure custody.

There were no substantive changes made to this section.

7B-1904. Order for secure or nonsecure custody.

There were no substantive changes made to this section.

7B-1905. Place of secure or nonsecure custody.

This section was amended to allow certain juveniles to be held in a local jail facility that meets certain requirements for up to 72 hours, under certain conditions.

7B-1906. Secure or nonsecure custody hearings.

This section was amended to allow detention hearings to be held via audio and video transmission.

7B-1907. Telephonic communication authorized.

There were no substantive changes made to this section.

ARTICLE 20. Basic Rights.

7B-2000. Juvenile's right to counsel; presumption of indigence.

This section was amended to provide the right to counsel when a juvenile, whether delinquent or undisciplined, is alleged to be in contempt of court.

7B-2001. Appointment of guardian.

There were no substantive changes made to this section.

7B-2002. Payment of court appointed attorney.

There were no substantive changes made to this section.

ARTICLE 21. Law Enforcement Procedures in Delinquency Proceedings.

7B-2100. Role of the law enforcement officer.

There were no substantive changes made to this section.

7B-2101. Interrogation procedures.

There were no substantive changes made to this section.

7B-2102. Fingerprinting and photographing juveniles.

This section is amended to allow law enforcement to fingerprint and photograph any juvenile who is charged with a felony at any point after the complaint is referred to juvenile services. Any fingerprints or photographs taken under this provision shall be destroyed if a petition is not filed, if no probable cause is found or if the juvenile is not adjudicated delinquent. Additionally, the fingerprints of any juvenile adjudicated delinquent for an A - E felony will be transmitted to the Federal Bureau of Investigation.

7B-2103. Authority to issue nontestimonial identification order where juvenile alleged to be delinquent.

There is no substantive change made to this section.

7B-2104. Time of application for nontestimonial identification order.

There is no substantive change made to this section.

7B-2105. Grounds for nontestimonial identification order.

This section was amended to add provisions, required by a NC Supreme Court case, for taking blood specimens.

7B-2106. Issuance of order.

There is no substantive change made to this section.

7B-2107. Nontestimonial identification order at request of juvenile.

There is no substantive change made to this section.

7B-2108. Destruction of records resulting from nontestimonial identification procedures.

There is no substantive change made to this section.

7B-2109. Penalty for willful violation.

There is no substantive change made to this section.

ARTICLE 22. Probable Cause Hearing and Transfer Hearing.

7B-2200. Transfer of jurisdiction of juvenile to superior court; direct filing in superior court.

This section was amended to clarify who may move for transfer of a juvenile to superior court. A new subsection was added to allow the district attorney to file charges directly in superior court for juveniles, 15 years of age, alleged to have committed an A-E felony.

7B-2201. Fingerprinting juvenile transferred to superior court.

There is no substantive change made to this section.

7B-2202. Probable cause hearing.

This section is amended to require that a probable cause hearing be held within 15 days of the juvenile's first appearance. The hearing to determine transfer to superior court may be held at the probable cause hearing, but a juvenile must receive at least 5 days notice of the intention to seek transfer.

7B-2203. Transfer hearing.

This section is amended to provide factors the court must consider in deciding whether a juvenile shall be transferred to superior court.

7B-2204. Right to pretrial release; detention.

There is no substantive change made to this section.

7B-2205. When jeopardy attaches.

There is no substantive change made to this section.

ARTICLE 23. Discovery.

7B-2300. Disclosure of evidence by petitioner.

7B-2301. Disclosure of evidence by juvenile.

7B-2302. Regulation of discovery; protective orders.

7B-2303. Continuing duty to disclose.

There is no substantive change made to these sections.

ARTICLE 24. Hearing Procedures.

7B-2400. Amendment of petition.

There is no substantive change made to this section.

7B-2401. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.

There is no substantive change made to this section.

7B-2402. Open hearings.

This section is amended to provide that all hearings are open unless closed by the court for good cause.

7B-2403. Adjudicatory hearing.

There is no substantive change made to this section.

7B-2404. Participation of the prosecutor.

There is no substantive change made to this section.

7B-2405. Conduct of the adjudicatory hearing.

There is no substantive change made to this section.

7B-2406. Continuances.

There is no substantive change made to this section.

7B-2407. When admissions by juvenile may be accepted.

There is no substantive change made to this section.

7B-2408. Rules of Evidence.

There is no substantive change made to this section.

7B-2409. Quantum of proof in adjudicatory hearing.

There is no substantive change made to this section.

7B-2410. Record of proceedings.

There is no substantive change made to this section.

7B-2411. Adjudication.

There is no substantive change made to this section.

7B-2412. Legal effect of adjudication of delinquency.

There is no substantive change made to this section.

7B-2413. Predisposition investigation and report.

There is no substantive change made to this section.

ARTICLE 25. Dispositions.

7B-2500. Purpose.

This section sets forth the purpose of the dispositions for undisciplined and delinquent juveniles. The purpose was amended to place more emphasis on accountability for the actions of delinquent and undisciplined juveniles and the protection of the public.

7B-2500.1. Dispositional hearing.

This section was amended to provide more guidance to the court in selecting the appropriate dispositions for the juvenile and the protection of the public.

7B-2500.2. Evaluation and treatment of undisciplined and delinquent juveniles.

There is no substantive change made to this section.

7B-2501. Dispositional alternatives for undisciplined juveniles.

There is no substantive change made to this section.

7B-2502. Conditions of protective supervision for undisciplined juveniles.

This section was amended to add several conditions of protective supervision that the court may order.

7B-2503. Contempt of court for undisciplined juveniles.

This is a new section which allows the court to hold an undisciplined juvenile in contempt of court for failure to comply with the order of the court and provides for specific periods of detention upon a finding of contempt.

7B-2504. Dispositional alternatives for delinquent juveniles.

This section adds several new dispositional alternatives for delinquent juveniles, including: victim-offender reconciliation program; curfew; placement in a residential treatment facility; wilderness programs; regimented training programs; house arrest; 14 24-hour periods of intermittent confinement; and placement in a multi-purpose group home. Many of these new alternatives are currently being used in some areas of the State, but were not expressly provided for in the statutes.

7B-2504.1. Delinquency history levels.

This section sets out the criteria for determining a juveniles delinquency history level, which is used to determine what level of disposition the juvenile will receive. This scheme is similar to the adult felony prior conviction level determination. Juveniles are given points for each prior offense, depending on the class of offense, and also additional points if the juvenile was on probation at the time of the new offense.

7B-2505. Dispositional limits for each class of offense and delinquency history level.

This section sets forth a new system of disposition for delinquency offenses. Each juvenile is classified by delinquency history level and the class of offense for which they are being adjudicated. The grid in this section shows at what level of disposition the juvenile should be treated. This section also defines what dispositional alternatives from 7B-2504 are available at each level of disposition.

7B-2506. Conditions of probation; violation of probation.

This section adds the following possible conditions of probation: remain free of controlled substances; abide by a curfew; submit at reasonable times to warrantless searches; not possess a firearm, explosive device or other deadly weapon; and any other conditions deemed appropriate by the court. This section also gives the court counselor, in the courts discretion, the authority to impose any of the following additional sanctions: up to 20 hours of community service; substance abuse monitoring or treatment; electronic monitoring; intensive supervision; and life skills or educational skills programs. The possible period of probation is extended from 1 year to 2 years. A violation of probation allows the court, in its discretion, to provide dispositions from the next dispositional level.

7B-2507. Probation review.

There is no substantive change made to this section.

7B-2508. Dispositional order.

This section was amended to remove the "least restrictive" language.

7B-2509. Commitment of delinquent juvenile to Department.

This section was amended to provide that any juvenile committed to training school must remain there for at least 6 months. A provision was also added to allow a juvenile to be held in a holdover facility for up to 72 hours, under certain circumstances, pending transfer to the Department.

7B-2510. Post-release supervision planning; hearing.

Senate Bill - Provisions were added to require that a juvenile only be released from training school after being committed at least 6 months, and to provide that all juveniles receive at least 90 days of post-release supervision.

House Bill - In addition to the changes in the Senate bill, provisions were added to require that, upon motion, a hearing be held to determine whether post-release supervision and/or the post-release supervision plan is appropriate.

7B-2511. Revocation of post-release supervision.

There were no substantive changes made to this section.

7B-2512. Final discharge.

This section provides for release from training school only after completion of post-release supervision or upon transfer to the Department of Corrections.

7B-2513. Extended jurisdiction under certain circumstances; review hearing..

This section allows the court to extend jurisdiction to 19 years old for juveniles pursuant to a motion filed by the chief court counselor or the Department. There are provisions for the timing of the motion and the hearing and the factors that the court should consider in determining whether to extend jurisdiction.

7B-2514. Transfer authority of Governor.

There were no substantive changes made to this section

ARTICLE 26. Modification and Enforcement of Dispositional Orders; Appeals.

7B-2600. Authority to modify or vacate.

7B-2601. Request for modification for lack of suitable services.

7B-2602. Right to appeal.

7B-2603. Proper parties for appeal.

7B-2604. Disposition pending appeal.

7B-2605. Disposition after appeal.

There were no substantive changes made to these sections.

ARTICLE 27. Authority Over Parents of Juveniles Adjudicated Delinquent or Undisciplined.

7B-2700. Appearance in court.

This section requires the parent, guardian or custodian of a juvenile to attend all hearings regarding the juvenile unless otherwise excused by the court. A provision is added to prevent employers from firing employees because they are required to appear in court.

7B-2701. Parental responsibility classes.

This section allows the court to order a parent to attend parental responsibility classes.

7B-2702. Medical, surgical, psychiatric, or psychological evaluation or treatment of juvenile or parent.

There were no substantive changes made to this section.

7B-2703. Compliance with orders of court.

There were no substantive changes made to this section.

7B-2704. Payment of support or other expenses; assignment of insurance coverage.

This section was amended to allow the court to order a parent to pay a probation fee or residential facility costs, to assign private insurance coverage to cover medical costs while a juvenile is in an out-of-home placement, and to pay court-appointed attorneys' fees.

7B-2705. Contempt for failure to comply.

This section was amended to clarify that civil or criminal contempt may be used against parents that fail to comply with court orders.

ARTICLE 28. Interstate Compact on Juveniles.

7B-2800. Execution of Compact.

7B-2801. Findings and purposes.

7B-2802. Existing rights and remedies.

7B-2803. Definitions.

7B-2804. Return of Runaways.

7B-2805. Return of escapees and absconders.

7B-2806. Voluntary return procedure.

7B-2807. Cooperative supervision of probationers and parolees.

7B-2808. Responsibility for costs.

7B-2809. Detention practices.

7B-2810. Supplementary agreements.

7B-2811. Acceptance of federal and other aid.

7B-2812. Compact administrators.

7B-2813. Execution of Compact.

7B-2814. Renunciation.

7B-2815. Severability.

7B-2816. Authority of Governor to designate Compact Administrator.

7B-2817. Authority of Compact Administrator to enter into supplementary agreements.

7B-2818. Discharging financial obligations imposed by Compact or agreement.

7B-2819. Enforcement of Compact.

7B-2820. Additional procedure for returning runaways not precluded.

**7B-2821. Proceedings for return of runaways under G.S. 7B-2804 of Compact;
"juvenile" construed.**

7B-2822. Interstate parole and probation hearing procedures for juveniles.

7B-2823. Hearing officers.

7B-2824. Due process at parole or probation violation hearing.

7B-2825. Effect of parole or probation violation hearing outside State.

**7B-2826. Amendment to Interstate Compact on Juveniles concerning interstate
rendition of juveniles alleged to be delinquent.**

7B-2827. Out-of-State Confinement Amendment.

These sections comprise the Interstate Compact on Juveniles and are unchanged from current law.

Chapter 7B, Subchapter III. Juvenile Records.

ARTICLE 29. Records and Social Reports of Cases of Abuse, Neglect, and Dependency.

7B-2900. Definitions.

This section provides that the definitions in Subchapters I. and II. apply to this Subchapter.

7B-2901. Confidentiality of records.

There were no substantive changes made to this section.

7B-2902. Disclosure in child fatality or near fatality cases.

There were no substantive changes made to this section.

ARTICLE 30. Juvenile Records and Social Reports of Delinquency and Undisciplined Cases.

7B-3000. Juvenile court records.

This section was amended to allow the juvenile, their parent, the prosecutor and the court counselor to obtain a copy of a juveniles record. A law enforcement officer may examine the record, but not copy it. The court may seal any portion of the record to prevent examination except pursuant to a court order. Additionally, law enforcement, magistrates, and prosecutors may use a juvenile's record for pretrial release and plea negotiating decisions.

7B-3001. Other records relating to juveniles.

There were no substantive changes made to this section.

ARTICLE 31. Disclosure of Juvenile Information.

7B-3100. Disclosure of information about juveniles.

7B-3101. Notification of schools when juveniles are alleged or found to be delinquent.

There were no substantive changes made to this section.

ARTICLE 32. Expunction of Juvenile Records.

7B-3200. Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined.

The age required to expunge a record of undisciplined behavior is raised to 18 to correspond with the increase of jurisdiction for undisciplined juveniles to age 18.

7B-3201. Effect of expunction.

There were no substantive changes made to this section.

7B-3202. Notice of expunction.

There were no substantive changes made to this section.

ARTICLE 33. Computation of Recidivism Rates.

7B-3300. Juvenile recidivism rates.

There were no substantive changes made to this section.

ARTICLE 34. Parental Authority Over Juveniles.

7B-3400. Juvenile under 19 subject to parents' control.

7B-3400.1. Definitions.

7B-3401. Exceptions.

7B-3402. No criminal liability created.

7B-3403. Enforcement.

There were no substantive changes made to these sections. This Article was previously Article 2A of Chapter 110.

ARTICLE 35. Emancipation.

7B-3500. Who may petition.

7B-3501. Petition.

7B-3502. Summons.

7B-3503. Hearing.

7B-3504. Considerations for emancipation.

7B-3505. Final decree of emancipation.

7B-3506. Costs of court.

7B-3507. Legal effect of final decree.

7B-3508. Appeals.

7B-3509. Application of common law.

There were no substantive changes made to these sections.

ARTICLE 36. Judicial Consent for Emergency Surgical or Medical Treatment.

7B-3600. Judicial authorization of emergency treatment; procedure.

There were no substantive changes made to this section.

ARTICLE 37. Placing or Adoption of Juvenile Delinquents or Dependents.

7B-3700. Consent required for bringing child into State for placement or adoption.

7B-3701. Bond required.

7B-3702. Consent required for removing child from State.

7B-3703. Violation of Article a misdemeanor.

7B-3704. Definitions.

7B-3705. Application of Article.

There were no substantive changes made to these sections.

ARTICLE 38. Interstate Compact on the Placement of Children.

7B-3800. Adoption of Compact.

7B-3801. Financial responsibility under Compact.

7B-3802. Agreements under Compact.

7B-3803. Visitation, inspection or supervision.

7B-3804. Compact to govern between party states.

7B-3805. Placement of delinquents.

7B-3806. Compact Administrator.

These sections comprise the Interstate Compact on the Placement of Children and are unchanged from current law.

Section 5 - Effective July 1, 1999

Section 5 creates a "blended sentencing" option for juveniles tried in superior court. This option allows a superior court judge to suspend an adult sentence and place the juvenile on probation on the condition that the juvenile successfully complete any of the applicable terms and conditions of adult probation or juvenile probation. All the resources available in juvenile court are available to a juvenile sentenced under this provision.

Section 6 - Effective July 1, 1999

The changes to this section require a school to destroy any juvenile court records no longer needed by the school to protect the safety of or to improve the education opportunities for the student or others. Also, information gained through examination of records, that is not information required to be furnished to the school, cannot be used as the sole basis for a decision to suspend or expel a student.

Section 7 - Effective July 1, 1999

Section 7 directs The Criminal Justice Information Network Governing Board (CJIN) to incorporate juvenile justice information into the network currently being developed (CJIN).

Section 8 - Effective July 1, 1999

Section 8 requires The North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission) to conduct the same studies and evaluations that it currently conducts for Structured Sentencing on the dispositional provisions of the Juvenile Code.

PART III. REGISTRATION OF CERTAIN JUVENILES

Section 9 - Effective October 1, 1999

Section 9 is a recodification into the new Chapter 7B of the juvenile sex offender registration provision. No substantive changes were made.

PART IV. PREVENTION STATUTORY RECOMMENDATIONS EDUCATING CHILDREN EXPELLED FROM SCHOOL

Sections 10 & 11 - Effective July 1, 1999

Sections 10 and 11 require that for any child expelled or under long term suspension from school have a plan developed that explores strategies for providing alternative learning programs, when feasible and appropriate.

PART V. CONFORMING STATUTORY CHANGES

Section 12 - Effective July 1, 1999

Section 12 makes conforming changes necessitated by the recodification of Chapters 7A, 110, 134 and 143A into the new Chapter 7B.

Section 13 - Effective October 1, 1999

Section 13 makes a conforming change necessitated by the recodification of Chapter 7A.

PART VI. UNCODIFIED RECOMMENDATIONS

Section 14 - Effective July 1, 1999

Section 14 requires the Department of Justice to revise the Division of Criminal Information's juvenile arrest form.

Section 15 - Effective July 1, 1999

Section 15 requires the Department of Justice and the Department of Juvenile Justice to administer minority sensitivity training to all law enforcement officers and other juvenile justice professionals.

Section 16 - Effective July 1, 1998

Section 16 authorizes the Legislative Research Commission to study the recommendations of The Court Improvement Project, which pertain to abuse, neglect and dependency cases.

Section 17 - Effective July 1, 1998

Section 17 requires that the State Board of Education study the feasibility and advisability of delaying the start of the school day.

Section 18 - Effective July 1, 1999

Section 18 requires that CJIN develop a comprehensive juvenile justice information system. The purpose of the system is to collect data and information regarding delinquent juveniles in order that the information may be shared among appropriate agencies.

Section 19 - Effective October 1, 1998

Section 19 requires the Department of Juvenile Justice to develop statewide community based dispositional alternatives for delinquent juveniles.

Section 20 - Effective July 1, 1998

Section 20 requires the Administrative Office of the Courts to develop family court pilot programs to hear all matters involving intrafamily rights, relationships, and obligations, and all juvenile justice matters.

Section 21 - Effective October 1, 1998

Section 21 provides for screenings and assessments of at-risk children in order to coordinate the administration of state and local delinquency prevention programs and services to those children.

Section 22 - Effective October 1, 1998

Section 22 requires the Department of Juvenile Justice in cooperation with the Department of Public Instruction to study and recommend to the General Assembly more effective and efficient ways to provide services to juveniles who are in need of treatment, counseling and rehabilitation, to coordinate case management of delinquent and undisciplined juveniles, and to share critical information between agencies that work with juveniles.

PART VII. DEPARTMENT OF JUVENILE JUSTICE STUDY AND REPORT

Section 23 - Effective July 1, 1998

Section 23 requires the Department of Juvenile Justice to use existing funds to evaluate the effectiveness of the revisions to the Juvenile Code made by this Act.

PART VIII. DEPARTMENT TRANSITIONAL PERIOD

Section 24 - Effective July 1, 1998

Section 24 clarifies that although the changes to the Juvenile Code are not effective until July 1, 1999, the Department of Juvenile Justice shall perform the duties of the Division of Youth Services and the Division of Juvenile Services, effective October 1, 1998.

PART IX. FACILITIES CONSTRUCTION

Section 25 - Effective July 1, 1998

Section 25 expedites the construction of juvenile facilities and the renovation of adult facilities for use as juvenile facilities, by exempting the construction or renovation from the statutory requirements of Chapter 143 pertaining to the issuance of public contracts, and the Environmental Policy Act and the Sedimentation Pollution Control Act of 1973 contained in Chapter 113A.

PART X. APPROPRIATIONS

Section 26 - Effective July 1, 1998

Section 26 appropriates \$42,400,000 to a Juvenile Justice Reserve Fund to implement the provisions of this Act.

PART XI. SEVERABILITY CLAUSE

Section 27 - Effective July 1, 1998

Section 27 provides that if any provision of this Act is found to be unconstitutional or invalid by the courts, the other provisions of this Act shall continue in effect.

PART XII. EFFECTIVE DATES

Section 28

Section 28 sets forth the effective dates of the bill as follows:

Sections 1, 2, 19, 21 & 22 are effective October 1, 1998;
Sections 3 - 8, 10 - 12, 14, 15 & 18 are effective July 1, 1999;
Sections 9 & 13 are effective October 1, 1999.

The remainder of the Act is effective July 1, 1998.

JUVENILE JUSTICE REFORM ACT

"The juvenile justice system is broken. We need to make sure dangerous young criminals are held accountable and we need to rebuild the system accordingly. We need to make sure all offenders see -- the first time and every time -- that breaking the law carries consequences, in or out of courts. We need to do more to give our kids a chance for more than drugs and guns and crime and prison. Communities must work together better to make sure our children are being served effectively, and we need a lot more adults serving as mentors to keep other kids from turning down that path. We're not doing any of that well enough today. We are failing in our most basic responsibility to keep our people safe, and we are failing our children."

*Gov. Jim Hunt, to the Governor's Commission
on Juvenile Crime and Justice on Nov. 7, 1997*

In the last decade, North Carolina has seen an increase of 172% in violent juvenile crime, and juvenile drug violations and gun crimes have jumped by more than 500%.

In the two decades since the state's juvenile justice system was last overhauled, things have changed: young people are committing more violent crimes at younger ages, and more young people are victims of juvenile crime than ever before.

In April 1997, Gov. Hunt began an intensive look at the juvenile justice system. Hunt asked Secretary Richard Moore of the Department of Crime Control & Public Safety to coordinate the effort, and former Durham prosecutor Marcia Morey, staff director of the Governor's Commission on Juvenile Crime & Justice, launched six months of intensive research: surveying judges, district attorneys and court counselors; looking at previous reform recommendations; and scanning the nation for innovative ideas that work.

In September 1997, Gov. Jim Hunt appointed the Governor's Commission on Juvenile Crime and Justice -- with 18 of the state's top leaders in law enforcement, juvenile crime and children's issues -- and charged the group with developing a comprehensive plan to fight juvenile crime with punishment and prevention strategies.

For seven months, the Commission focused on this task -- assisted by 75 advisory members with expertise in areas like juvenile court, crime prevention, child advocacy and law enforcement. The Commission held seven public hearings across the state, visited innovative programs for juveniles and heard from a wide range of people -- including parents, former and current juvenile offenders, police officers and social workers -- about how best to tackle the problem. Its March 1998 report outlined 61 specific recommendations for change.

Gov. Hunt's 1998 juvenile crime reduction initiative -- called the Juvenile Justice Reform Act -- is built on the Commission's recommendations. It focuses on three key areas identified by the Commission: making sure violent offenders get swift, sure punishment; making prevention more effective to deter youngsters from a life of crime; and overhauling the juvenile justice system to make it work better.

I. MAKING SURE VIOLENT JUVENILES GET SWIFT, SURE PUNISHMENT

The Commission repeatedly heard a clear message from juvenile offenders across the state: the current juvenile justice system is not working. Too many juveniles see no immediate consequences for their actions, time and time again. When they do come to court -- sometime months after committing a crime -- they often get only a slap on the wrist or spend a few months in training school.

As any parent of an unruly child knows, "tough love" is the most effective way to change behavior. That means letting a youngster know there is a consequence for breaking the rules -- every time. That means punishment appropriate to the crime -- the first time and every time. Without that consistency and certainty, discipline doesn't work -- not at home and not in North Carolina's juvenile justice system.

- ◆ **Overhauling the way juveniles are sentenced to make sure every juvenile is held accountable** -- Under the current system, juveniles are sentenced inconsistently across the state for the same crimes. There is not a definite sentence for certain crimes as in the adult system -- resulting in uneven punishment and mixed signals to juvenile criminals.

Gov. Hunt's Juvenile Justice Reform Act will change the way juveniles are sentenced. It will set guidelines and standards across the state -- depending on the offense and on the juvenile's previous criminal record. Under the new system, punishments will be tougher, more effective and consistent.

Violent, repeat offenders will immediately go to training school, which is often not the case now. Those who commit less serious crimes will be dealt with in their own communities -- at day reporting centers, detention centers, drug or alcohol treatment centers, regimented training programs, electronic house arrest, intensive probation or other intermediate sanctions. Juveniles who commit the least serious crimes will be required to perform community service, undergo counseling, make restitution and be put on probation.

Like truth in sentencing for adults, this approach will ensure the most dangerous criminals will serve their time in training school. And it ensures that all offenders see consequences for their actions, with graduated sanctions in place.

- ◆ **Adult time for adult crime** -- District Attorneys and judges should have the authority to transfer juveniles 15 years and older who commit violent crimes directly to adult court, without going through time-consuming red tape that could delay a juvenile's trial and jeopardize victims' rights.
- ◆ **Speed up all court appearances** -- Too often, juveniles charged with a crime spend weeks or months unsupervised before they appear in court. Gov. Hunt's Juvenile Justice Reform Act will mandate their first appearance within 10 days; and require a probable cause hearing be held within 15 days.

◆ **Require juveniles who commit certain crimes to be held in secure custody**

⇒ **Detention beds** -- North Carolina does not have enough detention facilities to accommodate the youth who are awaiting trial, need to be held in secure custody for a short time, or are serving a sentence. Too often, juveniles who commit serious crimes go home unsupervised because detention centers are full.

- * **Build new detention beds** -- Current construction efforts will increase system-wide detention bed capacity to 322. The NC Sentencing Commission estimates an additional need for 143 more detention beds over the next five years -- an increase of 44%.

Cost: \$14.4 million to build, \$5 a year million to operate

⇒ **Training schools** -- Gov. Hunt wants to overhaul training schools to emphasize a rigorous academic experience, job skill training and work or community service.

- * **Require minimum stay of 6 months** -- Now, a training school stay lasts only a few weeks or a few months -- but it's not consistent and it's not long enough to send a signal that serious actions carry serious consequences.
- * **Extend age of training school stay** -- Now, a juvenile convicted of a violent felony can be released from training school anytime before age 18. Gov. Hunt wants to change the law to require that dangerous juveniles stay in training school until their 19th birthday.
- * **Enact minimum 90-day post-release** -- Juveniles need better, closer supervision to help make the transition back into society.
Cost covered by additional court counselors
- * **Build new training school beds** -- The NC Sentencing Commission estimates a need for 208 more training school beds over the next five years.
Cost: \$9.8 million to build, \$10.4 million to operate

II. DETERRING YOUTH FROM A LIFE OF CRIME

The most effective way to reduce juvenile crime is to prevent it from happening in the first place. That means starting earlier, working with families who need the most help to keep their kids out of trouble. That means getting Smart Start up & running in every county in the state to give children a better start and reduce the potential that they'll turn to crime. (A new study Fight Crime: Invest in Kids, made up of North Carolina law enforcement leaders and prosecutors, says denying Smart Start to young children could multiply 10 times the risk that they will be delinquent teens.)

That means involving the community -- churches, civic groups, youth organizations like the Boy Scouts, businesses and volunteer mentors -- in teaching youngsters values and discipline, respect and responsibility. And that also means making sure parents are taking responsibility -- and are held accountable for getting their kids back on track.

◆ **Start in the earliest years**

⇒ **Home visiting** -- Studies show intensive home visiting that offers parenting skills to young mothers in a child's earliest years can cut in half the youngster's risk of becoming a delinquent teen.

Last year, Gov. Hunt launched maternal home visitor programs in eight counties, targeting families at risk of child abuse or neglect. This year, he is asking the General Assembly to double that number with public health nurses to provide intensive help, monitoring and child development training for mothers at risk of abusing or neglecting their children.

Cost: \$800,000

⇒ **Risk factors** -- State agencies need to work together more effectively to make sure children at risk of getting in trouble are identified and helped early on. Multiple risk factors such as alcohol and substance abuse in families, broken homes, and learning disabilities should be factored in. It's critical to address the needs of at-risk children at birth, pre-school age, kindergarten, and middle school - - so Smart Start should be leveraged to include more risk assessment and referral, and the new child care teacher training efforts should include efforts to help child care teachers identify at-risk children.

Under the new consolidated juvenile justice agency, risk assessment and referral will be streamlined and strengthened, and the agency will conduct a study to determine the best way to coordinate fair and appropriate risk assessment.

Cost: \$100,000 for the risk assessment study

◆ **Parental Responsibility**

When a youngster gets in trouble, the parent needs to take responsibility -- and should be held accountable. At Dillon training school, Gov. Hunt talked to one juvenile offender whose parents didn't come to court when their son was sentenced to training school.

Under the Juvenile Justice Reform Act, parents of juveniles charged with a crime must attend court hearings with their child, pay court costs, provide transportation to court appointments, make sure the youngsters comply with court orders or probation requirements, and attend family counseling or parenting classes. If a parent of a youngster charged with a crime fails to meet these responsibilities, he or she may be held in contempt by the judge -- and face fines or other penalties.

All parents of youngsters who get in trouble -- even those who don't end up in the court system -- must sign personal responsibility contracts, pledging to better monitor the youngster, keep them in school, check on homework and be involved in other ways.

Parents are responsible for making sure their youngsters fulfill their personal responsibility contract, which outlines the specific tasks they'll undertake -- including staying in school, joining after-school activities, obeying their parents, staying drug-free, making restitution, undergoing counseling, and performing community service.

No cost

Take action after the first offense -- Many adult criminals got their start committing a minor offense in their early years, but weren't held accountable for their actions. Gov. Hunt believes many youngsters can be deterred from a life of crime with a combination of adult involvement, highly-structured programs and a clear signal that actions have consequences.

⇒ **On Track** -- On Track is Gov. Hunt's new restitution and rehabilitation initiative, targeting first-time offenders. Across the state, these youngsters and their parents must sign a personal responsibility contract outlining the specific tasks they'll undertake to get back on track -- including staying in school, joining after-school activities, obeying their parents, staying drug-free, making restitution, attending counseling, and performing community service. Juvenile court counselors will be enforcing these contracts.

In 10 pilot counties, youngsters on probation will be matched up with a volunteer mentor and a case manager in an intensive supervision program.

Cost: \$600,000 to pilot the initiative in 10 counties

⇒ **Take truancy seriously** -- Runaways and truants are often one step away from more serious trouble, but too often their parents can't control them. The Juvenile Justice Reform Act gives juvenile courts authority over truants & runaways through age 18, and the power to hold them in contempt if they don't follow orders to get back in school and obey their parents -- as a way to deter them from getting into more serious trouble.

No cost

⇒ **Electronic house arrest** -- Communities like Durham have found creative ways to keep juveniles on the right path without sending them to training school. Electronic house arrest is one idea that works -- it keeps youngsters accountable and keeps them in their community.

Cost: \$200,000 for new house arrest bracelets

⇒ **Drug and alcohol prevention plan** -- The Juvenile Justice Reform Act will ensure that all youngsters convicted of a drug or alcohol crime will be tested, and the new juvenile justice agency will develop a comprehensive juvenile delinquency plan targeting drug and alcohol abuse prevention.

Cost: \$50,000 for plan

◆ **Innovative community initiatives to teach responsibility** --

⇒ **Community involvement with Juvenile Crime Prevention Councils** -- For too long, prevention efforts have been directed from Raleigh, with little responsibility given to communities who know best how to serve their troubled youngsters. Smart Start is a model example of communities galvanizing around their children; assessing the needs of those youngsters; putting together a comprehensive plan to address those needs; and applying for grants to do it their way in their community. In the case of Smart Start, some of the biggest successes have been

the brainstorming and good ideas that came from that process -- for very little cost.

The Juvenile Justice Reform Act sets up Juvenile Crime Prevention Councils in every county, replacing and building on the existing Youth Service Advisory Councils. Each Council will include community leaders -- district court judge, the district attorney, a court counselor, a police chief and the sheriff, school superintendent, mental health director and social services director, business leader, members of the faith community and non-profits.

These Councils will be responsible for deciding how best to reduce juvenile crime - - focusing on prevention and intervention -- in their county. Starting next year, these Councils will get prevention block grants -- made up of CBA and Governor's One-on-One funds -- and will decide how best to engage churches, non-profits and other community groups in effective prevention efforts.

No cost now; administrative & technical assistance cost to be covered by the new Juvenile Justice agency.

- ⇒ **Juvenile Crime Prevention Council incentive grants** -- Many churches, non-profits and community groups across North Carolina are coming up with innovative ways to teach youngsters more responsibility. The Juvenile Justice Reform Act provides communities with incentives to work with troubled youths -- mentoring, teen court, community service, drug and alcohol treatment and other critical services.

Like local Smart Start partnerships, these non-profits will put together a plan to serve their local children, compete for competitive grants for innovative local programs and contract with members of the faith community, non-profits and others who want to get involved in helping at-risk children.

Cost: \$6.4 million for Juvenile Crime Prevention Council incentive grants (on top of the \$16.4 million now spent on CBA and the \$1.9 million for Governor's One-on-One)

- ⇒ **National Guard** -- Gov. Hunt's budget request includes support for the National Guard's G.R.A.S.P. (Guard Response to Alternative Sentencing Program) to set up regimented training programs across the state, involving troubled youth in rigorous exercise, discipline, mentoring efforts that help teach responsibility much like military boot camps.

Cost: \$1 million

- ⇒ **After-school programs** -- Studies show that violent juvenile crimes triple in the hours after school.

- * **SOS** -- the after-school crime prevention program targeting middle-schoolers that Gov. Hunt launched in his special session on crime in 1994 is now helping 11,000 youngsters in 76 counties, matched up with more than 3,500 volunteers who serve as mentors. Both Gov. Hunt and his wife, Carolyn, volunteer weekly in the SOS program.

- * **Communities in Schools** -- Gov. Hunt's budget request will double the amount of money for in-school and after-school volunteer efforts -- including mentoring and tutoring -- by Communities in Schools. CIS is operating in 68 counties, expanding to 8 more counties and mentor training is underway in 13 counties as well.

Cost: \$7 million in continuation budget for SOS; \$950,000 in continuation and \$1 million in expansion budget for CIS

- * **Mentoring** -- At North Carolina's Volunteer Summit this year, Gov. Hunt and 1,000 attendees pledged to match every at-risk child with a mentor. The next day, Orange County alone got 60 calls in 24 hours from people eager to volunteer. Gov. Hunt has declared 1998 "The Year of the Volunteer" and his administration is dedicating time and resources and working with private and non-profit sectors to see that at-risk children get the adult mentor they need.

No cost

III. CREATE A MORE EFFECTIVE JUVENILE JUSTICE SYSTEM

The current juvenile justice system is slow, outdated and secretive. There is not enough coordination or effective community resources. There is too much fragmentation and too little accountability to the public. The Juvenile Justice Reform Act will change that with:

- ◆ **More court counselors** -- Court counselors are the front-line workers in the juvenile justice system, and they are overburdened. Adding 100 new court counselors -- a 25% increase -- along with support staff -- will begin to address that need.
Cost: \$5 million
- ◆ **Family courts** -- North Carolina will pilot family courts with specially trained judges to hear juvenile delinquency, juvenile or parental substance abuse, abuse and neglect, and other family cases.
Cost: \$2 million for 3-4 pilot programs for two years
- ◆ **Give law enforcement and courts the tools they need to protect the public** -- Too often, prosecutors don't know the violent history of a juvenile in their court and law enforcement officers don't have full information when they make an arrest.
 - ⇒ **Information system** -- To arrest dangerous juveniles, law enforcement needs a common information technology system to gather, track and disseminate data on dangerous juvenile criminals. The information system will link prosecutors, court counselors, law enforcement, training schools and detention facilities.
Cost: \$4.9 million
 - ⇒ **Identify and fingerprint violent juvenile offenders** -- Law enforcement officers will be allowed to immediately photograph and fingerprint juveniles who come into custody for serious crimes. If a juvenile is found not guilty, records are destroyed.
No cost to state

⇒ **Standardize tracking** -- North Carolina needs a standard way of accounting for every juvenile who comes into the system with standardized arrest forms.

No cost now

⇒ **Give courts details of juvenile records** -- Juvenile records are now closed to the public and not even available to District Attorneys -- which means a prosecutor might not know that a young adult charged with a crime may have committed serious violent crimes as a juvenile. The Juvenile Justice Reform Act will ensure that prosecutors and judicial officials have that information, so they can make the best decisions about public safety.

No cost

◆ **Consolidate & streamline the system**

⇒ **Create single cabinet level agency** -- State government is fragmented when it comes to serving juvenile offenders. The Administrative Office of the Courts and the Division of Youth Services share the responsibility of sanctioning and treating juvenile offenders -- but are in separate departments and branches of government, with separate budgets, procedures and policies and chief executives. We need to consolidate our efforts to be more efficient and effective. The Juvenile Justice Reform Act establishes a Cabinet-level Department of Juvenile Justice to consolidate and coordinate these efforts, starting Oct. 1, 1998.

Cost: None (according to a State Budget Office fiscal analysis that shows the consolidated administrative and personnel costs of AOC & DYS would cover the new agency; a shortfall of some \$500,000 would be made up by AOC and DHHS)

⇒ **Create statewide juvenile justice policy board** -- Juvenile justice is not well coordinated at the state level -- multiple agencies are going in multiple directions, with no coordination, oversight or policy direction.

The Juvenile Justice Reform Act sets up a State Advisory Council on Juvenile Justice and Delinquency Prevention, a 19-member board to advise and review the new Department of Juvenile Justice. The Governor and Chief Justice of the state Supreme Court will co-chair the council, and members will include Cabinet secretaries; the director of the Administrative Office of the Courts; the Superintendent of Public Instruction; representatives from the General Assembly; and private citizens who have demonstrated a commitment to youth and juvenile justice issues.

In addition to working with the new Department of Juvenile Justice, the council will look at the juvenile justice system as a whole -- working with agencies to set policy that promotes strong, collaborative review of juvenile offenders.

No cost

DELINQUENCY

OLD	NEW		
7A-516	7B-1500	7A-594	7B-2100
7A-517	7B-1501	7A-595	7B-2101
7A-523	7B-1600	7A-603	7B-2102
NEW	7B-1601	7A-596	7B-2103
7A-524	7B-1602	7A-597	7B-2104
NEW	7B-1603	7A-598	7B-2105
NEW	7B-1604	7A-599	7B-2106
7A-530	7B-1700	7A-600	7B-2107
7A-531	7B-1701	7A-601	7B-2108
7A-532	7B-1702	7A-602	7B-2109
7A-533	7B-1703	7A-608	7B-2200
7A-534	7B-1706	7A-608.1	7B-2201
7A-535	7B-1704	7A-609	7B-2202
7A-536	7B-1705	7A-610	7B-2203
7A-558	7B-1800	NEW	7B-2204
7A-559	7B-1801	7A-611	7B-2205
7A-560	7B-1802	7A-612	7B-2206
7A-561	7B-1803	7A-618	7B-2300
7A-562	7B-1804	7A-619	7B-2301
7A-563	7B-1804	7A-620	7B-2302
7A-564	7B-1805	7A-621	7B-2303
7A-565	7B-1806	7A-627	7B-2400
NEW	7B-1806.1	7A-628	7B-2401
NEW	7B-1807	NEW	7B-2402
7A-571	7B-1900	7A-629	7B-2403
7A-572	7B-1901	7A-630	7B-2404
7A-573	7B-1902	7A-631	7B-2405
7A-574	7B-1903	7A-632	7B-2406
7A-575	7B-1904	7A-633	7B-2407
7A-576	7B-1905	7A-634	7B-2408
7A-577	7B-1906	7A-635	7B-2409
7A-578	7B-1907	7A-636	7B-2410
7A-584	7B-2000	7A-637	7B-2411
7A-585	7B-2001	7A-638	7B-2412
7A-588	7B-2002	7A-639	7B-2413

7A-646	7B-2500	7A-692	7B-2808
7A-640	7B-2500.1	7A-693	7B-2809
7A-647(3)	7B-2500.2	7A-694	7B-2810
7A-647	7B-2501	7A-695	7B-2811
7A-648(2)	7B-2502	7A-696	7B-2812
NEW	7B-2503	7A-697	7B-2813
7A-649	7B-2504	7A-698	7B-2814
NEW	7B-2504.1	7A-699	7B-2815
NEW	7B-2505	7A-700	7B-2816
NEW	7B-2506	7A-701	7B-2817
7A-658	7B-2507	7A-702	7B-2818
7A-651	7B-2508	7A-703	7B-2819
7A-652	7B-2509	7A-704	7B-2820
NEW	7B-2513	7A-705	7B-2821
7A-654	7B-2510	7A-706	7B-2822
7A-655	7B-2512	7A-707	7B-2823
7A-656	7B-2511	7A-708	7B-2824
7A-653	7B-2514	7A-709	7B-2825
7A-664	7B-2600	7A-710	7B-2826
7A-665	7B-2601	7A-711	7B-2827
7A-666	7B-2602	NEW	7B-2900
7A-667	7B-2603	7A-675	7B-2901
7A-668	7B-2604	7A-675.1	7B-2902
7A-669	7B-2605	7A-675	7B-3000
NEW	7B-2700	NEW	7B-3001
NEW	7B-2701	NEW/675.1	7B-3100
7A-650	7B-2702	7A-675.2	7B-3101
NEW	7B-2703	7A-676	7B-3200
NEW	7B-2704	7A-677	7B-3201
NEW	7B-2705	7A-678	7B-3202
7A-684	7B-2800	7A-675.3	7B-3300
7A-685	7B-2801	110-44.1	7B-3400
7A-686	7B-2802	110-44.2	7B-3401
7A-687	7B-2803	110-44.3	7B-3402
7A-688	7B-2804	110-44.4	7B-3400
7A-689	7B-2805	7A-717	7B-3500
7A-690	7B-2806	7A-718	7B-3501
7A-691	7B-2807	7A-719	7B-3502

7A-720	7B-3503	134A-1	7B-4000
7A-721	7B-3504	134A-6	7B-4001
7A-722	7B-3305	134A-8	7B-4002
7A-723	7B-3506	134A-20	7B-4003
7A-724	7B-3507	134A-21	7B-4004
7A-725	7B-3508	134A-22	7B-4005
7A-726	7B-3509	134A-25	7B-4006
7A-732	7B-3600	134A-26	7B-4007
110-50	7B-3700	134A-37	7B-4008
110-51	7B-3701	134A-38	7B-4009
110-52	7B-3702	134A-39	7B-4010
110-55	7B-3703	7A-289.1	7B-4100
110-56	7B-3704	7A-289.3	7B-4101
110-57	7B-3705	7A-289.4	7B-4102
110-57.1	7B-3800	7A-289.5	7B-4103
110-57.2	7B-3801	110-23	7B-4104
110-57.3	7B-3802	7A-289.13	7B-4200
110-57.4	7B-3803	7A-289.4	7B-4201
110-57.5	7B-3804	7A-289.15	7B-4202
110-57.6	7B-3805	7A-289.16	7B-4203
110-57.7	7B-3806	NEW	7B-4300
NEW	7B-3900	NEW	7B-4301

Abused, Neglected, Dependent

Old	New	Old	New	Old	New
7A-516	7B-100	7A-575	7B-504	7A-664	7B-1000
7A-517	7B-101	7A-576	7B-505	7A-666	7B-1001
7A-523	7B-200	7A-577	7B-506	7A-667	7B-1002
7A-524	7B-201	7A-578	7B-507	7A-668	7B-1003
7A-542	7B-300	7A-585	7B-600	7A-669	7B-1004
7A-543	7B-301	7A-586	7B-601	7A-289.22	7B-1100
7A-544	7B-302	7A-587	7B-602	7A-289.23	7B-1101
7A-544.1	7B-303	7A-588	7B-603	7A-289.24	7B-1102
7A-545	7B-304	7A-620	7B-700	7A-289.25	7B-1103
7A-546	7B-305	7A-627	7B-800	7A-289.26	7B-1104
7A-547	7B-306	7A-629	7B-801	7A-289.27	7B-1105
7A-548	7B-307	7A-631	7B-802	7A-289.28	7B-1106
7A-549	7B-308	7A-632	7B-803	7A-289.29	7B-1107
7A-550	7B-309	7A-634	7B-804	7A-289.30	7B-1108
7A-551	7B-310	7A-635	7B-805	7A-289.31	7B-1109
7A-552	7B-311	7A-636	7B-806	7A-289.32	7B-1110
7A-558	7B-400	7A-637	7B-807	7A-289.33	7B-1111
7A-559	7B-401	7A-639	7B-808	7A-289.34	7B-1112
7A-560	7B-402	7A-646	7B-900	7A-489	7B-1200
7A-561	7B-403	7A-644	7B-901	7A-490	7B-1201
7A-562	7B-404	7A-645	7B-902	7A-491	7B-1202
7A-563	7B-405	7A-647	7B-903	7A-492	7B-1203
7A-564	7B-406	7A-650	7B-904	7A-493	7B-1204
7A-565	7B-407	7A-651	7B-905	110-147	7B-1300
7A-571	7B-500	7A-657	7B-906	110-148	7B-1301
7A-572	7B-501	7A-659	7B-907	110-149	7B-1302
7A-573	7B-502	7A-660	7B-908	110-150	7B-1303
7A-574	7B-503	7A-661	7B-909		

GOVERNOR'S COMMISSION ON JUVENILE CRIME AND JUSTICE



FINAL REPORT
MARCH 10, 1998

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Julia Kim, Assistant to the Director

Leslie Starsonneck, Policy Analyst
Michelle Cotton, Research Associate

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Special Thanks to the Administrative Office of the Court, Juvenile Services Division; Department of Health and Human Services, Division of Youth Services; Department of Administration; Department of Correction; Office of State Budget and Management; Department of Public Instruction; Institute of Government, UNC - CH; and the Governor's Crime Commission.

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EXECUTIVE SUMMARY

Since the last comprehensive revision of North Carolina's Juvenile Code in 1979, juvenile crime has escalated to unacceptable levels. From 1979 to 1996 the juvenile arrest rate for violent crime surged 172 percent; weapon offenses have increased seven-fold and drug arrests have doubled. Not only are younger juveniles committing more serious crimes, they also are victims of juvenile crime. The significance of these statistics are even more troublesome in that during the same time period North Carolina's 10 - 15 year old population declined.

1979 versus 1996

Category	1979	1996	Percent Change
10 - 15 year old population	584,744	560,911	- 4.1%
Robbery Arrests	111	309	+ 178.4%
Aggravated Assault Arrests	175	817	+ 366.9%
Weapon Arrests	65	570	+ 776.9%
Drug Violation Arrests	512	1,022	+ 98.4%
Court Delinquency Hearings	9,311	19,297	+ 107.2%
Training School Admissions	981	1,019	+ 3.9%

Criminal Justice Analysis Center of the Governor's Crime Commission

Despite the recent decline in the adult crime rates, juvenile arrests continue to escalate. If current trends persist and the juvenile population in North Carolina increases 15% over the next decade, the growth of juvenile crime could be three times higher than that of adults. Our already overburdened juvenile justice system will face significantly larger caseloads, increased demands on detention and training school facilities and fewer resources will be available for prevention and rehabilitation. It is also of equal concern that minority youth are vastly over-represented in the juvenile justice system. Although African-American youth comprise less than one-third of North Carolina's population, they represent two-thirds of the youth who are arrested and/or placed in secure custody. Significant attention and efforts must be made to rectify this problem.

When Jim Hunt was re-elected to his fourth term as Governor, a top priority of his administration was to fight and reduce juvenile crime. In April 1997, work began in preparation for Governor Hunt's announcement of the Governor's Commission on Juvenile Crime and Justice. Over 300 North Carolina judges, juvenile justice experts, district attorneys, law enforcement and child advocates were interviewed and surveyed about the issues and problems facing the juvenile justice

outdated and the system is overburdened. The majority of these experts stated that delinquent youth are not held accountable for their actions. Too many first time offenders get away with little, if any consequences. An average of 6 - 8 weeks elapse before a juvenile is brought to court after committing an offense. Detention beds are full and offenders are released from training schools in shorter periods of time in order to make way for new admissions. Finally, there is a lack of comprehensive and coordinated efforts to prevent juvenile delinquency in the first place.

On September 4, 1997, Governor Hunt, by and through Executive Order, established the Governor's Commission on Juvenile Crime and Justice. With the Governor as Chair of the Commission and Secretary of Crime Control and Public Safety Richard Moore as Vice-Chair, five Ex-Officio department heads and eighteen voting Commissioners were appointed to conduct a thorough and comprehensive review of the juvenile criminal justice system. In addition to the Commission members, seventy-five individuals including service providers, child advocates and criminal justice officials were asked to serve on one of four advisory groups: Juvenile Code Revision Advisory Group; Delinquency Prevention and Drug Education Advisory Group; Accountable Sanctions Advisory Group; and the Juvenile Justice System Agency Advisory Group.

From September 1997 through December 1997, Governor Hunt, the Commission and Advisory Groups met twice a month to study the issues, learn from juvenile justice experts and examine innovative approaches from other states. In addition to these meetings, public hearings were held in Fayetteville, Winston-Salem, Asheville, Durham, Wilmington, Charlotte and Goldsboro. Commissioners toured C.A. Dillon Training School and a county operated detention facility; observed juvenile court proceedings in Charlotte and Wilmington; visited youth homes and programs across the State; and spoke with numerous youth who were under court supervision. It was the comments from the youth themselves that made lasting impressions on the Governor and Commissioners. One young offender echoed the comments of many other youth when he referred to the juvenile justice system as a "joke" and said, "I was given fifteen second chances."

At the conclusion of the Advisory meetings, in January 1998, Governor Hunt presided over five Commission hearings. During these meetings, the Commission studied and reviewed the reports from the four Advisory Groups. On March 10, 1998, the Commission approved this final report. The sixty-one recommendations represent a balanced approach which is aimed at: 1) preventing juvenile delinquency; and 2) interrupting the development of youth violence and victimization. All of the recommendations call for accountability: Juveniles must be held swiftly and appropriately accountable for delinquent behavior; parents must be held accountable to support their children; and State and local agencies must be held accountable to provide coordinated, effective responses to delinquent and undisciplined behavior while doing everything possible to prevent juveniles from committing crime in the first place.

I. JUVENILE CODE

A. STRUCTURE OF THE JUVENILE CODE

Recommendation No. 1:

The statutory sections of the Juvenile Code that pertain to undisciplined and delinquent juveniles should be separate and distinct from those statutes that pertain to abused, neglected, and dependent juveniles.

Statement of the problem:

The Juvenile Code, Subchapter XI of Chapter 7A of the North Carolina General Statutes, contains laws pertaining to both delinquency and undisciplined matters and abuse, neglect and dependency matters. Judges, practitioners, and citizens have complained that the structure of the present Juvenile Code is confusing and difficult to understand because the statutes (as well as individual paragraphs within the same statute) combine and inter-mix laws pertaining to juvenile offenders and those pertaining to children who need protection. For example, G.S. 7A-575 - "Order for secure or nonsecure custody" reads in part: "The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order...If the order is for secure custody, copies of the petition and the custody order shall accompany the juvenile...". Unless the new practitioner or lay person knows that secure custody pertains to delinquency cases and nonsecure custody pertains to civil abuse, neglect, and dependency cases, the paragraph is very confusing.

Rationale for the recommendation:

The organizational structure of the Juvenile Code should be changed by separating statutes that address delinquency and undisciplined matters from statutes that address abuse, neglect and dependency matters. Organizing the juvenile justice statutes into separate parts would provide a more logical and chronological organization for judges and juvenile court practitioners. Also, it would be easier for the general public to understand and to have confidence in the laws relating to the juvenile justice system.

The Court Improvement Project of the Administrative Office of the Courts endorsed this recommendation in its report submitted to this Commission on March 10, 1998.

B. AGE OF DELINQUENCY JURISDICTION

Recommendation No. 2:

The maximum age of original jurisdiction for delinquent juveniles should remain up until the 16th birthday. The age of extended juvenile jurisdiction for disposition purposes for delinquent juveniles should be raised from age 18 to age 21.

Statement of the problem:

Juvenile Court has exclusive original jurisdiction over juveniles who commit delinquent and undisciplined acts while at least age 6 and not yet age 16. The extended age for which a juvenile may be under juvenile court jurisdiction is until the 18th birthday. [G.S. 7A-523 and 7A-524]

North Carolina is one of only three states that prosecute 16-year-olds as adults in the criminal system. Juveniles who are in training school, or who are under juvenile court jurisdiction, are automatically released upon reaching their 18th birthday. Some of the more serious, violent youth who remain in training schools are released on their 18th birthday despite the fact that they have not been treated or rehabilitated effectively. With no post-release conditions, these older juveniles continue to pose a risk to community safety as well as to themselves. It has been noted that more juveniles are transferred to the adult system simply because judges do not think effective treatment can be given to them before their 18th birthday.

Rationale for the recommendation:

The majority of the Juvenile Code Advisory Committee members felt that raising the original jurisdictional age for delinquency would have a detrimental impact on an already overburdened juvenile justice system. It was stated that public opinion would not favor such a recommendation, particularly in light of the serious rise in crimes being committed by juveniles under 16 years of age. Finally, budgetary projections would be exorbitant. The Commission agreed to maintain the upper age of original jurisdiction up to a juvenile's 16th birthday.

The Commission recommends that juvenile jurisdiction be extended until a youth's 21st birthday. Giving the juvenile justice system this extended authority over 18-, 19-, and 20 year-olds (on probation, in training school, or subject to other disposition provisions) would result in more appropriate, longer rehabilitative treatment and would result in fewer transfers of juveniles to the adult system, where rehabilitation is unlikely to occur.

[Note: In 1997, three states - Connecticut, New York and North Carolina - processed 16 year

olds as adults for criminal jurisdiction purposes. Sixteen states process 17 year-olds as adults and thirty-nine states process 18 year-olds as adults. For extended jurisdiction, a majority of states have expanded the juvenile court's jurisdiction to age 21. Since 1992, eleven states have extended the age to commit juveniles to juvenile correctional facilities, including California, Oregon and Washington, to the age of 25.]

On March 10, 1998, during the final Commission meeting, the Governor, Secretary Moore and some Commissioners expressed their opinion that this recommendation for extended jurisdiction should apply only to those youth who are in training school on their 18th birthday and who should remain for an extended period of time.

C. STATUS OFFENDERS

Recommendation No. 3:

Judges should have the authority to hold undisciplined juveniles in contempt, if they are found to be in willful violation of the court's disposition order. All due process rights should be given to the juvenile in contempt proceedings.

Recommendation No. 4:

Original jurisdiction over undisciplined juveniles should be extended from age 16 to age 18.

Statement of the problem:

Presently, juveniles who are under the age of 16 may be brought to juvenile court on allegations of being "undisciplined" if they are runaways from home, truant from school, beyond the parents' control, or found regularly in places where it is unlawful for a juvenile to be. If a juvenile is found to be "undisciplined" the court may order "protective supervision." While the Juvenile Code allows the court to impose most dispositions that are available in delinquency cases, it prohibits undisciplined juveniles from being placed in secure custody for more than 24 hours (or in some instances, 72 hours).

Several North Carolina judicial districts no longer process undisciplined petitions. Judges and court counselors complain that it is a "statute without teeth" because the court cannot place a juvenile in detention if s/he fails to comply with a valid "protective supervision order" and

continues to be truant from school, to run away from home, or to be beyond the disciplinary control of a parent or guardian. The majority of judges and court counselors surveyed in 1997 believed that the court should retain jurisdiction over undisciplined youth only if short term detention could be used as an option. National studies indicate that juveniles who are truant from school or are beyond the disciplinary control of parents are much more likely to engage in delinquent activity.

Presently, a juvenile who is beyond his/her 16th birthday, who refuses to obey household rules by running away, violating curfew, visiting bars or dropping out of school, remains the legal responsibility of the parents who are obligated to provide food, clothing and shelter. In fact, parents can be charged with neglect or dependency for failing to provide for their 16- and 17-year-old teenagers. For parents who seek some type of court assistance, the juvenile court lacks jurisdiction. Numerous citizens and court officials have urged that the jurisdictional age for undisciplined youth be raised from a youth's 16th to 18th birthday.

Rationale for the recommendations:

Undisciplined behavior is frequently the first step to delinquency. The Commission believes that it is important to retain juvenile court jurisdiction over status offenders and recommends that the Code continue to exercise jurisdiction over the existing categories of undisciplined juveniles (status offenders): runaways; truants; juveniles who are beyond their parents' or guardians' control; and juveniles found regularly in places where it is unlawful for a juvenile to be. The Commission agreed that the juvenile court system should continue to provide resources to these youth and their families. These youth can benefit from community-based services, such as counseling and mentoring.

The Commission recommends that the court have the ability to find undisciplined juveniles in contempt of court if they willfully fail to follow a court's valid protective supervision order. Juveniles should be afforded all due process rights in contempt proceedings since they could face detention if found to be in contempt.

Given that parents of 16- and 17- year-olds remain legally obligated to provide food, shelter, and clothing even when their children are beyond their control, out of the home, truant from school or regularly found in places where they should not be, the Commission recommends that the jurisdictional age for undisciplined juveniles be raised to age 18 to provide support and services to these families and youths. Court assistance is needed for these youth who are considered to be out of parental control.

D. SCREENING, INTAKE AND DIVERSION

Recommendation No. 5:

The Juvenile Code should provide that if a juvenile's case is not filed as a petition (when grounds for filing a petition exist) and is diverted to a community resource: a) the case must remain "open" for follow-up by Juvenile Services until the juvenile "substantially completes" the diversion plan; and b) if the juvenile fails to substantially complete a diversion plan, a petition may be filed. Examples of programs to which juveniles may be diverted include: Teen Court, restitution, community service, victim-offender mediation, regimented physical training and counseling.

Recommendation No. 6:

Juvenile Services should maintain confidential records of all diverted cases so that intake counselors can determine whether a juvenile has had a complaint diverted previously. [See also Recommendation No. 38 in Section II, Juvenile Dispositions/Sentencing.]

Recommendation No. 7:

The Juvenile Code should allow the use of "diversion contracts" which are voluntary agreements entered into by the juvenile, the parent(s) and/or guardian(s), the intake counselor, and, when possible, appropriate service providers. Diversion contracts should provide for accountability by all parties and appropriate consequences for any party's noncompliance.

Recommendation No. 8:

Statutory criteria should be established to determine which cases may be diverted from Juvenile Court to Teen Court. Teen Court should be a one time option primarily for first offenders who are alleged to have committed misdemeanors, and should not be an option for misdemeanor assaults inflicting serious injury, assaults involving weapons, etc.

Statement of the problem:

Present law: Juvenile court delinquency and undisciplined complaints are screened initially by the local judicial district's Juvenile Services intake court counselor. The intake counselor makes a preliminary determination whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. Upon finding legal sufficiency for the complaint, the intake counselor determines whether a complaint should be filed as a petition for court or if the juvenile should be diverted to a community resource. Generally, for nonviolent felonies and misdemeanor complaints, there are no statutory guidelines for intake counselors to consider when deciding which complaints should be filed for court action and which should be diverted to a community resource. Complaints that allege "nondivertible offenses," or serious felonies **must** be filed as petitions. Finally, under current law, if a juvenile's case is diverted to a community resource and the juvenile "contacts or is seen by the resource," the intake counselor **must** close the file. (G.S. 7A-531, 7A-532, and 7A-534)

In 1997, approximately 40% of all juvenile complaints were diverted away from court to a community based program. Under current practice, there is no statewide consistency in the handling of juvenile court cases. While some district intake counselors may file all misdemeanor assault or drug cases, other district intake counselors may divert similar types of cases. For juveniles whose cases are diverted to a community resource, as long as the juvenile makes a contact, such as a phone call, the juvenile cannot later be brought into court for that matter. Currently, no juvenile records are permitted to be kept on cases that are diverted from juvenile court, therefore a juvenile may have several complaints diverted, and thereby may never be held accountable for his/her actions.

Rationale for the recommendations:

Juveniles must be held accountable for their actions. No juvenile whose case is diverted from court should be able to avoid responsibility. The use of diversion contracts should provide clear terms and expectations of the juvenile, and would be a basis for Juvenile Services to follow-up to ensure the juvenile complies with the agreement. Official, confidential records of diversion would assist intake counselors in making later diversion decisions and assist the court in making subsequent, appropriate disposition or transfer decisions. Finally, as Teen Courts are being implemented in more jurisdictions, statutory guidelines should be implemented as to what type of offenders and cases should be heard.

E. PARENTAL ACCOUNTABILITY TO APPEAR IN COURT

Recommendation No. 9:

The parent(s) and/or guardian(s) of a juvenile should be required to attend detention, adjudication and disposition hearings. Judges should be authorized and encouraged to rigorously and consistently require the parent(s) and/or guardian(s) to attend juvenile hearings. If the court finds the parent(s) and/or guardian(s) in wilful violation of such orders, the court should have the authority to hold contempt proceedings against the parent(s) and/or legal guardian(s) with the possibility of sanctions including the payment of fines, costs and/or statutorily permissible incarceration.

Statement of the problem:

Currently, the Code provides that if a parent or guardian is personally served with a summons to appear in court, in no less than five days before the scheduled hearing, and "fails without reasonable cause to appear and to bring the juvenile before the court, he may be proceeded against as for contempt of court." [G.S. 7A-565] Despite this statutory provision many parents and/or legal guardians are never summoned to court. As a result, many juveniles appear in court alone without a parent. This lack of parental involvement in a juvenile's contact with the juvenile justice system undercuts the seriousness of the process in the juvenile's mind.

Court counselors and judges most often cite uncooperative parents/legal guardians as the primary reason juveniles do not succeed on probation. Eighty-five percent of North Carolina's juvenile court judges surveyed in the summer of 1997 stated that parents are not being held accountable in juvenile justice proceedings. It is estimated that in more than one-third of all juvenile cases, parents are detrimental to the juvenile's success on probation. Parents either do not appear for court hearings or do nothing to assist in getting their child to school or to court ordered appointments.

Rationale for the recommendation:

Parents of juveniles must take a more active and cooperative role in juvenile proceedings. The Code should authorize the court to hold parents accountable, through contempt or other means that protect the parents' due process rights, for failing without cause to appear at a detention, adjudication, or disposition hearing, or for failing to cooperate with their child's court supervision.

Recent initiatives in Kansas, Michigan and Texas require parents to attend the hearings of their

children or face contempt of court sanctions, such as fines and possible jail time.

F. TIME LIMITS: FIRST APPEARANCES; DETENTION; PROBABLE CAUSE/TRANSFER HEARINGS; FILING OF PETITIONS

Recommendation No. 10:

The Code should require that if a complaint is approved for filing as a petition, the petition must be filed within 15 days from receipt of the complaint, with a possible extension of up to 15 additional days. If a juvenile petition is diverted at intake, this time period shall be stayed.

Statement of the problem:

There is no statutory time limit between the time a juvenile complaint is approved for filing and the time the petition is actually filed. Presently, the Code requires only that complaints be evaluated within 15 days of receipt, with a possible extension up to an additional 15 days.

The average length of time between the date of an offense and the juvenile's first court appearance is 6-8 weeks. Virtually every juvenile justice professional has stressed the need for quicker processing of juvenile cases so that juvenile offenders will realize the consequences of their actions and will be held accountable.

Rationale for the recommendation:

This provision would apply to the actual filing of the petition. The same 15 day limit that applies to the intake counselor's decision of whether a complaint should be filed as a petition would apply to the date when the petition should actually be filed. Presently, the Code specifies no time within which the petition must be filed. This is one of several recommendations aimed at expediting the handling of juvenile cases.

Recommendation No. 11:

Juveniles who are taken into secure custody shall have first appearances or detention hearings within five days of being placed into secure custody. For juveniles who are alleged to have committed felonies and are not in secure custody, the Code should require a first appearance within 5 days after service of the petition and summons.

Statement of the problem:

Presently, the Juvenile Code requires that juveniles who are placed in secure custody must be brought into court within five days. [G.S. 7A-577] However, for those juveniles who are charged with felonies and who are not placed in secure custody, there is no statutory time frame in which the juvenile must appear in court. In North Carolina, an average of six to eight weeks elapse between the time the juvenile commits an offense until s/he first walks into court. These prolonged delays diminish responsibility and accountability.

Rationale for the recommendation:

A prompt and meaningful first appearance would help convey to the juvenile and the parent(s) and/or guardian(s) the seriousness of the situation. Juveniles who are charged with felony offenses should be brought into court as swiftly as possible in order to be informed of the serious nature of being charged with a felony, be appointed legal counsel, and have a date set for the adjudicatory hearing.

Recommendation No. 12:

Juveniles who are held in secure custody are entitled to a detention hearing every five days. The Juvenile Code should authorize the holding of detention hearings by two-way interactive audio/visual communication from wherever a juvenile is detained to juvenile court.

Statement of the problem:

As a result of a severe shortage of detention beds in North Carolina, hundreds of juveniles must be transported across the state in order to be placed in a detention facility. Also, juveniles who are held in detention are entitled to a detention hearing every five days and must be transported to and from one of the state's 12 detention facilities. Law enforcement departments have had to bear the brunt of the transportation burden, resulting in two officers being taken away from regularly assigned duties to transport juveniles.

Rationale for the recommendation:

Interactive audio/visual communication between juvenile courtrooms and detention facilities would reduce staff and time constraints, and costs of transporting juveniles.

Recommendation No. 13:

Juveniles who are charged with felony offenses are entitled to a probable cause hearing. A probable cause hearing should be held within 15 days after the juvenile's "first appearance" (if the juvenile is not in secure custody) or the juvenile's secure custody hearing (if the juvenile is in secure custody). Upon a finding of probable cause the court may proceed with the transfer hearing, but for good cause the judge may continue the transfer hearing until a later date.

Recommendation No. 14:

A juvenile should be entitled to 5 days notice prior to the probable cause hearing of the state's intention to seek transfer to superior court. Failure to provide the 5-days notice constitutes grounds for the presiding juvenile court judge to continue the transfer hearing after a finding of probable cause.

Statement of the problem:

Juveniles who are charged with felony offenses are entitled to probable cause hearings. Unlike the adult criminal statutes, there is no time limit for which a probable cause hearing must be held. Some probable cause hearings are held months after a juvenile has been charged, resulting in some youth spending long periods of time in detention.

Article 49 of the current Juvenile Code does not provide for a transfer hearing that is separate and distinct from the probable cause hearing. Typically, if probable cause is found in a juvenile's case, the presiding judge entertains motions on the issue of transfer. The issues of probable cause and transfer are often decided during the same hearing, with the most serious cases being transferred to the adult system.

On some occasions, juvenile attorneys have not been notified of the state's intention to seek transfer to superior court. Without advance notice, important witnesses may not have been subpoenaed and the standard of fundamental fairness may not have been met.

G. FINGERPRINTS AND PHOTOGRAPHS

Recommendation No. 15:

The Code shall authorize law enforcement officials to fingerprint and photograph any juvenile who is charged with a felony at any point after the complaint is referred to Juvenile Services. If a juvenile petition is not filed, probable cause is not found, or the juvenile is not adjudicated delinquent, any and all evidence pertaining to the photographs and fingerprints shall be destroyed.

Statement of the problem:

Currently, juveniles who are arrested for misdemeanor or felony offenses cannot be photographed or fingerprinted without a court order or until after an adjudication for an offense that would be a Class A-E felony, if committed by an adult. Often, juveniles who are charged with serious felonies do not appear in court and are suspects in other crimes. Law enforcement and juvenile court officials have no way to identify these youth.

Rationale for the recommendation:

The authority to photograph and fingerprint all juveniles charged with felony offenses would assist law enforcement in investigations and would assist court counselors to locate juveniles for whom the court has issued a "pick up" (secure custody) order. In recent years, 27 states have authorized law enforcement to fingerprint and photograph juveniles upon arrest for crimes that would be felonies if committed by adults. This information has been useful for identification and subsequent investigations.

Any photographs or fingerprints obtained in a case for which the juvenile is not adjudicated delinquent should be destroyed. This provision is to ensure that only fingerprints and photographs of juveniles who actually are adjudicated become part of a permanent record.

Under the recommendation, a nontestimonial identification order would still be required before photographing or fingerprinting a juvenile at any stage prior to the referral to intake of a complaint alleging a felony offense.

H. CONFIDENTIALITY

Recommendation No. 16:

The Code should provide that juvenile hearings are open to the public, provided the court may close a hearing or a part of a hearing for good cause upon motion of a party or on the court's own motion.

Statement of the problem:

Present law authorizes the judge to exclude the public, but requires that a hearing be open at the juvenile's request. [G.S. 7A-629] In most districts juvenile court is routinely closed to the public. In a few districts, it is almost always open. There is a lack of uniformity throughout the State and oftentimes witnesses and victims are not allowed in the courtroom for the entire juvenile proceeding. Closed courtrooms have added to the secrecy of proceedings and denied the public's right to know about the nature and extent of juvenile crime.

Rationale for the recommendation:

Victims and the public have the right to know about juvenile proceedings; however, some parts of some proceedings (such as those dealing with psychiatric information or other sensitive family matters) should not be public. In 1997, 21 states required or permitted the court to open juvenile proceedings to the public if the youth was charged with serious or violent offenses or if the juveniles were repeat offenders.

I. ACCESS TO JUVENILE COURT RECORDS

Recommendation No. 17:

Juvenile records should be available for examination (but not photocopying) by law enforcement officials and possibly by service providers. Designated school officials should have access to juvenile court records in order to facilitate compliance with juvenile court orders that are in the juvenile's best interest. Any information gained from examination of juvenile records not subject to the notification to schools requirements under the North Carolina General Statutes shall not be used as the sole basis for expulsion or suspension. [See also Recommendations Nos. 48 and 49 in Section III, Juvenile Justice Agency.]

Statement of the problem:

Juvenile records are sealed and remain confidential unless a court order allows interested parties to have access to delinquency or undisciplined records.

Strict confidentiality statutes have inhibited service providers from accessing information to properly provide the best treatment for adjudicated youth. Also, closed records have prevented or restricted law enforcement officials from having access to information that may be useful in subsequent investigations.

Rationale for the recommendation:

Many agencies such as mental health, social services, drug rehabilitation, schools, etc., that serve court-supervised youth may be better able to provide appropriate treatment if they have access to juvenile records. Access to these records will improve coordination of services to the juvenile and the juvenile's family.

School officials, also, should have access to court records so that they can better respond to the needs of court-involved youth while preserving school safety. The Commission does not want or intend for schools to be able to use any information obtained from court files as a sole means to suspend or expel a student. Finally, law enforcement officers should have access to juvenile records for purposes of investigating criminal activity.

The judge should have the discretion to designate certain information in the juvenile file as "sealed" and accessible only by court order.

A 1995 survey conducted by the National Center for Juvenile Justice found that 26 states allowed law enforcement agencies to have access to juvenile court records, 20 states allowed schools to have at least limited access to information concerning the juvenile's name/address and disposition of charges, and 36 states allowed service providers to have access to juvenile information.

J. PROBABLE CAUSE/TRANSFER HEARINGS

Recommendation No. 18:

The Juvenile Code should provide that in order to transfer a case to superior court the judge must conclude that the interest of justice and the purposes of the Juvenile Code will be served by transferring the case. In addition, the Code should require that the judge, before ordering transfer of a case to superior court, consider the following factors:

- a. the juvenile's age;**
- b. the juvenile's maturity;**
- c. the juvenile's intellectual functioning;**
- d. the juvenile's prior record;**
- e. previous rehabilitative attempts;**
- f. the likelihood that the juvenile can benefit from treatment within the time that the juvenile would remain under the jurisdiction of the juvenile court;**
- g. the seriousness of the offense;**
- h. the degree of violence involved in the offense; and**
- i. the prospects for adequate protection of the public.**

Statement of the problem:

Currently, the Juvenile Code, does not require a presiding judge to take any specific facts into consideration when deciding to transfer a case. The statute provides only that, "the judge may proceed to determine whether the needs of the juvenile or the best interests of the state will be served by transfer of the case to superior court for trial as in the case of adults." [G.S. 7A-610] The vagueness of the statute is interpreted to mean that judges are not required to specify any reasons for transfer.

Rationale for the recommendations:

In an effort to expedite the juvenile justice system process, the probable cause hearing should be held within a specific time frame, particularly for juveniles who are in secure custody. The recommendation provides for time extensions, if necessary; for example, when a party needs adequate time to obtain meaningful expert assistance.

Considerations of due process and fundamental fairness dictate that prosecutors must give notice of intent to seek the transfer of a juvenile to the adult system. This will encourage better

preparation for the hearing and provide greater procedural fairness at this critical proceeding. Also, this recommendation resolves the present ambiguity as to whether the judge may order transfer without a motion from the prosecutor or the juvenile.

As a matter of fairness and consistency, the Code should require the presiding judge to consider certain factors when deciding whether to transfer a case to superior court. Virtually all other states provide statutory factors for the judge to consider, including the juvenile's age, the juvenile's emotional maturity, the juvenile's intellectual functioning, the juvenile's prior record, previous rehabilitation attempts, the likelihood that the juvenile can benefit from treatment within the time that the juvenile would remain under the jurisdiction of the juvenile court, the seriousness of the offense, the degree of violence involved in the offense, and the prospects for adequate protection of the public.

K. BLENDED SENTENCING

Recommendation No. 19:

North Carolina should adopt a criminal-inclusive model of blended sentencing whereby if a juvenile is transferred to superior court, the presiding superior court judge may impose a juvenile disposition and an adult criminal disposition simultaneously. Execution of the adult criminal disposition is suspended during imposition of the juvenile disposition and pending a violation or re-offense by the juvenile.

Statement of the problem:

If a juvenile has been charged with a serious or violent crime, judges are reluctant to maintain juvenile jurisdiction if the period of time spent under supervision is not enough time to provide adequate rehabilitation. Thus juveniles are more likely to be transferred to the adult system to ensure public safety. But if a juvenile is transferred to the adult system to be tried in superior court, the superior court must impose an adult sentence according to structured sentencing guidelines. Statistics show that juveniles who are transferred to the adult system are more likely to commit more crimes than those who are kept in the juvenile rehabilitative system.

Rationale for recommendation:

Blended sentencing would allow a superior court judge to impose a juvenile and/or adult sanction. The Commission recommends that North Carolina adopt a "Criminal-Inclusive Blend" whereby the superior court imposes both a juvenile and adult correctional sanction and suspends

the adult sentence during imposition of the juvenile disposition and pending a violation or re-offense by the juvenile. Other states that have adopted this model include Arkansas and Missouri. Approximately one-half of the other states have adopted variations of blended sentencing.

L. DIRECT FILING OF CHARGES AGAINST 15 YEAR-OLD OFFENDERS FOR CERTAIN SERIOUS VIOLENT CRIMES

Recommendation No. 20:

If blended sentencing exists, the prosecutor should have the authority to directly charge a juvenile as an adult in the case of 15 year-olds who have committed Class A-E felony offenses.

Statement of the problem:

Fifteen year-olds who commit serious or violent crimes may have been on juvenile probation for prior offenses or may be on conditional releases from training schools. For these types of cases and for 15 year-olds who are charged with murder, rape, armed robbery or other Class A-E felonies, juvenile court proceedings delay the time in which a juvenile is ultimately transferred to the adult system.

Rationale for the recommendation:

Prosecutorial discretion would permit prosecutors to make essentially the same decision that a juvenile court judge makes in transfer decisions. Direct filing of charges in adult court against those 15 year-olds who have committed serious violent offenses or who are serious repeat offenders would quickly remove from the juvenile justice system these youth who would otherwise occupy scarce detention bed space.

II. JUVENILE DISPOSITIONS/SENTENCING

A. PURPOSE OF DISPOSITIONS

Recommendation No. 21:

“Protection of the public” should be included in the purpose paragraph of the Disposition Article. The Code should require that the judge use the “most effective” dispositional alternative or sanction and the requirement for the judge to use the “least restrictive disposition” or alternative should be eliminated.

Statement of the problem:

Currently, the North Carolina juvenile justice system focuses on the offender. The primary consideration in determining an appropriate disposition is the juvenile's rehabilitative needs. N.C. Gen. Stat. § 7A-646 states that “[i]n choosing among statutorily permissible dispositions...the judge shall select the restrictive disposition both in terms of kind and duration, that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case and the age and prior record of the juvenile.” Protection of the public is mentioned in other parts of the Juvenile Code but is not emphasized in the purpose of dispositions.

Rationale for the recommendation:

The Commission recommends that the system concentrate on holding the offender accountable for his/her behavior and protecting the public. In responses to increases in the rate and seriousness of juvenile crime across the country, both federal and state legislatures have been reconsidering the balancing point between the juvenile justice system's focus on child protection and treatment and the protection of the public safety. The distinct trend has been toward placing greater weight on the protection of the public safety.

In order to ensure the public safety and hold the juvenile accountable for his/her offenses, the Commission recommends that North Carolina require juvenile judges to use the “most effective” dispositional alternative. Accordingly, the Commission also recommends that North Carolina adopt a new graduated disposition structure that accounts for the seriousness of the offense, accountability of the juvenile, and the protection of the public safety. While priority factors in the dispositional process should be the seriousness of the offense and the risk of continued delinquent behavior, the degree of culpability and the rehabilitative needs of the offender should

also be considered. Under a new graduated disposition structure the "least restrictive alternative" is not necessarily the most appropriate disposition to hold the juvenile accountable.

B. PARENTAL ACCOUNTABILITY

Recommendation No. 22:

The court should be authorized, in its discretion, to require parent(s) and/or guardian(s), who are able to do so, to transport or provide transportation to the juvenile to assist in the juvenile's compliance with dispositional orders, including transportation to perform community service or attend treatment.

Statement of the problem:

The current statute requires parents to transport juvenile probationers only to appointments with their court counselors. There is no provision requiring parents to transport their children to appointments with service providers, including mental health workers, social workers, etc., or to community service sites.

Rationale for the recommendation:

The court should have the authority to require parents to transport juveniles on probation to any location required as a condition of probation. If a parent is able to provide transportation, the court should be able to hold the parent accountable for ensuring that the juvenile at least arrives for appointments or community service work that are conditions of the juvenile's probation.

Recommendation No. 23:

Parental responsibility classes should be funded and the court should be authorized to require parent(s) and/or guardian(s) to attend them.

Statement of the problem:

Frequently parents of juvenile delinquents are unprepared for or frustrated with their role as parents and may be facing a myriad of other issues (e.g., family violence, poverty). In these cases, parenting classes are helpful to teach the parent appropriate responses to the juvenile and

the juvenile's behavior. Parental responsibility classes are available in some parts of North Carolina. Some states provide statewide funding for these programs and authorize courts to mandate participation for parents who have children on juvenile probation.

Rationale for the recommendation:

The Commission believes that parental responsibility classes are beneficial for both the juvenile who requires structure and discipline, and the parent who may need assistance in dealing appropriately with the juvenile. More parental responsibility classes should be available and judges should be authorized to mandate participation in them.

Recommendation No. 24:

With good cause, juvenile court counselors should be authorized to initiate contempt of court proceedings if the parent(s) or guardian(s) wilfully fails to cooperate with their child's probation conditions. [See also Recommendation No. 9 in Section I, Juvenile Code.]

Statement of the problem:

Currently, only the juvenile court judge may initiate contempt proceedings against the parents of juveniles adjudicated delinquent. Contempt is rarely utilized in juvenile court though it is an available tool. When contempt proceedings are initiated by the court, some major failure on the parent's part has occurred.

Rationale for the recommendation:

Court counselors interact regularly with the parents of juvenile probationers. If the parent of a juvenile on probation fails to cooperate with the juvenile's probation conditions in any significant way, contempt of court proceedings against the parent is a legitimate way to leverage that participation. Since the court counselor is typically the first to know of and is in the best position to assess any failure of the parent to cooperate with the terms of the juvenile's probation, the court counselor is in the best position to initiate contempt proceedings. Immediate initiation of contempt proceedings may halt or diminish any adverse effect on the juvenile that a parent's non-compliance may have. Each district should develop written procedures to guide court counselors in this process.

Recommendation No. 25:

The Juvenile Code should authorize the court, in its discretion and if the parent has the means to pay, to require the parent(s) and/or guardian(s) of delinquent juveniles to:

- a) **pay a daily set fee for days held in secure detention;**
- b) **pay a fee for probation supervision or residential facility costs;**
- c) **assign private insurance coverage to cover medical costs while the juvenile is in secure detention, training school or other out-of-home placement;**
- d) **pay court-appointed attorney's fees.**

Statement of the problem:

Juveniles are presumed indigent under the Juvenile Code and are not required to pay for treatment or services. [G.S. 7A-584] A court may order the parent to pay the cost of medical, surgical, psychiatric, psychological, or other treatment ordered by the court for the juvenile, or for the parent when the treatment is directly related to the parent's behavior which contributed or led to the juvenile's adjudication. If the court finds that the parent is unable to pay the costs of treatment, the court may charge the costs to the county. [G.S. 7A-650] The statute is not consistently applied across the state, and the state bears the heaviest financial burden to detain, supervise, and/or provide treatment to the juvenile even if the parent has the means to do so.

Rationale for the recommendation:

Parental accountability is as important an issue as juvenile accountability. Part of the responsibility of parenting is providing materially for the needs of the juvenile. Some states require parents whose children are on juvenile probation to pay certain fees and to assign private medical insurance to cover costs while juveniles are in residential or detention facilities. The Juvenile Code currently provides for payment by parents for many services when the court finds that the parents have the means to pay. The financial responsibility of parents under the Code should be broadened and clarified.

C. DISPOSITIONAL OPTIONS

Recommendation No. 26:

The following dispositions should be added to the Dispositions Article of the Code:

- a) **house arrest (with or without electronic monitoring);**
- b) **regimented training program (e.g., Sgt. Redd's program in Fayetteville);**
and
- c) **victim-offender reconciliation program.**

Statement of the problem:

N.C. Gen.Stat. 7A-649 enumerates the following dispositional alternatives:

- (1) Suspension of more severe disposition. The judge may suspend a more severe disposition, such as commitment to training school, subject to the juvenile's complying with specified conditions. The conditions must be clearly specified in the court's order and the juvenile must agree to them.
- (2) Restitution. The juvenile may be required to make restitution to anyone who experienced loss or damage as a result of his/her offense. The judge may order full or partial restitution; however, the juvenile may be required to pay restitution only to the extent that he or she has or could reasonably acquire the means to pay according to the juvenile's age. The order for restitution cannot extend beyond a twelve-month period, unless the court extends probation for an additional year.
- (3) Payment of a fine. The juvenile may be required to pay a fine if s/he has the ability to do so. The fine must be related to the seriousness of the juvenile's offense. The fine may not be greater than the maximum fine an adult could be assessed for the same offense. Fines are not paid to the victim, if any, but to the county school fund.
- (4) Community service. The judge may order the juvenile to perform supervised community service and specify the nature of the work and the number of hours required. The work must relate to the seriousness of the juvenile's offense, and may not extend beyond the probation period.
- (5) Day program. The juvenile may be required to participate in a supervised day program and comply with reasonable conditions specified in the order.
- (6) Educational or treatment programs. The juvenile may be ordered to a community-based program of academic or vocational education, or to a professional residential or nonresidential treatment program, for up to twelve months.

- (7) **Intermittent confinement.** The judge may order that the juvenile be confined on an intermittent basis in an approved detention facility. Confinement may not exceed five 24-hour periods, and the confinement must be completed within ninety days of the juvenile being placed on probation.
- (8) **Probation.** The most frequent juvenile disposition is supervised probation. A probation order is limited to one year, however, the court may extend probation for one additional year.
- (9) **No driver's license.** The judge may order that the juvenile not be licensed to operate a motor vehicle in the state for as long as the court retains jurisdiction or for a shorter period of time.
- (10) **Training school.** The judge may commit the juvenile to the Division of Youth Services for placement in a training school. If the judge selects this disposition s/he must follow the provisions of G.S. 7A-652.

The recommended dispositions are currently available only in some parts of the state.

Rationale for the recommendation:

These recommended dispositions have been reported to be effective in those areas where available. The Code specifies certain dispositional alternatives but is not inclusive nor exhaustive of all dispositional alternatives available. These recommend dispositions should be clearly defined and authorized.

Recommendation No. 27:

The following conditions of probation should be added to the current list of dispositions authorized in the Code:

- a) **remain free of any controlled substances of any type unless prescribed by a physician and submit to random drug testing;**
- b) **abide by a prescribed curfew;**
- c) **submit at reasonable times to a warrantless search;**
- d) **possess no firearm, explosive device, or other deadly weapon; and**
- e) **satisfy any other conditions determined appropriate by the court.**

Statement of the problem:

Specific statutory conditions of probation include that a juvenile: remain on good behavior and

not violate any laws; attend school regularly; maintain passing grades in up to four courses during each grading period; not associate with specified persons or be in specified places; report to a court counselor; make financial restitution or pay a fine; and be employed regularly if the juvenile does not attend school. [G.S. 7A-649(8)] These conditions proscribe and limit certain behaviors, but do not account for some critical behaviors in which a juvenile may engage.

Rationale for the recommendation:

Often judges add special conditions of probation including the above recommended conditions of probation. The conditions of probation ensure the juvenile's compliance with the law and provide a basis for the court's review if the juvenile engages in undesirable or unlawful behavior but is not charged with the commission of a criminal offense.

Recommendation No. 28:

The Code should allow the court to delegate authority, in the court's discretion, to the Chief Juvenile Court Counselor to add the following requirements to juvenile who are on probation:

- a) perform up to 20 hours of community service;
- b) submit to substance abuse monitoring or treatment;
- c) cooperate with electronic monitoring;
- d) cooperate with intensive supervision; and
- e) participate in a life skills or educational skills program.

Statement of the problem:

Whenever circumstances dictate that the conditions of a juvenile's probation be modified, the juvenile court counselor is required to file a motion for review. The judge may modify the conditions of the juvenile's probation after proper notice to the juvenile and a hearing on the matter. [G.S. 7A-658] Often, weeks pass before the motion for review is heard resulting in unnecessary delays in identifying and/or securing services or appropriate supervision for the juvenile.

Rationale for the recommendation:

Juvenile court counselors should have the ability to manage each offender's case while s/he is on probation. Based on the offender's behavior, the court counselor should staff the case and the

Chief Juvenile Court Counselor should be able to require the offender to do certain things. The offender should have the right to ask the court to review any requirements added by the Chief Court Counselor. This process can expedite the identification or implementation of services or supervision for the juvenile without the unnecessary delays that result from having to schedule the case before the court.

Recommendation No. 29:

The State shall continue to work in partnership with local communities to strengthen the continuum of treatment options so judges can effectively implement the Dispositions Article of the Juvenile Code. To properly implement graduated sanctions statewide, all juvenile courts must have access to the following types of community-based alternatives, such as:

- **Home based family counseling with family support groups that can provide required family intervention services in all cases in which the court determines a need for such service;**
- **Day reporting centers (which should be targeted at the highest crime communities within the State to provide the maximum supervision possible within a non-residential setting);**
- **After school activity programs for middle school youth targeted at the potential at-risk youth during the time when most juvenile crime occurs;**
- **Inpatient and outpatient substance abuse and sex offender treatment;**
- **Juvenile Court counselors focused on high-risk juveniles;**
- **Group homes with psychological treatment components for juveniles who do not pose a public threat but need an intensive long term intervention approach.**

Statement of the problem:

Juvenile court practitioners across this state have expressed frustration over the lack of community resources to adequately respond to the needs of troubled juveniles and their families. This results in the use of inappropriate placements for juveniles, failure to assess and meet the needs of these troubled youth, and contributes to an unacceptable recidivism rate.

Rationale for the recommendation:

Creating dependency on training schools and detention facilities will rob us of the opportunity to

create more community based and cost efficient alternatives. Funding strategies and incentives must be created to enable communities to devise a locally based continuum of appropriate sanctions and treatment options to ensure the long-term success of our juvenile justice system.

D. GRADUATED SANCTIONS

Recommendation No. 30:

The Juvenile Code should move from an offender-based dispositional system to an offense and risk-based dispositional system. The dispositional factors to consider in the new system in order of priority should be: (1) seriousness of the offense; (2) holding the offender accountable for his/her actions; (3) protecting the public safety through risk assessment and risk control; (4) the degree of culpability/blameworthiness; and (5) the rehabilitative needs of the offender. The requirement for the judge to use the "least restrictive" disposition should be eliminated.

Recommendation No. 31:

Three categories of offenses should be defined, including:

- a) violent: adjudication of a Class A-E felony offense;**
- b) serious: adjudication of a Class F-I felony offense or a Class A1 misdemeanor;**
- c) minor: adjudication of a Class 1, 2, or 3 misdemeanor.**

Recommendation No. 32:

Three levels of risk of continued delinquent behavior should be defined, including high, medium, and low, based on a risk assessment performed by an Intake Court counselor prior to the disposition hearing.

Recommendation No. 33:

Three dispositional levels should be established as follows:

LEVEL 1 COMMUNITY	LEVEL 2 INTERMEDIATE (may also include Level 1 dispositions)	LEVEL 3 COMMITMENT
Continue for Disposition	Intensive Supervision Probation	Commitment to Training School
Community-Based Program	House Arrest with or without Electronic Monitoring	
Fine	Structured Day Program	
Community Service	Regimented Training Program	
Counseling	Suspension of a More Severe Disposition	
Restitution	Multi-purpose Group Home	
Regular Probation	Eckerd Wilderness Camp	
Curfew	Short-Term Secure Confinement (up to 14 days during probation period)	
Residential placement with a relative, or in foster care, a group home, an Eckerd Wilderness Camp, or in a treatment facility		
Vocational or Educational Program		
Intermittent Confinement for 5 days during probation period		

Recommendation No. 34:

Dispositional levels should be prescribed based on a combination of the offense seriousness and the risk level as follows:

OFFENSE	RISK		
	LOW	MEDIUM	HIGH
Violent	Level 2 or 3	Level 3	Level 3
Serious	Level 1 or 2	Level 2	Level 2 or 3
Minor	Level 1	Level 1 or 2	Level 2

Statement of the problem:

The current North Carolina juvenile justice system is an offender based system that requires the judge to select the least restrictive disposition that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case, and the age and prior record of the juvenile. The Juvenile Code mentions but does not emphasize protection of the public safety as a factor in determining the appropriate disposition. No categories of offenses or degrees of dangerousness are designated under the current Code. In the most general sense, juveniles under the current Code fall under either one of two categories: those who remain within the juvenile system and those who are transferred to the adult system. For those who remain in the juvenile system, the primary factor in determining the appropriate disposition is the juvenile and his/her rehabilitation needs. Consequently, the juvenile who has committed a serious and/or violent offense and the juvenile who has committed a minor offense could receive the same disposition.

Rationale for the recommendation:

Currently, the North Carolina juvenile justice system focuses on the offender and the primary consideration in determining an appropriate disposition is rehabilitative needs. The Commission recommends that the system focus on holding the offender accountable for his/her behavior and protecting the public. The priority factors to be considered in the dispositional process should be the seriousness of the offense and the risk of continued delinquent behavior, the degree of culpability, and the rehabilitative needs of the offender.

A dispositional structure that categorizes offenses by offense seriousness accounts for a wide range of differences between juvenile offenders, especially those who would remain in the

juvenile system. A new graduated sanctions model that provides for accountability of the juvenile, the seriousness of the offense, and the public safety (an offense plus risk based system) requires that categories of offenses be defined. Delinquent offenses should be grouped by their seriousness level. Violent offenses should be disposed of differently than serious offenses and minor offenses.

Public safety should be a dispositional consideration in juvenile court. Public safety can be addressed by projecting future delinquent behavior based on a risk assessment. A risk assessment instrument estimates an offender's likelihood of continued delinquent behavior based on past delinquent behavior. The risk level should be derived from weighing the following factors: number of prior adjudications, types of prior adjudications, and probationary status at time of adjudication. The sum of the juvenile justice factors should assign the offender to either the low, medium, or high risk category.

A system of dispositional categories which increase gradually in restrictiveness, incapacity and intensity provides structure to the process of determining the appropriate disposition according to the seriousness of the offense committed and the risk of further offending. Also, within each dispositional category the needs factors of the juvenile should determine the appropriate services and/or programs for the juvenile which will also decrease the risk of recidivism. The most restrictive, incapacitating, and intensive disposition is commitment to training school. The least restrictive, incapacitating, and intensive dispositions include a range of community level dispositions. In between these levels, the intermediate disposition level contains a range of dispositions for offenders who can be handled in the community with a moderate level of restriction, incapacitation, and intensity of intervention.

A system of dispositions which accounts for the seriousness of the offense, accountability of the juvenile and the public safety removes the guesswork involved in determining the appropriate juvenile disposition. Common sense dictates that minor offenders should not initially be committed to training school, one of the most expensive services available. On the other end of the spectrum, judges should be able to commit first-time violent offenders to training school. Based on their risk level, serious offenders should be dealt with through community or intermediate dispositions or committed to training school.

E. DISPOSITIONAL RULES

Recommendations No. 35:

Judges should be authorized to depart from the Level 3 Disposition in the medium and high risk violent offense cells to a Level 2 Disposition only if the judge submits written findings on the record which substantiate "extraordinary needs of the offender."

Rationale for the recommendation:

Judges should be able to depart from a commitment to training school when an offender has "extraordinary needs" which are documented on the record.

Recommendation No. 36:

Judges should be allowed to consider evidence of a juvenile's cooperation with law enforcement to provide information about other individuals with whom the juvenile acted in the offense for which the juvenile was adjudicated. Judges should be allowed to use the juvenile's cooperation as a mitigating factor in disposition/sentencing.

Statement of the problem:

Juveniles often become involved in criminal offenses through the enticement of others. Because of the perception that sanctions imposed on juveniles adjudicated delinquent are lenient, if not meaningless, a significant current problem is the recruitment of juveniles by older drug dealers who want these youth to sell drugs or act as couriers. The current disposition structure allows for the judge to exercise considerable flexibility in designing an appropriate disposition, but the Code does not require consideration of a juvenile's cooperation with law enforcement.

Rationale for the recommendation:

Courts should encourage, or at least recognize, a juvenile's cooperation with law enforcement to identify those involved with whom the juvenile participated in criminal behavior.

Recommendation No. 37:

Judges should be authorized to impose a maximum term of confinement in a secure juvenile detention facility not to exceed 14 days for a Level 2 Intermediate disposition.

Rationale for the recommendation:

Judges should not impose more than 14 days of confinement in a local secure juvenile detention facility per dispositional hearing. Thus a juvenile should not receive a Level 2 disposition of 14 detention days and a Level 1 disposition of 5 detention days at the same dispositional hearing.

Recommendation No. 38:

Diversion agreements with juveniles should be tracked by an automated system and should be available to the juvenile court counselor at intake and to the judge at disposition. [See also Recommendation No. 6 in Section I, Juvenile Code.]

Statement of the problem:

Diversion policies vary from judicial district to judicial district, and official records of diversions are not kept. A juvenile may have been charged with an offense, which was diverted, prior to an initial delinquency adjudication. In some districts this information may be kept in informal or unofficial records so that Juvenile Services is aware of the number and type of charges filed against a juvenile prior to adjudication, and can use this information to decide whether a juvenile's case should be diverted or filed as a petition. Other districts may not track this information at all. Consequently, there may be inconsistency across the state regarding accountability of juveniles who have been previously diverted from the juvenile justice system.

Rationale for the recommendation:

Since diversion policies are discretionary, some juveniles may not be held as accountable for their behavior as others. The history of prior diversions should be available uniformly across the state to court counselors to consider in deciding whether to file a petition and to courts to consider at disposition. The number of encounters a juvenile has with the juvenile justice system even prior to an initial adjudication is an indicator of the risk of future delinquent behavior by that juvenile and an appropriate factor to consider in determining an effective disposition.

Recommendation No. 39:

The Department of Motor Vehicles should be notified when a juvenile disposition order restricts the juvenile's driving or licensing privileges.

Statement of the problem:

The Juvenile Code allows the judge to order that a juvenile adjudicated delinquent not be licensed to operate a motor vehicle in the State of North Carolina for as long as the court retains jurisdiction over the juvenile or for any shorter period of time. [G.S. 7A-649(9)] However, it is unclear whether the Division of Motor Vehicles is consistently notified when a judge prohibits a juvenile from obtaining a driver's license.

Rationale for the recommendation:

Uniform procedures should be established for notifying the Division of Motor Vehicles that a juvenile is not eligible for a driver's license and when s/he will be eligible. If the dispositional alternative of suspending a juvenile's driving privileges is available it should be enforced consistently.

Recommendation No. 40:

Judges should be authorized to continue the current conditions of probation, modify the conditions of probation, or order a new disposition in the next higher Dispositional Level when an offender violates the conditions of probation (not commits a new crime). A judge should be authorized to order up to twice the period authorized for short-term secure confinement, however, a judge may not order a Level 3 disposition for a juvenile adjudicated delinquent only for a minor offense.

Rationale for the recommendation:

When an offender who is on juvenile probation violates the conditions of probation, the judge should have the authority to determine the most appropriate response to the violation. This should include increasing the level of restrictiveness, incapacitation, or intensity, by moving the offender from a Level 1 to a Level 2 dispositional category or moving the offender from a Level 2 to a Level 3 dispositional category. However, offenders adjudicated delinquent only for minor

offenses (Class 1, 2, or 3 misdemeanors) should not be moved up to a Level 3 disposition (commitment to training school). Training school should be reserved for offenders adjudicated delinquent for violent and serious offenses.

Recommendation No. 41:

The statute which prohibits a delinquent juvenile from being committed to training school in excess of the period an adult could be incarcerated for the same act should be repealed.

Statement of the problem:

Because the Code prohibits juveniles from spending time in training school in excess of the time an adult may spend in prison for the same offense, some juveniles are released from training school prior to completing the training school program.

Rationale for the recommendation:

Currently, training schools and prisons are not equivalent dispositions/sentences. Training schools reflect the treatment and rehabilitation orientation of the juvenile justice system, rather than the punitive orientation of the adult penal system. Therefore, it is not necessary to equate a term in training school to a prison term for the same offense. It should be noted that this statute is still used from twenty to thirty times per year in North Carolina. Definite commitments to training school have been found to be constitutional in three other states: Texas, Kansas, and Florida.

Recommendation No. 42:

A mandatory minimum term of six months for any juvenile committed to training school should be required.

Statement of the problem:

Juveniles who are committed to training school are placed on "indefinite commitments." There is no minimum confinement requirement. Juveniles are released back into their communities based on their behavior, number of "good days," and his/her achievement of competency levels.

Some critics in North Carolina argue that juveniles who are released from training school within six months of commitment do not have the time to receive any meaningful rehabilitative treatment.

Rationale for the recommendation:

Since 1992, fifteen states have modified statutes to provide for a mandatory minimum period of incarceration of juveniles committing certain violent or serious offenses. Release from training school should continue to be the authority of the Division of Youth Services based on when the offender has successfully completed program requirements, but no earlier than six months.

Recommendation No. 43:

Every juvenile released from training school should be required to continue on a minimum of 90 days of aftercare or post-release supervision. Staff for the training school and staff from the Court Counselor's office should be required to prepare a release plan and present it to the court. The juvenile, the juvenile's attorney, the court counselor, and the prosecutor should be required to appear before the court when the juvenile is released pursuant to the release plan. If the juvenile fails to comply with the conditions of release, s/he should return to court and the judge should continue the current disposition, modify the current disposition, or re-commit the juvenile to training school for an indefinite period of time.

Statement of the problem:

After-care provides support programs to help juveniles adapt new behaviors and attitudes acquired in residential or institutional facilities to their home communities. "Effective after-care programs provide adequate supervision and support services...[including] electronic monitoring, counseling, treatment and community service referrals, education, work training and intensive supervision probation or parole." (From *A Legislator's Guide to Comprehensive Juvenile Justice*, 1996 National Conference of State Legislatures.) Risk assessment, case management, selection of juveniles for after-care, access to and collaboration with community-based resources, a system of incentives and consequences, and cooperation and information sharing between agencies are important features of effective after-care. (See *Legislator's Guide*.)

After-care or post-release supervision is allowed by North Carolina statute for juveniles who are released from training school on a "conditional release." The Division of Youth Services provides specific release conditions, which if the juvenile violates, results in his/her return to

training school, if the juvenile has not reached his/her 18th birthday. After-care supervision is provided and supervised by the Juvenile Services' court counselor. In the event that a juvenile reaches his/her 18th birthday, juvenile jurisdiction automatically terminates with no after-care.

Rationale for the recommendation:

Aftercare supervision should be mandatory after release from training school. Several states have imposed mandatory six to twelve month after-care upon release from a secure custody facility. Aftercare supervision is necessary for public safety reasons and to assist the offender to successfully reintegrate into the community. Juvenile justice staff should prepare a plan upon the offender's release from training school. If the offender violates the conditions of release, the judge should have the authority to appropriately handle the violation, including recommitting the juvenile to training school for an indefinite period of time.

F. USE OF JAIL FACILITIES FOR SHORT TERM DETENTION OF CERTAIN JUVENILE OFFENDERS

Recommendation No. 44:

In the event that the nearest local detention facility is unable to accept a juvenile who has been charged or adjudicated with a serious or violent offense and the juvenile poses a significant risk to the community safety, the Code should allow for the detention of that juvenile in an adult facility with sight and sound barriers, as a last resort for detention purposes. The juvenile shall be detained for a period of time not to exceed 72 hours. All appropriate services to protect the safety of the juvenile as promulgated by the Department of Health and Human Services shall be implemented.

Statement of the problem:

Under current North Carolina and federal law, a juvenile may be detained in an approved county detention home or a regional detention facility, but may not be detained in any jail, lockup, prison, or other adult penal institution. (Juvenile Justice and Delinquency Prevention Act of 1979; N.C.G.S. 7A-576(b).) Twelve juvenile detention centers across the state range in size from 8 to 32 beds for a total number of 222 detention beds in North Carolina. The current policy for local districts is to turn away juveniles from detention beds in order to keep one or two beds open. County commissioners may impose a population cap limiting the number of juveniles who may be detained at any of the four county operated detention facilities. State

operated detention centers do not operate under population caps and often experience overcrowding.

Survey data from District Attorneys and Juvenile Court Counselors indicate a need for additional detention beds. A survey of Chief Court Counselors conducted by the staff of the Governor's Commission on Juvenile Crime and Justice revealed that:

- 7 of 12 judicial districts with juvenile detention facilities with a total of 137 beds report a shortage of beds. (The optimal number of beds outnumber actual beds from 4 to 32 beds per facility.)
- 22 of 30 judicial districts report having to drive 100 miles or more to the nearest detention facility; three report having to drive over 300 miles to the nearest facility.

North Carolina law does allow for the detention of juveniles in holdover facilities upon a finding of probable cause and transfer to superior court if the juvenile does not obtain pretrial release. A holdover facility is a segregated part of a local jail approved by the Department of Health and Human Services, which provides close supervision to ensure the juvenile cannot converse with, see, or be seen by the adult population. [See G.S. 7A-611 and 7A-517(16).]

Rationale for the recommendation:

Detention bed space is limited in North Carolina. Often juveniles who have committed serious and/or violent offenses cannot be detained for lack of bed space. The protection of the public safety and the juvenile dictate that where county jails are found to be suitable, they should be used to confine certain serious and/or violent juvenile offenders prior to adjudication or trial and after trial for a limited period of time.

III. JUVENILE JUSTICE SYSTEM AGENCY

A. CREATION OF A SINGLE AGENCY

Recommendation No. 45:

A single cabinet level agency of Juvenile Justice Services should be created in North Carolina.

- a) the Juvenile Service Division of the Administrative Office of the Courts and the Division of Youth Services of the Department of Health and Human Services should be combined and transferred to the proposed Department of Juvenile Justice.**
- b) Consideration should be given to the consolidation of additional juvenile justice functions within the new Department of Juvenile Justice Services, including the Center for the Prevention of School Violence, School Resource Officers, and the Guardian Ad Litem program of the Administrative Office of the Courts.**

Statement of the problem:

Two state agencies are primarily responsible for supervision and delivery of services to juveniles adjudicated delinquent in North Carolina. The Juvenile Services Division of the Administrative Office of the Courts within the Judicial branch oversees intake, probation and aftercare services. The Division of Youth Services of the Department of Health and Human Services within the Executive branch operates the state's institutional and training school facilities and oversees state funded community-based alternatives. While these agencies have overlapping responsibilities they have separate budgets, separate and independent systems of collecting and reporting data, and separate division or department policies and procedures. Problems resulting from this dual agency juvenile justice system include coordination lapses in case-management of juveniles committed to and conditionally released from training school, communication barriers and restrictions on the sharing of agency information, and a general sense of "territorialism" or "turfism" between the two agencies.

Other state agencies also provide ancillary services and supervision to court adjudicated youth. These include the Department of Public Instruction, the Department of Social Services, the Department of Administration, the Division of Child and Family Services, the Division of Mental Health, Developmental Disabilities and Substance Abuse, and the Willie M. Program. Generally, this multi-system approach often results in confusion and inefficient supervision and

service delivery to juveniles adjudicated delinquent. Since the last major revision of the Juvenile Code several legislative and independent study and review commissions have recognized the need for greater coordination and efficiency within the juvenile justice system and have recommended the creation of a single juvenile justice state agency. The call for agency unification stems primarily from an acknowledged need for significantly increased accountability to juveniles within the system and the citizens of North Carolina.

Rationale for the recommendation:

The new department in combination with all other accompanying recommendations regarding its form, function and authority, should lead to better coordination, increased efficiency and a genuine partnership between the state and communities in dealing with the problems associated with juvenile delinquency. It also allows the accompanying recommendations in this report to be possible.

Because of the wide range of departments and agencies serving the specific juvenile population targeted for this new Department, it would be impossible to pull all of them together under one umbrella department. However, some agencies, including the Center for the Prevention of School Violence and some functions, including all state and federal funding for School Resource Officers, could logically fit within the new organization.

The Center for the Prevention of School Violence, now housed at North Carolina State University after its initial founding and operation within the Department of Crime Control and Public Safety, would be a logical part of the Department of Juvenile Justice Services. The Center's mission is to reduce violent juvenile behavior within public schools, and it has proven to be an effective agency directed at making schools safer and more secure. Since the age for delinquency coincides with the age for compulsory school attendance, the addition of the Center would be primary to the new Department's mission.

All state and federal funding for School Resource Officers should be consolidated within the new Department. This is a logical extension of the work of the Center for the Prevention of School Violence and is a function that would be effectively integrated within the state department and its companion juvenile justice councils at the local level. [See Recommendation No. 45, Section III, Juvenile Justice System Agency for discussion of local juvenile justice councils.]

The Guardian ad Litem Program within the Administrative Office of the Courts should be included in the new department since it represents and advocates for abused and neglected children within Juvenile Court and some of the abused and neglected population of juveniles may be at risk for delinquent behavior.

B. CREATION OF STATE-LOCAL JUVENILE SERVICE COUNCILS**Recommendation No. 46:**

Local juvenile justice councils should be created, replacing current Youth Service Advisory Councils to streamline and increase the quality of planning and funding of both community-based alternatives for court-adjudicated juveniles, and, community-based prevention services for youth who are at risk for becoming delinquent youth.

A state-local partnership effort should be developed, overseen, and housed within the Department of Juvenile Justice Services that is dedicated to providing programmatic expertise and other information to prevent and address juvenile delinquency to the local juvenile justice councils.

[See also Recommendation No. 54 in Section IV, Prevention.]

Statement of the problem:

Currently there is a multiplicity of state and local delinquency and delinquency prevention efforts and programs which are funded by a variety of sources, i.e. the Department of Health and Human Resources for mental health and substance abuse services, the Department of Public Instruction for educational and after school programs, the Governor's Crime Commission which awards federal juvenile justice grants, the Center for the Prevention of School Violence. Additionally local efforts through city and county programs and private funds, including United Way agencies, all support programs for youth who are in and out of the juvenile court system.

On the state level, one of the main sources of funding comes from the Division of Youth Services which provides funding to counties for community-based alternatives (CBA) for at-risk and court adjudicated juveniles. While all counties in North Carolina receive CBA funds, there has been concern expressed that the Youth Service Advisory Councils which oversee CBA programs are not operating as efficiently as possible and in some counties not enough funding is being devoted to juveniles who are under court supervision. As a result, a handful of counties have sent a disproportionately high number of juveniles to the State-operated training schools. Also, concern has been expressed that some members of the Youth Service Advisory Councils have conflicts of interest when voting on funding requests for programs in which they have an interest. Finally, at the local level, frequently, within individual counties, numerous youth boards and task forces compete for funding of programs and services which often duplicate one another.

Rationale for the recommendation:

To avoid duplication of efforts and conflicts of interest, local juvenile justice councils should be created. As a mechanism for increasing accountability, these councils will provide the oversight for direct juvenile justice funding, whether federal, state, or local. The local councils should also, at a minimum, coordinate indirect funding and related policies affecting youth at risk and those juveniles with court involvement. These councils should replace the existing, current YSACs. Community based alternatives for court adjudicated juveniles and community based prevention services for at-risk youth should be overseen as programs separate and distinct from one another.

[See Recommendation No. 54 in Section IV, Prevention for the role of local councils for delinquency prevention efforts.]

C. ESTABLISH A POLICY OVERSIGHT BOARD**Recommendation No. 47:**

In conjunction with the cabinet level Department of Juvenile Justice Services a Juvenile Justice Oversight Board co-chaired by the Governor and the Chief Justice should be created.

Statement of the problem:

Juveniles who come within the jurisdiction of Juvenile Court also receive services from a variety of other state agencies including, the Department of Public Instruction, the Department of Social Services, the Department of Administration, the Division of Child and Family Services, the Division of Mental Health, Developmental Disabilities and Substance Abuse, and the Willie M. Program. Currently, no oversight body exists to review the operation of the juvenile justice system and all its ancillary components as a whole. Without oversight from North Carolina's highest ranking officials, state agencies may operate under divergent philosophies and may not be encouraged to work together in a comprehensive way.

Rationale for the recommendation:

The creation of a single state juvenile justice agency would provide uniformity and consistency in service delivery, collection and reporting of data, budget administration and disbursement of community programming funds. However, because other state agencies also provide ancillary

services and supervision to court adjudicated youth a single oversight entity is necessary to allow for system-wide review and coordination of all juvenile service providers. The creation of this Board would allow for a review of the system's operation, dedication, and prioritization of funding needs, and provide a forum in which to address problems of collaboration among agencies and departments serving the juvenile offender population. It would also set policy that promotes strong, collaborative, case managed based review of juvenile offenders. Its composition would reflect the need for broad based commitment and include: the Director of the Administrative Office of the Courts, the Superintendent of Public Instruction, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Administration, the Secretary of the Department of Correction, the Secretary of the Department of Crime Control and Public Safety, the Secretary of the Department of Juvenile Justice Services, the President Pro Tem of the North Carolina State Senate or his/her designee, the Speaker of the North Carolina House of Representatives or his/her designee, and a private citizen who has demonstrated an interest and commitment to youth and juvenile justice issues.

D. TRANSITION TIME LINE FOR RESTRUCTURING THE JUVENILE JUSTICE SYSTEM

Recommendation No. 48:

A timely thoughtful time line for the transition from the existing system to the new organization must be developed as soon as authorization for the new department is made.

Statement of the problem:

Currently, the two main agencies providing services to juveniles adjudicated delinquent are housed within separate branches of state government. The Juvenile Services Division which oversees intake, probation and aftercare of court-involved youth is within the Administrative Office of the Courts in the Judicial branch. The Division of Youth Services which oversees state institutions, training schools, and Community Based Alternatives funding is within the Department of Health and Human Services in the Executive branch. Each agency has its own budget, policies, and procedures relating to administration and information collection and reporting.

Rationale for the recommendation:

The recommendations set forth by this Commission represent major changes and a substantive

shift in the way North Carolina administers and manages its juvenile offender population and those at risk for becoming court involved. The acceptance and ultimate success of these changes depends significantly on the timing and methods of change and realignment of functions. Adequate time as well as a broad spectrum of state and local juvenile justice professionals, state and local elected officials, organizational experts, budget and fiscal analysts, and management consultants must all be part of the overall transition. Several significant subsets must work on the variety of activities required by this kind of major functional and organizational overhaul in focus, management and service delivery.

E. JUVENILE JUSTICE INFORMATION SYSTEM

Recommendation No. 49:

A comprehensive Juvenile Justice information system should be developed.

Statement of the problem:

Currently, North Carolina does not have an effective or timely information system linking the state agencies whose services include juvenile justice with each other or with local juvenile justice agencies. Anyone with a valid need for juvenile justice information has been stymied by the lack of a coordinated, integrated juvenile justice information system. While both the Division of Juvenile Services and the Division of Youth Services collect information relevant to their specific needs, the information is not compatible, integrated, and cannot be used to provide meaningful information on individual juveniles or to track juveniles through the "system." In 1996 the Governor's Crime Commission awarded a grant to the Administrative Office of the Courts, with a match provided by the Department of Health and Human Services, to assemble a core group from local and state government agencies (particularly to include technical representation from both Juvenile Services and DYS) to study the state's needs for a statewide juvenile justice information system, and to begin the large task of planning for the implementation of such a system.

Rationale for the recommendation:

This statewide information system will address the need to collect information about juveniles and the processing of juveniles at every point of contact with the system, and then to share the relevant information among appropriate agencies and individuals. The information collected will allow decision-makers to base treatment and intervention plans on client specific data. The information will also provide the basis for a research and evaluation component in order to

assess the impact of the juvenile justice system of services.

Comments:

It is critical in the development of the juvenile justice information system that the system be consistent and compatible with the statewide Criminal Justice Information Network (CJIN) project now under development among state and local criminal justice information systems. CJIN will link state and local criminal justice agencies in the adult system, and will provide a wide array of necessary management and offender based information to appropriate state and local agencies with the need to know. It is important that this juvenile information be accessible to this network, and its qualified users.

Such an information system should be able to track a young person throughout his or her experiences with involved community and state agencies. The system should include client demographic information, document interactions with system components (criminal history, out-of-home placements, etc.), measure services delivered, and measure service outcomes. The information system should be compatible with information systems related to juvenile justice, but residing outside of the Department of Juvenile Justice Services, in order for services to be more easily coordinated among agencies, and to facilitate more effective measurement of system outcomes. The management of this system must be from a single independent Department of Juvenile Justice Services in order to strengthen its effectiveness, compatibility with other systems, budgeting priority, and timely implementation.

Recommendation No. 50:

Confidential information on juveniles should be shared among designated agencies as determined by the chief district court judge. [See also, Recommendation No. 17 in Section I, Juvenile Code.]

Statement of the problem:

Only the juvenile, the juvenile's parent, guardian, or custodian, and the prosecutor in a subsequent criminal proceeding are allowed access to court records. All others, including schools, must receive an order from the judge granting access to information from the court file or agency records. Current confidentiality laws make it extremely difficult for agencies to share information. Law enforcement, school personnel, court professionals, social service and mental health workers have limited, if any, inter-communication which would serve the juvenile.

Rationale for the recommendation:

The sharing of information among agencies and service providers will lead to increased coordination of efforts and efficacy in service delivery. Duplication of efforts and uninformed decision-making can be avoided if service providers are able to communicate freely with one another about the facts and circumstances of a juvenile's case. When kept properly and utilized correctly, juvenile records can help predict future delinquent and criminal behavior based on past events, provide officers with important information pertaining to both officer safety and delinquency prevention, and identify appropriate services to provide to the juvenile in a timely and effective manner.

Comments:

In several judicial districts, the chief district court judge has signed an administrative order authorizing the free exchange of information among agencies and service providers specified in the order. Such a blanket order circumvents the interpretation of current confidentiality laws which impedes inter-agency information sharing for that judicial district. Such orders should be constructed with safeguards to protect against disclosures that may violate a juvenile's constitutional rights.

Recommendation No. 51:

The current Juvenile Arrest form should be amended to conform to the proposed "Juvenile Contact Report" with the specific changes noted in the form attached to this document (see page 48).

Statement of the problem:

The term "arrest" has a broad definition across different law enforcement agencies, and has contributed to noticeable differences among jurisdictions reporting "juvenile arrests."

Rationale for the recommendation:

Inconsistency in interpretation of the definition of arrest results in inconsistent data from district to district, and greater uncertainty about the extent of juvenile crime and delinquency. Consistent and accurate reporting is necessary for true assessment and evaluation of juvenile delinquency and for efficient service delivery.

Since North Carolina law enforcement agencies use the Division of Criminal Information's

"Juvenile Arrest" form, or a format with the same required data elements, the form is easily amended for greater universal understanding and consistency in reporting, renamed the "Juvenile Contact Report," subtitled "Use to Record the Handling of Juveniles Who Commit Criminal Offenses." In addition, some of the fields require amending to provide more realistic reporting options and case disposition information. The revised form, together with related and updated instructions to law enforcement, will provide greater data integrity, and is attached to this report. The law enforcement training curriculum also will be updated consistent to reflect these changes.

F. OVER-REPRESENTATION OF MINORITIES IN THE JUVENILE JUSTICE SYSTEM

Recommendation No. 52:

The final report of the Governor's Commission on Juvenile Crime and Justice to be presented to the Governor shall include in the historical section of the report an acknowledgment of the over-representation of minorities in the juvenile justice system. [See the Executive Summary.]

Recommendation No. 53:

The State of North Carolina should mandate sensitivity training for all law enforcement and juvenile justice professionals regarding minorities.

Statement of the problem:

Qualitative and empirical research demonstrates that African American and other minority youth comprise a majority of juveniles involved in the juvenile justice system in North Carolina. For FY 1996-97 the Division of Youth Services of the Department of Health and Human Services reported that of the 1118 juveniles admitted to training school, 60.6% were Black, 36.5 were Caucasian, 2% were "other" and 1% were Native American. Of the 5546 admissions to detention centers in FY 1996-97, 58% were Black, 37% were Caucasian, 2.8% were "other" and 2.1% were Native American. According to the Office of State Planning, in 1995, 1996, and 1997, 23% of the total male population in North Carolina was non-white. Among children aged 6 - 16 years, the percentage of non-whites was slightly higher: in 1995 and 1996, 70% were white and 30% were non-white. According to the 1990 US Census Bureau, approximately 91% of North Carolina's non-white population is African American.

Data reported in North Carolina pursuant to federal disproportionate minority confinement

legislation revealed that 84 of 100 counties in 1994 reported minority over-representation in the juvenile justice system.

In 1995, the Office of Juvenile Justice and Delinquency Prevention reported that nationwide, minorities accounted 61.4% of all juvenile arrests.

Additionally, of 82,000 students reported to have been suspended from North Carolina public schools in 1995-1996, 67,000 were African American and were suspended an average of 3.6 days compared to 3.1 days for white students, 4.1 days for Native American students, and 3.2 days for Hispanic students. The suspension of African American males far exceeded the actual representation of these students (30%) in the school population.

State and national figures attest to the high rate of arrest and confinement of minority youth. The reasons for and solutions to this phenomena have been at the center of much debate and national research. Although the degrees and levels of crime committed by minority youth are easy to measure, the reasons for their disproportionate levels of confinement to state juvenile justice institutions are harder to assess. What is clear, however, is that there are multiple risk factors associated with violent, criminal behavior. Minority youth in North Carolina are disproportionately affected by poverty, teen pregnancy, lack of prenatal care, unemployment, school dropout, and are victimized more often than non-minorities.

Rationale for the recommendations:

Recognition of the problem needs to be the first step in addressing the issue of over-representation of minority youth in the juvenile justice system. The proposed recommendations will impact court-involved youth significantly, and given past trends will likely impact minority youth even more. Sensitivity training for all juvenile justice professionals and law enforcement officers would help to ensure that the experience of minority youth in the juvenile justice system is equitable and consistent from county to county regardless of differences in community profiles and resources.

Juvenile Contact Report

Use to Record the Handling of Juveniles Who Commit Criminal Offenses

INFO.	Agency Name		ORI NC	Date/Time of <u>Arrest</u> Mo Date Year		OCA Hrs.							
	Taken <input type="checkbox"/> Prints <input type="checkbox"/> Photos		Fingerprint Card Check Digit # (CKN)		Arrest Tract Contact	Residence Tract	Arrest Number Contact						
SUBJECT INFORMATION	Name (Last, First, Middle)			D.O.B.	Age	Race	Sex	Place of Birth	Country of Citizenship				
	Current Address				Phone	Occupation	<input type="checkbox"/> Resident <input type="checkbox"/> Unknown <input type="checkbox"/> Non-Resident						
	Employer's Name / School				Address			Phone					
	Also Known As (Alias Names)				Hgt	Wgt	Hair	Eye	Skin Tone	Consumed Drug/Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk			
	Scars, Marks, Tattoos			Social Security #		OLN and State		Misc. # and Type					
	Parent / Guardian			Address				Phone					
	If Armed, Type of Weapon		<input type="checkbox"/> On-View <input type="checkbox"/> Juvenile Court Summons <input type="checkbox"/> Temporary Custody Order			Place of Arrest <u>Contact</u>							
	Charge #1	<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (If not reporting agency)		Statute #	Warr. Date Mo Date Yr					
	Charge #2	<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (If not reporting agency)		Statute #	Warr. Date Mo Date Yr					
	Charge #3	<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (If not reporting agency)		Statute #	Warr. Date Mo Date Yr					
VYR	Make	Model	Style	Color	Lic/Lis	Vin							
Vehicle: 1. <input type="checkbox"/> Left at Scene <input type="checkbox"/> Secured <input type="checkbox"/> Unsecured Date/Time _____ Hrs. _____ 2. <input type="checkbox"/> Released to other at owners request <input type="checkbox"/> Name of Other _____ 3. <input type="checkbox"/> Impounded <input type="checkbox"/> Place of storage _____ Inventory on File? _____													
<input type="checkbox"/> Handled within department and released <input type="checkbox"/> Referred to <u>community agency or program: social services</u> <u>Teen Court</u> <input type="checkbox"/> Referred to juvenile court authorities <input type="checkbox"/> Referred to other police agency <u>mental health</u> <u>Other</u>													
L - Lost S - Stolen R - Recovered D - Damaged Z - Seized B - Burned C - Counterfeit / Forged F - Found (Check "OJ" column if recovered for other jurisdiction)													
OF ARREST CONTACT	DCI	Status	Quantity	Type Measure	Suspected Type			Check up to 3 types of activity for each					
								Possess	Buy	Sale	Mfg.	Importing	Operating
ANT	Name: Complainant <input type="checkbox"/> Victim <input type="checkbox"/>				Address:				Phone:				
	NARRATIVE												
STATUS	Arresting Officer Signature/ID # <u>Contacting</u>		SRO yes _____ no _____		Date/Time Submitted Mo Date Yr		Supervisor Signature Hrs.						
	Case Status: <input type="checkbox"/> Further Inv. <input type="checkbox"/> Inactive <input type="checkbox"/> Closed		Case Disposition: <input type="checkbox"/> Cleared By <u>Contact</u> / No Supplement Needed <input type="checkbox"/> Arrest/No Investigation			Arrestee Signature <u>Juvenile</u>							

Juvenile Contact Report

Use to Record the Handling of Juveniles Who Commit Criminal Offenses

The Division of Criminal Information has designed a special Juvenile Contact Report for utilization by any law enforcement agency. This separate report was created to record the handling of juveniles (under age 16) due to the fact that many law enforcement agencies feared it would violate State law if they documented the "arrest" or handling of a juvenile. The North Carolina Attorney General's Office has issued an opinion stating it is lawful for law enforcement agencies to document the handling of juveniles and submit them to DCI for statistical purposes. The Juvenile Contact Report provides law enforcement agencies a separate documentation method for the handling of a juvenile from adult offenders as required by law.

For purposes of Uniform Crime Reporting (UCR), the word "arrest" or "contact" as it applies to juveniles is intended to mean the law enforcement handling of all persons under the age of 16 who have committed a crime and are identified (with probable cause) as the offender when the circumstances are such that if the juvenile were an adult, an arrest would have been reported. The Juvenile Contact Report should include the classification of the offense for which the juvenile was handled. For example, if a juvenile is handled for committing an offense of larceny, the charge should be reported as Larceny/Theft, even though the technical charge is "juvenile delinquency." (While the offense of "runaway" is a juvenile status offense, those offenses will need to be included on this form for UCR purposes.) **Juvenile Contact Reports should not be submitted in cases of:**

1. police "contacts" with juveniles where no criminal offense was committed (except runaways); or
2. juveniles taken into custody for their own protection but no crime was committed (neglect cases).

It must be emphasized that only criminal violations by juveniles where some police or official action is taken should be reported. Mere interviews, warnings, or admonishments where no criminal offense occurred should not be reported. Do not include those situations where juveniles have committed no violation but are taken into custody because their welfare is endangered. "Call backs" or "follow-up contacts" with juvenile offenders by officers for the purpose of determining their progress should not be reported. It is useful to understand that statistics are being gathered to measure juvenile crime problems, not juvenile court activity.

INSTRUCTIONS

Instructions for filling out the Juvenile Contact Report are the same as those instructions for the Arrest Report. The only fields which are different in the two forms are those dealing with the confinement and bond information for the arrestee (Arrest Report) and the referral of the juvenile charged with a crime (Juvenile Contact Report).

Referral Section:

This field is used to indicate law enforcement's referral of the juvenile. Place an "X" in the appropriate block to indicate which action your department took in the handling of the listed juvenile.

Handled within department and released

Referred to juvenile court authorities

Referred to other police agency

Referred to a community agency or program:

(Indicate whether Social Services, Mental Health, Teen Court, or other)

This information relates to law enforcement referral of juveniles who are handled by police. A juvenile, depending on the seriousness of the offense and the offender's prior criminal record, may be warned by the police and released to parents, relatives, friends, or guardians. Juveniles may also be referred to juvenile court authorities; to a community agency, such as Social Services; or to other law enforcement agencies.

IV. PREVENTION

A. STATE-LOCAL JUVENILE SERVICE COUNCILS - PREVENTION

Recommendation No. 54:

A state-local partnership dedicated to juvenile delinquency prevention should be established. The partnership will have two components: 1) a state-level oversight body, e.g. a Commission or Office; and 2) locally-based entities, in the form of local councils which will jointly address juvenile delinquency and prevention. The goal of this partnership will be to reduce the incidence of juvenile delinquency by ensuring that delinquency prevention activities are coordinated, collaborative, non-duplicative, efficient, and accessible to the whole community. The state-local oversight body shall have permanent staff devoted solely to juvenile delinquency prevention activities. Recurring dollars will be earmarked for this state-local alliance. [See also Recommendation No. 46 in Section III, Juvenile Justice System Agency.]

Statement of the problem:

Currently there is a multiplicity of state and local delinquency prevention programs which are funded by a variety of sources including, but not limited to CBA funds from the Division of Youth Services, Juvenile Justice grants from the Governor's Crime Commission, Department of Public Instruction, Safe and Drug Free Schools, and the N.C. Center for the Prevention of School Violence. In addition, a significant amount of funding is provided by the private sector, i.e., foundations and United Way agencies. Unfortunately, many of these programs and services overlap and duplicate efforts. Currently there is no unified effort to coordinate, optimize and evaluate prevention strategies and programs.

Rationale for the recommendation:

In order to reduce juvenile delinquency, there must be a commitment on the state and local level to implement and evaluate the most effective programs and services. This proposed state-local alliance will prioritize and coordinate prevention efforts. The local councils will build on and utilize resources already in place in the community, *including all critical members of the community*, channeling resources, minimizing duplicative planning and organizing efforts, implementing evaluation and accountability elements, and adhering to guiding principles.

Local boards should use a collaborative, multi-disciplinary team approach representing a cross-section of the local community, including a balanced mixture of public and private individuals, and a strong cultural, ethnic, and gender balance that reflects the composition of the communities they serve. Collaboration with the private sector and the faith-based community will be necessary pieces of the organizational process.

This state-level office or commission should have the following functions:

- 1) Serve as a clearinghouse for information on delinquency prevention strategies. Collect research and distribute information to local agencies about "best practices" - what works, what is promising and what does not work;
- 2) Support community-based programs and services by providing training and technical assistance to community delinquency prevention entities;
- 3) Make recommendations to state and local governments for changes to laws, rules or policies that will reduce the incidence of juvenile delinquency;
- 4) Develop a comprehensive structure for follow-up and delivery of program and treatment services to ensure youth, adult and system accountability;
- 5) Coordinate state-wide media campaigns that accurately inform citizens about the development of strategies to prevent juvenile delinquency.

The local boards, councils or task forces should have the following functions:

- 1) Conduct an updated community needs assessment. Identify resources and needs, and develop appropriate solutions to meet those needs;
- 2) Rigorous performance evaluation. Each prevention initiative should be required to have a strong evaluation component. This accountability requirement should be tied to funding;
- 3) Increase community awareness of the causes of juvenile delinquency and strategies to reduce the problem; and
- 4) Develop strategies to intervene and appropriately respond to and treat the needs - as identified through a risk assessment instrument - of youth in a timely and constructive manner.

The creation of this partnership should also include the establishment of a permanent funding stream for juvenile delinquency prevention. Current delinquency prevention funding streams, with additional state appropriations as needed, shall be channeled through the state oversight body, and from the oversight body to the community level. Guidelines for the funding process should be as follows:

- 1) Fund what works. Programs and projects which demonstrate progress, have been

proven to be effective, and/or show promise, based on valid research should be supported. The partnership should fund projects based on a "menu" of types of services. In addition, new, innovative projects should be rigorously evaluated to determine their effectiveness in preventing delinquency or its proximal risk factors and may also be funded on a discretionary basis. The merits of a program will be determined on the basis of known or reasonably projected outcomes. Bad practices, poor outcomes, and programs which have proven to be ineffective will not be funded.

- 2) The money should follow the child. The funding system should be designed in such a way that wherever a child is being served by a delinquency prevention program, funds are allocated to that program for that child. For example, if a child is sent to training school, the county will be required to send their program dollars to that training school. If a child is served in a community program, the funding will remain in the community. And, when a child moves from one program to another, the money will follow.
- 3) Use a formula for the distribution of funds. A funding formula should be developed that ensures that even the smallest of counties will be able to provide basic services to the children in that community.
- 4) Allow and encourage local flexibility. The system should send prevention/intervention dollars to the local level, where it will be determined how best to spend those funds.
- 5) Combine resources. Counties will be allowed and encouraged to combine resources and services. For example, small counties may be able to make the best use of their delinquency prevention funding by pooling their funds, and providing joint services to the youth in their communities.

Every community in our state needs the centralization and vision that would be fostered by a state-local alliance dedicated to juvenile delinquency prevention. Initially, such an initiative could be piloted in selected counties during the first year, and expanded to include additional counties in subsequent years.

B. EARLY IDENTIFICATION OF CHILDREN AT-RISK OF DELINQUENT BEHAVIOR

Recommendation No. 55:

Periodic assessments at critical points in a child's life should be implemented to identify risk and protective factors as early as possible. If necessary, there should be a coordinated, interdisciplinary treatment and service plan developed by child service agencies.

Statement of the problem:

Research has shown that there are multiple risk factors that put children at risk for becoming delinquent. Examples of risk factors include aggression, school failure, child abuse and neglect, substance abuse, extreme economic deprivation, friends who engage in problem behavior, inconsistent, ineffective discipline, poor parental supervision, and family conflict. Youth who are exposed to these risk factors are more prone to engage in delinquent behavior. Currently, there is no standard assessment to identify youth who are at-risk.

Rationale for the recommendation:

At various stages of development, it is possible to identify children and their families who could profit from supplemental programs designed to develop protective factors, such as improving cognitive and social competence and self-control skills, improving parenting skills, and having a positive adult role model. Risk indicators found at screening would trigger the need for and referral to a coordinated array of locally available family support services. The Commission recommends screening at the following critical times:

- 1) At birth. As the first stage in a comprehensive delinquency prevention plan, all newborn infants should be screened for risk factors, such as having a mother less than 19 years of age; having a mother who is a single parent; and living in a low-income family indicated by the family being on Medicaid or having no health insurance.
- 2) In day care or preschool at ages 3 and 4. Children could be screened in day care, Head Start or through Smart Start-funded programs. Early intervention during the preschool period is critical because it is easier and more cost effective to intervene early rather than wait until behavior patterns of both parents and children are ingrained and resistant to change.
- 3) At entry to kindergarten. Current screening should be supplemented with more

- extensive tools.
- 4) At the end of 3rd grade. Screening should occur for those children exhibiting school failure and/or aggressive behavior.
 - 5) At the beginning of 6th grade and the beginning of 9th grade. Both of these represent key school transition points. Screening of youth at this age will provide information about the large number of adolescents who newly develop problems associated with aggression, delinquency and antisocial behavior and who did not exhibit those problems in elementary school.
 - 6) Juvenile offenders should be assessed upon adjudication. Screening would indicate high risk factors indicative of recidivism.

Although screening for risk and protective factors will require investments of both time and money, many tools already exist which allow for quick, cost-effective, and developmentally appropriate assessments. For example, there are models of screening tools currently available which are easy to use, easy to score, and can be completed in two-to-five minutes per child. The state shall select or develop its own tools which will be used uniformly statewide, thus allowing for longitudinal monitoring of effectiveness and progress.

When children score in the targeted range, they will be given additional, in depth assessments to see how much of a problem exists and what strengths the children, their families, and communities have to help the child. Individually tailored treatment including a coordinated array of assessments, interventions and family support services will follow from this more thorough assessment.

C. COMPREHENSIVE JUVENILE DELINQUENCY AND SUBSTANCE ABUSE PREVENTION SYSTEM

Recommendation No. 56:

A comprehensive juvenile delinquency and substance abuse prevention plan should be developed. The concepts contained in the "Alcohol and Drug Prevention and Treatment Services" January 27, 1998 report from the Division of Mental Health, Developmental Disabilities and Substance Abuse should be developed and incorporated into a comprehensive juvenile delinquency plan. [See Appendix VI.]

Statement of the problem:

The lack of a comprehensive juvenile delinquency and substance abuse prevention plan has resulted in a lack of a continuum of services, duplication of efforts, unwise spending of state and local funds, and a lack of credible data on the effectiveness of prevention programs. Also, juveniles arrests for drug offenses has increased dramatically over the last decade. A characteristic profile of North Carolina juvenile offenders showed that 67% of youths in training schools reported having used some type of illegal substance. Almost half of these youths reported using drugs on a daily basis. Recent surveys indicate that juveniles are consuming and abusing alcohol at alarming levels.

Rationale for the recommendation:

No one program or strategy will solve the problem of juvenile delinquency. An array of programs and services which address the needs of children and families is needed. An effective juvenile delinquency and substance abuse prevention plan must target youth and their families, hold youth, adults and systems accountable for their participation or encouragement of delinquent and harmful behavior, be culturally sensitive, and age appropriate. Further, efforts must be collaborative (including public/private initiatives), interdisciplinary, multi-tiered, provide a continuum of services and be administered and accessible at community and local levels. Communities should be responsible for adhering to certain principles that have proven effective and the state should have the responsibility for informing localities about best practices in juvenile delinquency prevention.

Effective delinquency prevention efforts should do the following:

- 1) Address the highest priority problem areas and identify risk and protective factors to which children in a particular community are exposed;
- 2) Focus most strongly on populations exposed to a number of risk factors;
- 3) Address problem areas and identify strengths early and at appropriate developmental stages;
- 4) Address multiple risk factors in multiple settings such as family, schools, community and peer groups;
- 5) Offer comprehensive interventions across many systems and deal simultaneously with many aspects of juveniles' lives;
- 6) Be intensive, involving multiple contacts weekly or even daily with at-risk juveniles;
- 7) Operate on a strength-based rather than deficiency model building on a juvenile's strengths rather than focusing on deficiencies;
- 8) Be holistic, approaching juveniles within the context of their relationships to and

- with others rather than focusing solely on the individual;
- 9) Incorporate community participation and ethnic and cultural diversity in the development and evaluation of services.

The following are types of programs that have proven effective in preventing juvenile delinquency and substance abuse, and should be available as basic services in communities:

- Early intervention is highly effective, desirable, and, in the long-run, cost effective. Quality early childhood programs provide a safe and stimulating environment for children and offer the chance for children to get off to a good start. Smart Start and other relevant initiatives should encourage and fund programming that prepares the children academically, emotionally, and behaviorally to learn. Just as children must learn their alphabet, they must learn self-discipline and how to regulate their emotions. Children who are out-of-control emotionally and behaviorally cannot learn.
- In-Home and Community-based Family Counseling and Parent Training. Ineffective parenting practices is a primary factor placing a child at risk for juvenile delinquency. Services which focus on child development and positive discipline offered to children and families in their homes when possible, or, at the very least, in their community, have proven effective. For example, intensive home visitation services for the families of certain newborns have been demonstrated to lower rates of child abuse and neglect, reduce subsequent pregnancies, reduce welfare dependency, and reduce contacts with the justice system. In addition, family planning and adolescent pregnancy prevention services avert unintended pregnancies which is a crucial means of ensuring that all children are wanted, and of increasing the likelihood that children will be born into families that are ready and able to nurture them in a safe, stable environment.
- Adolescent and family alcohol and other drug abuse services. Drug and alcohol abuse affects everyone connected to the abuser. Substance abuse programs should focus on all aspects of the problem, including community education, prevention services, and treatment services.
- Non-school hours activities. Most crimes are committed between 2:00 and 7:00 PM when children are out of school and least likely to be monitored by adults. Communities and schools need to work together to provide affordable, accessible, and appropriate activities for all youth when they are not in school (before and after school, weekends, holidays, vacations or during school hours for children suspended or expelled from school.) Examples include academic programs, clubs, recreational and cultural activities. Children at high risk are most in need of such activities but are often terminated from these programs due to disruptions or do not attend for a variety of reasons. They then

find unproductive and/or harmful alternatives with which to occupy their time. Communities should place a high priority on keeping its children at highest risk in safe, structured, supervised, and stimulating programs making it difficult for them to gather unsupervised and teach each other to be better criminals.

- Law-related education and life/social skills training programs. One of the best ways to offer hope to young people is to provide them with the knowledge, skills and guidance to establish positive directions for their lives. Providing guidance which defines what is acceptable societal behavior and instilling in them that there are consequences if such behaviors are not demonstrated is an essential part of education and delinquency prevention.
- Conflict resolution, problem solving and anger management. When children and adolescents commit crimes or use aggression in response to conflict, they reflect the attitudes of their peers, families or the media of what is acceptable. The key to a successful delinquency and substance abuse prevention program is to direct (or redirect) children towards developing effective ways to regulate their emotions, and create positive goals and solutions, and help them develop the skills necessary to reach these goals. These are skills which can be used for the rest of their lives and be taught to other family members as well.
- Personal Advocates. Long-term mentoring relationships, tutors, or other caring adults for children and youth identified as "at risk" should be provided in each community. These volunteers should serve as personal advocates to assure that the children receive the services, education, or time and attention they need. For children with serious problems of aggression or delinquency, these volunteers need to be carefully screened, trained and supported to deal with the severity and magnitude of behavioral and emotional problems experienced by these children. A personal advocate should be provided for every child who needs or wants one.
- Substance abuse prevention and education is critical to alerting and teaching youth about the dangerousness of drug use. Substance abuse prevention must be comprehensive in nature and involve parents, educators and mentors. Alcohol and tobacco use must also be targeted for prevention efforts which should be aimed not only at juveniles, but also their families. Also, the efforts of the Partnership for A Drug-Free North Carolina should be supported. [See appendix]

D. APPROPRIATE AND EFFECTIVE RESPONSES TO EDUCATING CHILDREN EXPELLED FROM SCHOOL

Recommendation No. 57:

No child in North Carolina should be allowed to consistently disrupt the classrooms in the traditional school setting or pose a threat to other students. Because expulsion or long-term suspension of a child from school frequently places a child in a position to create havoc in the community, no child in North Carolina should be allowed to avoid receiving an education by getting expelled or suspended long-term from school.

Statement of the problem:

Currently, there are limited options available to students and schools for students who consistently disrupt the classrooms in the traditional school setting or pose a threat to other students. Too often, expulsion or long-term suspension of a child from school frequently places a child in a position to create havoc in the community. According to an in-depth report on out-of-school suspensions, issued by the N.C. Department of Public Instruction, nearly 82,000 students were reported to have been in out-of-school suspension in 1995-96. 700 of these students were reported as long-term suspensions. Among the 82,000 students suspended there were 119,000 individual incidents of suspension resulting in more than 500,000 days out of school. Nearly six percent of the state's students were suspended out-of-school at least once during the 1995-96 school year.

Rationale for the recommendation:

North Carolina is committed to insuring that children are able to attend schools which are safe and orderly. However, because it is recognized that children who are expelled or placed on long term suspension out of school are put in a position to compound their own problems by not receiving additional education. Therefore, it is important to provide quality alternative education settings. Such alternative settings must be carefully constructed and adequately funded and supervised. This should promote education and improvement in a youngster's behavior and achievement, while not creating an opportunity for disruption of the regular school setting.

V. OTHER RECOMMENDATIONS

A. FAMILY COURT MODEL

Recommendation No. 58:

The reorganization of juvenile justice services should be achieved to be readily integrated into the Family Court model as recommended by the Court Futures Commission and currently under study by the General Assembly, and a Family Court model should be established as a pilot in a few urban jurisdictions to demonstrate its operation and effectiveness.

Statement of the problem:

In the majority of judicial districts, more than one judge presides over any juvenile case. Consequently, no one judge develops expertise regarding a particular juvenile and his/her family circumstances and needs even if the family has appeared in Juvenile Court often or for more than one juvenile or other matter.

Rationale for the recommendation:

The Family Court model is before the General Assembly as one recommendation for court reform. Accordingly, changes made to the juvenile justice system should be easily adaptable to the adoption of the Family Court model. Changes to the juvenile system must be the first steps in the full establishment of the Family Court. Through the creation of a specialized family court with jurisdiction over all disputes involving intra-familial rights, relationships and obligations, and all juvenile matters, North Carolina can take a major step forward in dealing with matters related to a specific family in a thoughtful, integrated, and holistic fashion.

Comments:

The Family Court will be a specific and separate judicial entity within the proposed new circuit court system. A family court model could be established as a pilot in a few urban jurisdictions to demonstrate its operation and effectiveness. This Court will hear all claims involving familial rights, relationships and obligations and all juvenile matters. The family court will provide a unified, rational, and timely forum for the resolution of all judicial proceedings involving family members. Cases will be heard by a specially training judge regularly assigned to Family Court. Family case managers will be assigned to work with the family as a unit to identify, engage, and

coordinate services, follow through on the court's recommendations, and increase family accountability to take specific action to resolve family related problems.

One of the strengths of this model is that ideally the same Family Court judge will hear all matters coming before the Court related to a single family. This will provide that judge much greater insight into the range of problems, events, and issues going on within a particular family. Also, the case manager will be assigned to the same one or more Family Court judges and will work with and follow the same family to address its needs and carry out the conditions and orders from the Family Court judge. This approach can be the single most effective and essential change in our response to all domestic and juvenile problems to break the generational cycles of family violence, which often manifests itself in juvenile crime. This recommendation will hold families more accountable for related matters which come before the Family Court.

This recommendation is significant, but not the only recommendation for court reform now under consideration by the General Assembly. However, if it is implemented, it must be consistent with the total court reform package under study for passage by the General Assembly.

B. COURT IMPROVEMENT PROJECT

Recommendation No. 59:

It is recommended that the Court Improvement Project's report on Juvenile Code statutes pertaining to abuse, neglect and dependency be reviewed by the General Assembly.

C. EVALUATION OF REFORM LEGISLATION

Recommendation No. 60:

The North Carolina General Assembly should allocate resources for the evaluation of the effectiveness of any reform measures recommended by the Governor's Commission on Juvenile Crime and Justice or adopted by the legislature.

D. DELAY START OF SCHOOL DAY STUDY

Recommendation No. 61:

The State Board of Education should study the feasibility and advisability of delaying the start of the school day in order to eliminate late afternoon free time when so many juvenile offenses are committed. Such study shall be referred immediately to the Education Oversight Committee of the North Carolina General Assembly.

Appendix I :
Executive Order

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 117 GOVERNOR'S COMMISSION ON JUVENILE CRIME AND JUSTICE

WHEREAS, North Carolinians deserve to live, work and attend school in communities without fear of crime, drugs and violence; and,

WHEREAS, the state has taken important steps to protect its citizens in recent years by providing tougher sentences for violent criminals, keeping dangerous criminals behind bars longer, and boosting efforts to deter young people from a life of crime; and,

WHEREAS, North Carolina continues to face challenges fighting crime, especially juvenile crime, which is rising across the country; and,

WHEREAS, in North Carolina juvenile arrests for violent crime have risen a dramatic 172%, arrests of juveniles for weapon offenses have skyrocketed 482%, and arrests of juveniles for drug violations have soared 523% over the last ten years; and,

WHEREAS, North Carolina's elected officials and community leaders are committed to developing strong, new approaches to fighting juvenile crime by making sure young offenders know they will face tough consequences for their actions, holding parents more responsible for their children, and keeping at-risk youngsters on the right path and away from crime and drugs with stronger community-based prevention efforts; and,

WHEREAS, leaders should develop a plan to fight juvenile crime by revising the juvenile justice system to bring it in line with the kinds of crimes committed by juveniles today, stepping up the state's prevention efforts to keep at-risk young people from turning to a life of crime and drugs, developing sanctions for first-time juvenile offenders and tougher punishment for violent offenders, and streamlining the state agency structure for dealing with juvenile crime.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina. IT IS ORDERED:

Section 1. Governor's Commission on Juvenile Crime and Justice Established

The Governor's Commission on Juvenile Crime and Justice is hereby established. The Commission shall consist of eighteen voting members appointed by the Governor as follows: the Secretary of Crime Control and Public Safety; the Chief Justice of the Supreme Court of North Carolina, four members of the North Carolina Senate; four members of the North Carolina House of Representatives; one Superior Court Judge; one District Court Judge; one District Attorney; the chairman of the Governor's Crime Commission; and four at-large members representing law enforcement, child advocacy interests, public schools, and the general public. There shall also be five non-voting ex-officio members appointed by the Governor as follows: the Secretary of Correction; the Secretary of Administration, the Secretary of Health and Human Resources; the State Superintendent of Public Instruction; and, the Director of the Administrative Office of the Courts.

Section 2. Chair, Vice Chair, and Honorary Co-Chairs

The Governor shall serve as the Chair of the Commission and have the power to vote. The Secretary of Crime Control and Public Safety shall be the Vice-Chair and shall serve in the absence of the Chair. The Speaker of the North Carolina House of Representatives and the President Pro Tempore of the North Carolina Senate shall serve as Honorary Co-Chairs of the Commission.

Section 3. Commission Duties and Responsibilities

The Commission shall conduct a thorough and comprehensive review of the juvenile criminal justice system and shall make specific recommendations in the following areas:

- (a) Revisions of the Juvenile Code;
- (b) Juvenile crime prevention efforts, initiatives, and drug education;
- (c) Appropriate and accountable sanctions for all juvenile offenders; and,
- (d) The state agency structure of the juvenile justice system.

The Commission shall also address other related issues assigned to it by the Chair.

Section 4. Commission Meetings

The Commission shall meet at least twice monthly and shall meet more often at the call of the Chair. Meetings shall be conducted in compliance with state's Open Meetings Law.

Section 5. Advisory Groups

The Governor shall establish four advisory groups to provide recommendations to the Commission. Members of each advisory group shall be appointed by the Governor. The four advisory groups shall be as follows:

- (a) Juvenile Code Revision Advisory Group;
- (b) Delinquency Prevention and Drug Education Advisory Group;
- (c) Accountable Sanctions Advisory Group; and,
- (d) Juvenile Justice System Agency Structure Advisory Group.

The Governor shall appoint an Advisory Chair for each advisory group. The advisory groups shall meet monthly and shall meet more often at the call of the Advisory Chair. Meetings shall be conducted in compliance with the state's Open Meeting Laws.

Section 6. Cooperation of Governmental Agencies

The heads of all state departments and agencies shall, to the extent permitted by law, provide the Commission with information required to achieve the purposes of this Order.

Section 7. Public Hearings

The Commission is authorized to hold public hearings on the specific issues under consideration by it, to visit facilities and institutions related to or involved in the specific issues under its consideration, and to receive input from citizens about these issues.

Section 8. Per Diem, Travel, and Subsistence

Members of the Commission and the four advisory groups shall serve without compensation but, subject to availability of funds, shall be eligible for per diem, travel, and subsistence as provided by North Carolina rules, regulations, and General Statutes.

Section 9. Reporting Requirements

The Commission shall present a final report including appropriate administrative and legislative recommendations to the Governor no later than February 2, 1998.

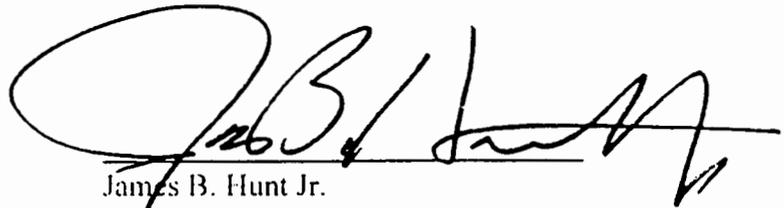
Section 10. Staff Support

The Governor shall appoint an Executive Director who shall provide staff for the Commission through funds administered by the Governor's Crime Commission.

Section 11. Effective Date

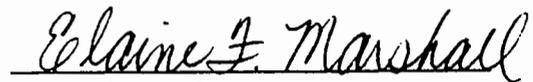
This order is effective immediately and shall remain in effect until rescinded by the Governor.

Done in the Capital City of Raleigh, North Carolina, this the 7th day of September, 1997.

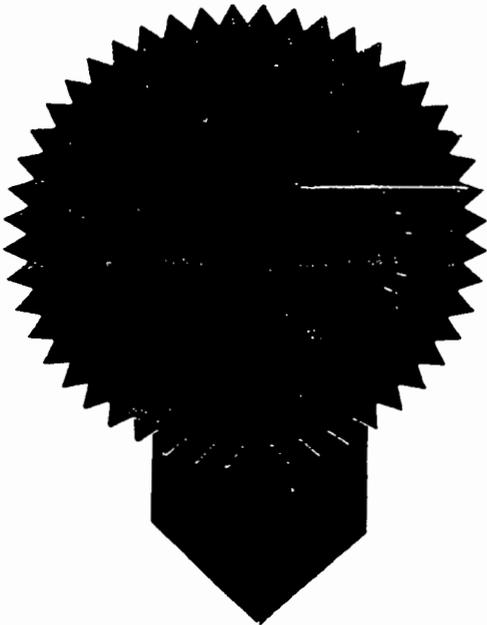


James B. Hunt Jr.
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



Appendix II:
Speakers List

Governor's Commission on Juvenile Crime and Justice

Regular Meetings' Speaker List

September 12, 1997

John Wilson, Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, DC
Robin Lubitz, Executive Director of the Governor's Crime Commission
Janet Mason, Institute of Government, University of North Carolina at Chapel Hill, Juvenile Code changes since 1979
Chief District Court Judge Anna Mills Wagoner, 19th-C Judicial District, Salisbury, NC
Laura McFern, Chief Juvenile Court Counselor, Mecklenburg County
Phil Redmond, Executive Director of the Children's Law Center, Charlotte, NC
Dennis Nowicki, Chief of Police, Charlotte-Mecklenburg Police Department
Peter Gilchrist, Mecklenburg County District Attorney
Rev. Larry Hill, Matthews Murkland Presbyterian Church, Charlotte, NC
Judge William Byars, Camden, S.C., Chairman of the South Carolina Governor's Juvenile Justice Task Force Commission

September 26, 1997

Chief District Court Judge Albert S. Thomas, Jr., 7th Judicial District, Wilson, NC
Review of 1979 Juvenile Code Revision Committee
Marcia Morey, Executive Director of the Governor's Commission on Juvenile Crime and Justice, Review of 1979 to 1996 juvenile crime statistics/issues/problems
Janet Mason, Institute of Government, University of North Carolina at Chapel Hill, Juvenile Code revisions since 1979

October 10, 1997

Susan Gay, Durham County Juvenile Court Counselor
Susan Whitten, Director of Community-based Alternatives, Division of Youth Services, NC Department of Health and Human Services
Ben Carrington, Durham Schools Attendance and Hearing Officer
Sgt. Tommy Rogers, Winston-Salem Police Department
Larry Hayes, Chief Juvenile Court Counselor, Goldsboro, NC
Elaine Denny, Training Schools Administrator, Division of Youth Services, NC Department of Health and Human Services
Jim Deloatch, Juvenile Services Aftercare Supervisor, Wake County

October 24, 1997

Linda Hayes, Chairperson of the Governor's Crime Commission
Robin Lubitz, Executive Director of the Governor's Crime Commission
Pat Matthews, Restorative Justice program, Asheville, NC
Larry Downing, Restorative Justice program, Asheville, NC
Mike Reider, Administrator with Haven House, Raleigh, NC
Janice Sanders, Social Worker with Haven House, Raleigh, NC
Lark Williams, Social Worker with Haven House, Raleigh, NC
Crystal Hall, Youth client of Haven House, Raleigh, NC
Kim Yaman, Parent of youth client of Haven House, Raleigh, NC

November 7, 1997

Dr. Richard Dembo, Professor of Criminology, University of South Florida, Tampa, FL
Tim Center, Senior Attorney, Florida Legislative Juvenile Justice Advisory Board,
Tallahassee, FL
William Muse, Assistant Attorney General of Virginia, Richmond, VA

November 21, 1997

Doris Stith, Edgecombe County Community Enrichment Organization
Dr. Paul Knepper, Associate Professor Of Criminal Justice, East Carolina University,
Greenville, NC
Tom Keith, Forsyth County District Attorney
Tom Haigwood, Pitt County District Attorney
Chief District Court Judge Ken Titus, 14th Judicial District, Durham, NC
Chief District Court Judge Anna Mills Wagoner, 19th-C Judicial District, Salisbury, NC
Chief District Court Judge Lawrence McSwain, 18th Judicial District, Greensboro, NC
Chief District Court Judge Albert S. Thomas, Jr., 7th Judicial District, Wilson, NC
District Court Judge Gwynett Hilburn, 3-A Judicial District, Greenville, NC

December 5, 1997

Carol Rapp Zimmerman, Assistant Director, Ohio Department of Youth Services,
Columbus, OH, RECLAIM Ohio Program
Tracy Litthcut, Director of Boston Youth Services, Boston, MA
Pam Pierce, Probation officer, Dorchester, MA
Three Youthful Offenders: Shekia, Shannon, and Anthony

December 19, 1997

North Carolina Attorney General Mike Easley
Marcia Morey, Executive Director of the Commission on Juvenile Crime and Justice
James B. Hunt, Jr., Governor of North Carolina

Governor's Commission on Juvenile Crime and Justice

Public Hearings' Speaker List

September 15, 1997 Fayetteville

Chief District Court Judge Elizabeth Keever, 12th Judicial District, Fayetteville, NC
Richard Alligood, Chief Juvenile Court Counselor, Cumberland County
Dr. Pam Riley, Executive Director of N.C.Center for the Prevention of School Violence
Mary Owens, Ramsey Alternative School Principal, Fayetteville, NC
Robin Jenkins, Cumberland County Mental Health Department
Rosemary Zimmerman, Child Protective Services, Cumberland County Department of
Social Services
Richard Giddens, Teen Court member, Cumberland County
Rebecca Saporito, Juvenile offender, Cumberland County
Sgt. Roger Redd, youth program director, Cumberland County

Public Comment:

Attorney Matt Cockman
Blaire Smathers, Teen Court and Dispute Resolution Center
Alexander Beckman, Teen Court
Imam Muhammad, Child Means Sources program
Lindon Spear, Haven Animal House (animal therapy program)
Chip Brower, Security Chief for Cumberland County Schools and Chairperson of the
Juvenile Assessment Center
Mike Kydd, Director of Eckerd Wilderness Camp in Cumberland County

October 16, 1997 Asheville

Don Fraser, Owen Middle School Resource Officer, Asheville, NC
Barbara Blanks, Director of Buncombe Alternatives, Asheville, NC
Karen McDonald, Chief Juvenile Court Counselor, Buncombe County
Ron Lytle, Director of the Juvenile Evaluation Center, Swannanoa, NC
District Court Judge Rebecca B. Knight, 28th Judicial District, Asheville, NC
Haywood County District Attorney Charles W. Hipps

Public Comment:

Mike Waters, N.C.Parks and Recreation Society
Luanne Bryan, Asheville Parks and Recreation Department
District Court Judge Gary S. Cash, 28th Judicial District, Asheville, NC
Sgt. Doug Birner, Asheville Police Department's Youth Services Unit
Bill Nolan, Haywood County Guardian ad Litem program
Chief District Court Judge Earl J. Fowler, Jr., 28th Judicial District, Asheville, NC

Shirley Messer, Buncombe County school teacher
Phyllis Sherrill, Community Relations Council, Asheville, NC
Gordan Keith, Director of Project Challenge
Matthew Becote, III, Executive Director of Life on Life's Terms, Buncombe County
Audrey Hall, Juvenile Services Coordinator with Buncombe County Schools
Kim Fink-Adams, Community-based program provider
Buncombe County Commissioner William Stanley

October 22, 1997 Winston-Salem

Assistant U.S. Attorney Loretta Biggs, Winston-Salem, NC
Jean Irvin, Forsyth County Juvenile Justice Council
Walter Byrd, Chief Court Counselor, Forsyth County
Dr. Ron Montaquila, Assistant Superintendent of Winston-Salem Schools
Dr. John Harrison, Project LEAP, Winston-Salem, NC
U.S. Attorney Walter Holt, Winston-Salem, NC
Burt Wood, Step-One substance abuse program
Candel Yardley, SOS program director in Forsyth County
Capt. C.C. McGee, Forsyth County Sheriff's Department
Belinda Williams, Governor's One-on-One volunteer program, Forsyth County
Jack Moore, Chief Juvenile Court Counselor for Surry and Stokes Counties

November 3, 1997 Durham

Dr. Ann Denlinger, Superintendent of Durham County Schools
District Court Judge Elaine O'Neal, 14th Judicial District, Durham, NC
Archie Snipes, Chief Juvenile Court Counselor, Durham County
Kismet Bell, Teen Court member, Durham
Sgt. J.T. "Tommy" Morris, Durham Police Department

Public Comment:

Durham County Commissioner Ellen Reckhow, Co-Chair of the Durham Crime Cabinet
Durham City Councilman Howard Clement, Co-Chair of the Durham Crime Cabinet
Sgt. Norman Gordan, Durham Sheriff's Department
David Byrd, Durham YMCA
District Court Judge Craig Brown, 14th Judicial District, Durham, NC
Al Singer, Director of Child Advocacy and juvenile law specialist, Durham, NC
District Court Judge Richard Chaney, 14th Judicial District, Durham, NC
Jane Volland, Teen Court Coordinator and defense attorney, Durham, NC
Lisa Price, Exec. Director of North Carolinians Against Gun Violence Education Fund
Paul Nagy, Director of Substance Abuse and Treatment Services, Duke Medical Center
Defense Attorney Tom Stark, Durham, NC
Detective Wallace Early, Juvenile Section, Durham Police Department
Kenneth Stokes, Director of Durham Companions, one-on-one program
Doris Edmondson, mother of teen offender, Durham, NC

November 18, 1997 Wilmington

New Hanover County District Attorney John Carriker
District Court Judge Rebecca Blackmore, 5th Judicial District, Wilmington, NC
New Hanover County Sheriff Joseph McQueen
Kathy Owens, teacher at Brunswick Learning Center at Southport, NC
Chief District Court Judge John Smith, 5th Judicial District, Wilmington, NC

Public Comment:

New Hanover County Commission Chairman Robert G. Greer
Andy Atkinson, New Hanover County Deputy County Manager
Mac Sligh, Director of Onslow County Parks and Recreation Department
Janice Chandler, teacher
Cynthia Parker, Assistant Principal of J.C. Roe Elementary School
Peggy Gibson, Director of Onslow Youth Services, community-based program
John Boone, Director of Save Our Kids Outreach Ministry
Capt. Wesley Cowan, Onslow County Sheriff's Department
Rev. Joseph Windley, Baptist minister
Julia Talbutt, New Hanover County Department of Social Services attorney
Laurie Wierse, Elementary School Counselor, New Hanover County Schools
D.N. Graves, retired New Hanover County citizen
Beau McCaffray, Coordinator of New Hanover Safe and Drug Free Schools program
Darold Cox, Sampson County Sheriff's Department and N.C. Juvenile Officers Assoc.

November 25, 1997 Charlotte

Lieutenant Governor Dennis Wicker
Parks Helms, Mecklenburg County Commission Chairman
Capt. Craig Honeycutt, Director of the Juvenile Unit, Charlotte-Mecklenburg Police
Calvin Wallace, Assistant Superintendent of Public Schools
Wes Seamon, Chief Juvenile Court Counselor and member of Stonewall Jackson
Community Advisory Council
Brenda Craig, Chairperson of Gaston Commission on Crime, Gastonia, NC
Richard W. Jacobsen, Jr., Mecklenburg County Social Services Director
Jack Lordan, Davie County substance abuse counselor
John Auten, Chief Juvenile Court Counselor, Shelby, NC
Lee Ragsdale, Mecklenburg Juvenile Court Counselor
Mary Carter, Mecklenburg Juvenile Court Counselor
Julio Herrera, Providence High School Resource Officer, Charlotte, NC

December 15, 1997 Goldsboro

Larry Hayes, Chief Juvenile Court Counselor, Goldsboro, NC
LaTerrie Ward, Wayne County Children and Youth Council, Goldsboro, NC
Wayne County District Attorney Donald Jacobs

Chief District Court Judge J. Patrick Exum, 8th Judicial District, Goldsboro, NC

Public Comment:

State Representative Carolyn B. Russell

State Representative Jerry Braswell

Goldsboro Police Chief Chester Hill

Wayne County Commissioner Wilbur E. Anderson

Shirley Edwards, Community-based program provider

Pam Stokes, Wayne County School Social Worker

Superintendent of Wayne County Schools Jimmy Williams

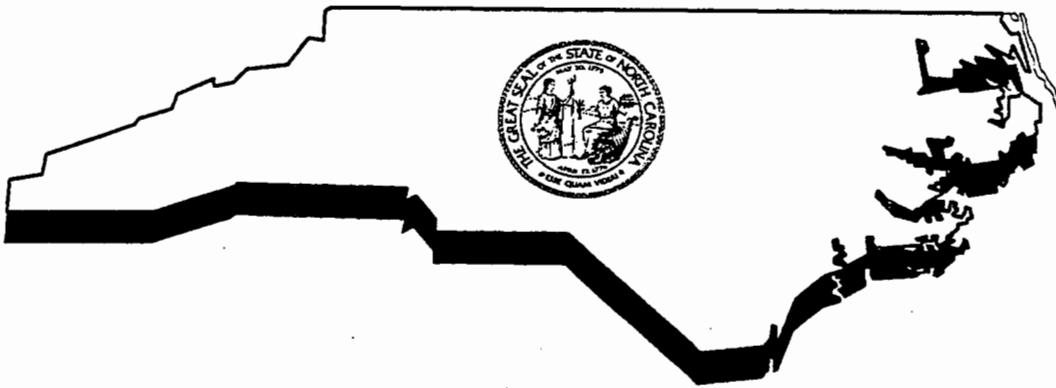
Wayne County Sheriff Carey Winders

Harriette Vick, Director of the Wayne County Juvenile Restitution and Community
Service program

Appendix III:
Juvenile Crime Trends

The Juvenile Justice System in North Carolina:

Past, Present, and Projected Trends



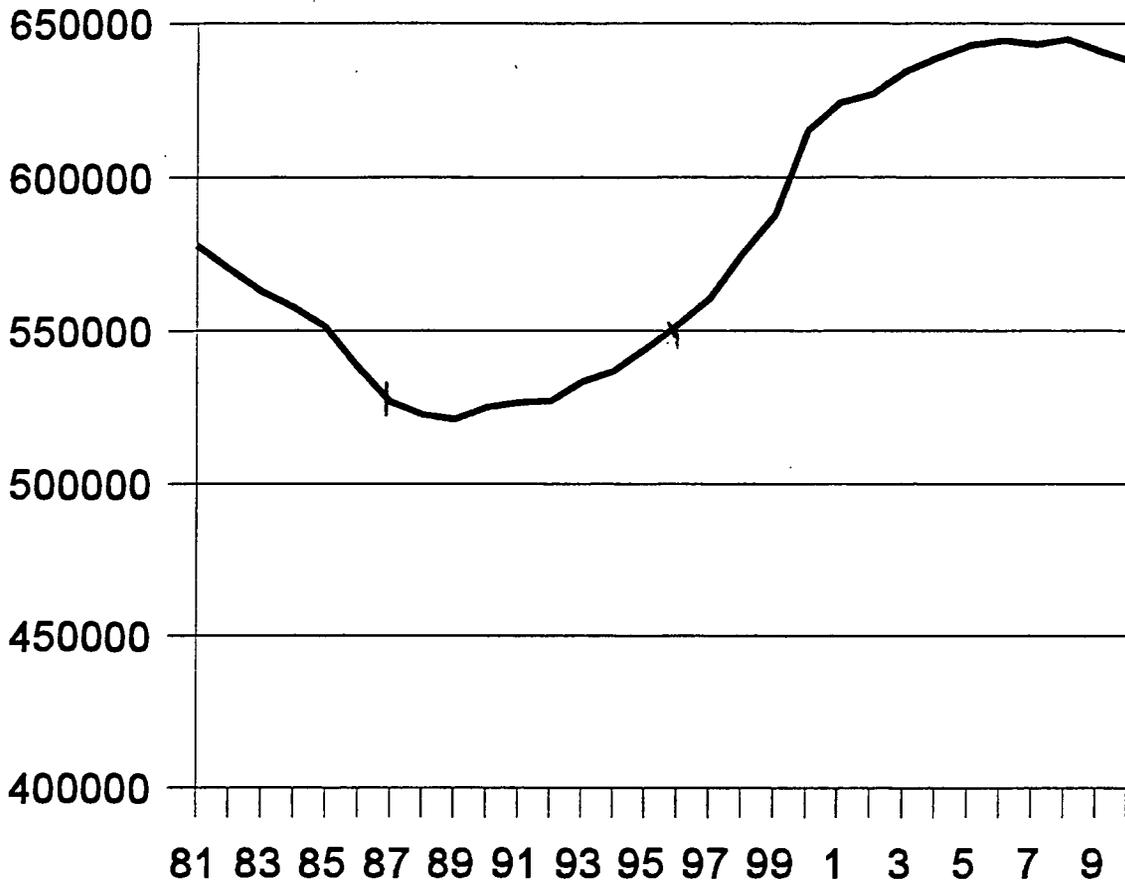
Prepared by

The North Carolina Criminal Justice Analysis Center

of the

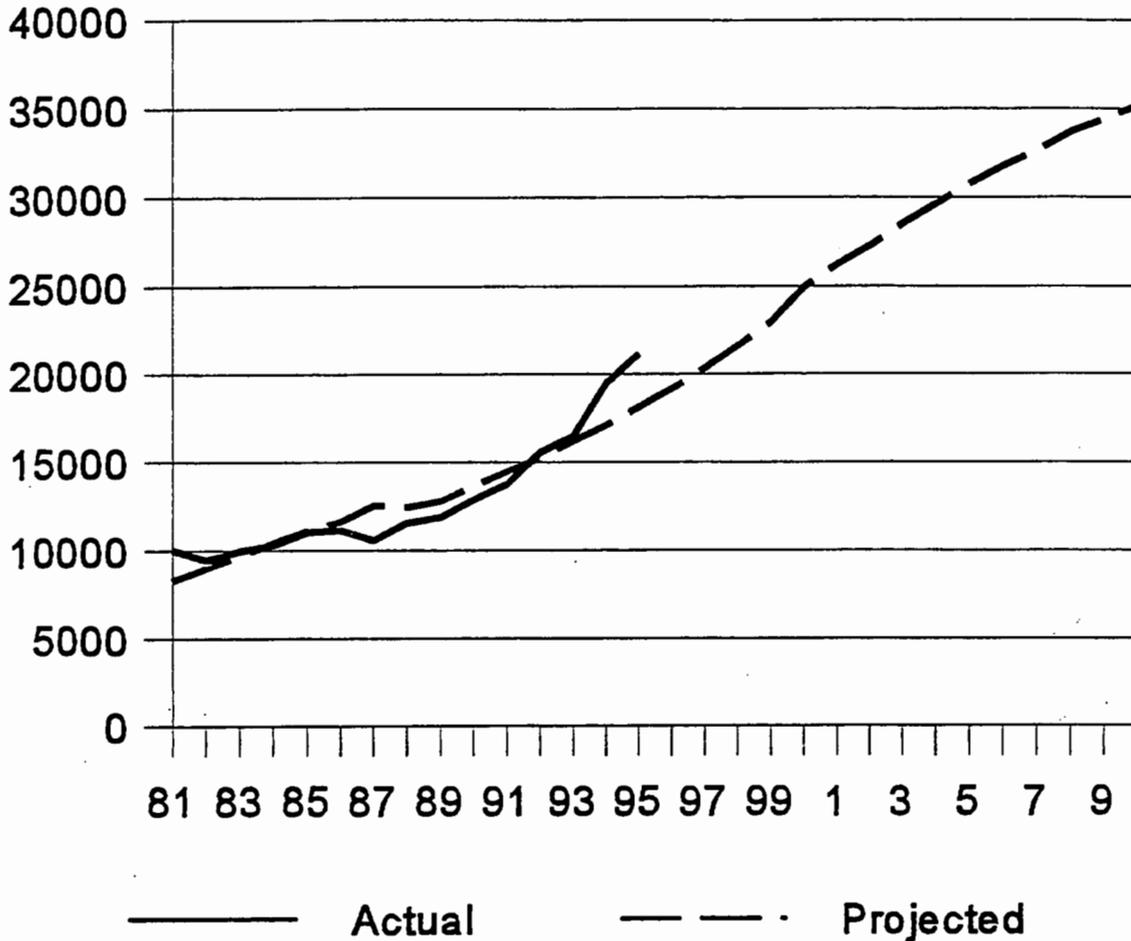
Governor's Crime Commission

North Carolina's Juvenile Population (10-15 Year Olds) 1981-2010



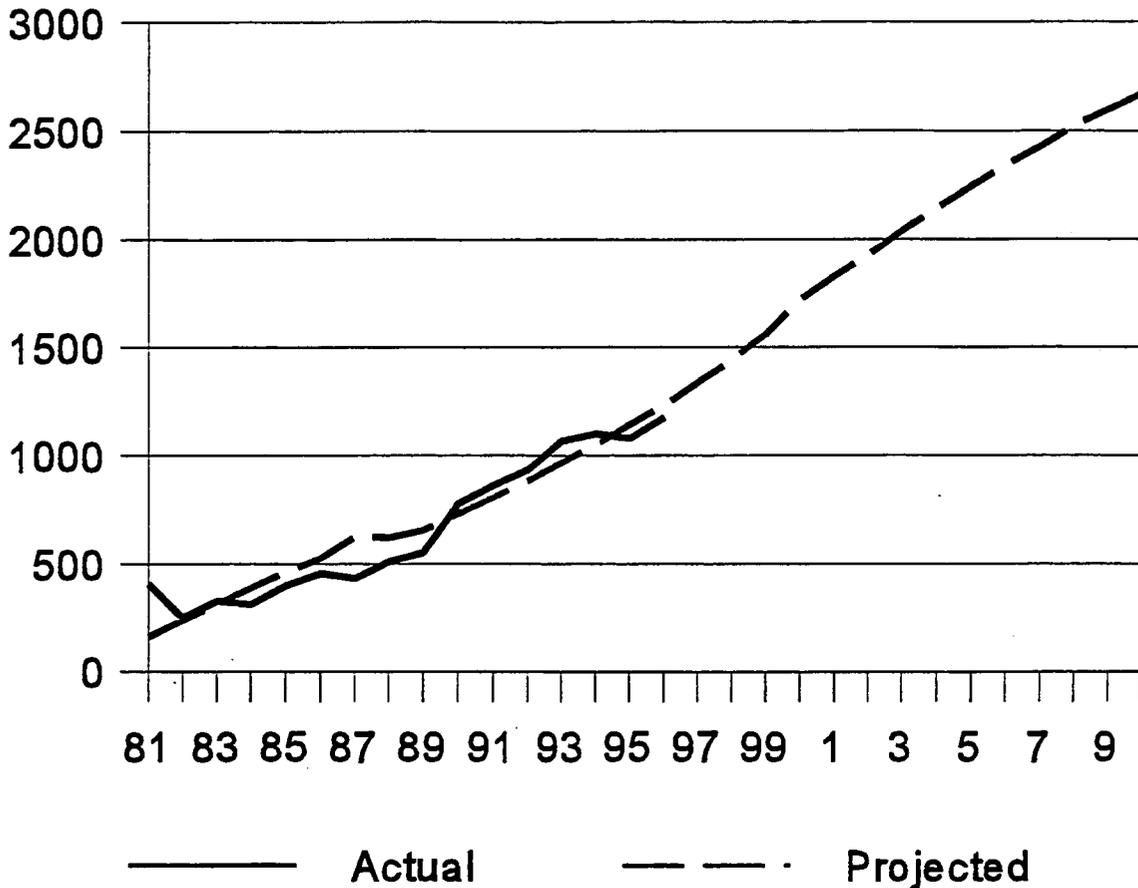
- ▶ The number of 10 to 15 year olds declined a slight 4.5 percent from 1981 to 1996.
- ▶ However, projections indicate that this population will grow 15.5 percent from 552,144 teens in 1996 to 637,777 in 2010.
- ▶ This growth trend has already begun and will steadily increase with the number of teens surpassing the 600,000 by the year 2000.

Total Number of Juvenile Arrests



- ▶ The number of juveniles arrested for *all* offenses in 1995 (21,138) was 110 percent greater than the number arrested in 1981 (10,040).
- ▶ Juvenile arrests grew 92 percent between 1985 and 1995.
- ▶ If current trends continue an estimated 35,224 juveniles will be arrested in 2010.
- ▶ This would represent an 67 percent increase over the total number of 1995 arrests and a 251 percent increase over the total number of juveniles arrested in 1981.

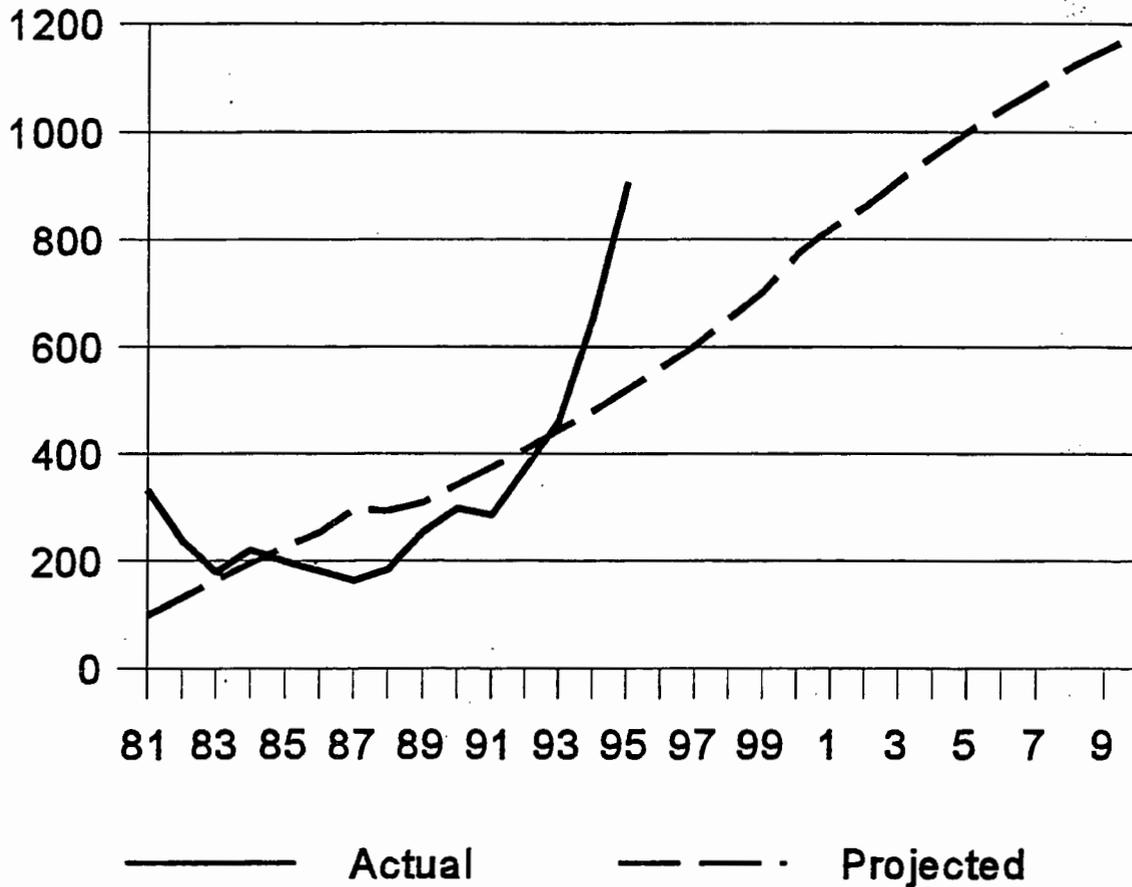
Total Number of Juvenile Arrests for Part 1 Violent Crimes Murder, Rape, Robbery, Aggravated Assault



- ▶ The number of juveniles who were arrested for serious violent crime grew from 407 in 1981 to 1,177 in 1996 (189 percent increase).
- ▶ The number of juveniles arrested for murder, rape, robbery, and aggravated assault grew an even greater 157.5 percent over the past decade.
- ▶ As many as 2,679 violent juvenile offenders could be arrested in 2010. This would be a 128 percent increase over the number arrested in 1996 and 558 percent more than the number arrested in 1981.

Juvenile Drug Violation Arrests

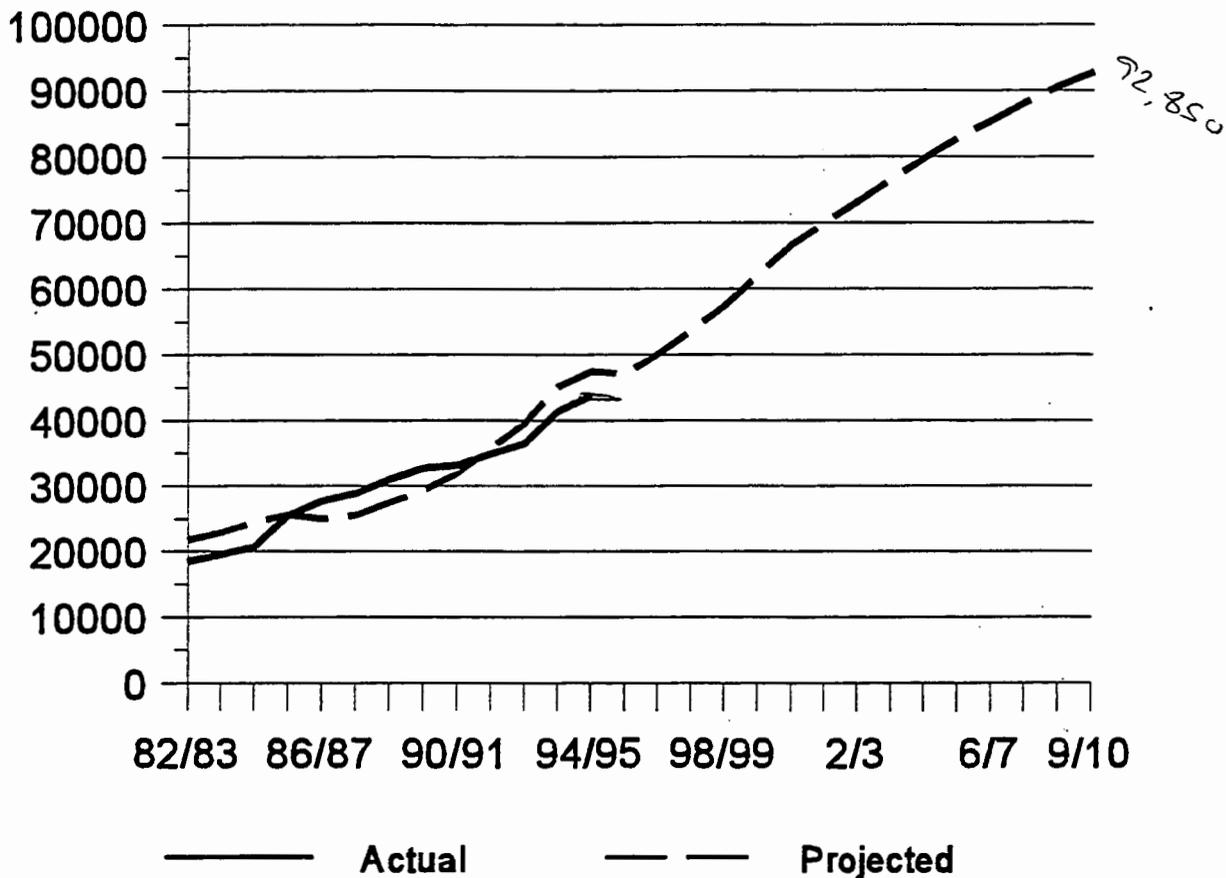
Total Number



- ▶ The number of drug arrests in 1995 (907) outpaced the number reported in 1981 (333) by 172 percent.
- ▶ Juvenile drug arrests grew 217 percent from 1991 to 1995.
- ▶ By 2010 close to 1,200 juveniles could be arrested for drug law violations which would be 32 percent higher than the number arrested in 1995 and 256 percent higher than the number arrested in 1981.

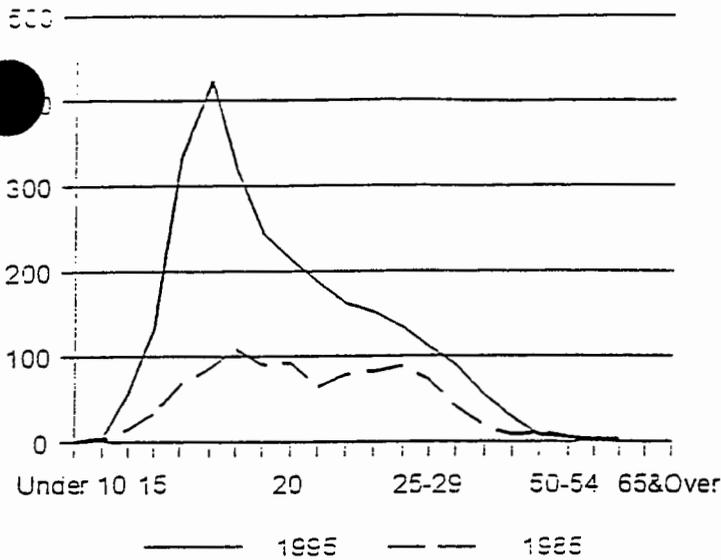
Juvenile Intake Complaints

Total Number

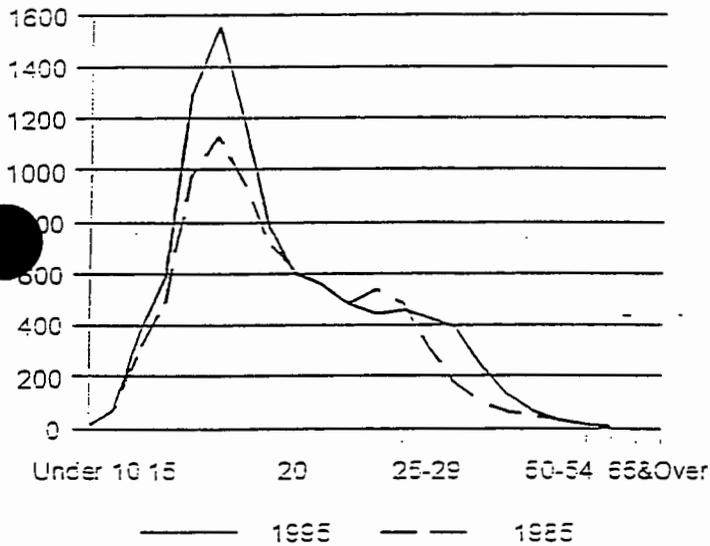


- ▶ The number of juvenile intake complaints, for fiscal year 1994-1995, (43,781) was 136 percent higher than the number of 1982-1983 complaints (18,520).
- ▶ Intake complaints have steadily grown by an average of 11 percent per year and have increased 51.5 percent over the last seven years.
- ▶ If the relationship between intake complaints and juvenile arrest practices persists an estimated 92,850 complaints will be filed in fiscal year 2009-2010. This would represent an increase of 221 percent over the number in 1987-88 and an increase of 401 percent over the number of 1982-1983 complaints.

Age-Specific Robbery Arrest Rates



Age Specific Burglary Arrest Rates

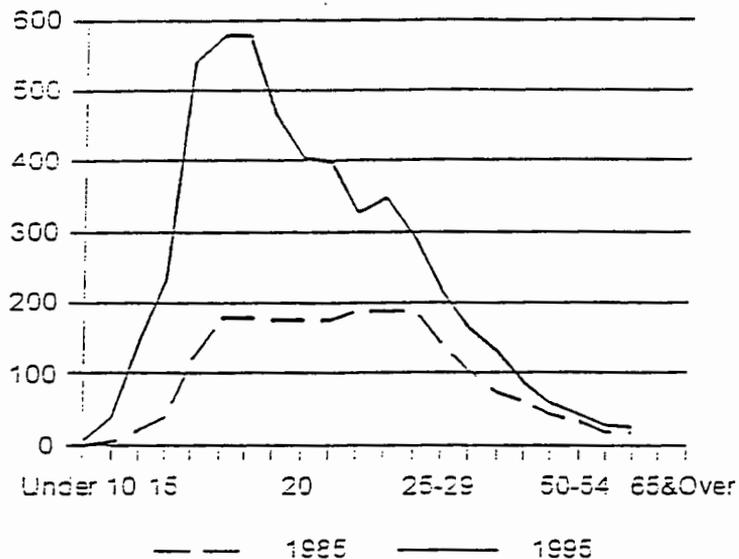


For example, Figure 2 and Figure 3 show the age specific arrest rates for robbery and burglary. The distance between the 1985 and 1995 lines shows that for both crimes the arrest rate for young offenders increased. While the arrest rates for both crimes increased, the change was more pronounced in the robbery arrests than the arrests for burglary. Between 1985 and 1995 the pattern of burglary arrests remained essentially the same, but the rate increased, *the 1995 line is higher*. For robbery there was not only an increase in the rate, but also a dramatic shift in the pattern of arrests, *the line moved up and to the left* indicating a dramatic increase in the arrest rate for the youngest offenders.

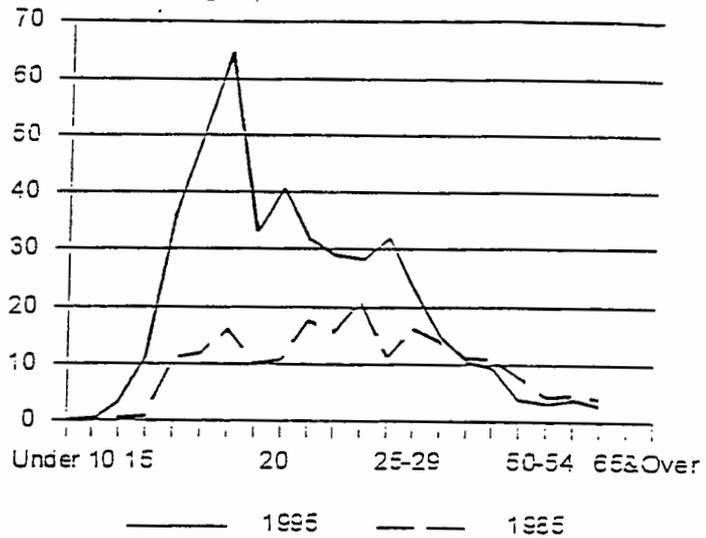
While Figures 2 through 7 each show a slightly different pattern, all these figures show that not only are more children involved in the criminal justice system, but younger children are starting to

commit violent crimes at much higher rates than they were ten years ago. What is new is the rate at which younger children are starting to be arrested for more serious crimes.

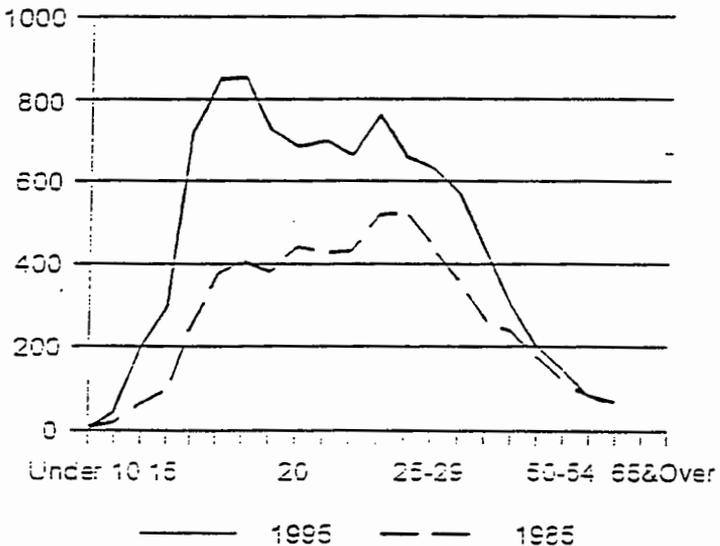
Age-Specific Weapon Arrest Rates



Age Specific Murder Arrest Rates



Age Specific Aggravated Assault Arrest Rates



Appendix IV:

Juvenile Casefile: "Jerry"

"JERRY" - A JUVENILE CASEFILE

The following is a case review of an actual juvenile offender as reflected in the court file. For reasons of confidentiality some names and details have been changed. While the majority of court adjudicated youth do not become chronic or violent offenders, the issues raised in Jerry's case are representative of the myriad of problems confronting the juvenile justice system and those who work within it.

October 1993 - February 1994:

Jerry was 13 years old and in the seventh grade. By October, Jerry had 23 unexcused absences from school. When he was in school he slept in class. He was also seen at school with large amounts of money in his possession. The school counselor met with Jerry's father on October 23rd. Jerry's father told the school counselor that he and Jerry's mother did not live together as she had a boyfriend and she was using drugs, and that Jerry was living with them. He told the school counselor that he was concerned that Jerry was running the streets at night and out of control. Jerry's father promised the school counselor that Jerry would move in with him and that Jerry's school attendance would improve.

The school counselor called the Department of Social Services to report this as a possible neglect case. Two weeks later DSS sent a letter to the school counselor saying that neglect was not substantiated as Jerry was now living with his father. In February of 1994 Jerry was caught stealing a \$45 shirt. He was briefly detained by store personnel until the police could come and take a report. Three weeks later the police officer who took the larceny report dropped a copy off with the Juvenile Services Intake Counselor.

ISSUES:

The law requires a school principal to file a report with the District Attorney's Office if a child has accumulated more than 10 unexcused absences and the parent(s) have not made good faith efforts to comply. (G.S. 115C-378) The District Attorney can have the parent(s) charged with a misdemeanor punishable by up to 30 days in jail and/or a \$50 fine. If the principal determines that the parent(s) have not made a good faith effort to comply, the principal may file a complaint with Juvenile Services.

The reality is that this statute is rarely enforced. Compliance requires a school official to appear in District Court which takes him or her away from school and continuances frequently occur in District Court resulting in wasted time for the school official. Judges are reluctant to fine a parent who often cannot afford the fine or to jail a parent when there is no one else to take care of the children at home. Frequently the child is more at fault than the parent as the parent may have left for work before the child is supposed to leave for school or the parent may have dropped the child off at school thinking the child will remain. Also, the child may intercept notices from the school that come to the home if the child is there before the parent(s) in the afternoon.

Police have the discretion to divert the matter or to take the complaint to the Juvenile Services Intake Counselor who will review the sufficiency of the complaint and then authorize it to be filed as a petition, or diverted to a community resource, or dismissed. There is no time limit by which officers must file reports with Juvenile Services Intake. Although three weeks, as in Jerry's case, may not seem long in adult terms, it is a long time to a child. The child may think he has "gotten away with it" or that there will be no repercussions.

The Intake Counselor did not know about the DSS investigation as information is not shared among agencies.

In this case, the school principal failed to file a truancy report with either the District Attorney or Juvenile Services. Had such a report been made or petition filed Jerry and/or his parent would have had to appear in court. However, the courts have virtually no authority to sanction undisciplined youth and the immediate result could have potentially been the same in either case: Jerry experienced no immediate consequences for his actions.

March - April 1994

Jerry and his father met with the Intake Officer in March. The father did not know about the larceny charge until the Intake Officer told him. Jerry's father told the Intake Officer that Jerry was doing better. The Intake Officer decided not to file a court petition for this first offense since it was minor and the Intake Officer diverted the matter. The Intake Officer did refer Jerry to mental health counseling. When Jerry went to his April 15th appointment at mental health all he had to do was to sign his name indicating that he had appeared and then he could leave.

ISSUES:

The law requires that within 15 days after receiving a police report the Intake Court Counselor must review the report to establish whether legal sufficiency exists to file a petition. If so, the Intake Court Counselor may file a petition or divert the case from Juvenile Court for the juvenile to receive "less restrictive" treatment in counseling. *(Intake counselors in North Carolina divert approximately 40% of the complaints they receive. Law enforcement officers divert approximately 21% of the incidents they investigate, thus, never even bringing them to the Intake Counselor.)*

Five weeks after Jerry stole the shirt and was caught he "comes to court" in the sense that he meets with an Intake Counselor. The case was diverted and Jerry was required only to make a "contact" for counseling. This means that if Jerry simply signed in at mental health he has met the contact requirement. He does not have to successfully complete a program. Because of heavy caseloads juvenile intake officers rarely follow up on diverted cases these cases are not put on the docket, and because youth cannot be sanctioned in Juvenile Court for failing to follow through with diversion orders, these cases remain unaddressed.

Because the Code has no provision providing for information-sharing among agencies within the juvenile system the Intake Officer at Juvenile Services did not know about the DSS investigation. Documentation regarding Jerry's home and school situations may have assisted the Intake Officer to make a more informed decision. Again, Jerry experienced no consequences for stealing, truancy and being out of control.

June 1994

Jerry returned to his mother to live with her during the summer. On June 10th, Jerry was standing with a crowd of other youth on the neighborhood street corner at midnight when shots rang out. Jerry's 16 year old brother was killed in this drive-by shooting. Two weeks later Jerry was a passenger in a dark green Jeep Cherokee driven by his 15 year old friend. The police stopped the Jeep as it had been reported stolen and Jerry's friend ran. The police officer detained Jerry who told the officer the name of his friend who ran. The officer recognized the name as that of a youth who had an extensive juvenile record. The

police officer tried to locate Jerry's mother but she could not be located. The officer called the Juvenile Court Counselor on call and asked for a secure custody order explaining that Jerry has been caught in a stolen vehicle. The court counselor told the officer that all detention beds were full and that Jerry must be returned home. After four hours spent trying to locate some relative of Jerry's to whom the officer could release him, the officer finally released Jerry to his grandmother. The officer sent a report of the incident to Juvenile Services.

ISSUES:

Law enforcement officers have no authority to place juveniles into secure custody without a judge's or court counselor's consent. Often times this means a long delay for the law enforcement officer who must remain with the juvenile. Because secure custody facilities are frequently overcrowded the juvenile is simply released back home or to the custody of a family member.

Although Jerry told the law enforcement officer that his friend had been the driver of the Jeep and although the officer knew that Jerry's friend had an extensive juvenile record, there were no photographs nor fingerprints of Jerry's friend on file because the law only authorizes photographing and fingerprinting of juveniles for a very few specific crimes. The officer could not pursue the investigation with a photographic lineup or fingerprint comparison.

Because of lack of facilities and overcrowding no detention bed was available for Jerry, and once again Jerry experienced no immediate consequences for his actions.

July - November 1994

Seven weeks after being caught in a stolen car Jerry made his first court appearance. He met his lawyer for the first time, a "tall man", who told him to "just go ahead and admit the petition." Jerry never had an opportunity to tell his lawyer that he didn't know his friend was underage and didn't have a driver's license. Nor did Jerry have a chance to tell his lawyer that Jerry's friend had driven other cars before when Jerry had been around and that Jerry didn't know that the Jeep was stolen. Following his lawyer's advice, Jerry admitted the petition and was adjudicated delinquent. The judge continued the case for disposition until the Court Counselor could do a home study. Jerry left the courtroom.

Jerry returned to court four months later with his father. The judge had reviewed the home study and had discovered that Jerry had been suspended from school. The judge ordered that Jerry be placed on one year's probation, obey a curfew, attend counseling, stay away from his friend and be placed in detention until he could go back to school. The Court Counselor informed the court that the detention facility was full so the judge sent Jerry home with his father and warned him that he was "skating on thin ice."

ISSUES:

Jerry did not make a court appearance for seven weeks from the time the police officer caught him. There is no requirement that the parent(s) of the juvenile appear with the juvenile unless they are subpoenaed and so Jerry went to court by himself. Jerry was assumed to be indigent and an attorney was appointed to represent him but the attorney did not even meet Jerry until Jerry was in court. The attorney did not explain who he was or what his role was in the proceedings and what Jerry's options were.

Jerry was not found "guilty" of possession of a stolen vehicle but was "adjudicated delinquent". Jerry did not know what this meant. The case was continued for disposition until the judge's next court date so

Jerry felt no immediate impact. Jerry never actually spoke in court as his lawyer spoke for him.

At disposition Jerry's father was present but he was not familiar with the terms that were being used either. The judge was bound by law to use "the least restrictive means" and to use community based resources for disposition. After the hearing the Court Counselor told Jerry to report to him once a month, to get back into school and to go for his counseling appointments already scheduled with mental health. Nobody told Jerry or his father how they were to arrange for transportation for these appointments.

Because the Code does not provide a specific timetable for court appearances following the time of the filing of a petition nearly two months lapsed since the night Jerry was stopped in the stolen vehicle. Because the Code fails to require the appearance of the parent(s) with juveniles unless subpoenaed, Jerry was adjudicated without his parent present or involved in the process. Neither Jerry nor his father fully understood the significance of the adjudication and disposition hearings. Consequently, Jerry experienced no immediate consequences for his actions.

November 1994

Because Jerry had no transportation to get to his mental health appointments, he never went. When he returned to school he took a knife with him because he was afraid that his friend who had been driving the Jeep would assault him. When school officials found the knife Jerry was suspended for the rest of the school year. A week later Jerry was caught with a handgun. Nine months after stealing the shirt, Jerry was back in court. This time the Judge continued Jerry's probation for one year and placed him on a suspended commitment to training school upon the agreement of Jerry and his Court Counselor that Jerry would apply to wilderness camp. The Judge also ordered that Jerry be placed in detention for two twenty-four hour periods to begin immediately.

ISSUES:

Students in possession of a weapon on school grounds may be suspended long term and the schools are not required to provide alternative education. Thus, Jerry would not be in school during the day and since he was too young to be employed he was left with a lot of unsupervised time on his hands once he had served his two days in detention.

The judge was not satisfied that "all appropriate community resources had been exhausted" so by law he could not commit Jerry to Training School. The law also only authorizes a maximum of five twenty-four hour detention periods. The Judge could not order Jerry to wilderness camp as it is a voluntary program. Jerry visited wilderness camp but refused to go. Jerry's father was not held accountable for failing to arrange transportation to counseling and for failing to report Jerry's curfew violation.

Because of the school's "zero-tolerance" policy and lack of alternative educational placements for juveniles such as Jerry, and because the judge did not condition Jerry's suspended commitment to training school on Jerry's successful completion of the wilderness camp, Jerry experienced only a slight consequence for his actions.

February 1995

Jerry and a 16 year old friend robbed a man walking down the sidewalk. Jerry's friend brandished a handgun at the victim while Jerry reached into the victim's pockets and took five dollars. Jerry and his

friend were caught and Jerry was placed into detention. The District Attorney's Office asked the Juvenile Court Judge to transfer Jerry's Armed Robbery charge to Superior Court. The Judge agreed and said that anytime a 14 year old uses a gun to commit a felony and comes before him they were "going up." Jerry was held in the juvenile detention center for eight months before his case was finally resolved in Superior Court. Jerry pleaded guilty to Common Law Robbery and was sentenced to not less than eight months and not more than ten months in the Department of Corrections which was suspended and he was placed on adult probation for thirty-six months.

While on probation Jerry killed a known drug dealer and is charged with Murder. Due to Jerry's age the District Attorney's Office allowed him to plead guilty to Manslaughter and agreed that the active sentence he will get of twenty months will run concurrently with the sentence for the robbery.

ISSUES:

The cases of juveniles 13 years old or older may be transferred to Superior Court without any specific findings of fact for the transfer required by law. Juveniles awaiting trial in Superior Court may post a bond or if they cannot afford a bond, they must be held in juvenile detention until they are sixteen. This contributes to the overcrowding in juvenile detention.

When Jerry pleaded guilty to Common Law Robbery his prior record in Juvenile Court could not be considered by law and so for sentencing purposes he had no prior record. Because he was convicted of a felony, he was not allowed back into the public schools and there were no alternative schools for him. Because of his age and his record it was virtually impossible for him to find employment.

Had the District Attorney's Office not requested transfer of Jerry's case, Jerry would in all likelihood have received an "indefinite commitment" to training school in Juvenile Court and could have remained there until he was eighteen. In training school, Jerry would have received educational and vocational services as well as counseling. Although binding a case over to Superior Court for trial as an adult may sound tough, in reality it often results in a more lenient sentence, with no rehabilitative services, than if the case had not been transferred.

While Jerry's appearance and conviction in Superior Court had earned him an adult record, he received a more lenient sentence for this offense in "adult court" than he would have in Juvenile Court.

This is an actual case.

Appendix V:

**Out-of-School Suspension in
North Carolina Public Schools,
An In-Depth Study**

OUT-OF-SCHOOL SUSPENSION IN NORTH CAROLINA PUBLIC SCHOOLS, AN IN-DEPTH STUDY

SUMMARY

Background Statement

"Out-of-School Suspension In North Carolina Public Schools, An In-Depth Study" is based on data collected from 109 LEAs on suspensions/expulsions during the Fall 1996 by Nancy Driscoll. Despite the difficulties experienced collecting and compiling this kind of data, we can feel confident that the general outcomes and trends emerging from the process will prove both useful and insightful as we move to address the future needs of students at-risk of suspension or expulsion. The following findings, conclusions, and recommendations are based on the data submitted by reporting LEAs:

Findings

The findings of the study are based on 109 of 118 LEAs reporting within the time limitations set for reporting. Significant results are cited below:

- Nearly 82,000 students were reported to have been in Out-of-School suspension in 1995-96. Seven hundred of these students were reported as long-term suspensions.
- Of the 82,000 suspensions, there were 119,000 individual (multiple) suspensions resulting in more than 500,000 days out of school. Nearly six percent of the state's students were suspended out-of-school at least once during 1995-96.
- According to the reported data, males were suspended three times as often as female students.
- African-American students accounted for over one-half of the suspensions. White students accounted for 47,000 of the suspension incidents, while black students accounted for 67,000.
- By gender, black males accounted for 50,000 suspension incidents, while white males accounted for 40,000. Black females accounted for nearly 20,000 suspensions and white females had over 10,000 incidents.
- Most frequently students were suspended for class disruptions or rule violations.
- The second most frequent offense resulting in suspensions was fighting.
- White students had slightly more suspensions for infractions related to substance abuse.
- Black students were suspended in middle and high schools primarily for rule violations, fighting, and other unacceptable behavior.
- Hispanic and Native American students were suspended most often for unacceptable behavior, rule violation, and fighting.

- White students are suspended an average of 3.1 days, blacks 3.6 days, Native Americans 4.1 days and Hispanic students 3.2 days.
-

Conclusions

From the data reported by LEAs, the following picture emerges for student suspensions in North Carolina:

- The largest number of suspensions statewide is due to rule infractions and unacceptable behavior.
 - A significant number of students was suspended for fighting; however, instances of assault, possessions and sale of controlled substances, and possession of a weapon were relatively rare.
 - The suspension of African-American males far exceeds the actual representation of these students (30%) in the school population.
 - Males in general are much more likely to be suspended than females regardless of ethnicity at the rate of 3:1.
 - Class disruptions/rule violations was the infraction for which students had the highest percentage of suspensions across the state.
 - Students at ages 12 - 17 are the group most likely to be suspended.
-

Recommendations

- Consider a standardized state-wide database system that will provide error checking and electronic transfer of data. Use of such a database at the LEA level would provide for ongoing monitoring and analysis of critical discipline and suspension data.
- Identify early those students at highest risk for school failure because of repeated discipline problems and multiple suspensions.
- Evaluate each of these students to determine to what extent academic skill deficits or other social, emotional or family problems are contributing to school behavior problems. This evaluation could be accomplished through the mechanism of the student assistance team.
- Develop an intervention plan for high-risk/high-need students before multiple suspensions lead them to leave school altogether.
- Encourage school districts to review their in-school suspension services. If such a program is in use and (1) students are repeatedly referred to the program, (2) students go on to out-of-school suspension, (3) there does not appear to be equity in who is referred, (4) students act up in and/or are not benefiting from the programs, or (5) school discipline overall is not improving, consider moving to a therapeutic in-school suspension program which provides

assessment and intervention services to truly improve behavior.

- Analyze the equity issues that are apparent from this study. Why are black students so much more likely to be suspended? Why are they also likely to be suspended for more days than white students? How can we improve educational services for black males who are more likely to be suspended than any other gender/ethnic group?
- Target ages twelve through seventeen for broad intervention services since students in this age group are the most likely to be suspended. Consider special intervention options for young students whose behavior has resulted in multiple out-of-school and/or long term suspensions.
- Finally we must encourage all LEAs to do what is best for all children as we work to improve public education. School improvement at the expense of segments of the school population is short-sighted. If too many students are left behind in our quest to meet the very valid public demand for high achievement and strong discipline, we are in danger of creating a cohort of under-educated, unemployable, angry young people with whom we all must deal for many years into the future. The public schools of North Carolina must put forth the very best effort to meet the needs of all children through thoughtful planning and workable programs.

Study reveals gap in suspension totals

More black students affected statewide

Associated Press

GREENSBORO — Black students account for almost 70 percent of out-of-school suspensions in Guilford County, a trend that's echoed across the state.

According to records given the News & Record of Greensboro by the school system, black students, who comprise less than 40 percent of the student population, were suspended about 9,000 times last school year. White students accounted for less than 4,000 suspensions.

A study commissioned in the 1995-96 school year by the state Department of Public Instruction shows a racial school-suspension-gap crisscrossing North Carolina. That survey revealed black youths, who comprise about 30 percent of the state's students, accounted for 56 percent of almost 120,000 reported suspensions.

The state survey also showed that black students were suspended longer than whites, an average of 3.6 days, compared to 3.1 days for white students.

In the Charlotte-Mecklenburg school district, where black students make up a little more than 40 percent of the population, black students account for 75 percent of long-term suspensions. Black students in Wake County make up 26 percent of the public school population and account for 54 percent of out-of-school suspensions.

Reasons for the suspension gap offered by teachers, school administrators, sociologists, civil rights workers and students include:

■ **White teachers' preconceived beliefs** that black children will be aggressive, disruptive and have difficulty learning.

■ **Socioeconomics.** This is the reason, or reasons, given by most people, white and black, for the disparity. The grip of poverty and the black experience of racism and slavery lead — in many black children — to feelings of inad-

equacy and an early loss of self-esteem. Black students then manifest these feelings in class disruptions, fights, inappropriate language and other violations of the student Code of Conduct.

■ **Tough black standards:** Some black teachers and administrators may be tougher than white educators in disciplining black students.

■ **Class.** This reason is linked with socioeconomic reasons, minus the effects of race. Some believe the problem has nothing to do with race, that it is strictly one of poverty and class.

■ **Lack of classroom management.** Some believe that too many teachers are too quick to rid their rooms of disruptive students instead of trying to calm and work with them.

■ **Trivial offenses.** The authors of two surveys on suspensions say it might be time for school administrators to consider changing the student Code of Conduct — that students are getting suspended for relatively minor infractions.

■ **Black students commit the most rule infractions** and are punished fairly without regard to race.

Most school administrators, white and black, say race has no bearing on a teacher's or principal's decision to punish.

"I have to support our teachers," Guilford schools Superintendent Jerry Weast said. "I think that 95 to 96 percent of the time they make the appropriate call that any reasonable person would support and understand."

Louis Fields, chairman of the local NAACP's education committee, said school officials must realize that race is a major reason for the suspension gap.

"White teachers come to school believing that black children are going to misbehave," he said. "A lot of teachers are afraid of these kids, and they're ready to get rid of them."

Students interviewed said they have seen no evidence of racial bias in the process.

Appendix VI:

**Substance Abuse Proposal: NC Department of Health and
Human Services, Division of MH/DD/SAS &
Governor's Office of Substance Abuse Policy**



North Carolina Department of Health and Human Services
Division of Mental Health, Developmental Disabilities
and Substance Abuse Services

325 North Salisbury Street • Raleigh, North Carolina 27603 • Courier # 56-20-24

James B. Hunt, Jr., Governor
Richard L. Bruton, MD, Secretary

John F. Baggett, Ph. D., Director
(919) 733-7011

January 27, 1998

MEMORANDUM

TO: Marcia Morey, Chair
Governor's Commission on Juvenile Crime and Justice

FROM: Flo A. Stein, M.P.H.
Section Chief, Substance Abuse Services
Division of MH/DD/SAS

Janice Petersen, Ph.D., Executive Director
Office of Substance Abuse Policy

SUBJECT: Alcohol and Drug Prevention and Treatment Services

The Substance Abuse Services Section in the Division of Mental Health, Developmental Disabilities and Substance Abuse Services proposes the following activities and programs to address drug and alcohol problems in youth, ages 9-17. This plan was developed in consultation with the Governor's Office of Substance Abuse Policy. We are recommending that this plan become a companion to the Final Recommendations prepared by the Governor's Commission on Juvenile Crime and Justice. Successfully addressing substance abuse problems is a pre-requisite for the implementation of the juvenile justice initiative.

FS:JP:bb

cc: Secretary Richard Moore
Crime Control and Public Safety

Building Capacity for Substance Abuse Prevention and Treatment Services For Youth

The Governor's Alcohol and Other Drug Program should be guided by the first goal of the 1997 National Drug Control Strategy "Educate and enable youth to reject illegal drugs as well as underage use of alcohol and tobacco." North Carolina children and their families face alcohol and other drug problems that cut across the current jurisdictions of many state agencies: juvenile justice, health, mental health, public housing, education and others. In North Carolina these agencies often work with insufficient knowledge of, or cooperation with, the efforts of other agencies. The Governor's Executive Order No. 115 "Single State Agency to Set Standards and Models of Care For Alcohol and Drug Prevention and Treatment Services" recognizes that this lack of coordinated statewide efforts has been a major obstacle to dealing with the problems of drug abuse. The Substance Abuse Services Section of the Division of MH/DD/SAS, serving as the Single State Agency (SSA), proposes to coordinate the planning and implementation of the following recommendations. These activities are designed to compliment and enhance the recommendations of the Governor's Commission on Juvenile Crime and Justice.

Primary Goal:

By the end of Year 2002, reverse the upward trend and reduce past month use of marijuana among 9-17 year olds by 25 percent (baseline 1997).

Associated Goals:

By the end of Year 2002 reduce past month use of all illicit drugs among 9-17 year olds by 35%.

By the end of Year 2002 reduce past month use of alcohol among 9-17 year olds by 20%.

Reduce the uses of tobacco among youth by 50% within five years.

Youth at Risk

Although alcohol and tobacco products cannot be legally sold to minors, drinking and smoking are widespread among youth people. Heavy drinking is pervasive even if teens do not view it as drunkenness. Smoking has substantially increased since 1991, particularly among younger children. Since 1991, illicit drug use has climbed sharply among junior high and high school students, according to the "Monitoring the Future" survey. Increases have been most dramatic among the youngest teens. Marijuana remains by far the most widely used illicit drug, but other drugs, notably LSD, methamphetamine and heroin are gaining popularity. Although heroin rates remain low overall, heroin use among adolescents has almost tripled

According to the National Institute on Drug Abuse (NIDA), today's heroin users are increasingly younger and suburban. In fact 8th graders reported higher rates of heroin use in 1996 than did older students. Cafeteria use of club drugs is reported all over the country. Illicit drugs such as Ketamine, LSD, and MDMA and prescription drugs, such as Ritalin, Rohypnol and Clonapin, are popular with teenagers who take drugs as part of a club scene to increase stamina. Many young people experiment with a variety of hallucinogenic, sedative and hypnotic drugs in combination along with alcohol.

Adolescents begin using drugs for many different reasons, reflecting individual history as well as social, family and environmental influences. Since children are particularly high risk because of person, family and community factors. The younger the child is when experimentation begins, the more likely it is that serious dependency will develop later. A recent study of juvenile arrestees found that youth who started drinking at age 10 or younger became dependent on alcohol five times more often than those who began drinking after age 15. Homeless and runaway youth report much higher alcohol, tobacco and other drug use than other children. Additional risk factors include having a parent or sibling addicted to alcohol or other drugs, impulsive or anti-social behavior and early school failure.

Alcohol and Other Drugs

Despite the legal drinking age of 21, many youth under the age of 18 consume alcohol. Nearly one-third of high school seniors experience a "binge" of five more drinks in a row within the previous two weeks. The average age at which young people begin drinking is 13. North Carolina recognizes the harmful consequences of underage drinking, including above average rates of traffic fatalities, hangover, injuries and legal difficulties as well as the potential for future heavy alcohol and other drug use.

Recommendation:

Reduce the harmful impact of early alcohol use and abuse through participation in the Robert Wood Johnson, "Underage Drinking Initiative" managed by the Governor's Institute on Alcohol and Substance Abuse.

Parents

Parents are powerful influences in the lives of their children. Through their words and their actions, parents provide key guidance on alcohol, tobacco and other drug use. Parents have a critical role to play in prevention — within the family and in collaboration with schools, churches, and community groups. Parenting is prevention.

Recommendation:

Integrate the Parenting for Prevention Program with other initiatives such as Smart Start, SOS, Communities That Care, and Employee Assistance Programs. This project will strengthen existing anti-drug programs directed by parents, help develop a drug focus for various parent groups which do not currently have a major drug focus, and provide training, technical assistance and resources for parents in initiating drug prevention programs for youth.

Media and Popular Culture

Beyond the family, children learn about tobacco, alcohol and other drugs from their larger environment. Adolescents are particularly vulnerable to social pressures. Advertising often reinforces teens assumptions that "everyone is doing it," by promoting images of successful popular people who smoke, drink or look as if they are using drugs. Extensive research shows that exposure to advertising commercials increase drinking and drug using behavior.

Research tells us that the drug problem in America is extremely sensitive. Drug use rises and falls based on key attitudes held by consumers, specifically how dangerous and socially acceptable drugs are perceived to be.

Recommendation:

Support the activities of the Partnership for A Drug-Free North Carolina as part of a non-profit coalition of volunteers from the communication industry, best known for its anti-drug advertising campaign. The Partnership generates donations of broadcast time and print space for its campaign.

Schools and Drugs

The development and implementation of a kindergarten through twelfth grade substance abuse instructional curriculum is a critical component in the development and maintenance of drug-free schools. Education should be coupled with school policies against alcohol and community wide anti-drug initiatives. The incidence of student drug use is rising as a result of declining emphasis on comprehensive alcohol and other drug education. School is an important point of intervention to help identify students with alcohol and other drug problems and to refer them to appropriate counseling and treatment services.

Recommendation:

Ensure that every school student in North Carolina, including private school students, shall receive mandatory instruction in alcohol and other drug abuse, including tobacco in every year, in every grade from kindergarten through grade twelve.

Schools are important point of intervention to help identify students with alcohol and other drug abuse problems. Efforts to address the problem in schools should enable students to seek help for their problems through Student Assistance Programs and treatment services.

Recommendation:

Inventory availability of Student Assistance Programs in North Carolina Middle Schools and High Schools.

Recommendation:

Establish memoranda of agreement between schools and local mental health centers to ensure that students identified with alcohol and other drug problems are referred to treatment.

Recommendation:

Ensure consistent alcohol and other drug training is provided for School Resource Officers in cooperation with Students Against Violence Everywhere.

Girl Power

The National Household Survey on Drug Abuse shows alarming increases in the number of girls ages 9 to 17, who drink alcohol, smoke cigarettes and use marijuana, stimulants and inhalants. These trends signal an urgent need to educate young girls about the dangers associated with drug use and its devastating consequences. The rate of illicit drug use rises sharply as girls move into adolescence. Recent data from the Youth Risk Behavior Study (CDC) has shown that alcohol use in adolescents is a strong predictor of both sexual activity and unprotected sex. The U.S. Department of Justice reports that female juvenile violent crime arrests doubled between 1985 and 1994. Parents, teachers, and other caregivers need information and support in providing the extra boost some girls need. Girls with positive interpersonal and social skills are less likely to use drugs, as are girls who develop interests and abilities in academics, arts, and sports.

Recommendation:

Join with Health and Human Services Secretary Donna E. Shalala and the North Carolina Women's Substance Abuse Advisory Committee in the national public education campaign "Girl Power" to give girls the tools they need to increase their skills and confidence to make the transition from childhood to adolescence health and drug free. "Girl Power" is a multiphase, multimedia public education program with the overall objective to delay the onset and reduce the use of alcohol, tobacco, and illicit drugs among young girls.

Treatment for Youth

Drug treatment has traditionally focused on adult addicts, who often have developed severe problems. Only a dozen publicly funded treatment programs are designed exclusively for adolescents. Treatment should be developmentally appropriate. Different levels of drug problems require different treatment environments; not all programs are equally effective for young people. Programs across North Carolina should provide assessment, education, treatment, and continuing care for adolescents referred by parents, schools, juvenile courts and other health and human service agencies.

Recommendation:

Ensure that age appropriate alcohol and other drug treatment should be uniformly available in every community.

Child Abuse, Neglect, and Family Violence

Child abuse, neglect and family violence are closely linked with alcohol and other drug use. Illicit drugs are involved in half the reported incidents of family violence, while alcohol is involved in three-quarters of the cases according to the National Research Council. More than three quarters of all foster care cases involve drug abuse by at least one parent; this does not include alcohol abuse. One study found that 36 percent of the children eligible for foster care also had substance abuse problems. Treatment for parents is prevention for the child. Children with substance abuse problems of their own are far more likely to experience multiple placements and stay in foster care longer than other children.

Recommendation:

All families experiencing abuse and neglect investigations should be assessed for alcohol and other drug problems. Local Departments of Social Services working cooperatively with local mental health agencies will develop a protocol for such assessments. Family members or other caregivers should be required to participate in treatment to maintain custody of children.

Recommendation:

Children placed in foster care should be provided with alcohol and other drug education and intervention services. The entire family, including siblings, should be included in the assessment. Older youth will be assessed for their own alcohol and drug abuse problems and referred to treatment where appropriate.

Recommendation:

Foster families, day care providers and other caregivers should receive training for the appropriate care of children with alcohol and drug dependent parents.

Children of Addicted Parents

Children who are members of a family with an alcoholic, addicted, or alcohol or drug abusing parent, guardian or other adults are at higher risk for initiating drug use, are at higher risk for developing alcoholism and other drug dependencies, are at greater risk of physical and sexual abuse, are more likely to have school health and behavior problems than other children.

Education, prevention, and counseling services can enable children of alcoholics and addicts to better understand alcoholism and learn ways to cope with addicted family members. Services for such children can reduce the emotional and physical damage caused by their parents drinking and reduce the risk of future alcohol and other drug abuse.

Recommendation:

Area mental health centers should give priority for admission for children of alcoholics who apply for alcohol and other drug treatment.

Recommendation:

Develop services targeted to those children whose parents are participants in North Carolina Work First Program. Twenty to thirty percent of parents requesting assistance have significant alcohol and other drug problems. Intervention services for the children could result in reduced numbers of children experiencing alcohol and drug problems.

Drugs and Delinquency

Behavioral and emotional problems in adolescents are often associated with delinquency, alcohol and other drug use. According to a recent nationwide study, one in five teens ages 12 through 17 reports serious problems with depression, anxiety, delinquency and aggression. These teens are much more likely to smoke, drink heavily and use other drugs. Moreover, drugs seem to exacerbate delinquent behavior. A major study of 7th grade boys already involved in delinquent activity found that those who use drugs reported much higher rates of truancy, shoplifting, gang fighting and vandalism than boys who did not use drugs.

Rising teen drug use has been accompanied by increasing drug arrests of juveniles. From 1992 to 1996, juvenile arrests for drug law violations (possession or sale) more than doubled.

The nationwide Drug Use Forecasting System (DUF) reports that in 1996, more than half of arrested juveniles tested positive for drugs at the time of arrest, compared to less than one-fifth

The nationwide Drug Use Forecasting System (DUF) reports that in 1996, more than half of arrested juveniles tested positive for drugs at the time of arrest, compared to less than one-fifth five years ago. Some cities like Washington, DC show higher rates, with two-thirds of arrested juveniles testing positive. Studies of juveniles in custody for various offenses confirm the pervasiveness of drug use.

Recommendation:

Expand the MAJORS (Managing Access for Juvenile Offender Resources and Services) Program to an additional twelve judicial districts. Provide transition and continuing care services for juvenile offenders that blend the control measures of court requirements, sanctions and community service with substance abuse treatment. Services are directed to juveniles under court supervision in the community and juvenile offenders released from training school or residential treatment.

Recommendation:

Enhance the Governor's One on One Program through the development and delivery of an alcohol and other drug education program for volunteers.

Young Drivers

Alcohol remains closely linked to accidents, which are the leading cause of death for adolescents. In 1996, a third of the 25,000 fatal traffic accidents for this group were related to alcohol. Moreover, driving under the influence of illicit drugs may be more widespread than generally realized.

Recommendation:

The Governor's Highway Safety Initiative should re-emphasize the "Booze It or Lose It" campaign focusing on 15 to 17 year olds.

Recommendation:

Encourage law enforcement and judicial officials to enforce the zero alcohol (.00) tolerance for young drivers.

Recommendation:

Direct the DWI Section of DHHS to develop age appropriate treatment models for young DWI offenders.

Although marijuana arrests are now largely associated with white juveniles, heroin and cocaine arrests involve black juveniles by a margin of two to one. In part these differences reflect patterns of drug dealing: crack cocaine, powder cocaine and heroin have been more prevalent in inner-city drug markets, which serve both black and white clients. As high purity, low cost heroin becomes more popular in the suburbs as well as the cities, the racial distribution of ten drug arrests may soon change.

Recommendation:

Analyze capacity of narcotic treatment to provide appropriate treatment of the emergency youth heroin epidemic. Develop training and education programs for professionals in medicine, social work, and substance abuse services.

Violent Crime

Like drug abuse, violence is beginning at younger ages. One in ten students in 7th and 8th grades acknowledges committing a violent act in the past year compared to one in twelve high school students, according to the 1997 report of the National Longitudinal Study of Adolescent Health.

Homicide has long been linked to substance abuse; autopsies of homicide victims have found that 40 to 70 percent had been drinking at the time of death. Among juveniles, nearly 60 percent of homicide victims have some level of alcohol in their blood at the time of death. Add Health reports that even those who do not drink or use other drugs are much more likely to be killed in households where drugs are used.

Researchers note that the drug culture environment may contribute to the increased risk of homicide. Theft, drug dealing and other activities to obtain drugs often generate violent behavior. Drinking, other drug use and drug dealing are closely linked to juvenile violence. Half of all juveniles arrested for violent offenses test positive for drugs at the time of arrest.

Recommendation:

Substance abuse specialists will be assigned to community policing initiatives in selected cities to provide "street" outreach, alcohol and drug education to potential gang members, their parents, and other neighborhood groups.

Sources

Girl Power, Department of Health and Human Services, 1997

Keeping Score, Drug Strategies, 1997

Pulse Check, Office of National Drug Control Policy, 1997

Substance Abuse Services, Division of MH/DD/SAS, January 1998

The White House President's Commission on Model State Drug Laws, December 1993

Appendix VII:

Piney Woods Boarding School Description

Piney Woods Public Boarding School Mississippi

Per the recommendation of Sheriff Baker, the Piney Woods Country Life School's model is recommended as a strategy for preventing and addressing issues (risk factors, e.g., toxic home environments) directly relating to juvenile crime and delinquency.

Structure

The Piney Woods Country Life School is the largest of five historically Black boarding schools in the country, three in the south, two in the mid-Atlantic. The school is located in a rural area 21 miles from Jackson, Mississippi, on a 2,000 acres farm. The school itself sits on 60 acres.

Piney Woods is based on a residential, community-based academic model, with a focused academic climate, consistent discipline, and strong ethical and spiritual values. The campus functions in much the way that a community would with its own post office, security system, communal activities, outdoor amphitheater, sports fields, etc. Many of the teachers and staff live in houses on campus, as does the school's president.

- The **average cost per student** is approximately **\$20,000**.
- The **average student background** is **poor, single parent, urban and rural**. Students come from communities across the United States.
- The **average length of stay** per student is **three years**.
- The **age range** of boarding students is **12 to 19**.
- The **student population** is **300, male and female**.
- Accredited academic instruction is offered for grades six through eleven.
- Students are enrolled through an application process. It is not a general rule to admit court-supervised youth; however, there are some exceptions.

Funding

The total annual operating budget is \$7.4 million. 30% of the budget is covered through fund raising efforts (e.g., individuals, private, and corporate); 45% operating funds are generated through an unrestricted endowment; 10% through student fees; 15% through auxiliaries such as food services, farming produce.

The school does not receive any federal funds with the exception of the National Schools Lunch Program, which a major percentage of the students are eligible to receive.

Mission

The mission of the school is "to provide excellence in education within a Christian community through creation of an exceptional academic model which supports the tenet that all students can learn, develop a strong work ethic, and lead extraordinary lives through academic achievement and responsible citizenship."

Governance

Piney Woods is governed by a 22-member Board of Directors. The role of the Board is to monitor the school's fiscal management, oversee program and facility issues, assure that the school meets the academic, ethical, spiritual and safety needs of the students, and assist in the raising of funds.

Success Rate

Over 98% of the 1996 and 1997 senior classes went to college. Graduates attend the some of the nation's top universities and colleges including: Harvard, Vassar, Tufts, Amherst, Smith, Oberlin and Michigan state in addition to the fine historically Black colleges and universities across the nation.

The 1995 graduating class (100%) were accepted into more than 270 of the finest colleges and universities in the country with scholarship offers over \$1.5 million. Some of the 1995 graduates are attending Morehouse, Fisk, Spelman, Jackson State University, Purdue, and Alcorn State University.

Summary of Policy Changes in the Juvenile Justice Reform Act

- **Changes purpose of dispositions in juvenile court**
- **Structures judicial decisions (similar to SSA) at initial disposition and for probation violations**
- **Prioritizes use of training school, intermediate, and community sanctions/resources**
- **Requires a minimum term in training school of 6 months**
- **Authorizes the court to extend the period in training school or on probation to the offender's 19th birthday**
- **Creates new intermediate dispositions for juveniles**
- **Increases the period of probation, adds more conditions to probation and authorizes judges to delegate authority to juvenile court counselors to add requirements to probation**
- **Requires a 90 day period of post-release supervision when an offender is released from training school**
- **Emphasizes parental accountability**

**JUVENILE JUSTICE REFORM ACT
DISPOSITION CHART**

OFFENSE	DELINQUENT HISTORY		
	LOW (0-1 point)	MEDIUM (2-3 points)	HIGH (4 or more points)
Violent (Class A-E felonies)	Level 2 or 3	Level 3	Level 3
Serious (Class F-I felonies and A1 misdemeanors)	Level 1 or 2	Level 2	Level 2 or 3
Minor (Class 1, 2, 3 misdemeanors)	Level 1	Level 1 or 2	Level 2

DISPOSITIONAL LEVELS

LEVEL 1 COMMUNITY	LEVEL 2 INTERMEDIATE	LEVEL 3 COMMITMENT
Continue for Disposition	Intensive Supervision Probation	Commitment to Training School for a minimum of 6 months
Community-Based Program	House Arrest with or without Electronic Monitoring	
Fine	Supervised Day Program	
Community Service	Regimented Training Program	
Counseling	On-Track Plus	
Restitution	Suspension of a More Severe Disposition	
Regular Probation	Multi-Purpose Group Home	
Curfew	Eckerd Wilderness Camp	
Victim-Offender Reconciliation Program	Short-Term Local Secure Confinement (up to 14 days during probation period)	
Residential placement with a relative, or in foster care, a group home, and Eckerd Wilderness Camp, or in a treatment facility		
Vocational or Educational Program		
Intermittent Secure Confinement (up to 5 days during probation)		

VISITOR REGISTRATION SHEET

JOINT HOUSE JUDICIARY II and SENATE JUDICIARY MEETING 5/21/98

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Starwood	Gov's Commission on Juvenile Crime & Justice
Julia Kim	Gov's Commission on Juvenile Crime & Justice
Franklin G. Gandy	Gov's Commission on Juvenile Crime & Justice
Cam Cover	BPM H
Beryl S. Wade	Gov's DM
Shad Davis	NCAE
Debra K. Ross	ACLU
Holly Wilson	ACLU
Anne L. Edwards	Christian Science Comm Pub for NC
John M. May	J. E. CWA
Alex Atkinson	BILL DRAFTING
Esther Manheimer	"
Jessie Sade	"
Lesh House	Conf of District Attorney's
Ray Aycock	County Com Assoc
John Z. Hunt	NCFPC
Luke Barber	Carolina Justice Policy Center
Leo Rubenstein	CYPL
Sam Haywood	SBE
Joe Stender	CCPS
Richard H. Moore	CCPS
John L. Wilson	NCAE
W. H. Boone	Center for
Mildred Gregory	Pop & Policy office
Roslyn Smith	Lobbyist
Rock Kane	AOC
Bobwell	AOC

MINUTES
SENATE JUDICIARY COMMITTEE
May 26, 1998

The Senate Judiciary Committee met on May 26, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and reminded the Committee that this would be a continuance of the discussion of Senate Bill 1260 - AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO MAKE CONFORMING CHANGES TO THE STATUTES, AND TO APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE.

Senator Cooper further announced that the bill would be broken down into sections so that each section could be discussed individually. The portions of the bill to be discussed would be the Agency and on Prevention.

Representative Baddour, Chairman of the Agency Committee of the Juvenile Justice Commission, was recognized to discuss this portion of the bill.

Representative Baddour explained that the Committee he chaired had the responsibility of looking at the agency - the way that juveniles were dealt with both at the state and local levels. The Agency Committee made three basic recommendations that are included in the bill:

1. Create a cabinet level Department of Juvenile Justice.

The present Juvenile Justice system is served by two areas:

1) Administrative Office of the Courts where the juvenile court counselors are located. They perform the function of intake, juvenile probation and after care (after a juvenile is released from a training school) and 2) the Department of Health and Human Services - Division of Youth Services. They are responsible for the facilities - detention centers, training schools, the wilderness camps, the multi-purpose group homes and the community-based alternative programs.

The Agency Committee has recommended that these two areas be brought together and create a cabinet level Department of Juvenile Justice. There would be approximately 1800 employees and the budget would be \$109 million. The Governor's people have looked at this and believe that they can produce sufficient savings to be able to implement this without any additional cost. It is felt that this would enable the state to better deliver juvenile services if these two areas

were brought together. There would be a cabinet level official appointed by the Governor who would be able to come before the Legislature and advocate for the needs of the system. This would enable this official to recommend policy and to determine policy for the Department.

2. Create a State Advisory Council on Juvenile Delinquency and Prevention.

This would be chaired by the Governor and the Chief Justice. The bill provides guidelines as to who would make up the Advisory Council. Basically, it would be cabinet secretaries who have as part of their responsibilities something to do with the Juvenile Justice System. This Council would recommend policy and determine the direction that the Juvenile Justice System would take.

3. Create, at the local level, Youth Service Advisory Councils.

These councils are appointed by the County Commissioners and are charged with the responsibility of allocating the state community based alternative funds. They are a very important component of the system. The counties are contributing about 35% of the funds.

The Agency Committee is recommending that the Youth Service Advisory Councils be replaced with Juvenile Crime Prevention Councils. The difference is that it would be designated in the legislation the people who would have to be appointed to these councils. In doing that it would be a much stronger council. These councils would be composed of the School Superintendent, a Chief of Police, the Sheriff, District Attorney, Chief Court Counselor, Director of Mental Health, County Manager, a substance abuse professional, member of the clergy, County Commissioner, a defense attorney, a non-profit representative or their designee, up to 25 members.

Language was put into the legislation which would make it clear that no member could have a conflict of interest when voting for funding.

Richard Moore, Secretary of the Department of Crime Control and Public Safety, was recognized to respond to questions from the Committee.

Senator Cooper recognized Senator Jeanne Lucas, Chairman of the Prevention Committee of the Juvenile Justice Commission.

The Prevention Committee had four basic concerns:

1. It is imperative that children be prevented from ever being at high risk of juvenile delinquency.
2. Children who are already at high risk must be prevented from actually becoming juvenile offenders.
3. First-time juvenile offenders must be prevented from becoming repeat offenders.
4. Chronic and/or serious juvenile offenders must be prevented from going deeper into the system.

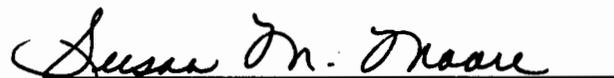
The State of North Carolina must bring together all of the agencies in a collaborative coordinated method so as not to have a duplication of efforts and the state must get the most out of the it's money to help the children and to keep our communities safe.

The Committee is recommending that there be state-wide coordination, that there be an Advisory Council to be headed by the Governor and the Chief Justice, and that there be an opportunity to look at the communities and organize those agencies and those services to protect the children. It is known which children are at risk, the protective factors which should be there are known and it is known that with cooperative efforts, a difference can be made.

Senator Cooper reminded the Committee that the discussion and review of the bill would continue at a future meeting.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, May 26, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 05/22/98 3:10 PM

AGENDA
SENATE JUDICIARY COMMITTEE
May 26, 1998

SB 1260

Juvenile Justice Reform Act

Cooper

Senator Jeanne Lucas - "Prevention"

Representative Phil Baddour - "Agency"

SENATE BILL 1260 (1st ed.): JUVENILE JUSTICE REFORM ACT

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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1

SENATE BILL 1260

Short Title: Juvenile Justice Reform Act.

(Public)

Sponsors: Senators Cooper, Lucas, Odom, Hartsell; Albertson, Dalton, Dannelly, Forrester, Garwood, Gulley, Hoyle, Jenkins, Kinnaird, Lee, Martin of Pitt, McDaniel, Miller, Phillips, Plyler, Purcell, Rand, Reeves, Soles, Warren, Weinstein, and Wellons.

Referred to: Judiciary.

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO
3 AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO
4 MAKE CONFORMING CHANGES TO THE STATUTES, AND TO
5 APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON
6 JUVENILE CRIME AND JUSTICE.
7 The General Assembly of North Carolina enacts:
8 PART I. ESTABLISHMENT OF THE DEPARTMENT OF JUVENILE JUSTICE
9 AND CONFORMING STATUTORY CHANGES.
10 Section. 1. (a) Articles 24 and 24A of Chapter 7A of the General
11 Statutes, Article 2 of Chapter 110 of the General Statutes, and Chapter 134A of the
12 General Statutes are repealed.
13 (b) Chapter 143B of the General Statutes is amended by adding a new
14 Article to read:
15 "ARTICLE 12.
16 "Department of Juvenile Justice.
17 "Part 1. General Provisions.
18 "§ 143B-511. Department of Juvenile Justice -- creation.
19 There is hereby created and constituted a department to be known as the
20 'Department of Juvenile Justice,' with the organization, powers, and duties defined in
21 Article 1 of this Chapter, except as modified in this Article.

1 "§ 143B-512. Definitions.

2 The following definitions shall apply to this Article, unless the context or subject
3 matter otherwise requires:

- 4 (1) Chief court counselor. -- The person responsible for administration
5 and supervision of juvenile intake, probation, and post-release
6 supervision in each judicial district, operating under the
7 supervision of the Secretary of the Department of Juvenile Justice.
- 8 (2) Community-based program. -- A program providing nonresidential
9 or residential treatment to a juvenile under the jurisdiction of the
10 juvenile court in the community where the juvenile's family lives.
11 A community-based program may include specialized foster care,
12 family counseling, shelter care, and other appropriate treatment.
- 13 (3) Court. -- The district court division of the General Court of
14 Justice.
- 15 (4) Court counselor. -- A person responsible for probation and post-
16 release supervision to juveniles under the supervision of the chief
17 court counselor.
- 18 (5) Custodian. -- The person or agency that has been awarded legal
19 custody of a juvenile by a court.
- 20 (6) Department. -- The North Carolina Department of Juvenile Justice.
- 21 (7) Detention facility. -- A facility authorized to provide secure
22 confinement and care for juveniles. Detention facilities include
23 both State and locally administered detention homes, centers, and
24 facilities.
- 25 (8) District. -- Any district court district as established by G.S. 7A-133.
- 26 (9) Judge. -- Any district court judge.
- 27 (10) Judicial district. -- Any district court district as established by G.S.
28 7A-133.
- 29 (11) Juvenile court. -- Any district court exercising jurisdiction pursuant
30 to this Chapter.
- 31 (12) Juvenile court services. -- Any type of residential or nonresidential
32 program for juveniles who are under the jurisdiction of the
33 juvenile court which provides services to a juvenile in the
34 community where the juvenile's family lives. Juvenile court
35 services may include family counseling, restitution, victim-offender
36 mediation, and other appropriate services.
- 37 (13) Juvenile facilities. -- A State-operated training school, detention
38 facility, multipurpose group home, or other residential institution
39 for committed delinquents previously operated by the Department
40 of Juvenile Justice.
- 41 (14) Juvenile Crime Prevention Councils. -- Councils in each county
42 that are appointed by the boards of county commissioners in the
43 respective counties. The Councils develop plans and administer

- 1 funds for dispositional community service and delinquency
2 prevention and annually evaluate services and programs.
3 (15) Post-release supervision. -- The supervision of a juvenile who has
4 been returned to the community after having been committed to
5 the Department of Juvenile Justice.
6 (16) Probation. -- The status of a juvenile who has been adjudicated
7 delinquent, is subject to specified conditions under the supervision
8 of a court counselor, and may be returned to the court for
9 violation of those conditions during the period of probation.
10 (17) Programs. -- Any type of residential or nonresidential program or
11 service for youth that may be developed by the Secretary as
12 authorized by this Article.
13 (18) Prosecutor. -- The district attorney or assistant district attorney
14 assigned by the district attorney to juvenile proceedings.
15 (19) Secretary. -- The Secretary of the Department of Juvenile Justice.

16 **§ 143B-513. Department of Juvenile Justice -- duties.**

- 17 (a) The Department of Juvenile Justice shall act to:
18 (1) Protect the public from acts of juvenile delinquency;
19 (2) Provide services to juveniles to assist them to become productive,
20 responsible citizens;
21 (3) Provide for a statewide and uniform system of juvenile probation
22 and post-release supervision that provides adequate and
23 appropriate services to certain children who are found to be within
24 the juvenile jurisdiction of the district court;
25 (4) Authorize an intake process for diversion of selected juvenile
26 offenders from the juvenile justice system;
27 (5) Plan, develop, and coordinate comprehensive multidisciplinary
28 services and programs statewide for prevention, early intervention,
29 and rehabilitation of juveniles;
30 (6) Implement training school programs that provide appropriate
31 mental health and substance abuse treatment and care according to
32 the needs of the juveniles and provide quality educational
33 programs, including vocational and technical education in
34 coordination with other local and State services and resources for
35 juveniles; and
36 (7) Ensure that personnel responsible for the care, supervision, and
37 treatment of juveniles are appropriately apprised of the
38 requirements of this Article and trained in specialized and cultural
39 diversity areas to comply with standards established by Chapter 7B
40 of the General Statutes.

- 41 (b) In addition to the powers and duties mandated in subsection (a) of this
42 section, the Department may release or transfer a juvenile from a secure custody
43 facility to another secure custody facility when necessary to appropriately administer
44 the juvenile's commitment. The Department shall notify the court that committed

1 the juvenile to the Department, in writing, of its intent to release or transfer the
2 juvenile. If the court does not respond within 10 days after receipt of the notice, the
3 release or transfer shall be deemed granted.

4 (c) The Department may also provide consulting services and technical assistance
5 to courts, law enforcement agencies, and other agencies, local governments, and
6 public and private organizations, and may develop or assist Juvenile Crime
7 Prevention Councils in developing community needs, assessments, and action
8 programs relating to prevention and treatment of delinquent and undisciplined
9 behavior.

10 (d) The Department shall annually collect and report budget expense data for
11 every program operated and contracted by the Department. The budget and expense
12 data shall conform to a format approved by the Department and to any statutory
13 requirements and shall include information and data on all State-operated and
14 contracted programs for the purpose of comparing programs. The Department shall
15 submit an annual budget and expense report to the Office of the Governor no later
16 than February 1 each year.

17 (e) The Department shall develop a cost-benefit model and apply the model to
18 each State-funded program. Program commitment and recidivism rates shall be
19 components of the model. In developing the model, the Department shall consider
20 the recommendations of the State Advisory Board on Juvenile Justice and
21 Delinquency Prevention. The Department shall submit a report ranking the State-
22 funded programs to the Governor and the General Assembly, on or before February
23 1 each year.

24 (f) Each programmatic, residential, and service contract or agreement entered into
25 by the Department shall include a cooperation clause for purposes of complying with
26 the Department's quality assurance requirements, cost-accounting requirements,
27 recidivism rates, and the program outcome evaluation programs.

28 **§ 143B-514. Department of Juvenile Justice -- functions and organization.**

29 (a) All authority, powers, duties, and functions, including statutory, records,
30 personnel, property, unexpended balances of appropriations, allocations or other
31 funds, including the functions of budgeting and purchasing, of the Division of
32 Juvenile Services of the Administrative Office of the Courts are transferred to and
33 vested in the Department of Juvenile Justice as if by a Type I Transfer as defined in
34 G.S. 143A-6.

35 (b) All authority, powers, duties, and functions, including statutory, records,
36 personnel, property, unexpended balances of appropriations, allocations or other
37 funds, including the functions of budgeting and purchasing, of the Division of Youth
38 Services of the Department of Health and Human Services are transferred to and
39 vested in the Department of Juvenile Justice as if by a Type I Transfer as defined in
40 G.S. 143A-6.

41 (c) All institutions previously operated by the Division of Youth Services of the
42 Department of Health and Human Services and the present central office of the
43 Division of Youth Services, including land, buildings, equipment, supplies, personnel,

1 or other properties rented or controlled for youth development purposes, shall be
2 administered by the Department of Juvenile Justice.

3 (d) All institutions previously operated by the Division of Juvenile Services of the
4 Administrative Office of the Courts and the present central office of the Division of
5 Juvenile Services, including land, buildings, equipment, supplies, personnel, or other
6 properties rented or controlled for youth development purposes, shall be
7 administered by the Department of Juvenile Justice.

8 **"§ 143B-515. Secretary of the Department of Juvenile Justice -- powers and duties.**

9 (a) The head of the Department of Juvenile Justice is the Secretary of the
10 Department of Juvenile Justice. The Secretary shall have the powers and duties
11 conferred by this Chapter, delegated by the Governor, and conferred by the
12 Constitution and laws of this State. The Secretary shall be responsible for effectively
13 and efficiently organizing the Department of Juvenile Justice to promote the policy of
14 the State as set forth in this Article and to promote public safety and to prevent the
15 commission of criminal offenses by juveniles in accord with that policy.

16 (b) The Secretary shall have the following powers and duties:

- 17 (1) To develop a sound admission or intake program to youth services
18 institutions, including the requirement of a careful evaluation of
19 the needs of each child prior to acceptance and placement.
- 20 (2) To assure quality programs in youth services institutions or youth
21 services programs which shall be designed to meet the needs of
22 children in care or receiving services.
- 23 (3) To have all other powers of a secretary in relation to a division of
24 youth services or youth services institutions or youth services
25 programs as provided by the Executive Organization Act of 1973
26 as amended and codified in Chapter 143B of the General Statutes
27 or as provided by any other appropriate State law.
- 28 (4) To adopt rules and regulations to implement the provisions of this
29 Article and the responsibilities of the Secretary and the
30 Department of Juvenile Justice under Chapter 7B of the General
31 Statutes.
- 32 (5) To designate the appropriate unit of the Department of Juvenile
33 Justice to be responsible for coordination of State-level services in
34 relation to delinquency prevention and juvenile court services so
35 that any citizen may go to one place in State government to
36 receive services or access to services.
- 37 (6) To arrange appropriate coordination and planning within the
38 child-serving agencies of the Department of Juvenile Justice and
39 promote interdepartmental coordination.
- 40 (7) To assist local governments and private service agencies in the
41 development of juvenile court services and delinquency
42 prevention, and to provide information on the availability of
43 potential funding sources and whatever assistance may be
44 requested in making application for needed funding.

1 (8) To approve yearly program evaluations and to make
2 recommendations to the General Assembly concerning
3 continuation funding that might be supported by that evaluation.

4 (9) To approve program evaluation standards by which all programs
5 developed under the provisions of this Article may be objectively
6 evaluated.

7 Such standards as may be developed for the purpose of program
8 evaluation shall be in addition to any current standards as may be
9 applicable under the existing authority of the Social Services
10 Commission and the Department of Juvenile Justice.

11 Minimum operating standards, as well as program evaluation
12 standards, as may be needed for new program models designed to
13 fulfill the intent of this Article, may be developed at the discretion
14 of the Secretary either by the Social Services Commission or the
15 Secretary.

16 (10) To develop a formula for funding on a matching basis for juvenile
17 court and delinquency prevention services as provided for in this
18 Article. This formula shall be based upon the county's or counties'
19 relative ability to fund community-based programs for juveniles.

20 Local governments receiving State matching funds for programs
21 under the provisions of this Article must maintain the same overall
22 level of effort that existed at the time of the filing of the county
23 assessment of youth needs with the Department.

24 (11) Assure that the Criminal Justice Information Network Governing
25 Board administer a comprehensive juvenile justice information
26 system to collect data and information about delinquent juveniles
27 for the purpose of developing treatment and intervention plans and
28 allowing reliable assessment and evaluation of the effectiveness of
29 rehabilitative and preventive services provided to delinquent
30 juveniles.

31 (12) Establish substance abuse testing for juveniles adjudicated
32 delinquent for substance abuse offenses.

33 (c) Except as otherwise specifically provided in this Article and in Article 1 of this
34 Chapter, the functions, powers, duties, and obligations of every agency or division in
35 the Department of Juvenile Justice shall be prescribed by the Secretary of the
36 Department of Juvenile Justice.

37 (d) The Secretary may adopt rules and procedures for the implementation of this
38 section. The Secretary may adopt rules applicable to local human services agencies
39 providing juvenile court and delinquency prevention services for the purpose of
40 program evaluation, fiscal audits, and collection of third-party payments.

41 "§ 143B-516. Secretary of the Department of Juvenile Justice requests for grants-in-
42 aid from non-State agencies.

43 It is the intent of this General Assembly that non-State human services agencies
44 providing juvenile court and delinquency prevention programs submit their

1 appropriation requests for grants-in-aid through the Secretary of the Department of
2 Juvenile Justice for recommendations to the Governor, the Advisory Budget
3 Commission, and the General Assembly and that agencies receiving these grants, at
4 the request of the Secretary of the Department of Juvenile Justice, provide a
5 postaudit of their operations that has been done by a certified public accountant.

6 "§ 143B-517. Department of Juvenile Justice -- authority to contract with other
7 entities.

8 (a) The Department of Juvenile Justice may contract with any governmental
9 agency, person, association, or corporation for the accomplishment of its duties and
10 responsibilities provided that the expenditure of funds pursuant to these contracts
11 shall be for the purposes for which the funds were appropriated and is not otherwise
12 prohibited by law.

13 (b) The Department may enter into contracts with and to act as intermediary
14 between any federal government agency and any county of this State for the purpose
15 of assisting the county to recover monies expended by a county-funded financial
16 assistance program; and, as a condition of assistance, the county shall agree to hold
17 and save harmless the Department against any claims, loss, or expense which the
18 Department might incur under the contracts by reason of any erroneous, unlawful, or
19 tortious act or omission of the county or its officials, agents, or employees.

20 "§ 143B-518. Department of Juvenile Justice; authority to assist private nonprofit
21 foundations.

22 The Secretary may allow employees of the Department or provide other
23 appropriate services to assist any private nonprofit foundation which works directly
24 with services or programs of the Department and whose sole purpose is to support
25 the services and programs of the Department. A Department employee shall be
26 allowed to work with a foundation no more than 20 hours in any one month. These
27 services are not subject to the provisions of Chapter 150B of the General Statutes.

28 The board of directors of each private, nonprofit foundation shall secure and pay
29 for the services of the State Auditor's Office or employ a certified public accountant
30 to conduct an annual audit of the financial accounts of the foundation. The board of
31 directors shall transmit to the Secretary of the Department of Juvenile Justice a copy
32 of the annual financial audit report of the private nonprofit foundation.

33 "Part 2. Juvenile Facilities.

34 "§ 143B-520. Juvenile facilities.

35 The Department of Juvenile Justice shall be responsible for administration of
36 statewide programs to implement the right of any committed juvenile to appropriate
37 treatment according to the juvenile's needs, including the following programs or
38 services: educational, clinical and psychological, psychiatric, social, medical,
39 vocational, recreational, and others as identified as appropriate by the Secretary.

40 "§ 143B-521. Authority to provide necessary medical or surgical care.

41 The Department may provide such medical and surgical treatment as is necessary
42 to preserve the life and health of students while in care, provided that no surgical
43 operation may be performed except as authorized in G.S. 148-22.2.

44 "§ 143B-522. Compensation to children in care.

1 Juveniles who have been committed to the Department may be compensated for
2 work or participation in training programs at rates approved by the Secretary within
3 available funds. The Department is authorized to accept grants or funds from any
4 source to compensate juveniles as provided under this section.

5 **"§ 143B-523. Criminal offense to aid escapes.**

6 It shall be unlawful for any person to aid, harbor, conceal, or assist any juvenile to
7 escape from an institution or youth services program. Any person who renders said
8 assistance to a juvenile shall be guilty of a Class 1 misdemeanor.

9 **"§ 143B-524. Visits and community activities.**

10 The Department shall encourage visits by parents, guardians, or custodians and
11 responsible relatives of juveniles in care. The Department shall also arrange a suitable
12 program of home visits for juveniles in care.

13 **"§ 143B-525. Regional detention services.**

14 The Department shall be responsible for juvenile detention services, including the
15 development of a statewide plan for regional juvenile detention services that will
16 offer juvenile detention care of sufficient quality to meet State standards to any
17 juvenile requiring juvenile detention care within the State in a detention facility as
18 follows:

19 (1) The Department shall plan with the counties operating a county
20 detention facility to provide regional juvenile detention services to
21 surrounding counties, except that the Department shall have some
22 discretion in defining the geographical boundaries of the regions
23 based on negotiations with affected counties, distances, availability
24 of juvenile detention care that meets State standards, and other
25 appropriate variable factors.

26 (2) The Department shall plan for and administer five or more
27 regional detention homes, including careful planning on location,
28 architectural design, construction, and administration of a program
29 to meet the needs of juveniles in juvenile detention care. Both the
30 physical facility and the program of a regional detention home
31 shall comply with State standards.

32 **"§ 143B-526. State subsidy to county detention facilities.**

33 The Department shall administer a State subsidy program to pay a county
34 detention facility which provides juvenile detention services and meets State
35 standards a certain per diem per juvenile. In general, this per diem should be fifty
36 percent (50%) of the total cost of caring for a juvenile from within the county and
37 100 percent (100%) of the total cost of caring for a juvenile from another county.
38 Any county placing a juvenile in a detention home in another county shall pay fifty
39 percent (50%) of the total cost of caring for the child to the Department. The exact
40 funding formulas may be varied by the Department to operate within existing State
41 appropriations or other funds that may be available to pay for juvenile detention
42 care.

43 **"§ 143B-527. Authority for implementation.**

1 In order to allow for effective implementation of a statewide regional approach to
2 juvenile detention, the Department shall have legal authority to do the following:

- 3 (1) To adopt rules that may be necessary to fulfill its responsibilities
4 under this Article;
5 (2) To plan with counties operating county detention homes to
6 provide regional services and to upgrade physical facilities as
7 recommended in said report, to contract with counties for services
8 and care, and to pay State subsidies to counties providing regional
9 juvenile detention services that meet State standards;
10 (3) To develop one or more pilot programs to demonstrate quality
11 juvenile detention care on a regional basis that meet State
12 standards;
13 (4) To develop a plan whereby law enforcement officers or other
14 appropriate employees of local government shall be reimbursed by
15 the State for the costs of transportation of a juvenile to and from
16 any juvenile detention facility;
17 (5) To seek funding for juvenile detention services from federal
18 sources, and to accept gifts of funds from public or private sources;
19 and
20 (6) To transfer State funds appropriated for institutions or other youth
21 services programs to develop a pilot program of juvenile detention
22 care, to purchase detention care in a county detention facility that
23 meets State standards, and to operate a detention facility.

24 "Part 3. Juvenile Court Services.

25 "§ 143B-530. Juvenile court services.

26 The Department of Juvenile Justice shall be responsible for administration of a
27 statewide and uniform system of juvenile probation and post-release supervision
28 services in all district court districts of the State. The Secretary shall be responsible
29 for planning, organizing, and administering juvenile probation and post-release
30 supervision services on a statewide basis to the end that juvenile services will be
31 uniform throughout the State and of sufficient quality to meet the needs of the
32 children under supervision.

33 "§ 143B-531. Duties and powers of Secretary.

34 The Secretary shall have the following powers and duties as they relate to juvenile
35 court services:

- 36 (1) To plan for a statewide program of juvenile probation and post-
37 release supervision services.
38 (2) To appoint such personnel within the Department of Juvenile
39 Justice as may be necessary to administer a statewide and uniform
40 system of juvenile probation and post-release supervision.
41 (3) To appoint the chief court counselor in each district court district
42 with the approval of the chief district judge of that district.
43 (4) To study the various issues related to qualifications, salary ranges,
44 appointment of personnel on a merit basis, including chief court

1 counselors, court counselors, secretaries and other appropriate
2 personnel, at the State and district levels in order to adopt
3 appropriate policies and procedures governing personnel.

4 (5) To develop a statewide plan for staff development and training so
5 that chief court counselors, court counselors and other personnel
6 responsible for juvenile services may be appropriately trained and
7 qualified; such plan may include attendance at appropriate
8 professional meetings and opportunities for educational leave for
9 academic study.

10 (6) To develop, promulgate, and enforce such policies, procedures,
11 rules, and regulations as the Secretary may find necessary and
12 appropriate to implement a statewide and uniform program of
13 juvenile probation and post-release supervision services.

14 **§ 143B-532. Duties and powers of chief court counselors.**

15 The chief court counselor in each district court district appointed as provided by
16 this Article shall have the following powers and duties:

17 (1) To appoint such court counselors, secretaries, and other personnel
18 as may be authorized by the Department in accordance with the
19 personnel policies adopted by the Secretary.

20 (2) To supervise and direct the program of juvenile probation and
21 post-release supervision within the district court district under the
22 supervision of the court and the Secretary according to the
23 statewide practices and procedures promulgated by the Secretary.

24 (3) To provide in-service training for staff as required by the
25 Secretary.

26 (4) To keep any records and make any reports requested by the
27 Secretary in order to provide statewide data and information about
28 juvenile needs and services.

29 **§ 143B-533. Duties and powers of juvenile court counselors.**

30 All juvenile court counselors providing services to judges hearing juvenile cases
31 shall have the following powers and duties, as the court may require:

32 (1) To secure or arrange for such information concerning a case as the
33 court may require before, during, or after the hearing.

34 (2) To prepare written reports for the use of the court.

35 (3) To appear and testify at court hearings.

36 (4) To assume temporary custody of a juvenile when directed by court
37 order.

38 (5) To furnish each juvenile on probation and the juvenile's parents,
39 guardian, or custodian with a written statement of the juvenile's
40 conditions of probation, and to consult with the parents, guardian,
41 or custodian so that they may help the juvenile comply with the
42 juvenile's probation.

43 (6) To keep informed concerning the conduct and progress of any
44 juvenile on probation or under court supervision through home

- 1 visits or conferences with the parents, guardian, or custodian and
2 in other ways.
- 3 (7) To see that the conditions of probation are complied with by the
4 juvenile, or to bring any juvenile who violates the juvenile's
5 probation to the attention of the court.
- 6 (8) To make periodic reports to the court concerning the adjustment
7 of any juvenile on probation or under court supervision.
- 8 (9) To keep such records of the juvenile's work as the court may
9 require.
- 10 (10) To account for all funds collected from juveniles.
- 11 (11) To have all the powers of a peace officer in the district.
- 12 (12) To provide supervision for a juvenile transferred to the officer's
13 supervision from another court or another state, and to provide
14 supervision for any child released from an institution operated by
15 the Department of Correction when requested by the Department
16 to do so.
- 17 (13) To assist in the development of post-release supervision and the
18 supervision of juveniles.
- 19 (14) To have such other duties as the court may direct.
- 20 "Part 4. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.
21 "§ 143B-540. Comprehensive Juvenile Delinquency and Substance Abuse Prevention
22 Plan.
- 23 (a) The Department shall develop a comprehensive juvenile delinquency and
24 substance abuse prevention plan that will provide nonduplicative, collaborative,
25 cooperative, public/private, State/local juvenile delinquency and substance abuse
26 prevention programs to youth and their families. These collaborative programs shall
27 be interdisciplinary and multitiered, shall provide a continuum of services, and shall
28 be cooperatively and collaboratively administered at and accessible to community and
29 local levels. In administering the programs, communities and localities shall adhere
30 to proven effective principles. The Department shall ensure that localities are
31 informed about best practices in juvenile delinquency and substance abuse
32 prevention.
- 33 (b) The Department shall ensure that any program provided through this plan
34 contains at least the following critical elements:
- 35 (1) An addressing of the highest priority problem areas and an
36 identification of the risk and protective factors to which youth in a
37 particular community are exposed;
- 38 (2) The strongest focus on populations exposed to a number of risk
39 factors;
- 40 (3) An addressing of problem areas and an identification of strengths
41 both early in life and at appropriate developmental stages;
- 42 (4) An addressing of multiple risk factors in different settings such as
43 family, school, community, and peer group;

- 1 (5) An offering of comprehensive interventions across many systems
2 that deal simultaneously with many aspects of a youth's life;
3 (6) An intensive involvement of multiple contacts weekly or even daily
4 with at-risk youth;
5 (7) An operation that is strength-based rather than deficiency-based,
6 that builds on a youth's strengths rather than on deficiencies;
7 (8) A holistic approach to youth within the context of their
8 relationships to and with others rather than focusing solely on the
9 youth; and
10 (9) An incorporation of community participation and ethnic and
11 cultural diversity into the development and evaluation of services.

12 (c) The Department shall ensure that the plan contain at least the following
13 programs, which have proven effective in preventing juvenile delinquency and
14 substance abuse and which should be available as basic services in communities:

- 15 (1) Early intervention;
16 (2) In-home and community-based family counseling and parent
17 training;
18 (3) Adolescent and family substance abuse prevention services,
19 including alcohol abuse prevention services and including
20 substance abuse education;
21 (4) Nonschool hours activities, both before and after school hours;
22 (5) Law-related education and life/social skills training programs;
23 (6) Conflict resolution, problem solving, and anger management; and
24 (7) Personal advocacy, including mentoring relationships, tutors, or
25 other caring adult programs.

26 (d) Prior to the implementation of any plan and program development prescribed
27 in this section, the Department shall report to the General Assembly in detail on its
28 plan to implement this section, including detailed descriptions of the plan and
29 programs contemplated. The report shall also provide a detailed cost analysis of this
30 section's implementation.

31 (e) The Department shall cooperate with all other affected State agencies and
32 entities in implementing this section.

33 "Part 5. Juvenile Crime Prevention Councils.

34 "§ 143B-550. Juvenile Crime Prevention Councils; legislative intent.

35 (a) It is the intent of the General Assembly both to reduce the number of juveniles
36 committed by the courts for delinquency to institutions operated by the Department
37 of Juvenile Justice or other State agencies and to prevent juveniles who are at risk
38 from becoming delinquent. The primary intent of this Article is to provide an
39 ongoing, comprehensive State/local, public/private, cooperative, collaborative
40 partnership to develop both streamlined and enhanced community-based alternatives
41 to training school and detention commitment and unified, nonduplicative,
42 coordinated, and collaborative community-based prevention strategies and programs.
43 Additionally, it is the intent of the General Assembly to provide noninstitutional
44 dispositional alternatives that will protect the community and the juvenile.

1 (b) The Juvenile Crime Prevention Councils shall prioritize funding for
2 dispositions of court-adjudicated youth pursuant to minimum standards adopted by
3 the Department.

4 (c) The Department shall ensure that juvenile court services and delinquency
5 prevention programs are developed by a State/local, private/public, cooperative and
6 collaborative partnership that avoids overlapping and duplication and that optimizes
7 and evaluates all programs and services on an ongoing basis. The programs
8 developed under this partnership shall fulfill the following organizational and
9 objective requirements:

10 (1) These programs shall be planned and organized at the community
11 level, and developed in partnership with the State. These planning
12 efforts shall include appropriate representation from local
13 government, local public and private agencies serving families and
14 children, local business leaders, citizens with an interest in youth
15 problems, youth representatives, and others as may be appropriate
16 in a particular community. The planning bodies at the local level
17 shall be the Juvenile Crime Prevention Councils.

18 (2) At the State level, the Department shall:

19 a. Serve the community level as a clearinghouse for
20 information on delinquency prevention strategies and on
21 alternatives to commitment. The Department shall research,
22 collect, and distribute information to local agencies about
23 best practices, what works, what is promising, and what does
24 not work;

25 b. Provide technical assistance to Juvenile Crime Prevention
26 Councils;

27 c. Make recommendations to State and local governments on
28 changes to laws, rules, or policies that will reduce the
29 incidence of delinquency and the incidence of inappropriate
30 commitment;

31 d. Develop a comprehensive structure for follow-up and
32 delivery of program and treatment services to ensure
33 juvenile, adult, and system accountability;

34 e. Coordinate statewide media campaigns that accurately
35 inform people about the development of strategies to
36 prevent delinquency; and

37 f. Channel existing delinquency prevention funding streams to
38 the community level until a permanent funding stream for
39 delinquency prevention is established.

40 (3) At the local level, as a prerequisite for receiving funding for
41 juvenile court service and delinquency prevention programs, the
42 board of county commissioners of each county shall appoint a
43 Juvenile Crime Prevention Council. The Juvenile Crime

1 Prevention Council shall consist of not more than 25 members and
2 should include, if possible, the following:

- 3 a. The local school superintendent, or that person's designee;
4 b. A chief of police in the county;
5 c. The local sheriff, or that person's designee;
6 d. The district attorney, or that person's designee;
7 e. The chief court counselor, or that person's designee;
8 f. The Director of the Area Mental Health Authority, or that
9 person's designee;
10 g. The director of the local department of social services, or
11 that person's designee;
12 h. The county manager, or that person's designee;
13 i. A substance abuse professional;
14 j. A member of the faith community;
15 k. A county commissioner;
16 l. A youth representative;
17 m. A juvenile defense attorney;
18 n. A district court judge;
19 o. A member of the business community;
20 p. A public health professional;
21 q. A representative from the United Way or other nonprofit
22 agency; and
23 r. Up to six members of the public to be appointed by the
24 county board of commissioners.

25 The county shall modify the Council's membership as necessary to
26 ensure that current Council members reflect the racial and
27 socioeconomic diversity of the community and to minimize
28 potential conflicts of interest by members.

- 29 (4) The Council shall annually review the needs of troubled juveniles,
30 both those at risk of delinquency and those adjudicated delinquent,
31 within the county and the assets and resources that are available to
32 address the needs of those juveniles. The Council shall use a
33 public/private, nonduplicative, collaborative, coordinated,
34 multifaceted, and multidisciplinary approach to this review, and to
35 the utilization of any existing programs as well as to the
36 development of any new programs and services. In particular, the
37 Council shall review the existing resources that can be expanded to
38 provide prevention programs and services. The Council shall
39 include the faith-based community as a vital part of this approach.
40 The Council shall develop and advertise a Request for Proposal
41 process, and submit a written Plan of Action for the expenditure of
42 juvenile sanction and prevention funds to the county for its
43 approval. Upon the county's authorization, the Plan shall be

1 submitted to the Department for final approval and subsequent
2 implementation.

3 In addition to its annual review, the Council shall perform the
4 following functions on an ongoing basis:

5 a. Conduct an ongoing updated community needs assessment
6 in order to identify resources and needs and develop
7 appropriate solutions to meet these needs;

8 b. Perform rigorous and ongoing performance evaluations of
9 prevention and alternatives programs and services. The
10 Council shall require each prevention initiative and each
11 alternatives initiative to have a strong evaluation component
12 and the Council shall make this accountability responsibility
13 a condition of each initiative's continued funding;

14 c. Increase public awareness of the causes of delinquency and
15 of strategies to reduce the problem;

16 d. Develop strategies to intervene and appropriately respond to
17 and treat the needs of juveniles at risk of delinquency or of
18 juveniles requiring alternatives to commitment as these
19 needs are identified through appropriate risk assessment
20 instruments;

21 e. Provide services to juveniles who are in need of treatment,
22 counseling, or rehabilitation and to the families of those
23 juveniles, including court-ordered parenting responsibility
24 classes; and

25 f. Plan for the establishment of a permanent funding stream
26 for delinquency prevention.

27 (5) To meet the programming needs of delinquent and at-risk youth in
28 smaller, rural counties, Juvenile Crime Prevention Councils shall
29 examine the benefits of joint program development between
30 counties within the same judicial district. If two or more counties
31 determine that a multicounty initiative would be beneficial, they
32 may establish a multicounty Juvenile Crime Prevention Council,
33 with the membership consisting of the members from each county
34 represented.

35 (6) The Secretary shall develop a funding mechanism for programs
36 that meet the standards as developed under the provisions of this
37 Part. The Secretary shall ensure that the guidelines for the
38 State/local partnership's funding process include the following
39 requirements:

40 a. Fund what works. -- Programs and projects that demonstrate
41 progress, that have been proven to be effective, or that show
42 promise, based on valid research should be supported. The
43 partnership shall fund projects based on a 'menu' of types of
44 services. In addition, new innovative projects shall be

1 rigorously evaluated to determine their effectiveness in
2 preventing delinquency and recidivism and their proximal
3 risk factors and may be funded on a discretionary basis.
4 The merits of a program shall be determined on the basis of
5 known or reasonably projected outcomes. Bad practices,
6 poor outcomes, and programs that have proven to be
7 ineffective shall not be funded;

8 b. The money should follow the juvenile. -- The funding
9 process shall be designed in such a way that, whenever a
10 juvenile is being served by a program, funds are allocated to
11 that program for that juvenile and will follow that juvenile.
12 For example, if a juvenile is receiving delinquency
13 prevention services and is subsequently adjudicated
14 delinquent and committed to training school, the county
15 shall continue to fund the services for the juvenile, if still
16 appropriate to reduce the recidivism risk, and shall send the
17 program dollars to the training school;

18 c. Use a formula for the distribution of funds. -- A funding
19 formula shall be developed that ensures that even the
20 smallest counties will be able to provide the basic
21 prevention and alternatives services to juveniles in their
22 communities;

23 d. Allow and encourage local flexibility. -- A vital component
24 of the State/local partnership established by this section is
25 local flexibility to determine how best to allocate prevention
26 and alternatives funds; and

27 e. Combine resources. -- Counties shall be allowed and
28 encouraged to combine resources and services.

29 The Secretary shall adopt rules to implement the policy and intent summarized in
30 this section.

31 **"§ 143B-551. Purchase of care or services from programs meeting State standards.**

32 The Department of Juvenile Justice and any other appropriate State or local
33 agency may purchase care or services from public or private agencies providing
34 delinquency prevention programs or juvenile court services, including parenting
35 responsibility classes. The programs shall meet the State standards as authorized by
36 G.S. 143B-550. As institutional populations are reduced, the Department of Juvenile
37 Justice may divert State funds appropriated for institutional programs to purchase the
38 services pursuant to the provisions of the Executive Budget Act.

39 The Secretary of Juvenile Justice shall prepare an annual report on the
40 effectiveness and cost-benefit of the Department's programs, which shall include the
41 most current institutional populations of juveniles being served by the various
42 departments of State government which shall include comparative costs of all child-
43 serving agencies. Such report shall be submitted to the Governor, the General
44 Assembly, and the various State departments providing services to juveniles.

1 "Part 6. State Advisory Council on Juvenile Justice and
2 Delinquency Prevention.

3 "§ 143B-560. Findings.

4 The General Assembly finds that juveniles who come within the jurisdiction of
5 juvenile court also receive services from a variety of other State agencies, including
6 the Department of Public Instruction, the Division of Social Services, the Department
7 of Administration, the Division of Child and Family Services, and the Division of
8 Mental Health, Developmental Disabilities, and Substance Abuse Services. No
9 oversight body exists to review the operation of the juvenile justice system and its
10 ancillary components as a single entity and to ensure that State agencies work
11 together in a comprehensive and effective way.

12 "§ 143B-561. Creation of Council; purpose; members; duties.

13 (a) Creation. -- There is created the State Advisory Council on Juvenile Justice
14 and Delinquency Prevention. The Council shall be located within the Office of the
15 Governor for organizational, budgetary, and administrative purposes.

16 (b) Purpose. -- The purpose of the Council is to advise all State agencies providing
17 services and supervision to court-adjudicated youth regarding the coordination of
18 services to juveniles.

19 (c) Membership. -- The Council shall consist of 19 members as follows:

20 (1) Four persons appointed by the Governor, one of whom is a private
21 citizen who has demonstrated an interest and commitment to youth
22 and juvenile justice issues.

23 (2) Four persons appointed by the Chief Justice of the Supreme Court.

24 (3) The following persons, or their designees, ex officio:

25 a. The Governor.

26 b. The Chief Justice of the Supreme Court.

27 c. The President Pro Tempore of the Senate.

28 d. The Speaker of the House of Representatives.

29 e. The Director of the Administrative Office of the Courts.

30 f. The Superintendent of Public Instruction.

31 g. The Secretary of the Department of Administration.

32 h. The Secretary of the Department of Health and Human
33 Services.

34 i. The Secretary of the Department of Correction.

35 j. The Secretary of the Department of Crime Control and
36 Public Safety.

37 k. The Secretary of the Department of Juvenile Justice.

38 (d) Terms. -- Members shall serve for two-year terms, with no prohibition against
39 being reappointed, except initial appointments shall be for terms as follows:

40 (1) The Governor shall initially appoint two members for a term of
41 two years and two members for a term of three years.

42 (2) The Chief Justice of the Supreme Court shall initially appoint two
43 members for a term of two years and two members for a term of
44 three years.

1 (e) Chair. -- The Governor and Chief Justice of the Supreme Court shall serve as
2 cochairs of the Council.

3 (f) Vacancies. -- A vacancy on the Council resulting from the resignation of a
4 member or otherwise shall be filled in the same manner in which the original
5 appointment was made and the term shall be for the balance of the unexpired term.

6 (g) Compensation. -- The Council members shall receive no salary as a result of
7 -serving on the Council but shall receive per diem, subsistence, and travel expenses in
8 accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

9 (h) Removal. -- Members may be removed in accordance with G.S. 143B-13 as if
10 that section applied to this Article.

11 (i) Meetings. -- The chair shall convene the Council. Meetings shall be held as
12 often as necessary, but not less than four times a year.

13 (j) Quorum. -- A majority of the members of the Council shall constitute a
14 quorum for the transaction of business. The affirmative vote of a majority of the
15 members present at meetings of the Council shall be necessary for action to be taken
16 by the Council.

17 "§ 143B-562. Powers and duties of the Council.

18 The Council shall have the following powers and duties:

19 (1) Advise the Department of Juvenile Justice in the review of the
20 State's juvenile justice planning, the development of the
21 community juvenile justice councils, and the development of a
22 formula for the distribution of funds to community juvenile service
23 boards.

24 (2) Advise all State agencies serving juveniles for the purpose of
25 developing a consistent philosophy with regard to providing
26 services to youth and promoting collaboration and the efficient and
27 effective delivery of services to youth and families through State,
28 local, and district programs and fully address problems of
29 collaboration across State agencies with the goal of serving youth.

30 (3) Review and comment on juvenile justice, delinquency prevention,
31 and juvenile services grant applications prepared for submission
32 under any federal grant program by any governmental entity of the
33 State.

34 (4) Review the juvenile justice system's operation and prioritization of
35 funding needs.

36 (5) Review the progress and accomplishment of State and local
37 juvenile justice, delinquency prevention, and juvenile services
38 projects.

39 (6) Develop recommendations concerning the establishment of
40 priorities and needed improvements with respect to juvenile
41 justice, delinquency prevention, and juvenile services and report its
42 recommendations to the General Assembly on or before March 1
43 each year.

1 (7) Review and comment on the proposed budget for the Department
 2 of Juvenile Justice."

3 Section 2. (a) G.S. 7A-343.1 reads as rewritten:

4 **"§ 7A-343.1. Distribution of copies of the appellate division reports.**

5 The Administrative Officer of the Courts shall, at the State's expense distribute
 6 such number of copies of the appellate division reports to federal, State departments
 7 and agencies, and to educational institutions of instruction, as follows:

9	Governor, Office of the	1
10	Lieutenant Governor, Office of the	1
11	Secretary of State, Department of the	2
12	State Auditor, Department of the	1
13	Treasurer, Department of the State	1
14	Superintendent of Public Instruction	1
15	Office of the Attorney General	11
16	State Bureau of Investigation	1
17	Agriculture and Consumer Services, Department of	1
18	Labor, Department of	1
19	Insurance, Department of	1
20	Budget Bureau, Department of Administration	1
21	Property Control, Department of Administration	1
22	State Planning, Department of Administration	1
23	Environment and Natural Resources, Department of	1
24	Revenue, Department of	1
25	Health and Human Services, Department of	1
26	<u>Juvenile Justice, Department of</u>	<u>1</u>
27	Commission for the Blind	1
28	Transportation, Department of	1
29	Motor Vehicles, Division of	1
30	Utilities Commission	8
31	Industrial Commission	11
32	State Personnel Commission	1
33	Office of State Personnel	1
34	Office of Administrative Hearings	2
35	Community Colleges, Department of	38
36	Employment Security Commission	1
37	Commission of Correction	1
38	Parole Commission	1
39	Archives and History, Division of	1
40	Crime Control and Public Safety, Department of	2
41	Cultural Resources, Department of	3
42	Legislative Building Library	2
43	Justices of the Supreme Court	1 ea.
44	Judges of the Court of Appeals	1 ea.

1	Judges of the Superior Court	1 ea.
2	Clerks of the Superior Court	1 ea.
3	District Attorneys	1 ea.
4	Emergency and Special Judges of the Superior Court	1 ea.
5	Supreme Court Library	AS MANY AS REQUESTED
6	Appellate Division Reporter	1
7	University of North Carolina, Chapel Hill	71
8	University of North Carolina, Charlotte	1
9	University of North Carolina, Greensboro	1
10	University of North Carolina, Asheville	1
11	North Carolina State University, Raleigh	1
12	Appalachian State University	1
13	East Carolina University	1
14	Fayetteville State University	1
15	North Carolina Central University	17
16	Western Carolina University	1
17	Duke University	17
18	Davidson College	2
19	Wake Forest University	25
20	Lenoir Rhyne College	1
21	Elon College	1
22	Campbell University	25
23	Federal, Out-of-State and Foreign Secretary of State	1
24	Secretary of Defense	1
25	Secretary of Health, Education and Welfare	1
26	Secretary of Housing and Urban Development	1
27	Secretary of Transportation	1
28	Attorney General	1
29	Department of Justice	1
30	Internal Revenue Service	1
31	Veterans' Administration	1
32	Library of Congress	5
33	Federal Judges resident in North Carolina	1 ea.
34	Marshal of the United States Supreme Court	1
35	Federal District Attorneys resident in North Carolina	1 ea.
36	Federal Clerks of Court resident in North Carolina	1 ea.
37	Supreme Court Library exchange list	1

38

39 Each justice of the Supreme Court and judge of the Court of Appeals shall receive
40 for his private use, one complete and up-to-date set of the appellate division reports.
41 The copies of reports furnished each justice or judge as set out in the table above
42 may be retained by ~~him~~ personally to enable ~~him~~ the justice or judge to keep up-to-
43 date ~~his~~ the personal set of reports."

44

(b) G.S. 14-316.1 reads as rewritten:

1 **"§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

2 Any person who is at least 16 years old who knowingly or willfully causes,
3 encourages, or aids any juvenile within the jurisdiction of the court to be in a place
4 or condition, or to commit an act whereby the juvenile could be adjudicated
5 delinquent, undisciplined, abused, or neglected as defined by ~~G.S. 7A-517~~ G.S. 7B-
6 101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

7 It is not necessary for the district court exercising juvenile jurisdiction to make an
8 adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in
9 order to prosecute a parent or any person, including an employee of the Department
10 of ~~Health and Human Services~~ Juvenile Justice under this section. An adjudication
11 that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a
12 subsequent prosecution of a parent or any other person including an employee of the
13 ~~Division of Youth Services~~ Department of Juvenile Justice, who contributes to the
14 delinquent, undisciplined, abused, or neglected condition of any juvenile."

15 (c) G.S. 17C-3 reads as rewritten:

16 **"§ 17C-3. North Carolina Criminal Justice Education and Training Standards**
17 **Commission established; members; terms; vacancies.**

18 (a) There is established the North Carolina Criminal Justice Education and
19 Training Standards Commission, hereinafter called "the Commission," in the
20 Department of Justice. The Commission shall be composed of 26 members as follows:

- 21 (1) Police Chiefs. -- Three police chiefs selected by the North Carolina
22 Association of Chiefs of Police and one police chief appointed by
23 the Governor.
- 24 (2) Police Officers. -- Three police officials appointed by the North
25 Carolina Police Executives Association and two criminal justice
26 officers certified by the Commission as selected by the North
27 Carolina Law-Enforcement Officers' Association.
- 28 (3) Departments. -- The Attorney General of the State of North
29 Carolina; the Secretary of the Department of Crime Control and
30 Public Safety; the Secretary of the Department of ~~Health and~~
31 ~~Human Services~~; Juvenile Justice; the Secretary of the Department
32 of Correction; the President of the Department of Community
33 Colleges.
- 34 (4) At-large Groups. -- One individual representing and appointed by
35 each of the following organizations: one mayor selected by the
36 League of Municipalities; one law-enforcement training officer
37 selected by the North Carolina Law-Enforcement Training
38 Officers' Association; one criminal justice professional selected by
39 the North Carolina Criminal Justice Association; one sworn law-
40 enforcement officer selected by the North State Law-Enforcement
41 Officers' Association; one member selected by the North Carolina
42 Law-Enforcement Women's Association; and one District Attorney
43 selected by the North Carolina Association of District Attorneys.

1 (5) Citizens and Others. -- The President of The University of North
2 Carolina; the Director of the Institute of Government; and two
3 citizens, one of whom shall be selected by the Governor and one
4 of whom shall be selected by the Attorney General. The General
5 Assembly shall appoint two persons, one upon the
6 recommendation of the Speaker of the House of Representatives
7 and one upon the recommendation of the President Pro Tempore
8 of the Senate. Appointments by the General Assembly shall be
9 made in accordance with G.S. 120-122. Appointments by the
10 General Assembly shall serve two-year terms to conclude on June
11 30th in odd-numbered years.

12 (b) The members shall be appointed for staggered terms. The initial appointments
13 shall be made prior to September 1, 1983, and the appointees shall hold office until
14 July 1 of the year in which their respective terms expire and until their successors are
15 appointed and qualified as provided hereafter:

16 For the terms of one year: one member from subdivision (1) of subsection (a),
17 serving as a police chief; three members from subdivision (2) of subsection (a), one
18 serving as a police official, and two criminal justice officers; one member from
19 subdivision (4) of subsection (a), appointed by the North Carolina Law-Enforcement
20 Training Officers' Association; and two members from subdivision (5) of subsection
21 (a), one appointed by the Governor and one appointed by the Attorney General.

22 For the terms of two years: one member from subdivision (1) of subsection (a),
23 serving as a police chief; one member from subdivision (2) of subsection (a), serving
24 as a police official; and two members from subdivision (4) of subsection (a), one
25 appointed by the League of Municipalities and one appointed by the North Carolina
26 Association of District Attorneys.

27 For the terms of three years: two members from subdivision (1) of subsection (a),
28 one police chief appointed by the North Carolina Association of Chiefs of Police and
29 one police chief appointed by the Governor; one member from subdivision (2) of
30 subsection (a), serving as a police official; and three members from subdivision (4) of
31 subsection (a), one appointed by the North Carolina Law-Enforcement Women's
32 Association, one appointed by the North Carolina Criminal Justice Association, and
33 one appointed by the North State Law-Enforcement Officers' Association.

34 Thereafter, as the term of each member expires, his successor shall be appointed
35 for a term of three years. Notwithstanding the appointments for a term of years, each
36 member shall serve at the will of the appointing authority.

37 The Attorney General, the Secretary of the Department of Crime Control and
38 Public Safety, the Secretary of the Department of ~~Health and Human Services,~~
39 Juvenile Justice, the Secretary of the Department of Correction, the President of The
40 University of North Carolina, the Director of the Institute of Government, and the
41 President of the Department of Community Colleges shall be continuing members of
42 the Commission during their tenure. These members of the Commission shall serve
43 ex officio and shall perform their duties on the Commission in addition to the other
44 duties of their offices. The ex officio members may elect to serve personally at any or

1	Alcoholic Beverage Control Commission	44-46
2	Assistant Commissioners of Agriculture	47-48
3	Deputy Secretary of State	49
4	Deputy State Treasurer	50
5	Assistant State Treasurer	51
6	Deputy Commissioner for the Department of Labor	52
7	Chief Deputy for the Department of Insurance	53
8	Assistant Commissioner of Insurance	54
9	Deputies and Assistant to the Attorney General	55-65
10	Board of Economic Development Nonlegislative Member	66-88
11	State Ports Authority Nonlegislative Member	89-96
12	Utilities Commission Member	97-104
13	Post-Release Supervision and	
14	Parole Commission Member	105-109
15	State Board Member, Commission Member,	
16	or State Employee Not Named in List	110-200".
17	(e) G.S. 66-58(b) reads as rewritten:	
18	"(b) The provisions of subsection (a) of this section shall not apply to:	
19	(1) Counties and municipalities.	
20	(2) The Department of Health and Human Services or the Department	
21	of Agriculture and Consumer Services for the sale of serums,	
22	vaccines, and other like products.	
23	(3) The Department of Administration, except that the agency shall	
24	not exceed the authority granted in the act creating the agency.	
25	(4) The State hospitals for the mentally ill.	
26	(5) The Department of Health and Human Services.	
27	(6) The North Carolina School for the Blind at Raleigh.	
28	<u>(6a) The Department of Juvenile Justice.</u>	
29	(7) The North Carolina Schools for the Deaf.	
30	(8) The Greater University of North Carolina with regard to its	
31	utilities and other services now operated by it nor to the sale of	
32	articles produced incident to the operation of instructional	
33	departments, articles incident to educational research, articles of	
34	merchandise incident to classroom work, meals, books, or to	
35	articles of merchandise not exceeding twenty-five cents (25¢) in	
36	value when sold to members of the educational staff or staff	
37	auxiliary to education or to duly enrolled students or occasionally	
38	to immediate members of the families of members of the	
39	educational staff or of duly enrolled students nor to the sale of	
40	meals or merchandise to persons attending meetings or conventions	
41	as invited guests nor to the operation by the University of North	
42	Carolina of an inn or hotel and dining and other facilities usually	
43	connected with a hotel or inn, nor to the hospital and Medical	
44	School of the University of North Carolina, nor to the Coliseum of	

1 North Carolina State University at Raleigh, and the other schools
2 and colleges for higher education maintained or supported by the
3 State, nor to the Centennial Campus of North Carolina State
4 University at Raleigh, nor to the comprehensive student health
5 services or the comprehensive student infirmaries maintained by
6 the constituent institutions of the University of North Carolina.

7 (9) The Department of Environment and Natural Resources, except
8 that the Department shall not construct, maintain, operate or lease
9 a hotel or tourist inn in any park over which it has jurisdiction.
10 The North Carolina Wildlife Resources Commission may sell
11 wildlife memorabilia as a service to members of the public
12 interested in wildlife conservation.

13 (10) Child-caring institutions or orphanages receiving State aid.

14 (11) Highlands School in Macon County.

15 (12) The North Carolina State Fair.

16 (13) Rural electric memberships corporations.

17 (13a) State Farm Operations Commission.

18 (13b) The Department of Agriculture and Consumer Services with
19 regard to its lessees at farmers' markets operated by the
20 Department.

21 (13c) The Western North Carolina Agricultural Center.

22 (14) Nothing herein contained shall be construed to prohibit the
23 engagement in any of the activities described in subsection (a)
24 hereof by a firm, corporation or person who or which is a lessee of
25 space only of the State of North Carolina or any of its departments
26 or agencies; provided the leases shall be awarded by the
27 Department of Administration to the highest bidder, as provided
28 by law in the case of State contracts and which lease shall be for a
29 term of not less than one year and not more than five years.

30 (15) The State Department of Correction is authorized to purchase and
31 install automobile license tag plant equipment for the purpose of
32 manufacturing license tags for the State and local governments and
33 for such other purposes as the Department may direct.

34 The Commissioner of Motor Vehicles, or such other authority as
35 may exercise the authority to purchase automobile license tags is
36 hereby directed to purchase from, and to contract with, the State
37 Department of Correction for the State automobile license tag
38 requirements from year to year.

39 The price to be paid to the State Department of Correction for
40 the tags shall be fixed and agreed upon by the Governor, the State
41 Department of Correction, and the Motor Vehicle Commissioner,
42 or such authority as may be authorized to purchase the supplies.

43 (16) Laundry services performed by the Department of Correction may
44 be provided only for agencies and instrumentalities of the State

1 which are supported by State funds and for county or municipally
2 controlled and supported hospitals presently being served by the
3 Department of Correction, or for which services have been
4 contracted or applied for in writing, as of May 22, 1973. In
5 addition to the prior sentence, laundry services performed by the
6 Department of Correction may be provided for the Governor
7 Morehead School and the North Carolina School for the Deaf.

8 The services shall be limited to wet-washing, drying and ironing
9 of flatwear or flat goods such as towels, sheets and bedding, linens
10 and those uniforms prescribed for wear by the institutions and
11 further limited to only flat goods or apparel owned, distributed or
12 controlled entirely by the institutions and shall not include
13 processing by any dry-cleaning methods; provided, however, those
14 garments and items presently being serviced by wet-washing,
15 drying and ironing may in the future, at the election of the
16 Department of Correction, be processed by a dry-cleaning method.

17 (17) The North Carolina Global TransPark Authority or a lessee of the
18 Authority.

19 (18) The activities and products of private enterprise carried on or
20 manufactured within a State prison facility pursuant to G.S. 148-
21 70."

22 (f) G.S. 66-58(c) reads as rewritten:

23 "(c) The provisions of subsection (a) shall not prohibit:

24 (1) The sale of products of experiment stations or test farms.

25 (2) The sale of learned journals, works of art, books or publications of
26 the Department of Cultural Resources or other agencies, or the
27 Supreme Court Reports or Session Laws of the General Assembly.

28 (3) The business operation of endowment funds established for the
29 purpose of producing income for educational purposes; for
30 purposes of this section, the phrase "operation of endowment
31 funds" shall include the operation by public postsecondary
32 educational institutions of campus stores, the profits from which
33 are used exclusively for awarding scholarships to defray the
34 expenses of students attending the institution; provided, that the
35 operation of the stores must be approved by the board of trustees
36 of the institution, and the merchandise sold shall be limited to
37 educational materials and supplies, gift items and miscellaneous
38 personal-use articles. Provided further that sales at campus stores
39 are limited to employees of the institution and members of their
40 immediate families, to duly enrolled students of the campus at
41 which a campus store is located and their immediate families, to
42 duly enrolled students of other campuses of the University of
43 North Carolina other than the campus at which the campus store is
44 located, to other campus stores and to other persons who are on

- 1 campus other than for the purpose of purchasing merchandise from
2 campus stores. It is the intent of this subdivision that campus stores
3 be established and operated for the purpose of assuring the
4 availability of merchandise described in this Article for sale to
5 persons enumerated herein and not for the purpose of competing
6 with stores operated in the communities surrounding the campuses
7 of the University of North Carolina.
- 8 (4) The operation of lunch counters by the Department of Health and
9 Human Services as blind enterprises of the type operated on
10 January 1, 1951, in State buildings in the City of Raleigh.
- 11 (5) The operation of a snack bar and cafeteria in the State Legislative
12 Building.
- 13 (6) The maintenance by the prison system authorities of eating and
14 sleeping facilities at units of the State prison system for prisoners
15 and for members of the prison staff while on duty, or the
16 maintenance by the highway system authorities of eating and
17 sleeping facilities for working crews on highway construction or
18 maintenance when actually engaged in such work on parts of the
19 highway system.
- 20 (7) The operation by penal, correctional or facilities operated by the
21 Department of Health and Human ~~Services~~ Services, the
22 Department of Juvenile Justice, or by the Department of
23 Agriculture and Consumer Services, of dining rooms for the
24 inmates or clients or members of the staff while on duty and for
25 the accommodation of persons visiting the inmates or clients, and
26 other bona fide visitors.
- 27 (8) The sale by the Department of Agriculture and Consumer Services
28 of livestock, poultry and publications in keeping with its present
29 livestock and farm program.
- 30 (9) The operation by the public schools of school cafeterias.
- 31 (9a) The use of a public school bus or public school activity bus for a
32 purpose allowed under G.S. 115C-242 or the use of a public school
33 activity bus for a purpose authorized by G.S. 115C-247.
- 34 (10) Sale by any State correctional or other institution of farm, dairy,
35 livestock or poultry products raised or produced by it in its normal
36 operations as authorized by the act creating it.
- 37 (11) The sale of textbooks, library books, forms, bulletins, and
38 instructional supplies by the State Board of Education, State
39 Department of Public Instruction, and local school authorities.
- 40 (12) The sale of North Carolina flags by or through the auspices of the
41 Department of Administration, to the citizens of North Carolina.
- 42 (13) The operation by the Department of Correction of forestry
43 management programs on State-owned lands, including the sale on

1 the open market of timber cut as a part of the management
2 program.

3 (14) The operation by the Department of Correction of facilities to
4 manufacture and produce traffic and street name signs for use on
5 the public streets and highways of the State.

6 (15) The operation by the Department of Correction of facilities to
7 manufacture and produce paint for use on the public streets and
8 highways of the State.

9 (16) The performance by the Department of Transportation of dredging
10 services for a unit of local government.

11 (17) The sale by the State Board of Elections to political committees
12 and candidate committees of computer software designed by or for
13 the State Board of Elections to provide a uniform system of
14 electronic filing of the campaign finance reports required by
15 Article 22A of Chapter 163 of the General Statutes and to facilitate
16 the State Board's monitoring of compliance with that Article. This
17 computer software for electronic filing of campaign finance reports
18 shall not exceed a cost of one hundred dollars (\$100.00) to any
19 political committee or candidate committee without the State
20 Board of Elections first notifying in writing the Joint Legislative
21 Commission on Governmental Operations.

22 (18) The leasing of no more than 50 acres within the North Carolina
23 Zoological Park by the Department of Environment and Natural
24 Resources to the North Carolina Zoological Society for the
25 maintenance or operation, pursuant to a contract or otherwise, of
26 an exhibition center, theater, conference center, and associated
27 restaurants and lodging facilities."

28 (g) G.S. 114-19.6 reads as rewritten:

29 "**§ 114-19.6. Criminal history record checks of employees of and applicants for**
30 **employment with the Department of Health and Human Services: and the Department**
31 **of Juvenile Justice.**

32 (a) Definitions. -- As used in this section, the term:

33 (1) 'Covered person' means:

34 a. An applicant for employment or a current employee in a
35 position in the Department of Health and Human Services
36 or the Department of Juvenile Justice who provides direct
37 care for a client, patient, student, resident or ward of the
38 Department; or

39 b. Supervises positions providing direct care as outlined in sub-
40 subdivision a. of this subdivision.

41 (2) 'Criminal history' means a State or federal history of conviction of
42 a crime, whether a misdemeanor or felony, that bears upon a
43 covered person's fitness for employment in the Department of
44 Health and Human ~~Services~~: Services or the Department of

1 Juvenile Justice. The crimes include, but are not limited to,
2 criminal offenses as set forth in any of the following Articles of
3 Chapter 14 of the General Statutes: Article 5, Counterfeiting and
4 Issuing Monetary Substitutes; Article 5A, Endangering Executive
5 and Legislative Officers; Article 6, Homicide; Article 7A, Rape and
6 Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and
7 Abduction; Article 13, Malicious Injury or Damage by Use of
8 Explosive or Incendiary Device or Material; Article 14, Burglary
9 and Other Housebreakings; Article 15, Arson and Other Burnings;
10 Article 16, Larceny; Article 17, Robbery; Article 18,
11 Embezzlement; Article 19, False Pretenses and Cheats; Article
12 19A, Obtaining Property or Services by False or Fraudulent Use of
13 Credit Device or Other Means; Article 19B, Financial Transaction
14 Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article
15 26, Offenses Against Public Morality and Decency; Article 26A,
16 Adult Establishments; Article 27, Prostitution; Article 28, Perjury;
17 Article 29, Bribery; Article 31, Misconduct in Public Office; Article
18 35, Offenses Against the Public Peace; Article 36A, Riots and Civil
19 Disorders; Article 39, Protection of Minors; Article 40, Protection
20 of the Family; Article 59, Public Intoxication; and Article 60,
21 Computer-Related Crime. The crimes also include possession or
22 sale of drugs in violation of the North Carolina Controlled
23 Substances Act, Article 5 of Chapter 90 of the General Statutes,
24 and alcohol-related offenses such as sale to underage persons in
25 violation of G.S. 18B-302, or driving while impaired in violation of
26 G.S. 20-138.1 through G.S. 20-138.5.

27 (b) When requested by the Department of Health and Human ~~Services~~, Services
28 or the Department of Juvenile Justice, the North Carolina Department of Justice may
29 provide to the Department of ~~Health and Human Services~~ a covered person's
30 criminal history from the State Repository of Criminal Histories. Such requests shall
31 not be due to a person's age, sex, race, color, national origin, religion, creed, political
32 affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a
33 State criminal history record check only, the Department of ~~Health and Human~~
34 ~~Services~~ shall provide to the Department of Justice a form consenting to the check
35 signed by the covered person to be checked and any additional information required
36 by the Department of Justice. National criminal record checks are authorized for
37 covered applicants who have not resided in the State of North Carolina during the
38 past five years. For national checks the Department of ~~Health and Human Services~~
39 shall provide to the North Carolina Department of Justice the fingerprints of the
40 covered person to be checked, any additional information required by the
41 Department of Justice, and a form signed by the covered person to be checked
42 consenting to the check of the criminal record and to the use of fingerprints and
43 other identifying information required by the State or National Repositories. The
44 fingerprints of the individual shall be forwarded to the State Bureau of Investigation

1 for a search of the State criminal history record file and the State Bureau of
2 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation
3 for a national criminal history record check. The Department of Health and Human
4 Services shall keep all information pursuant to this section confidential. The
5 Department of Justice shall charge a reasonable fee for conducting the checks of the
6 criminal history records authorized by this section.

7 (c) All releases of criminal history information to the Department of Health and
8 Human Services or the Department of Juvenile Justice shall be subject to, and in
9 compliance with, rules governing the dissemination of criminal history record checks
10 as adopted by the North Carolina Division of Criminal Information. All of the
11 information the Department of ~~Health and Human Services~~ receives through the
12 checking of the criminal history is privileged information and for the exclusive use of
13 the ~~Department of Health and Human Services~~. Department.

14 (d) If the covered person's verified criminal history record check reveals one or
15 more convictions covered under subsection (a) of this section, then the conviction
16 shall constitute just cause for not selecting the person for employment, or for
17 dismissing the person from current employment with the Department of Health and
18 Human ~~Services~~. Services or the Department of Juvenile Justice. The conviction shall
19 not automatically prohibit employment; however, the following factors shall be
20 considered by the Department of ~~Health and Human Services~~ in determining whether
21 employment shall be denied:

- 22 (1) The level and seriousness of the crime;
- 23 (2) The date of the crime;
- 24 (3) The age of the person at the time of the conviction;
- 25 (4) The circumstances surrounding the commission of the crime, if
26 known;
- 27 (5) The nexus between the criminal conduct of the person and job
28 duties of the person;
- 29 (6) The prison, jail, probation, parole, rehabilitation, and employment
30 records of the person since the date the crime was committed; and
- 31 (7) The subsequent commission by the person of a crime listed in
32 subsection (a) of this section.

33 (e) The Department of Health and Human Services and the Department of
34 Juvenile Justice may deny employment to or dismiss a covered person who refuses to
35 consent to a criminal history record check or use of fingerprints or other identifying
36 information required by the State or National Repositories of Criminal Histories. Any
37 such refusal shall constitute just cause for the employment denial or the dismissal
38 from employment.

39 (f) The Department of Health and Human Services and the Department of
40 Juvenile Justice may extend a conditional offer of employment pending the results of
41 a criminal history record check authorized by this section."

42 (h) G.S. 115C-110 reads as rewritten:
43 "§ 115C-110. Services mandatory; single-agency responsibility; State and local plans;
44 census and registration.

1 (a) The Board shall cause to be provided by all local school administrative units
2 and by all other State and local governmental agencies providing special education
3 services or having children with special needs in their care, custody, management,
4 jurisdiction, control, or programs, special education and related services appropriate
5 to all children with special needs. In this regard, all local school administrative units
6 and all other State and local governmental agencies providing special education and
7 related services shall explore available local resources and determine whether the
8 services are currently being offered by an existing public or private agency.

9 When a specified special education or related service is being offered by a local
10 public or private resource, any unit or agency described above shall negotiate for the
11 purchase of that service or shall present full consideration of alternatives and its
12 recommendations to the Board. In this regard, a new or additional program for
13 special education or related services shall be developed with the approval of the
14 Board only when that service is not being provided by existing public or private
15 resources or the service cannot be purchased from existing providers. Further, the
16 Board shall support and encourage joint and collaborative special education planning
17 and programming at local levels to include local administrative units and the
18 programs and agencies of the Departments of Health and Human ~~Services~~ Services,
19 Juvenile Justice, and Correction.

20 The jurisdiction of the Board with respect to the design and content of special
21 education programs or related services for children with special needs extends to and
22 over the Department of Health and Human ~~Services~~ Services, the Department of
23 Juvenile Justice, and the Department of Correction.

24 All provisions of this Article that are specifically applicable to local school
25 administrative units also are applicable to the Department of Health and Human
26 ~~Services~~ Services, the Department of Juvenile Justice, and the Department of
27 Correction and their divisions and agencies; all duties, responsibilities, rights and
28 privileges specifically imposed on or granted to local school administrative units by
29 this Article also are imposed on or granted to the Department of Health and Human
30 ~~Services~~ Services, the Department of Juvenile Justice, and the Department of
31 Correction and their divisions and agencies. However, with respect to children with
32 special needs who are residents or patients of any state-operated or state-supported
33 residential treatment facility, including without limitation, a school for the deaf,
34 school for the blind, mental hospital or center, mental retardation center, or in a
35 facility operated by the Department of Juvenile Justice, the Department of Correction
36 or any of its divisions and agencies, the Board shall have the power to contract with
37 the Department of Health and Human ~~Services~~ Services, the Department of Juvenile
38 Justice, and the Department of Correction for the provision of special education and
39 related services and the power to review, revise and approve ~~said~~ these Departments'
40 plans for special education and related services to those residents.

41 The Departments of Health and Human ~~Services~~ Services, Juvenile Justice, and
42 Correction shall submit to the Board their plans for the education of children with
43 special needs in their care, custody, or control. The Board shall have general
44 supervision and shall set standards, by rule or regulation, for the programs of special

1 education to be administered by it, by local educational agencies, and by the
2 Departments of Health and Human ~~Services~~ Services, Juvenile Justice, and
3 Correction. The Board may grant specific exemptions for programs administered by
4 the Department of Health and Human ~~Services~~ Services, the Department of Juvenile
5 Justice, or the Department of Correction when compliance by them with the Board's
6 standards would, in the Board's judgment, impose undue hardship on ~~such~~ this
7 Department and when other procedural due process requirements, substantially
8 equivalent to those of G.S. 115C-116, are assured in programs of special education
9 and related services furnished to children with special needs served by ~~such~~ this
10 Department. Further, the Board shall recognize that inpatient and residential special
11 education programs within the Departments of Health and Human ~~Services~~ Services,
12 Juvenile Justice, and Correction may require more program resources than those
13 necessary for optimal operation of ~~such~~ these programs in local school administrative
14 units.

15 Every State and local department, division, unit or agency covered by this section
16 is hereinafter referred to as a 'local educational agency' unless the text of this Article
17 otherwise provides.

18 (b) The Board shall make and keep current a plan for the implementation of the
19 policy set forth in G.S. 115C-106(b). The plan shall include:

- 20 (1) A census of the children with special needs in the State, as
21 required by subsection (j) of this section;
- 22 (2) A procedure for diagnosis and evaluation of each ~~such~~ child;
- 23 (3) An inventory of the personnel and facilities available to provide
24 special education for ~~such~~ these children;
- 25 (4) An analysis of the present distribution of responsibility for special
26 education between State and local educational agencies, together
27 with recommendations for any necessary or desirable changes in
28 the distribution of responsibilities;
- 29 (5) Standards for the education of children with special needs;
- 30 (6) Programs and procedures for the development and implementation
31 of a comprehensive system of personnel development; and
- 32 (7) Any additional matters, including recommendations for
33 amendment of laws, changes in administrative regulations, rules
34 and practices and patterns of special organization, and changes in
35 levels and patterns of education financial support.

36 (c) The Board shall annually submit amendments to or revisions of the plan
37 required by subsection (b) to the Governor and General Assembly and make it
38 available for public comment pursuant to subdivision (1) and for public distribution
39 no less than 30 days before January 15 of each year. All such submissions shall set
40 forth in detail the progress made in the implementation of the plan.

41 (d) The Board shall adopt rules ~~or regulations~~ covering:

- 42 (1) The qualifications of and standards for certification of teachers,
43 teacher assistants, speech clinicians, school psychologists, and

1 others involved in the education and training of children with
2 special needs;

3 (2) Minimum standards for the individualized educational program for
4 all children with special needs other than for the pregnant
5 children, and for the educational program for the pregnant
6 children, who receive special education and related services; and

7 (3) ~~Such~~ Any other rules ~~or regulations~~ as may be necessary or
8 appropriate for carrying out the purposes of this Article.
9 Representatives from the Departments of Health and Human
10 ~~Services~~ Services, Juvenile Justice, and Correction shall be
11 involved in the development of the standards outlined under this
12 subsection.

13 (e) On or before October 15, each local educational agency shall report annually
14 to the Board the extent to which it is then providing special education for children
15 with special needs. The annual report also shall detail the means by which the local
16 educational agency proposes to secure full compliance with the policy of this Article,
17 including the following:

18 (1) A statement of the extent to which the required education and
19 services will be provided directly by the agency;

20 (2) A statement of the extent to which standards in force pursuant to
21 G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and

22 (3) The means by which the agency will contract to provide, at levels
23 meeting standards in force pursuant to G.S. 115C-110(b)(5) and
24 (d)(2), all special education and related services not provided
25 directly by it or by the State.

26 (f) After submitting the report required by subsection (e), the local educational
27 agency also shall submit such supplemental and additional reports as the Board may
28 require to keep the local educational agency's plan current.

29 (g) By ~~rule or regulation, rule,~~ rule, the Board shall prescribe due dates not later than
30 October 15 of each year, and all other necessary or appropriate matters relating to
31 ~~such~~ these annual and supplemental and additional reports.

32 (h) The annual report shall be a two-year plan for providing appropriate special
33 education and related services to children with special needs. The agency shall submit
34 the plan to the Board for its review, approval, modification, or disapproval. Unless
35 thereafter modified with approval of the Board, the plan shall be adhered to by the
36 local educational agency. The procedure for approving, disapproving, establishing,
37 and enforcing the plan shall be the same as that set forth for the annual plan. The
38 long-range plan shall include such provisions as may be appropriate for the following,
39 without limitation:

40 (1) Establishment of classes, other programs of instruction, curricula,
41 facilities, equipment, and special services for children with special
42 needs; and

43 (2) Utilization and professional development of teachers and other
44 personnel working with children with special needs.

1 (i) Each local educational agency shall provide free appropriate special education
2 and related services in accordance with the provisions of this Article for all children
3 with special needs who are residents of, or whose parents or guardians are residents
4 of, the agency's district, beginning with children aged five. No matriculation or
5 tuition fees or other fees or charges shall be required or asked of children with
6 special needs or their parents or guardians except ~~such~~ those fees or charges as are
7 required uniformly of all public school pupils. The provision of free appropriate
8 special education within the facilities of the Department of Health and Human
9 Services and the Department of Juvenile Justice shall not prevent ~~that~~ those
10 Department from charging for other services or treatment.

11 (j) The Board shall require an annual census of children with special needs,
12 subdivided for 'identified' and 'suspected' children with special needs, to be taken in
13 each school year. Suspected children are those in the formal process of being
14 identified, evaluated or diagnosed as children with special needs. The census shall be
15 conducted annually and shall be completed not later than October 15, and shall be
16 submitted to the Governor and General Assembly and be made available to the
17 public no later than January 15 annually.

18 In taking the census, the Board shall require the cooperation, participation, and
19 assistance of all local educational agencies and all other State and local governmental
20 departments and agencies providing or required to provide special education services
21 to children with special needs, and those departments and agencies shall cooperate
22 and participate with and assist the Board in conducting the census.

23 The census shall include the number of children identified and suspected with
24 special needs, their age, the nature of their disability, their county or city of
25 residence, their local school administrative unit residence, whether they are being
26 provided special educational or related services and if so by what department or
27 agency, whether they are not being provided special education or related services, the
28 identity of each department or agency having children with special needs in its care,
29 custody, management, jurisdiction, control, or programs, the number of children with
30 special needs being served by each department or agency, and such other information
31 or data as the Board shall require. The census shall be of children with special needs
32 between the ages of three and 21, inclusive.

33 (k) The Department shall monitor the effectiveness of individualized education
34 programs in meeting the educational needs of all children with special needs other
35 than pregnant children, and of educational programs in meeting the educational
36 needs of the pregnant children.

37 (l) The Board shall provide for procedures assuring that in carrying out the
38 requirements of this Article procedures are established for consultation with
39 individuals involved in or concerned with the education of children with special
40 needs, including parents or guardians of such children, and there are public hearings,
41 adequate notice of such hearings, and an opportunity for comment available to the
42 general public prior to the adoption of the policies, procedures, and rules or
43 regulations required by this Article.

1 (m) Children with special needs shall be educated in the least restrictive
2 appropriate setting, as defined by the State Board of Education."

3 (i) G.S. 115C-111 reads as rewritten:

4 "**§ 115C-111. Free appropriate education for all children with special needs.**

5 No child with special needs between the ages specified by G.S. 115C-109 shall be
6 denied a free appropriate public education or be prevented from attending the public
7 schools of the local educational agency in which he or his parents or legal guardian
8 resides or from which he receives services or from attending any other public
9 program of free appropriate public education because he is a child with special
10 needs. If it appears that a child should receive a program of free appropriate public
11 education in a program operated by or under the supervision of the Department of
12 Health and Human ~~Services~~, Services or the Department of Juvenile Justice, the local
13 educational agency shall confer with the appropriate Department of Health and
14 Human Services or Juvenile Justice staff for their participation and determination of
15 the appropriateness of placement in said program and development of the child's
16 individualized education program. The individualized education program may then
17 be challenged under the due process provisions of G.S. 115C-116. Every child with
18 special needs shall be entitled to attend ~~such~~ these nonresidential schools or programs
19 and receive from them free appropriate public education."

20 (j) G.S. 115C-113(f) reads as rewritten:

21 "(f) Each local educational agency shall prepare individualized educational
22 programs for all children found to be children with special needs other than the
23 pregnant children, and educational programs prescribed in subsection (h) of this
24 section for the pregnant children. The individualized educational program shall be
25 developed in conformity with Public Law 94-142 and the implementing regulations
26 issued by the United States Department of Education and shall be implemented in
27 conformity with timeliness set by that Department. The term "individualized
28 educational program" means a written statement for each such child developed in
29 any meeting by a representative of the local educational agency who shall be
30 qualified to provide, or supervise the provision of, specially designed instruction to
31 meet the unique needs of such children, the teacher, the parents or guardian of such
32 child, and, whenever appropriate, such child, which statement shall be based on rules
33 developed by the Board. Each local educational agency shall establish, or revise,
34 whichever is appropriate, the individualized educational program of each child with
35 special needs each school year and will then review and, if appropriate revise, its
36 provisions periodically, but not less than annually. In the facilities and programs of
37 the Department of Health and Human ~~Services~~, Services and the Department of
38 Juvenile Justice, the individualized educational program shall be planned in
39 collaboration with those other individuals responsible for the design of the total
40 treatment or habilitation plan or both; the resulting educational, treatment, and
41 habilitation plans shall be coordinated, integrated, and internally consistent."

42 (k) G.S. 115C-113.1 reads as rewritten:

43 "**§ 115C-113.1. Surrogate parents.**

1 In the case of a child whose parent or guardian is unknown, whose whereabouts
2 cannot be determined after reasonable investigation, or who is a ward of the State,
3 the local educational agency shall appoint a surrogate parent for the child. The
4 surrogate parent shall be appointed from a group of persons approved by the
5 Superintendent of Public ~~Instruction and Instruction~~, the Secretary of Health and
6 Human Services, and the Secretary of the Department of Juvenile Justice, but in no
7 case shall the person appointed be an employee of the local educational agency or
8 directly involved in the education or care of the child. The Superintendent shall
9 ensure that local educational agencies appoint a surrogate parent for every child in
10 need of a surrogate parent."

11 (l) G.S. 115C-115 reads as rewritten:

12 "**§ 115C-115. Placements in private schools, out-of-state schools and schools in other**
13 **local educational agencies.**

14 The board shall adopt rules and regulations to assure that:

15 (1) There be no cost to the parents or guardian for the placement of a
16 child in a private school, out-of-state school or a school in another
17 local education agency if the child was so placed by the Board or
18 by the appropriate local educational agency as the means of
19 carrying out the requirement of this Article or any other applicable
20 law requiring the provision of special education and related
21 services to children within the State.

22 (2) No child shall be placed by the Board or by the local educational
23 agency in a private or out-of-state school unless the Board has
24 determined that the school meets standards that apply to State and
25 local educational agencies and that the child so placed will have all
26 the rights he would have if served by a State or local educational
27 agency.

28 (3) If the placement of the child in a private school, out-of-state school
29 or a school in another local educational agency determined by the
30 Superintendent of Public Instruction to be the most cost-effective
31 way to provide an appropriate education to that child and the
32 child is not currently being educated by the Department of Health
33 and Human ~~Services~~ Services, the Department of Juvenile Justice,
34 or the Department of Correction, the State will bear a portion of
35 the cost of the placement of the child. The local school
36 administrative unit shall pay an amount equal to what it receives
37 per pupil from the State Public School Fund and from other State
38 and federal funds for children with special needs for that child.
39 The State shall pay the full cost of any remainder up to a
40 maximum of fifty percent (50%) of the total cost."

41 (m) G.S. 115C-121(b) reads as rewritten:

42 "(b) The Council shall consist of ~~18~~ 23 members to be appointed as follows: five ex
43 officio members; two members appointed by the Governor; two members of the
44 Senate appointed by the President Pro Tempore; two members of the House of

1 Representatives appointed by the Speaker of the House; and 12 members appointed
2 by the State Board of Education. Of those members of the Council appointed by the
3 State Board one member shall be selected from each congressional district within the
4 State, and the members so selected shall be composed of at least one person
5 representing each of the following: handicapped individuals, parents or guardians of
6 children with special needs, teachers of children with special needs, and State and
7 local education officials and administrators of programs for children with special
8 needs. The Council shall designate a chairperson from among its members. The
9 designation of the chairperson is subject to the approval of the State Board of
10 Education. The board shall promulgate rules or regulations to carry out this
11 subsection.

12 Ex officio members of the Council shall be the following:

- 13 (1) The Secretary of the Department of Health and Human Services or
14 the Secretary's designee;
- 15 (1a) The Secretary of the Department of Juvenile Justice or the
16 Secretary's designee;
- 17 (2) The Secretary of the Department of Correction or the Secretary's
18 designee;
- 19 (3) A representative from The University of North Carolina Planning
20 Consortium for Children with Special Needs; and
- 21 (4) The Superintendent of Public Instruction or the Superintendent's
22 designee.

23 The term of appointment for all members except those appointed by the State
24 Board of Education shall be for two years. The term for members appointed by the
25 State Board of Education shall be for four years. No person shall serve more than two
26 consecutive four-year terms. The initial term of office of the person appointed from
27 the 12th Congressional District shall commence on January 3, 1993, and expire on
28 June 30, 1996.

29 Each Council member shall serve without pay, but shall receive travel allowances
30 and per diem in the same amount provided for members of the North Carolina
31 General Assembly."

32 (n) G.S. 115C-139(a) reads as rewritten:

33 "(a) The Board, any two or more local educational agencies and any such agency
34 and any State department, agency, or division having responsibility for the education,
35 treatment or habilitation of children with special needs are authorized to enter into
36 interlocal cooperation undertakings pursuant to the provisions of Chapter 160A,
37 Article 20, Part 1 of the General Statutes or into undertakings with a State agency
38 such as the Departments of Public Instruction, Health and Human ~~Services~~, Juvenile
39 Justice, or Correction, or their divisions, agencies, or units, for the purpose of
40 providing for the special education and related services, treatment or habilitation of
41 such children within the jurisdiction of the agency or unit, and shall do so when it
42 itself is unable to provide the appropriate public special education or related services
43 for ~~such~~ these children. In entering into such undertakings, the local agency and State
44 department, agency, or division shall also contract to provide the special education or

1 related services that are most educationally appropriate to the children with special
2 needs for whose benefit the undertaking is made, and provide ~~such~~ these services by
3 or in the local agency unit or State department, agency, or division located in the
4 place most convenient to ~~such~~ these children."

5 (o) G.S. 115C-250(a) reads as rewritten:

6 "(a) The State Board of Education and local boards of education may expend
7 public funds for transportation of handicapped children with special needs who are
8 unable because of their handicap to ride the regular school buses and who have been
9 placed in programs by a local school board as a part of its duty to provide such
10 children with a free appropriate education, including its duty under G.S. 115C-115.
11 At the option of the local board of education with the concurrence of the State Board
12 of Education, funds appropriated to the State Board of Education for contract
13 transportation of exceptional children may be used to purchase buses and minibuses
14 as well as for the purposes authorized in the budget. The State Board of Education
15 shall adopt rules and regulations concerning the construction and equipment of these
16 buses and minibuses.

17 The Department of Health and Human ~~Services~~ Services, the Department of
18 Juvenile Justice, and the Department of Correction may also expend public funds for
19 transportation of handicapped children with special needs who are unable because of
20 their handicap to ride the regular school buses and who have been placed in
21 programs by one of these agencies as a part of that agency's duty to provide such
22 children with a free appropriate public education.

23 If a local area mental health center places a child with special needs in an
24 educational program, the local area mental health center shall pay for the
25 transportation of the child, if handicapped and unable because of the handicap to
26 ride the regular school buses, to the program."

27 (p) G.S. 115C-325(p) reads as rewritten:

28 "(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or
29 regulation to the contrary, this section shall apply to all persons employed in teaching
30 and related educational classes in the schools and institutions of the Departments of
31 Health and Human ~~Services~~ Services, Juvenile Justice, and Correction regardless of
32 the age of the students."

33 (q) G.S. 115D-1 reads as rewritten:

34 "§ 115D-1. Statement of purpose.

35 The purposes of this Chapter are to provide for the establishment, organization,
36 and administration of a system of educational institutions throughout the State
37 offering courses of instruction in one or more of the general areas of two-year college
38 parallel, technical, vocational, and adult education programs, to serve as a legislative
39 charter for such institutions, and to authorize the levying of local taxes and the
40 issuing of local bonds for the support thereof. The major purpose of each and every
41 institution operating under the provisions of this Chapter shall be and shall continue
42 to be the offering of vocational and technical education and training, and of basic,
43 high school level, academic education needed in order to profit from vocational and
44 technical education, for students who are high school graduates or who are beyond

1 the compulsory age limit of the public school system and who have left the public
2 schools, provided, juveniles of any age committed to the ~~Division of Youth Services~~
3 ~~of the Department of Health and Human Services~~ Department of Juvenile Justice by
4 a court of competent jurisdiction may, if approved by the director of the training
5 school to which they are assigned, take courses offered by institutions of the system if
6 they are otherwise qualified for admission."

7 (r) G.S. 115D-5(b) reads as rewritten:

8 "(b) In order to make instruction as accessible as possible to all citizens, the
9 teaching of curricular courses and of noncurricular extension courses at convenient
10 locations away from institution campuses as well as on campuses is authorized and
11 shall be encouraged. A pro rata portion of the established regular tuition rate charged
12 a full-time student shall be charged a part-time student taking any curriculum course.
13 In lieu of any tuition charge, the State Board of Community Colleges shall establish a
14 uniform registration fee, or a schedule of uniform registration fees, to be charged
15 students enrolling in extension courses for which instruction is financed primarily
16 from State funds; provided, however, that the State Board of Community Colleges
17 may provide by general and uniform regulations for waiver of tuition and registration
18 fees for persons not enrolled in elementary or secondary schools taking courses
19 leading to a high school diploma or equivalent certificate, for training courses for
20 volunteer firemen, local fire department personnel, volunteer rescue and lifesaving
21 department personnel, local rescue and lifesaving department personnel, Radio
22 Emergency Associated Citizens Team (REACT) members when the REACT team is
23 under contract to a county as an emergency response agency, local law-enforcement
24 officers, patients in State alcoholic rehabilitation centers, all full-time custodial
25 employees of the Department of Correction, employees of the Department's Division
26 of Adult Probation and Parole and employees of the ~~Division of Youth Services of~~
27 ~~the Department of Health and Human Services~~ Department of Juvenile Justice
28 required to be certified pursuant to Chapter 17C of the General Statutes and the
29 rules of the Criminal Justice and Training Standards Commission, trainees enrolled
30 in courses conducted under the New and Expanding Industry Program, clients of
31 sheltered workshops, clients of adult developmental activity programs, students in
32 Health and Human Services Development Programs, juveniles of any age committed
33 to the ~~Division of Youth Services of the Department of Health and Human Services~~
34 Department of Juvenile Justice by a court of competent jurisdiction, prison inmates,
35 and members of the North Carolina State Defense Militia as defined in G.S. 127A-5
36 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes.
37 Provided further, tuition shall be waived for senior citizens attending institutions
38 operating pursuant to this Chapter as set forth in Chapter 115B of the General
39 Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be
40 waived for all courses taken by high school students at community colleges in
41 accordance with G.S. 115D-20(4) and this section."

42 (s) G.S. 122C-3(13a) reads as rewritten:

43 "(13a) 'Eligible assaultive and violent children' means children who are
44 citizens of North Carolina and:

- 1 a. Who suffer from emotional, mental, or neurological
2 handicaps that have been accompanied by behavior that is
3 characterized as violent or assaultive; and
4 b. Who are involuntarily institutionalized or otherwise placed
5 in residential programs, including:
6 1. Minors who are mentally ill as defined by G.S. 122C-
7 3(21) and who are admitted for evaluation or
8 treatment to a treatment facility under Article 5 of
9 Chapter 122C of the General Statutes or are
10 presented for admission and denied due to their
11 behaviors or handicapping conditions;
12 2. Minors who are referred to an area mental health,
13 developmental disabilities, and substance abuse
14 authority pursuant to ~~G.S. 7A-647(3)~~ G.S. 7B-903 for
15 whom residential treatment or placement is
16 recommended;
17 3. Minors who are placed in residential programs as a
18 condition of probation pursuant to ~~G.S. 7A-649(8)~~;
19 G.S. 7B-2504;
20 4. Minors who are ordered to a professional residential
21 treatment program pursuant to ~~G.S. 7A-649(6)~~; G.S.
22 7B-2504; and
23 5. Minors committed to the custody of the ~~Division of~~
24 ~~Youth Services~~ Department of Juvenile Justice,
25 pursuant to ~~G.S. 7A-649(10)~~; G.S. 7B-2504; and
26 c. For whom the State has not provided appropriate treatment
27 and educational programs."

28 (t) G.S. 122C-113(b1) reads as rewritten:

29 "(b1) The Secretary shall cooperate with the State Board of Education and the
30 Department of Juvenile Justice in coordinating the responsibilities of the Department
31 of Health and Human Services, the State Board of Education, the Department of
32 Juvenile Justice, and the Department of Public Instruction for adolescent substance
33 abuse programs. The Department of Health and Human Services, through its
34 Division of Mental Health, Developmental Disabilities, and Substance Abuse
35 Services, in cooperation with the Department of Juvenile Justice, shall be responsible
36 for intervention and treatment in non-school based programs. The State Board of
37 Education and the Department of Public ~~Instruction~~ Instruction, in consultation with
38 the Department of Juvenile Justice, shall have primary responsibility for in-school
39 education, identification, and intervention services, including student assistance
40 programs."

41 (u) G.S. 122C-117(a) reads as rewritten:

42 "(a) The area authority shall:

- 1 (1) Engage in comprehensive planning, budgeting, implementing, and
- 2 monitoring of community-based mental health, developmental
- 3 disabilities, and substance abuse services;
- 4 (2) Provide services to clients in the catchment ~~area~~; area, including
- 5 clients committed to the custody of the Department of Juvenile
- 6 Justice;
- 7 (3) Determine the needs of the area authority's clients and coordinate
- 8 with the Secretary and with the Secretary of the Department of
- 9 Juvenile Justice the provision of services to clients through area
- 10 and State facilities;
- 11 (4) Develop plans and budgets for the area authority subject to the
- 12 approval of the Secretary;
- 13 (5) Assure that the services provided by the area authority meet the
- 14 rules of the Commission and Secretary;
- 15 (6) Comply with federal requirements as a condition of receipt of
- 16 federal grants; and
- 17 (7) Appoint an area director, chosen through a search committee on
- 18 which the Secretary of the Department of Health and Human
- 19 Services or the Secretary's designee serves as a nonvoting
- 20 member."

(v) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

29 OFFICIAL OR AGENCY	NUMBER OF COPIES
30 State Departments and Officials	
31 Governor	1
32 Lieutenant Governor	1
33 Auditor	1
34 Treasurer	1
35 Secretary of State	1
36 Superintendent of Public Instruction.....	1
37 Attorney General (Library)	1
38 Commissioner of Agriculture	1
39 Commissioner of Labor	1
40 Commissioner of Insurance.....	1
41 Department of Environment and	
42 Natural Resources.....	1
43 Department of Health and Human Services.....	1
44 <u>Department of Juvenile Justice</u>	<u>1</u>

1 Board of Transportation.....1
 2 Utilities Commission.....1
 3 Department of Administration.....1
 4 Clerk of the Supreme Court.....1
 5 Clerk of the Court of Appeals.....1
 6 Clerk of the Superior Court.....1 each
 7 Department of Cultural Resources [State
 8 Library].....5
 9 Supreme Court Library.....2
 10 Legislative Library.....1
 11 Schools
 12 All state-supported colleges and universities
 13 in the State of North Carolina.....*1 each
 14 Local Officials
 15 Clerks of the Superior Courts.....1 each
 16 Chief Building Inspector of each incorporated
 17 municipality or county.....1
 18

19 In addition, the Building Code Council shall make additional copies available at
 20 such price as it shall deem reasonable to members of the general public."

21 (w) G.S. 143B-138.1(a) reads as rewritten:

22 "(a) All functions, powers, duties, and obligations previously vested in the
 23 following commissions, boards, councils, committees, or subunits of the Department
 24 of Human Resources are transferred to and vested in the Department of Health and
 25 Human Services by a Type I transfer, as defined in G.S. 143A-6:

- 26 (1) Division of Aging.
- 27 (2) Division of Services for the Blind.
- 28 (3) Division of Medical Assistance.
- 29 (4) Division of Mental Health, Developmental Disabilities, and
 30 Substance Abuse Services.
- 31 (5) Division of Social Services.
- 32 (6) Division of Facility Services.
- 33 (7) Division of Vocational Rehabilitation.
- 34 ~~(8) Division of Youth Services.~~
- 35 (9) Division of Services for the Deaf and the Blind.
- 36 (10) Office of Economic Opportunity.
- 37 (11) Division of Child Development.
- 38 (12) Office of Rural Health."

39 (x) G.S. 143B-150.7(b) reads as rewritten:

40 "(b) The Committee shall have 24 members appointed for staggered four-year
 41 terms and until their successors are appointed and qualify. The Governor shall have
 42 the power to remove any member of the Committee from office in accordance with
 43 the provisions of G.S. 143B-13. Members may succeed themselves for one term and
 44 may be appointed again after being off the Committee for one term. Six of the

1 members shall be legislators appointed by the General Assembly, three of whom shall
2 be recommended by the Speaker of the House of Representatives, and three of whom
3 shall be recommended by the President Pro Tempore of the Senate. Two of the
4 members shall be appointed by the General Assembly from the public at large, one of
5 whom shall be recommended by the Speaker of the House of Representatives, and
6 one of whom shall be recommended by the President Pro Tempore of the Senate.
7 The remainder of the members shall be appointed by the Governor as follows:

8 (1) ~~Five~~ Four members representing the Department of Health and
9 Human Services, one of whom shall be the Assistant Secretary for
10 Children and Family, one of whom shall represent the Division of
11 Social Services, ~~one of whom shall represent the Division of Youth~~
12 ~~Services~~, one of whom shall represent the Division of Mental
13 Health, Developmental Disabilities, and Substance Abuse Services,
14 and one of whom shall represent the Division of Maternal and
15 Child Health;

16 (2a) One member representing the Department of Juvenile Justice;

17 (2) Two members, one from each of the following: the Administrative
18 Office of the Courts and the Department of Public Instruction;

19 (3) One member who represents the Juvenile Justice Planning
20 Committee of the Governor's Crime Commission, and one
21 member appointed at large;

22 (4) One member who is a district court judge certified by the
23 Administrative Office of the Courts to hear juvenile cases;

24 (5) One member representing the schools of social work of The
25 University of North Carolina;

26 (6) Two members, one of whom is a provider of family preservation
27 services, and one of whom is a consumer of family preservation
28 services; and

29 (7) Three members who represent county-level associations; one of
30 whom represents the Association of County Commissioners, one of
31 whom represents the Association of Directors of Social Services,
32 and one of whom represents the North Carolina Council of Mental
33 Health, Developmental Disabilities, and Substance Abuse Services.

34 The Secretary of the Department of Health and Human Services shall serve as the
35 Chair of the Committee. The Secretary shall appoint the cochair of the Committee
36 for a two-year term on a rotating basis from among the Committee members who
37 represent the ~~Division of Youth Services~~, Department of Juvenile Justice, the
38 Division of Social Services, and the Division of Mental Health, Developmental
39 Disabilities, and Substance Abuse Services."

40 (y) G.S. 143B-152.6 reads as rewritten:

41 "§ 143B-152.6. Cooperation S.O.S. Program; cooperation of State and local agencies.

42 All agencies of the State and local government, including the Department of
43 Juvenile Justice, departments of social services, health departments, local mental
44 health, mental retardation, and substance abuse authorities, court personnel, law

1 enforcement agencies, The University of North Carolina, the community college
2 system, and cities and counties, shall cooperate with the Department of Health and
3 Human Services, and local nonprofit corporations that receive grants in coordinating
4 the program at the State level and in implementing the program at the local level.
5 The Secretary of Health and Human Services, after consultation with the
6 Superintendent of Public Instruction, shall develop a plan for ensuring the
7 cooperation of State agencies and local agencies, and encouraging the cooperation of
8 private entities, especially those receiving State funds, in the coordination and
9 implementation of the program."

10 (z) G.S. 143B-152.14 reads as rewritten:

11 "**§ 143B-152.14. Cooperation Family Resource Center Grant Program; cooperation of**
12 **State and local agencies.**

13 All agencies of the State and local government, including the Department of
14 Juvenile Justice, departments of social services, health departments, local mental
15 health, mental retardation, and substance abuse authorities, court personnel, law
16 enforcement agencies, The University of North Carolina, the community college
17 system, and cities and counties, shall cooperate with the Department of Health and
18 Human Services, and local nonprofit corporations that receive grants in coordinating
19 the program at the State level and in implementing the program at the local level.
20 The Secretary of Health and Human Services, after consultation with the
21 Superintendent of Public Instruction, shall develop a plan for ensuring the
22 cooperation of State agencies and local agencies and encouraging the cooperation of
23 private entities, especially those receiving State funds, in the coordination and
24 implementation of the program."

25 (aa) G.S. 143B-153(2) reads as rewritten:

26 "(2) The Social Services Commission shall have the power and duty to
27 establish standards and adopt rules and regulations:

28 a. For the programs of public assistance established by federal
29 legislation and by Article 2 of Chapter 108A of the General
30 Statutes of the State of North Carolina with the exception of
31 the program of medical assistance established by G.S. 108A-
32 25(b);

33 b. To achieve maximum cooperation with other agencies of the
34 State and with agencies of other states and of the federal
35 government in rendering services to strengthen and maintain
36 family life and to help recipients of public assistance obtain
37 self-support and self-care;

38 c. For the placement and supervision of dependent children
39 and delinquent children who are placed in the custody of
40 the Department of Juvenile Justice, and payment of
41 necessary costs of foster home care for needy and homeless
42 children as provided by G.S. 108A-48; and

43 d. For the payment of State funds to private child-placing
44 agencies as defined in G.S. 131D-10.2(4) and residential

1 child care facilities as defined in G.S. 131D-10.2(13) for care
2 and services provided to children who are in the custody or
3 placement responsibility of a county department of social
4 services."

5 (bb) G.S. 143B-417 reads as rewritten:

6 **"§ 143B-417. North Carolina Internship Council -- creation; powers and duties.**

7 There is hereby created the North Carolina Internship Council of the Department
8 of Administration. The North Carolina Internship Council shall have the following
9 functions and duties:

- 10 (1) To determine the number of student interns to be allocated to each
11 of the following offices or departments:
- 12 a. Office of the Governor
 - 13 b. Department of Administration
 - 14 c. Department of Correction
 - 15 d. Department of Cultural Resources
 - 16 e. Department of Revenue
 - 17 f. Department of Transportation
 - 18 g. Department of Environment and Natural Resources
 - 19 h. Department of Commerce
 - 20 i. Department of Crime Control and Public Safety
 - 21 j. Department of Health and Human Services
 - 22 j1. Department of Juvenile Justice
 - 23 k. Office of the Lieutenant Governor
 - 24 l. Office of the Secretary of State
 - 25 m. Office of the State Auditor
 - 26 n. Office of the State Treasurer
 - 27 o. Department of Public Instruction
 - 28 p. Repealed by Session Laws 1985, c. 757, s. 162.
 - 29 q. Department of Agriculture and Consumer Services
 - 30 r. Department of Labor
 - 31 s. Department of Insurance
 - 32 t. Office of the Speaker of the House of Representatives
 - 33 u. Justices of the Supreme Court and Judges of the Court of
34 Appeals
 - 35 v. Department of Community Colleges
 - 36 w. Office of State Personnel
 - 37 x. Office of the Senate President Pro Tempore;
- 38 (2) To screen applications for student internships and select from these
39 applications the recipients of student internships; and
- 40 (3) To determine the appropriateness of proposals for projects for
41 student interns submitted by the offices and departments
42 enumerated in (1)."
- 43 (cc) G.S. 143B-478 reads as rewritten:

1 "§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings,
2 etc.

3 (a) There is hereby created the Governor's Crime Commission of the Department
4 of Crime Control and Public Safety. The Commission shall consist of ~~34~~ 35 voting
5 members and six nonvoting members. The composition of the Commission shall be as
6 follows:

7 (1) The voting members shall be:

8 a. The Governor, the Chief Justice of the Supreme Court of
9 North Carolina (or his alternate), the Attorney General, the
10 Director of the Administrative Office of the Courts, the
11 Secretary of the Department of Health and Human Services,
12 the Secretary of the Department of Juvenile Justice, the
13 Secretary of the Department of Correction, and the
14 Superintendent of Public Instruction;

15 b. A judge of superior court, a judge of district court
16 specializing in juvenile matters, a chief district court judge,
17 and a district attorney;

18 c. A defense attorney, three sheriffs (one of whom shall be
19 from a "high crime area"), three police executives (one of
20 whom shall be from a "high crime area"), six citizens (two
21 with knowledge of juvenile delinquency and the public
22 school system, two of whom shall be under the age of 21 at
23 the time of their appointment, one representative of a
24 'private juvenile delinquency program,' and one in the
25 discretion of the Governor), three county commissioners or
26 county officials, and three mayors or municipal officials;

27 d. Two members of the North Carolina House of
28 Representatives and two members of the North Carolina
29 Senate.

30 (2) The nonvoting members shall be the Director of the State Bureau
31 of Investigation, the Secretary of the Department of Crime Control
32 and Public Safety, the Director of the ~~Division of Youth Services~~
33 ~~of the Department of Health and Human Services~~, ~~the~~
34 ~~Administrator for Juvenile Services of the Administrative Office of~~
35 ~~the Courts~~, Department of Juvenile Justice, the Director of the
36 Division of Prisons and the Director of the Division of Adult
37 Probation and Paroles.

38 (b) The membership of the Commission shall be selected as follows:

39 (1) The following members shall serve by virtue of their office: the
40 Governor, the Chief Justice of the Supreme Court, the Attorney
41 General, the Director of the Administrative Office of the Courts,
42 the Secretary of the Department of Health and Human Services,
43 the Secretary of the Department of Juvenile Justice, the Secretary
44 of the Department of Correction, the Director of the State Bureau

- 1 of Investigation, the Secretary of the Department of Crime Control
2 and Public Safety, the Director of the Division of Prisons, the
3 Director of the Division of Adult Probation and Paroles, the
4 Director of the ~~Division of Youth Services, the Administrator for~~
5 ~~Juvenile Services of the Administrative Office of the Courts,~~
6 Department of Juvenile Justice, and the Superintendent of Public
7 Instruction. Should the Chief Justice of the Supreme Court choose
8 not to serve, his alternate shall be selected by the Governor from a
9 list submitted by the Chief Justice which list must contain no less
10 than three nominees from the membership of the Supreme Court.
- 11 (2) The following members shall be appointed by the Governor: the
12 district attorney, the defense attorney, the three sheriffs, the three
13 police executives, the six citizens, the three county commissioners
14 or county officials, the three mayors or municipal officials.
- 15 (3) The following members shall be appointed by the Governor from a
16 list submitted by the Chief Justice of the Supreme Court, which list
17 shall contain no less than three nominees for each position and
18 which list must be submitted within 30 days after the occurrence of
19 any vacancy in the judicial membership: the judge of superior
20 court, the judge of district court specializing in juvenile matters,
21 and the chief district court judge.
- 22 (4) The two members of the House of Representatives provided by
23 subdivision (a)(1)d. of this section shall be appointed by the
24 Speaker of the House of Representatives and the two members of
25 the Senate provided by subdivision (a)(1)d. of this section shall be
26 appointed by the President Pro Tempore of the Senate. These
27 members shall perform the advisory review of the State plan for
28 the General Assembly as permitted by section 206 of the Crime
29 Control Act of 1976 (Public Law 94-503).
- 30 (5) The Governor may serve as chairman, designating a vice-chairman
31 to serve at his pleasure, or he may designate a chairman and vice-
32 chairman both of whom shall serve at his pleasure.
- 33 (c) The initial members of the Commission shall be those appointed pursuant to
34 subsection (b) above, which appointments shall be made by March 1, 1977. The terms
35 of the present members of the Governor's Commission on Law and Order shall
36 expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint
37 members, other than those serving by virtue of their office, to serve staggered terms;
38 seven shall be appointed for one-year terms, seven for two-year terms, and seven for
39 three-year terms. At the end of their respective terms of office their successors shall
40 be appointed for terms of three years and until their successors are appointed and
41 qualified. The Commission members from the House and Senate shall serve two-year
42 terms effective March 1, of each odd-numbered year; and they shall not be
43 disqualified from Commission membership because of failure to seek or attain
44 reelection to the General Assembly, but resignation or removal from office as a

1 member of the General Assembly shall constitute resignation or removal from the
 2 Commission. Any other Commission member no longer serving in the office from
 3 which he qualified for appointment shall be disqualified from membership on the
 4 Commission. Any appointment to fill a vacancy on the Commission created by the
 5 resignation, dismissal, death, disability, or disqualification of a member shall be for
 6 the balance of the unexpired term.

7 (d) The Governor shall have the power to remove any member from the
 8 Commission for misfeasance, malfeasance or nonfeasance.

9 (e) The Commission shall meet quarterly and at other times at the call of the
 10 chairman or upon written request of at least eight of the members. A majority of the
 11 voting members shall constitute a quorum for the transaction of business."

12 (dd) G.S. 147-45 reads as rewritten:

13 **"§ 147-45. Distribution of copies of State publications.**

14 The Secretary of State shall, at the State's expense, as soon as possible after
 15 publication, provide such number of copies of the Session Laws and Senate and
 16 House Journals to federal, State, and local governmental officials, departments and
 17 agencies, and to educational institutions of instruction and exchange use, as is set out
 18 in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services,		
Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1

1	Budget Bureau	2	1
2	Controller	1	0
3	Property Control	1	0
4	Purchase and Contract	2	0
5	Policy and Development	1	0
6	Veterans Affairs Commission	1	0
7	Environment and Natural Resources,		
8	Department of	6	0
9	Wildlife Resources Commission	2	0
10	Revenue, Department of	5	1
11	Health and Human Services, Department of	6	0
12	Mental Health, Developmental Disabilities,		
13	and Substance Abuse Services,		
14	Division of	1	0
15	Social Services, Division of	3	0
16	Facilities Services, Division of	1	0
17	Youth Services , Division of	1	0
18	Hospitals and Institutions	1 ea.	0
19	<u>Juvenile Justice, Department of</u>	<u>3</u>	<u>0</u>
20	Transportation, Department of	1	0
21	Board of Transportation	3	0
22	Motor Vehicles, Division of	1	0
23	Commerce, Department of	1	0
24	Economic Development, Division of	2	0
25	State Ports Authority	1	0
26	Alcoholic Beverage Control Commission,		
27	North Carolina	2	0
28	Banking Commission	2	0
29	Utilities Commission	8	1
30	Industrial Commission	7	0
31	Labor Force Development Council	1	0
32	Milk Commission	5	0
33	Employment Security Commission	1	1
34	Correction, Department of	1	0
35	Department of Correction	2	0
36	Parole Commission	2	0
37	State Prison	1	0
38	Correctional Institutions	1 ea.	0
39	Cultural Resources, Department of	1	0
40	Archives and History, Division of	5	1
41	State Library	5	5
42	Publications Division	1	1
43	Crime Control and Public Safety, Department of	2	1
44	North Carolina Crime Commission	1	0

1	Adjutant General	2	0
2	Elections, State Board of	2	0
3	Office of Administrative Hearings	2	0
4	State Personnel Commission	1	0
5	Office of State Personnel	1	1
6	Legislative Branch		
7	State Senators	1 ea.	1 ea.
8	State Representatives	1 ea.	1 ea.
9	Principal Clerk -- Senate	1	1
10	Principal Clerk -- House	1	1
11	Reading Clerk -- Senate	1	1
12	Reading Clerk -- House	1	1
13	Sergeant at Arms -- House	1	1
14	Sergeant at Arms -- Senate	1	1
15	Enrolling Clerk	1	0
16	Engrossing Clerk	1	0
17	Indexer of the Laws	1	0
18	Legislative Building Library	35	15
19	Judicial System		
20	Justices of the Supreme Court	1 ea.	1 ea.
21	Judges of the Court of Appeals	1 ea.	1 ea.
22	Judges of the Superior Court	1 ea.	0
23	Emergency and Special Judges of the		
24	Superior Court	1 ea.	0
25	District Court Judges	1 ea.	0
26	District Attorneys	1 ea.	0
27	Clerk of the Supreme Court	1	1
28	Clerk of the Court of Appeals	1	1
29	Administrative Office of the Courts	4	1
30	Supreme Court Library	AS MANY AS REQUESTED	
31	Colleges and Universities		
32	The University of North Carolina System		
33	Administrative Offices	3	0
34	University of North Carolina,		
35	Chapel Hill	65	25
36	University of North Carolina,		
37	Charlotte	3	1
38	University of North Carolina,		
39	Greensboro	3	1
40	University of North Carolina,		
41	Asheville	2	1
42	University of North Carolina,		
43	Wilmington	2	1
44	North Carolina State University,		

1	Raleigh	5	3
2	Appalachian State University	2	1
3	East Carolina University	3	2
4	Elizabeth City State University	2	1
5	Fayetteville State University	2	1
6	North Carolina Agricultural and		
7	Technical University	2	1
8	North Carolina Central University	5	5
9	Western Carolina University	2	1
10	University of North Carolina,		
11	Pembroke	2	1
12	Winston-Salem State University	2	1
13	North Carolina School of the Arts	1	1
14	Private Institutions		
15	Duke University	6	6
16	Davidson College	3	2
17	Wake Forest University	5	5
18	Lenoir Rhyne College	1	1
19	Elon College	1	1
20	Guilford College	1	1
21	Campbell University	5	5
22	Wingate College	1	1
23	Pfeiffer College	1	1
24	Barber Scotia College	1	1
25	Barton College	1	1
26	Shaw University	1	1
27	St. Augustine's College	1	1
28	J. C. Smith University	1	1
29	Belmont Abbey College	1	1
30	Bennett College	1	1
31	Catawba College	1	1
32	Gardner-Webb College	1	1
33	Greensboro College	1	1
34	High Point College	1	1
35	Livingstone College	1	1
36	Mars Hill College	1	1
37	Meredith College	1	1
38	Methodist College	1	1
39	North Carolina Wesleyan College	1	1
40	Queens College	1	1
41	Sacred Heart College	1	1
42	St. Andrews Presbyterian College	1	1
43	Salem College	1	1
44	Warren Wilson College	1	1

1	County and Local Officials		
2	Clerks of the Superior Court	1 ea.	1 ea.
3	Register of Deeds	1 ea.	1 ea.
4	Federal, Out-of-State and Foreign		
5	Secretary to the President	1	0
6	Secretary of State	1	1
7	Secretary of Defense	1	0
8	Secretary of Agriculture	1	0
9	Secretary of the Interior	1	0
10	Secretary of Labor	1	1
11	Secretary of Commerce	1	1
12	Secretary of the Treasury	1	0
13	Secretary of Health, Education and		
14	Welfare	1	0
15	Secretary of Housing and Urban		
16	Development	1	0
17	Secretary of Transportation	1	0
18	Attorney General	1	0
19	Postmaster General	1	0
20	Bureau of Census	1	0
21	Bureau of Public Roads	1	0
22	Department of Justice	1	0
23	Department of Internal Revenue	1	0
24	Veterans' Administration	1	0
25	Farm Credit Administration	1	0
26	Securities and Exchange Commission	1	0
27	Social Security Board	1	0
28	Environmental Protection Agency	1	0
29	Library of Congress	8	2
30	Federal Judges resident in North		
31	Carolina	1 ea.	0
32	Federal District Attorneys resident in		
33	North Carolina	1 ea.	0
34	Marshal of the United States		
35	Supreme Court	1	0
36	Federal Clerks of Court resident in		
37	North Carolina	1 ea.	0
38	Supreme Court Library exchange list.	1 ea.	0
39	One copy of the Session Laws shall be furnished the head of any department of		
40	State government created in the future.		
41	State agencies, institutions, etc., not found in or covered by this list may, upon		
42	written request from their respective department head to the Secretary of State, and		
43	upon the discretion of the Secretary of State as to need, be issued copies of the		

1 Session Laws on a permanent loan basis with the understanding that should said
2 copies be needed they will be recalled."

3 **PART II. JUVENILE CODE STATUTORY RECOMMENDATIONS.**

4 Section 3. Subchapter XI, Articles 41 through 59 of Chapter 7A of the
5 General Statutes, the North Carolina Juvenile Code, Articles 24B and 39 of Chapter
6 7A of the General Statutes, Articles 2A, 4, 4A, and 10 of Chapter 110 of the General
7 Statutes, and Article 62 of Chapter 143 of the General Statutes are repealed.

8 Section 4. The General Statutes are amended by adding a new Chapter
9 to read:

10 "Chapter 7B.

11 "Juvenile Code.

12 "SUBCHAPTER I. ABUSE, NEGLECT, DEPENDENCY.

13 "ARTICLE 1.

14 "Purposes; Definitions.

15 "§ 7B-100. Purpose.

16 This Subchapter shall be interpreted and construed so as to implement the
17 following purposes and policies:

18 (1) To provide procedures for the hearing of juvenile cases that assure
19 fairness and equity and that protect the constitutional rights of
20 juveniles and parents;

21 (2) To develop a disposition in each juvenile case that reflects
22 consideration of the facts, the needs and limitations of the juvenile,
23 the strengths and weaknesses of the family, and the protection of
24 the public safety;

25 (3) To provide for services for the protection of juveniles by means
26 that respect both the right to family autonomy and juveniles' needs
27 for safety, continuity, and permanence; and

28 (4) To provide standards for the removal, when necessary, of juveniles
29 from their homes and for the return of juveniles to their homes
30 consistent with preventing the unnecessary or inappropriate
31 separation of juveniles from their parents.

32 "§ 7B-101. Definitions.

33 As used in this Subchapter, unless the context clearly requires otherwise, the
34 following words have the listed meanings:

35 (1) Abused juveniles. -- Any juvenile less than 18 years of age whose
36 parent, guardian, custodian, or caretaker:

37 a. Inflicts or allows to be inflicted upon the juvenile a serious
38 physical injury by other than accidental means;

39 b. Creates or allows to be created a substantial risk of serious
40 physical injury to the juvenile by other than accidental
41 means;

42 c. Uses or allows to be used upon the juvenile cruel or grossly
43 inappropriate procedures or cruel or grossly inappropriate
44 devices to modify behavior;

- 1 d. Commits, permits, or encourages the commission of a
2 violation of the following laws by, with, or upon the
3 juvenile: first-degree rape, as provided in G.S. 14-27.2;
4 second degree rape as provided in G.S. 14-27.3; first-degree
5 sexual offense, as provided in G.S. 14-27.4; second degree
6 sexual offense, as provided in G.S. 14-27.5; sexual act by a
7 custodian, as provided in G.S. 14-27.7; crime against nature,
8 as provided in G.S. 14-177; incest, as provided in G.S. 14-
9 178 and G.S. 14-179; preparation of obscene photographs,
10 slides or motion pictures of the juvenile, as provided in G.S.
11 14-190.5; employing or permitting the juvenile to assist in a
12 violation of the obscenity laws as provided in G.S. 14-190.6;
13 dissemination of obscene material to the juvenile as
14 provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or
15 disseminating material harmful to the juvenile as provided
16 in G.S. 14-190.14 and G.S. 14-190.15; first and second
17 degree sexual exploitation of the juvenile as provided in
18 G.S. 14-190.16 and G.S. 14-190.17; promoting the
19 prostitution of the juvenile as provided in G.S. 14-190.18;
20 and taking indecent liberties with the juvenile, as provided
21 in G.S. 14-202.1, regardless of the age of the parties;
22 e. Creates or allows to be created serious emotional damage to
23 the juvenile. Serious emotional damage is evidenced by a
24 juvenile's severe anxiety, depression, withdrawal, or
25 aggressive behavior toward himself or others; or
26 f. Encourages, directs, or approves of delinquent acts involving
27 moral turpitude committed by the juvenile.
28 (2) Caretaker. -- Any person other than a parent, guardian, or
29 custodian who has responsibility for the health and welfare of a
30 juvenile in a residential setting. A person responsible for a
31 juvenile's health and welfare means a stepparent, foster parent, an
32 adult member of the juvenile's household, an adult relative
33 entrusted with the juvenile's care, or any person such as a house
34 parent or cottage parent who has primary responsibility for
35 supervising a juvenile's health and welfare in a residential child
36 care facility or residential educational facility. 'Caretaker' also
37 means any person who has the responsibility for the care of a
38 juvenile in a child care facility as defined in Article 7 of Chapter
39 110 of the General Statutes and includes any person who has the
40 approval of the care provider to assume responsibility for the
41 juveniles under the care of the care provider. Nothing in this
42 subdivision shall be construed to impose a legal duty of support
43 under Chapter 50 or Chapter 110 of the General Statutes. The

- 1 duty imposed upon a caretaker as defined in this subdivision shall
2 be for the purpose of this Subchapter only.
- 3 (3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
4 deputy clerk.
- 5 (4) Community-based program. -- A program providing nonresidential
6 or residential treatment to a juvenile in the community where the
7 juvenile's family lives. A community-based program may include
8 specialized foster care, family counseling, shelter care, and other
9 appropriate treatment.
- 10 (5) Court. -- The district court division of the General Court of
11 Justice.
- 12 (6) Custodian. -- The person or agency that has been awarded legal
13 custody of a juvenile by a court.
- 14 (7) Dependent juvenile. -- A juvenile in need of assistance or
15 placement because the juvenile has no parent, guardian, or
16 custodian responsible for the juvenile's care or supervision or
17 whose parent, guardian, or custodian is unable to provide for the
18 care or supervision and lacks an appropriate alternative child care
19 arrangement.
- 20 (8) Director. -- The director of the county department of social
21 services in the county in which the juvenile resides or is found, or
22 the director's representative as authorized in G.S. 108A-14.
- 23 (9) District. -- Any district court district as established by G.S. 7A-133.
- 24 (10) In loco parentis. -- A person acting in loco parentis means one,
25 other than parents or legal guardian, who has assumed the status
26 and obligation of a parent without being awarded the legal custody
27 of a juvenile by a court.
- 28 (11) Judge. -- Any district court judge.
- 29 (12) Judicial district. -- Any district court district as established by G.S.
30 7A-133.
- 31 (13) Juvenile. -- A person who has not reached the person's eighteenth
32 birthday and is not married, emancipated, or a member of the
33 armed services of the United States.
- 34 (14) Neglected juvenile. -- A juvenile who does not receive proper care,
35 supervision, or discipline from the juvenile's parent, guardian,
36 custodian, or caretaker; or who has been abandoned; or who is not
37 provided necessary medical care; or who is not provided necessary
38 remedial care; or who lives in an environment injurious to the
39 juvenile's welfare; or who has been placed for care or adoption in
40 violation of law. In determining whether a juvenile is a neglected
41 juvenile, it is relevant whether that juvenile lives in a home where
42 another juvenile has been subjected to abuse or neglect by an adult
43 who regularly lives in the home.

1 When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until
2 terminated by order of the court, until the juvenile reaches the age of 18 years, or is
3 otherwise emancipated.

4 "ARTICLE 3.

5 "Screening of Abuse and Neglect Complaints.

6 "§ 7B-300. Protective services.

7 The director of the department of social services in each county of the State shall
8 establish protective services for juveniles alleged to be abused, neglected, or
9 dependent.

10 Protective services shall include the investigation and screening of complaints,
11 casework, or other counseling services to parents or other caretakers as provided by
12 the director to help the parents or other caretakers and the court to prevent abuse or
13 neglect, to improve the quality of child care, to be more adequate parents or
14 caretakers, and to preserve and stabilize family life.

15 The provisions of this Article shall also apply to child care facilities as defined in
16 G.S. 110-86.

17 "§ 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.

18 Any person or institution who has cause to suspect that any juvenile is abused,
19 neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of
20 maltreatment, shall report the case of that juvenile to the director of the department
21 of social services in the county where the juvenile resides or is found. The report
22 may be made orally, by telephone, or in writing. The report shall include
23 information as is known to the person making it including the name and address of
24 the juvenile; the name and address of the juvenile's parent, guardian, or caretaker;
25 the age of the juvenile; the names and ages of other juveniles in the home; the
26 present whereabouts of the juvenile if not at the home address; the nature and extent
27 of any injury or condition resulting from abuse, neglect, or dependency; and any
28 other information which the person making the report believes might be helpful in
29 establishing the need for protective services or court intervention. If the report is
30 made orally or by telephone, the person making the report shall give the person's
31 name, address, and telephone number. Refusal of the person making the report to
32 give a name shall not preclude the department's investigation of the alleged abuse,
33 neglect, dependency, or death as a result of maltreatment.

34 Upon receipt of any report of sexual abuse of the juvenile in a child care facility,
35 the director shall notify the State Bureau of Investigation within 24 hours or on the
36 next workday. If sexual abuse in a child care facility is not alleged in the initial
37 report, but during the course of the investigation there is reason to suspect that sexual
38 abuse has occurred, the director shall immediately notify the State Bureau of
39 Investigation. Upon notification that sexual abuse may have occurred in a child care
40 facility, the State Bureau of Investigation may form a task force to investigate the
41 report.

42 "§ 7B-302. Investigation by director; access to confidential information; notification of
43 person making the report.

1 When a report of abuse, neglect, or dependency is received, the director of the
2 department of social services shall make a prompt and thorough investigation in
3 order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk
4 of harm to the juvenile, in order to determine whether protective services should be
5 provided or the complaint filed as a petition. When the report alleges abuse, the
6 director shall immediately, but no later than 24 hours after receipt of the report,
7 initiate the investigation. When the report alleges neglect or dependency, the director
8 shall initiate the investigation within 72 hours following receipt of the report. The
9 investigation and evaluation shall include a visit to the place where the juvenile
10 resides. All information received by the department of social services, including the
11 identity of the reporter, shall be held in strictest confidence by the department.

12 When a report of suspected abuse, neglect, or dependency of a juvenile is received,
13 the director of the department of social services shall immediately ascertain if other
14 juveniles remain in the home, and, if so, initiate an investigation in order to
15 determine whether they require protective services or whether immediate removal of
16 the juveniles from the home is necessary for their protection.

17 If the investigation indicates that abuse, neglect, or dependency has occurred, the
18 director shall decide whether immediate removal of the juvenile or any other
19 juveniles in the home is necessary for their protection. If immediate removal does not
20 seem necessary, the director shall immediately provide or arrange for protective
21 services. If the parent or other caretaker refuses to accept the protective services
22 provided or arranged by the director, the director shall sign a complaint seeking to
23 invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

24 If immediate removal seems necessary for the protection of the juvenile or other
25 juveniles in the home, the director shall sign a complaint which alleges the applicable
26 facts to invoke the jurisdiction of the court. Where the investigation shows that it is
27 warranted, a protective services worker may assume temporary custody of the
28 juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

29 In performing any duties related to the investigation of the complaint or the
30 provision or arrangement for protective services, the director may consult with any
31 public or private agencies or individuals, including the available State or local law
32 enforcement officers who shall assist in the investigation and evaluation of the
33 seriousness of any report of abuse, neglect, or dependency when requested by the
34 director. The director or the director's representative may make a written demand for
35 any information or reports, whether or not confidential, that may in the director's
36 opinion be relevant to the investigation of or the provision for protective services.
37 Upon the director's or the director's representative's request and unless protected by
38 the attorney-client privilege, any public or private agency or individual shall provide
39 access to and copies of this confidential information and these records to the extent
40 permitted by federal law and regulations. If a custodian of criminal investigative
41 information or records believes that release of the information will jeopardize the
42 right of the State to prosecute a defendant or the right of a defendant to receive a fair
43 trial or will undermine an ongoing or future investigation, it may seek an order from
44 a court of competent jurisdiction to prevent disclosure of the information. In such an

1 action, the custodian of the records shall have the burden of showing by a
2 preponderance of the evidence that disclosure of the information in question will
3 jeopardize the right of the State to prosecute a defendant or the right of a defendant
4 to receive a fair trial or will undermine an ongoing or future investigation. Actions
5 brought pursuant to this paragraph shall be set down for immediate hearing, and
6 subsequent proceedings in the actions shall be accorded priority by the trial and
7 appellate courts.

8 Within five working days after receipt of the report of abuse, neglect, or
9 dependency, the director shall give written notice to the person making the report,
10 unless requested by that person not to give notice, as to whether the report was
11 accepted for investigation and whether the report was referred to the appropriate
12 State or local law enforcement agency.

13 Within five working days after completion of the protective services investigation,
14 the director shall give subsequent written notice to the person making the report,
15 unless requested by that person not to give notice, as to whether there is a finding of
16 abuse, neglect, or dependency, whether the county department of social services is
17 taking action to protect the juvenile, and what action it is taking, including whether
18 or not a petition was filed. The person making the report shall be informed of
19 procedures necessary to request a review by the prosecutor of the director's decision
20 not to file a petition. A request for review by the prosecutor shall be made within five
21 working days of receipt of the second notification. The second notification shall
22 include notice that, if the person making the report is not satisfied with the director's
23 decision, the person may request review of the decision by the prosecutor within five
24 working days of receipt. The person making the report may waive the person's right
25 to this notification, and no notification is required if the person making the report
26 does not identify himself to the director.

27 **"§ 7B-303. Interference with investigation.**

28 (a) If any person obstructs or interferes with an investigation required by G.S. 7B-
29 302, the director may file a petition naming said person as respondent and requesting
30 an order directing the respondent to cease such obstruction or interference. The
31 petition shall contain the name and date of birth and address of the juvenile who is
32 the subject of the investigation, shall specifically describe the conduct alleged to
33 constitute obstruction of or interference with the investigation, and shall be verified.

34 (b) For purposes of this section, obstruction of or interference with an
35 investigation means refusing to disclose the whereabouts of the juvenile, refusing to
36 allow the director to have personal access to the juvenile, refusing to allow the
37 director to observe or interview the juvenile in private, refusing to allow the director
38 access to confidential information and records upon request pursuant to G.S. 7B-302,
39 refusing to allow the director to arrange for an evaluation of the juvenile by a
40 physician or other expert, or other conduct that makes it impossible for the director
41 to carry out the duty to investigate.

42 (c) Upon filing of the petition, the court shall schedule a hearing to be held not
43 less than five days after service of the petition and summons on the respondent.
44 Service of the petition and summons and notice of hearing shall be made as provided

1 by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian,
2 custodian, or caretaker; and any other person determined by the court to be a
3 necessary party. If at the hearing on the petition the court finds by clear, cogent, and
4 convincing evidence that the respondent, without lawful excuse, has obstructed or
5 interfered with an investigation required by G.S. 7B-302, the court may order the
6 respondent to cease such obstruction or interference. The burden of proof shall be
7 on the petitioner.

8 (d) If the director has reason to believe that the juvenile is in need of immediate
9 protection or assistance, the director shall so allege in the petition and may seek an
10 ex parte order from the court. If the court, from the verified petition and any inquiry
11 the court makes of the director, finds probable cause to believe both that the juvenile
12 is at risk of immediate harm and that the respondent is obstructing or interfering with
13 the director's ability to investigate to determine the juvenile's condition, the court
14 may enter an ex parte order directing the respondent to cease such obstruction or
15 interference. The order shall be limited to provisions necessary to enable the director
16 to conduct an investigation sufficient to determine whether the juvenile is in need of
17 immediate protection or assistance. Within 10 days after the entry of an ex parte
18 order under this subsection, a hearing shall be held to determine whether there is
19 good cause for the continuation of the order or the entry of a different order. An
20 order entered under this subsection shall be served on the respondent along with a
21 copy of the petition, summons, and notice of hearing.

22 (e) The director may be required at a hearing under this section to reveal the
23 identity of any person who made a report of suspected abuse, neglect, or dependency
24 as required by G.S. 7B-301.

25 (f) An order entered pursuant to this section is enforceable by civil or criminal
26 contempt as provided in Chapter 5A of the General Statutes.

27 **"§ 7B-304. Evaluation for court.**

28 In all cases in which a petition is filed, the director of the department of social
29 services shall prepare a report for the court containing a home placement plan and a
30 treatment plan deemed by the director to be appropriate to the needs of the juvenile.
31 The report shall be available to the court immediately following the adjudicatory
32 hearing.

33 **"§ 7B-305. Request for review by prosecutor.**

34 The person making the report shall have five working days, from receipt of the
35 decision of the director of the department of social services not to petition the court,
36 to notify the prosecutor that the person is requesting a review. The prosecutor shall
37 notify the person making the report and the director of the time and place for the
38 review, and the director shall immediately transmit to the prosecutor a copy of the
39 investigation report.

40 **"§ 7B-306. Review by prosecutor.**

41 The prosecutor shall review the director's determination that a petition should not
42 be filed within 20 days after the person making the report is notified. The review
43 shall include conferences with the person making the report, the protective services
44 worker, the juvenile, if practicable, and other persons known to have pertinent

1 information about the juvenile or the juvenile's family. At the conclusion of the
2 conferences, the prosecutor may affirm the decision made by the director, may
3 request the appropriate local law enforcement agency to investigate the allegations, or
4 may direct the director to file a petition.

5 "§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local
6 law enforcement; notification of Department of Health and Human Services and State
7 Bureau of Investigation.

8 (a) If the director finds evidence that a juvenile may have been abused as defined
9 by G.S. 7B-101, the director shall make an immediate oral and subsequent written
10 report of the findings to the district attorney or the district attorney's designee and
11 the appropriate local law enforcement agency within 48 hours after receipt of the
12 report. The local law enforcement agency shall immediately, but no later than 48
13 hours after receipt of the information, initiate and coordinate a criminal investigation
14 with the protective services investigation being conducted by the county department
15 of social services. Upon completion of the investigation, the district attorney shall
16 determine whether criminal prosecution is appropriate and may request the director
17 or the director's designee to appear before a magistrate.

18 If the director receives information that a juvenile may have been physically
19 harmed in violation of any criminal statute by any person other than the juvenile's
20 parent, guardian, custodian, or caretaker, the director shall make an immediate oral
21 and subsequent written report of that information to the district attorney or the
22 district attorney's designee and to the appropriate local law enforcement agency
23 within 48 hours after receipt of the information. The local law enforcement agency
24 shall immediately, but no later than 48 hours after receipt of the information, initiate
25 a criminal investigation. Upon completion of the investigation, the district attorney
26 shall determine whether criminal prosecution is appropriate.

27 If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a
28 juvenile in child care, the director shall notify the Department of Health and Human
29 Services within 24 hours or on the next working day of receipt of the report.

30 (b) If the director finds evidence that a juvenile has been abused or neglected as
31 defined by G.S. 7B-101 in a child care facility, the director shall immediately so
32 notify the Department of Health and Human Services and, in the case of sexual
33 abuse, the State Bureau of Investigation, in such a way as does not violate the law
34 guaranteeing the confidentiality of the records of the department of social services.

35 (c) Upon completion of the investigation, the director shall give the department
36 written notification of the results of the investigation required by G.S. 7B-302. Upon
37 completion of an investigation of sexual abuse in a child care facility, the director
38 shall also make written notification of the results of the investigation to the State
39 Bureau of Investigation.

40 The director of the department of social services shall submit a report of alleged
41 abuse, neglect, or dependency cases or child fatalities that are the result of alleged
42 maltreatment to the central registry under the policies adopted by the Social Services
43 Commission.

44 "§ 7B-308. Authority of medical professionals in abuse cases.

1 (a) Any physician or administrator of a hospital, clinic, or other medical facility to
2 which a suspected abused juvenile is brought for medical diagnosis or treatment shall
3 have the right, when authorized by the chief district court judge of the district or the
4 judge's designee, to retain physical custody of the juvenile in the facility when the
5 physician who examines the juvenile certifies in writing that the juvenile who is
6 suspected of being abused should remain for medical treatment or that, according to
7 the juvenile's medical evaluation, it is unsafe for the juvenile to return to the
8 juvenile's parent, guardian, custodian, or caretaker. This written certification must be
9 signed by the certifying physician and must include the time and date that the judicial
10 authority to retain custody is given. Copies of the written certification must be
11 appended to the juvenile's medical and judicial records and another copy must be
12 given to the juvenile's parent, guardian, custodian, or caretaker. The right to retain
13 custody in the facility shall exist for up to 12 hours from the time and date contained
14 in the written certification.

15 (b) Immediately upon receipt of judicial authority to retain custody, the physician,
16 the administrator, or that person's designee shall so notify the director of social
17 services for the county in which the facility is located. The director shall treat this
18 notification as a report of suspected abuse and shall immediately begin an
19 investigation of the case.

20 (1) If the investigation reveals (i) that it is the opinion of the certifying
21 physician that the juvenile is in need of medical treatment to cure
22 or alleviate physical distress, or to prevent the juvenile from
23 suffering serious physical injury, and (ii) that it is the opinion of
24 the physician that the juvenile should for these reasons remain in
25 the custody of the facility for 12 hours, but (iii) that the juvenile's
26 parent, guardian, custodian, or caretaker cannot be reached or,
27 upon request, will not consent to the treatment within the facility,
28 the director shall within the initial 12-hour period file a juvenile
29 petition alleging abuse and setting forth supporting allegations and
30 shall seek a nonsecure custody order. A petition filed and a
31 nonsecure custody order obtained in accordance with this
32 subdivision shall come on for hearing under the regular provisions
33 of this Subchapter unless the director and the certifying physician
34 together voluntarily dismiss the petition.

35 (2) In all cases except those described in subdivision (1) above, the
36 director shall conduct the investigation and may initiate juvenile
37 proceedings and take all other steps authorized by the regular
38 provisions of this Subchapter. If the director decides not to file a
39 petition, the physician, the administrator, or that person's designee
40 may ask the prosecutor to review this decision according to the
41 provisions of G.S. 7B-305 and G.S. 7B-306.

42 (c) If, upon hearing, the court determines that the juvenile is found in a county
43 other than the county of legal residence, in accord with G.S. 153A-257, the juvenile

1 may be transferred, in accord with G.S. 7B-903(2), to the custody of the department
2 of social services in the county of residence.

3 (d) If the court, upon inquiry, determines that the medical treatment rendered was
4 necessary and appropriate, the cost of that treatment may be charged to the parents,
5 guardian, custodian, or caretaker, or, if the parents are unable to pay, to the county
6 of residence in accordance with G.S. 7B-903 and G.S. 7B-904.

7 (e) Except as otherwise provided, a petition begun under this section shall
8 proceed in like manner with petitions begun under G.S. 7B-302.

9 (f) The procedures in this section are in addition to, and not in derogation of, the
10 abuse and neglect reporting provisions of G.S. 7B-301 and the temporary custody
11 provisions of G.S. 7B-500. Nothing in this section shall preclude a physician or
12 administrator and a director of social services from following the procedures of G.S.
13 7B-301 and G.S. 7B-500 whenever these procedures are more appropriate to the
14 juvenile's circumstances.

15 **"§ 7B-309. Immunity of persons reporting and cooperating in an investigation.**

16 Anyone who makes a report pursuant to this Article, cooperates with the county
17 department of social services in a protective services inquiry or investigation, testifies
18 in any judicial proceeding resulting from a protective services report or investigation,
19 or otherwise participates in the program authorized by this Article, is immune from
20 any civil or criminal liability that might otherwise be incurred or imposed for that
21 action provided that the person was acting in good faith. In any proceeding involving
22 liability, good faith is presumed.

23 **"§ 7B-310. Privileges not grounds for failing to report or for excluding evidence.**

24 No privilege shall be grounds for any person or institution failing to report that a
25 juvenile may have been abused, neglected, or dependent, even if the knowledge or
26 suspicion is acquired in an official professional capacity, except when the knowledge
27 or suspicion is gained by an attorney from that attorney's client during representation
28 only in the abuse, neglect, or dependency case. No privilege, except the attorney-
29 client privilege, shall be grounds for excluding evidence of abuse, neglect, or
30 dependency in any judicial proceeding (civil, criminal, or juvenile) in which a
31 juvenile's abuse, neglect, or dependency is in issue nor in any judicial proceeding
32 resulting from a report submitted under this Article, both as this privilege relates to
33 the competency of the witness and to the exclusion of confidential communications.

34 **"§ 7B-311. Central registry.**

35 The Department of Health and Human Services shall maintain a central registry of
36 abuse, neglect, and dependency cases and child fatalities that are the result of alleged
37 maltreatment that are reported under this Article in order to compile data for
38 appropriate study of the extent of abuse and neglect within the State and to identify
39 repeated abuses of the same juvenile or of other juveniles in the same family. This
40 data shall be furnished by county directors of social services to the Department of
41 Health and Human Services and shall be confidential, subject to policies adopted by
42 the Social Services Commission providing for its use for study and research and for
43 other appropriate disclosure. Data shall not be used at any hearing or court
44 proceeding unless based upon a final judgment of a court of law.

"ARTICLE 4."Venue; Petitions."§ 7B-400. Venue; pleading.

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. When a proceeding is commenced in a district other than that of the juvenile's residence, the court, on its own motion or upon motion of any party, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this subsection may be made at any time.

"§ 7B-401. Pleading and process.

The pleading in an abuse, neglect, or dependency action is the petition. The process in an abuse, neglect, or dependency action is the summons.

"§ 7B-402. Petition.

(a) The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian and shall allege the facts which invoke jurisdiction over the juvenile. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

Sufficient copies of the petition shall be prepared so that copies will be available for each juvenile, each parent if living separate and apart, the guardian ad litem, the social worker, and any person determined by the court to be a necessary party.

"§ 7B-403. Receipt of reports; filing of petition.

(a) All reports concerning a juvenile alleged to be abused, neglected, or dependent shall be referred to the director of the department of social services for screening. Thereafter, if it is determined by the director that a report should be filed as a petition, the petition shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing.

(b) A decision of the director of social services not to file a report as a petition shall be reviewed by the prosecutor if review is requested pursuant to G.S. 7B-305.

"§ 7B-404. Immediate need for petition when clerk's office is closed.

(a) When the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:

(1) When the director of the department of social services requests a petition alleging a juvenile to be abused, neglected, or dependent,
or

(2) When the director of the department of social services requests a petition alleging the obstruction of or interference with an investigation required by G.S. 7B-302.

(b) The authority of the magistrate under this section is limited to emergency situations when a petition is required in order to obtain a nonsecure custody order or an order under G.S. 7B-303. Any petition issued under this section shall be delivered to the clerk's office for processing as soon as that office is open for business.

"§ 7B-405. Commencement of action.

1 An action is commenced by the filing of a petition in the clerk's office when that
2 office is open, or by the issuance of a juvenile petition by a magistrate when the
3 clerk's office is closed, which issuance shall constitute filing.

4 "§ 7B-406. Issuance of summons.

5 (a) Immediately after a petition has been filed alleging that a juvenile is abused,
6 neglected, or dependent, the clerk shall issue a summons to the parent, guardian,
7 custodian, or caretaker requiring them to appear for a hearing at the time and place
8 stated in the summons. A copy of the petition shall be attached to each summons.

9 (b) A summons shall be on a printed form supplied by the Administrative Office
10 of the Courts and shall include:

11 (1) Notice of the nature of the proceeding;

12 (2) Notice of any right to counsel and information about how to seek
13 the appointment of counsel prior to a hearing;

14 (3) Notice that, if the court determines at the hearing that the
15 allegations of the petition are true, the court will conduct a
16 dispositional hearing to consider the needs of the juvenile and
17 enter an order designed to meet those needs and the objectives of
18 the State; and

19 (4) Notice that the dispositional order or a subsequent order:

20 a. May remove the juvenile from the custody of the parent,
21 guardian, or custodian.

22 b. May require that the juvenile receive medical, psychiatric,
23 psychological, or other treatment and that the parent
24 participate in the treatment.

25 c. May require the parent to undergo psychiatric,
26 psychological, or other treatment or counseling for the
27 purpose of remedying the behaviors or conditions that are
28 alleged in the petition or that contributed to the removal of
29 the juvenile from the custody of the parent.

30 d. May order the parent to pay for treatment that is ordered
31 for the juvenile or the parent.

32 (c) The summons shall advise the parent that upon service, jurisdiction over the
33 parent is obtained and that failure to comply with any order of the court pursuant to
34 G.S. 7B-904 may cause the court to issue a show cause order for contempt.

35 (d) A summons shall be directed to the person summoned to appear and shall be
36 delivered to any person authorized to serve process.

37 "§ 7B-407. Service of summons.

38 The summons shall be personally served upon the parent, guardian, custodian, or
39 caretaker, and the juvenile or counsel or guardian ad litem, not less than five days
40 prior to the date of the scheduled hearing. The time for service may be waived in the
41 discretion of the court.

42 If the parent, guardian, custodian, or caretaker entitled to receive a summons
43 cannot be found by a diligent effort, the court may authorize service of the summons

1 and petition by mail or by publication. The cost of the service by publication shall be
2 advanced by the petitioner and may be charged as court costs as the court may direct.
3 If the parent, guardian, custodian, or caretaker is personally served as herein
4 provided and fails without reasonable cause to appear and to bring the juvenile
5 before the court, the parent, guardian, custodian, or caretaker may be proceeded
6 against as for contempt of court.

7 "ARTICLE 5.

8 "Temporary Custody; Nonsecure Custody; Custody Hearings.

9 "§ 7B-500. Taking a juvenile into temporary custody.

10 Temporary custody means the taking of physical custody and providing personal
11 care and supervision until a court order for nonsecure custody can be obtained. A
12 juvenile may be taken into temporary custody without a court order by a law
13 enforcement officer or a department of social services worker if there are reasonable
14 grounds to believe that the juvenile is abused, neglected, or dependent and that the
15 juvenile would be injured or could not be taken into custody if it were first necessary
16 to obtain a court order. If a department of social services worker takes a juvenile
17 into temporary custody under this section, the worker may arrange for the placement,
18 care, supervision, and transportation of the juvenile.

19 "§ 7B-501. Duties of person taking juvenile into temporary custody.

20 (a) A person who takes a juvenile into custody without a court order under G.S.
21 7B-500 shall proceed as follows:

22 (1) Notify the juvenile's parent, guardian, custodian, or caretaker that
23 the juvenile has been taken into temporary custody and advise the
24 parent, guardian, custodian, or caretaker of the right to be present
25 with the juvenile until a determination is made as to the need for
26 nonsecure custody. Failure to notify the parent that the juvenile is
27 in custody shall not be grounds for release of the juvenile.

28 (2) Release the juvenile to the juvenile's parent, guardian, custodian,
29 or caretaker if the person having the juvenile in temporary custody
30 decides that continued custody is unnecessary.

31 (3) The person having temporary custody shall communicate with the
32 director of the department of social services who shall consider
33 prehearing diversion. If the decision is made to file a petition, the
34 director shall contact the judge or person delegated authority
35 pursuant to G.S. 7B-502 for a determination of the need for
36 continued custody.

37 (b) A juvenile taken into temporary custody under this Article shall not be held
38 for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a
39 Saturday, Sunday, or legal holiday, unless:

40 (1) A petition or motion for review has been filed by the director of
41 the department of social services, and

42 (2) An order for nonsecure custody has been entered by the court.

43 "§ 7B-502. Authority to issue custody orders; delegation.

1 In the case of any juvenile alleged to be within the jurisdiction of the court, the
2 court may order that the juvenile be placed in nonsecure custody pursuant to criteria
3 set out in G.S. 7B-503 when custody of the juvenile is necessary.

4 Any district court judge shall have the authority to issue nonsecure custody orders
5 pursuant to G.S. 7B-503. The chief district court judge may delegate the court's
6 authority to persons other than district court judges by administrative order which
7 shall be filed in the office of the clerk of superior court. The administrative order
8 shall specify which persons shall be contacted for approval of a nonsecure custody
9 order pursuant to G.S. 7B-503.

10 **"§ 7B-503. Criteria for nonsecure custody.**

11 When a request is made for nonsecure custody, the court shall first consider
12 release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other
13 responsible adult. An order for nonsecure custody shall be made only when there is
14 a reasonable factual basis to believe the matters alleged in the petition are true, and

15 (1) The juvenile has been abandoned; or

16 (2) The juvenile has suffered physical injury or sexual abuse; or

17 (3) The juvenile is exposed to a substantial risk of physical injury or
18 sexual abuse because the parent, guardian, custodian, or caretaker
19 has created the conditions likely to cause injury or abuse or has
20 failed to provide, or is unable to provide, adequate supervision or
21 protection; or

22 (4) The juvenile is in need of medical treatment to cure, alleviate, or
23 prevent suffering serious physical harm which may result in death,
24 disfigurement, or substantial impairment of bodily functions, and
25 the juvenile's parent, guardian, custodian, or caretaker is unwilling
26 or unable to provide or consent to the medical treatment; or

27 (5) The parent, guardian, custodian, or caretaker consents to the
28 nonsecure custody order; or

29 (6) The juvenile is a runaway and consents to nonsecure custody.

30 A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure
31 custody only when there is a reasonable factual basis to believe that there is no other
32 reasonable means available to protect the juvenile. In no case shall a juvenile alleged
33 to be abused, neglected, or dependent be placed in secure custody.

34 **"§ 7B-504. Order for nonsecure custody.**

35 The custody order shall be in writing and shall direct a law enforcement officer or
36 other authorized person to assume custody of the juvenile and to make due return on
37 the order. A copy of the order shall be given to the juvenile's parent, guardian,
38 custodian, or caretaker by the official executing the order.

39 An officer receiving an order for custody which is complete and regular on its face
40 may execute it in accordance with its terms. The officer is not required to inquire
41 into the regularity or continued validity of the order and shall not incur criminal or
42 civil liability for its due service.

43 **"§ 7B-505. Place of nonsecure custody.**

1 A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure
2 custody with the department of social services or a person designated in the order for
3 temporary residential placement in:

4 (1) A licensed foster home or a home otherwise authorized by law to
5 provide such care; or

6 (2) A facility operated by the department of social services; or

7 (3) Any other home or facility approved by the court and designated
8 in the order.

9 In placing a juvenile in nonsecure custody under this section, the court shall first
10 consider whether a relative of the juvenile is willing and able to provide proper care
11 and supervision of the juvenile in a safe home. If the court finds that the relative is
12 willing and able to provide proper care and supervision in a safe home, then the
13 court shall order placement of the juvenile with the relative. Prior to placement of a
14 juvenile with a relative outside of this State, the placement must be in accordance
15 with the Interstate Compact on the Placement of Children, Article 38 of this Chapter.
16 **§ 7B-506. Hearing to determine need for continued nonsecure custody.**

17 (a) No juvenile shall be held under a nonsecure custody order for more than
18 seven calendar days without a hearing on the merits or a hearing to determine the
19 need for continued custody. A hearing on nonsecure custody conducted under this
20 subsection may be continued for up to 10 business days with the consent of the
21 juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's
22 guardian ad litem. In addition, the court may require the consent of additional parties
23 or may schedule the hearing on custody despite a party's consent to a continuance. In
24 every case in which an order has been entered by an official exercising authority
25 delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued
26 custody shall be conducted on the day of the next regularly scheduled session of
27 district court in the city or county where the order was entered if such session
28 precedes the expiration of the applicable time period set forth in this subsection:
29 Provided, that if such session does not precede the expiration of the time period, the
30 hearing may be conducted at another regularly scheduled session of district court in
31 the district where the order was entered.

32 (b) At a hearing to determine the need for continued custody, the court shall
33 receive testimony and shall allow the guardian ad litem, or juvenile, and the
34 juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce
35 evidence, to be heard in the person's own behalf, and to examine witnesses. The
36 State shall bear the burden at every stage of the proceedings to provide clear and
37 convincing evidence that the juvenile's placement in custody is necessary. The court
38 shall not be bound by the usual rules of evidence at such hearings.

39 (c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining
40 whether continued custody is warranted.

41 (d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and
42 should continue in custody, the court shall issue an order to that effect. The order
43 shall be in writing with appropriate findings of fact. The findings of fact shall include

1 the evidence relied upon in reaching the decision and the purposes which continued
2 custody is to achieve.

3 (e) If the court orders at the hearing required in subsection (a) of this section that
4 the juvenile remain in custody, a subsequent hearing on continued custody shall be
5 held within seven business days of that hearing, excluding Saturdays, Sundays, and
6 legal holidays, and pending a hearing on the merits, hearings thereafter shall be held
7 at intervals of no more than 30 calendar days.

8 (f) Hearings conducted under subsection (e) of this section may be waived only
9 with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if
10 appointed, the juvenile's guardian ad litem.

11 The court may require the consent of additional parties or schedule a hearing
12 despite a party's consent to waiver.

13 (g) Any order authorizing the continued custody of a juvenile shall include
14 findings as to whether reasonable efforts have been made to prevent or eliminate the
15 need for placement of the juvenile in custody and may provide for services or other
16 efforts aimed at returning the juvenile promptly to a safe home. A finding that
17 reasonable efforts have not been made shall not preclude the entry of an order
18 authorizing continued custody when the court finds that continued custody is
19 necessary for the protection of the juvenile. Where efforts to prevent the need for the
20 juvenile's placement were precluded by an immediate threat of harm to the juvenile,
21 the court may find that the placement of the juvenile in the absence of such efforts
22 was reasonable. If the court finds through written findings of fact that efforts to
23 eliminate the need for placement of the juvenile in custody clearly would be futile or
24 would be inconsistent with the juvenile's safety and need for a safe, permanent home
25 within a reasonable period of time, then the court shall specify in its order that
26 reunification efforts are not required or order that reunification efforts cease.

27 (h) At each hearing to determine the need for continued custody, the court shall:

28 (1) Inquire as to the identity and location of any missing parent. The
29 court shall include findings as to the efforts undertaken to locate
30 the missing parent and to serve that parent. The order may provide
31 for specific efforts aimed at determining the identity and location
32 of any missing parent;

33 (2) Inquire as to whether a relative of the juvenile is willing and able
34 to provide proper care and supervision of the juvenile in a safe
35 home. If the court finds that the relative is willing and able to
36 provide proper care and supervision in a safe home, then the court
37 shall order temporary placement of the juvenile with the relative.
38 Prior to placement of a juvenile with a relative outside of this
39 State, the placement must be in accordance with the Interstate
40 Compact on the Placement of Children set forth in Article 38 of
41 this Chapter; and

42 (3) Inquire as to whether there are other juveniles remaining in the
43 home from which the juvenile was removed and, if there are,
44 inquire as to the specific findings of the investigation conducted

1 under G.S. 7B-302 and any actions taken or services provided by
2 the director for the protection of the other juveniles.

3 **"§ 7B-507. Telephonic communication authorized.**

4 All communications, notices, orders, authorizations, and requests authorized or
5 required by G.S. 7B-501, 7B-503, and 7B-504 may be made by telephone when other
6 means of communication are impractical. All written orders pursuant to telephonic
7 communication shall bear the name and the title of the person communicating by
8 telephone, the signature and the title of the official entering the order, and the hour
9 and the date of the authorization.

10 **"ARTICLE 6.**

11 **"Basic Rights.**

12 **"§ 7B-600. Appointment of guardian.**

13 In any case when no parent appears in a hearing with the juvenile or when the
14 court finds it would be in the best interests of the juvenile, the court may appoint a
15 guardian of the person for the juvenile. The guardian shall operate under the
16 supervision of the court with or without bond and shall file only such reports as the
17 court shall require. The guardian shall have the care, custody, and control of the
18 juvenile or may arrange a suitable placement for the juvenile and may represent the
19 juvenile in legal actions before any court. The guardian may consent to certain
20 actions on the part of the juvenile in place of the parent including (i) marriage, (ii)
21 enlisting in the armed forces, and (iii) enrollment in school. The guardian may also
22 consent to any necessary remedial, psychological, medical, or surgical treatment for
23 the juvenile. The authority of the guardian shall continue until the guardianship is
24 terminated by court order, until the juvenile is emancipated pursuant to Article 35 of
25 Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

26 **"§ 7B-601. Appointment and duties of guardian ad litem.**

27 (a) When in a petition a juvenile is alleged to be abused or neglected, the court
28 shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged
29 to be dependent, the court may appoint a guardian ad litem to represent the juvenile.
30 The guardian ad litem and attorney advocate have standing to represent the juvenile
31 in all actions under this Subchapter where they have been appointed. The
32 appointment shall be made pursuant to the program established by Article 12 of this
33 Chapter unless representation is otherwise provided legally made. The appointment
34 shall terminate at the end of two years. The court may reappoint the guardian ad
35 litem pursuant to a showing of good cause upon motion of any party, including the
36 guardian ad litem, or of the court. In every case where a nonattorney is appointed as
37 a guardian ad litem, an attorney shall be appointed in the case in order to assure
38 protection of the juvenile's legal rights through the dispositional phase of the
39 proceedings, and after disposition when necessary to further the best interests of the
40 juvenile. The duties of the guardian ad litem program shall be to make an
41 investigation to determine the facts, the needs of the juvenile, and the available
42 resources within the family and community to meet those needs; to facilitate, when
43 appropriate, the settlement of disputed issues; to offer evidence and examine
44 witnesses at adjudication; to explore options with the court at the dispositional

1 hearing; and to protect and promote the best interests of the juvenile until formally
2 relieved of the responsibility by the court.

3 (b) The court may order the department of social services or the guardian ad
4 litem to conduct follow-up investigations to ensure that the orders of the court are
5 being properly executed and to report to the court when the needs of the juvenile are
6 not being met. The court may also authorize the guardian ad litem to accompany the
7 juvenile to court in any criminal action wherein the juvenile may be called on to
8 testify in a matter relating to abuse.

9 (c) The court may grant the guardian ad litem the authority to demand any
10 information or reports, whether or not confidential, that may in the guardian ad
11 litem's opinion be relevant to the case. Neither the physician-patient privilege nor the
12 husband-wife privilege may be invoked to prevent the guardian ad litem and the
13 court from obtaining such information. The confidentiality of the information or
14 reports shall be respected by the guardian ad litem and no disclosure of any
15 information or reports shall be made to anyone except by order of the court or unless
16 otherwise provided by law.

17 **"§ 7B-602. Parent's right to counsel.**

18 In cases where the juvenile petition alleges that a juvenile is abused, neglected, or
19 dependent, the parent has the right to counsel and to appointed counsel in cases of
20 indigency unless the parent waives the right. In no case may the court appoint a
21 county attorney, prosecutor, or public defender.

22 **"§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

23 An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 or G.S. 7B-
24 602 pursuant to any other provision of the Juvenile Code shall be paid a reasonable
25 fee fixed by the court in the same manner as fees for attorneys appointed in cases of
26 indigency or by direct engagement for specialized guardian ad litem services through
27 the Administrative Office of the Courts. The court may require payment of the
28 attorney or guardian ad litem fee from a person other than the juvenile as provided
29 in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be
30 required to pay the fees for a court-appointed attorney or guardian ad litem in an
31 abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to
32 be abused, neglected, or dependent, or, in a proceeding to terminate parental rights,
33 unless the parent's rights have been terminated. A person who does not comply with
34 the court's order of payment may be punished for contempt as provided in G.S. 5A-
35 21.

36 **"ARTICLE 7.**

37 **"Discovery.**

38 **"§ 7B-700. Regulation of discovery; protective orders.**

39 (a) Upon written motion of a party and a finding of good cause, the court may at
40 any time order that discovery be denied, restricted, or deferred.

41 (b) The court may permit a party seeking relief under subsection (a) of this section
42 to submit supporting affidavits or statements to the court for in camera inspection. If,
43 thereafter, the court enters an order granting relief under subsection (a) of this

1 section, the material submitted in camera must be available to the Court of Appeals
2 in the event of an appeal.

3 "ARTICLE 8.

4 "Hearing Procedures.

5 "§ 7B-800. Amendment of petition.

6 The court may permit a petition to be amended when the amendment does not
7 change the nature of the offense alleged or the conditions upon which the petition is
8 based.

9 "§ 7B-801. Adjudicatory hearing.

10 The adjudicatory hearing shall be held in the district at such time and place as the
11 chief district court judge shall designate. The court may exclude the public from the
12 hearing unless the juvenile moves that the hearing be open, which motion shall be
13 granted.

14 "§ 7B-802. Conduct of hearing.

15 The adjudicatory hearing shall be a judicial process designed to adjudicate the
16 existence or nonexistence of any of the conditions alleged in a petition. In the
17 adjudicatory hearing, the court shall protect the following rights of the juvenile and
18 the juvenile's parent to assure due process of law.

19 "§ 7B-803. Continuances.

20 The court may, for good cause, continue the hearing for as long as is reasonably
21 required to receive additional evidence, reports, or assessments that the court has
22 requested, or other information needed in the best interests of the juvenile and to
23 allow for a reasonable time for the parties to conduct expeditious discovery.
24 Otherwise, continuances shall be granted only in extraordinary circumstances when
25 necessary for the proper administration of justice or in the best interests of the
26 juvenile.

27 "§ 7B-804. Rules of evidence.

28 Where the juvenile is alleged to be abused, neglected, or dependent, the rules of
29 evidence in civil cases shall apply.

30 "§ 7B-805. Quantum of proof in adjudicatory hearing.

31 The allegations in a petition alleging abuse, neglect, or dependence shall be proved
32 by clear and convincing evidence.

33 "§ 7B-806. Record of proceedings.

34 All adjudicatory and dispositional hearings shall be recorded by stenographic notes
35 or by electronic or mechanical means. Records shall be reduced to a written
36 transcript only when timely notice of appeal has been given. The court may order
37 that other hearings be recorded.

38 "§ 7B-807. Adjudication.

39 If the court finds that the allegations in the petition have been proven by clear and
40 convincing evidence, the court shall so state. If the court finds that the allegations
41 have not been proven, the court shall dismiss the petition with prejudice and the
42 juvenile shall be released from nonsecure custody.

43 "§ 7B-808. Predisposition investigation and report.

1 The court shall proceed to the dispositional hearing upon receipt of sufficient
2 social, medical, psychiatric, psychological, and educational information. No
3 predisposition report shall be submitted to or considered by the court prior to the
4 completion of the adjudicatory hearing. The court shall permit the guardian ad litem
5 or juvenile to inspect any predisposition report to be considered by the court in
6 making the disposition unless the court determines that disclosure would seriously
7 harm the juvenile's treatment or rehabilitation or would violate a promise of
8 confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the
9 guardian ad litem or juvenile, and the juvenile's parent, guardian, custodian, or
10 caretaker at the dispositional hearing. The court may order counsel not to disclose
11 parts of the report to the guardian ad litem or juvenile, or the juvenile's parent,
12 guardian, custodian, or caretaker if the court finds that disclosure would seriously
13 harm the treatment or rehabilitation of the juvenile or would violate a promise of
14 confidentiality given to a source of information.

15 "ARTICLE 9.

16 "Dispositions.

17 "§ 7B-900. Purpose.

18 The purpose of dispositions in juvenile actions is to design an appropriate plan to
19 meet the needs of the juvenile and to achieve the objectives of the State in exercising
20 jurisdiction. If possible, the initial approach should involve working with the juvenile
21 and the juvenile's family in their own home so that the appropriate community
22 resources may be involved in care, supervision, and treatment according to the needs
23 of the juvenile. Thus, the court should arrange for appropriate community-level
24 services to be provided to the juvenile and the juvenile's family in order to strengthen
25 the home situation.

26 "§ 7B-901. Dispositional hearing.

27 The dispositional hearing may be informal and the court may consider written
28 reports or other evidence concerning the needs of the juvenile. The juvenile and the
29 juvenile's parent, guardian, custodian, or caretaker shall have an opportunity to
30 present evidence, and they may advise the court concerning the disposition they
31 believe to be in the best interests of the juvenile. The court may exclude the public
32 from the hearing unless the juvenile moves that the hearing be open, which motion
33 shall be granted.

34 "§ 7B-902. Consent judgment in abuse, neglect, or dependency proceeding.

35 Nothing in this Article precludes the court from entering a consent order or
36 judgment on a petition for abuse, neglect, or dependency when all parties are present,
37 the juvenile is represented by counsel, and all other parties are either represented by
38 counsel or have waived counsel, and sufficient findings of fact are made by the court.

39 "§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.

40 The following alternatives for disposition shall be available to any court exercising
41 jurisdiction, and the court may combine any of the applicable alternatives when the
42 court finds the disposition to be in the best interests of the juvenile:

- 43 (1) The court may dismiss the case or continue the case in order to
44 allow the parent or others to take appropriate action.

- 1 (2) In the case of any juvenile who needs more adequate care or
2 supervision or who needs placement, the court may:
3 a. Require that the juvenile be supervised in the juvenile's own
4 home by the department of social services in the juvenile's
5 county, or by other personnel as may be available to the
6 court, subject to conditions applicable to the parent,
7 guardian, custodian, or caretaker as the court may specify;
8 or
9 b. Place the juvenile in the custody of a parent, relative,
10 private agency offering placement services, or some other
11 suitable person; or
12 c. Place the juvenile in the custody of the department of social
13 services in the county of the juvenile's residence, or in the
14 case of a juvenile who has legal residence outside the State,
15 in the physical custody of the department of social services
16 in the county where the juvenile is found so that agency
17 may return the juvenile to the responsible authorities in the
18 juvenile's home state. The director may, unless otherwise
19 ordered by the court, arrange for, provide, or consent to,
20 needed routine or emergency medical or surgical care or
21 treatment. In the case where the parent is unknown,
22 unavailable, or unable to act on behalf of the juvenile, the
23 director may, unless otherwise ordered by the court, arrange
24 for, provide, or consent to any psychiatric, psychological,
25 educational, or other remedial evaluations or treatment for
26 the juvenile placed by a court or the court's designee in the
27 custody or physical custody of a county department of social
28 services under the authority of this or any other Chapter of
29 the General Statutes. Prior to exercising this authority, the
30 director shall make reasonable efforts to obtain consent from
31 a parent or guardian of the affected juvenile. If the director
32 cannot obtain such consent, the director shall promptly
33 notify the parent or guardian that care or treatment has
34 been provided and shall give the parent frequent status
35 reports on the circumstances of the juvenile. Upon request
36 of a parent or guardian of the affected juvenile, the results
37 or records of the aforementioned evaluations, findings, or
38 treatment shall be made available to such parent or guardian
39 by the director unless prohibited by G.S. 122C-53(d).
40 (3) In any case, the court may order that the juvenile be examined by
41 a physician, psychiatrist, psychologist, or other qualified expert as
42 may be needed for the court to determine the needs of the
43 juvenile;

- 1 a. Upon completion of the examination, the court shall
2 conduct a hearing to determine whether the juvenile is in
3 need of medical, surgical, psychiatric, psychological, or other
4 treatment and who should pay the cost of the treatment. The
5 county manager, or such person who shall be designated by
6 the chairman of the county commissioners, of the juvenile's
7 residence shall be notified of the hearing, and allowed to be
8 heard. If the court finds the juvenile to be in need of
9 medical, surgical, psychiatric, psychological, or other
10 treatment, the court shall permit the parent or other
11 responsible persons to arrange for treatment. If the parent
12 declines or is unable to make necessary arrangements, the
13 court may order the needed treatment, surgery, or care, and
14 the court may order the parent to pay the cost of the care
15 pursuant to G.S. 7B-904. If the court finds the parent is
16 unable to pay the cost of treatment, the court shall order the
17 county to arrange for treatment of the juvenile and to pay
18 for the cost of the treatment. The county department of
19 social services shall recommend the facility that will provide
20 the juvenile with treatment.
- 21 b. If the court believes, or if there is evidence presented to the
22 effect that the juvenile is mentally ill or is developmentally
23 disabled, the court shall refer the juvenile to the area mental
24 health, developmental disabilities, and substance abuse
25 services director for appropriate action. A juvenile shall not
26 be committed directly to a State hospital or mental
27 retardation center; and orders purporting to commit a
28 juvenile directly to a State hospital or mental retardation
29 center except for an examination to determine capacity to
30 proceed shall be void and of no effect. The area mental
31 health, developmental disabilities, and substance abuse
32 director shall be responsible for arranging an
33 interdisciplinary evaluation of the juvenile and mobilizing
34 resources to meet the juvenile's needs. If institutionalization
35 is determined to be the best service for the juvenile,
36 admission shall be with the voluntary consent of the parent
37 or guardian. If the parent, guardian, custodian, or caretaker
38 refuses to consent to a mental hospital or retardation center
39 admission after such institutionalization is recommended by
40 the area mental health, developmental disabilities, and
41 substance abuse director, the signature and consent of the
42 court may be substituted for that purpose. In all cases in
43 which a regional mental hospital refuses admission to a
44 juvenile referred for admission by a court and an area

1 mental health, developmental disabilities, and substance
2 abuse director or discharges a juvenile previously admitted
3 on court referral prior to completion of treatment, the
4 hospital shall submit to the court a written report setting out
5 the reasons for denial of admission or discharge and setting
6 out the juvenile's diagnosis, indications of mental illness,
7 indications of need for treatment, and a statement as to the
8 location of any facility known to have a treatment program
9 for the juvenile in question.

10 **"§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or**
11 **dependent.**

12 (a) If the court orders medical, surgical, psychiatric, psychological, or other
13 treatment pursuant to G.S. 7B-903, the court may order the parent or other
14 responsible parties to pay the cost of the treatment or care ordered.

15 (b) At the dispositional hearing or a subsequent hearing in the case of a juvenile
16 who has been adjudicated abused, neglected, or dependent, if the court finds that it is
17 in the best interests of the juvenile for the parent to be directly involved in the
18 juvenile's treatment, the court may order the parent to participate in medical,
19 psychiatric, psychological, or other treatment of the juvenile. The cost of the
20 treatment shall be paid pursuant to G.S. 7B-903.

21 (c) At the dispositional hearing or a subsequent hearing in the case of a juvenile
22 who has been adjudicated abused, neglected, or dependent, the court may determine
23 whether the best interests of the juvenile requires that the parent undergo psychiatric,
24 psychological, or other treatment or counseling directed toward remediating or
25 remedying behaviors or conditions that led to or contributed to the juvenile's
26 adjudication or to the court's decision to remove custody of the juvenile from the
27 parent. If the court finds that the best interests of the juvenile require the parent
28 undergo treatment, it may order the parent to comply with a plan of treatment
29 approved by the court or condition legal custody or physical placement of the
30 juvenile with the parent upon the parent's compliance with the plan of treatment.
31 The court may order the parent to pay the cost of treatment ordered pursuant to this
32 subsection. In cases in which the court has conditioned legal custody or physical
33 placement of the juvenile with the parent upon the parent's compliance with a plan
34 of treatment, the court may charge the cost of the treatment to the county of the
35 juvenile's residence if the court finds the parent is unable to pay the cost of the
36 treatment. In all other cases, if the court finds the parent is unable to pay the cost of
37 the treatment ordered pursuant to this subsection, the court may order the parent to
38 receive treatment currently available from the area mental health program that serves
39 the parent's catchment area.

40 (d) Whenever legal custody of a juvenile is vested in someone other than the
41 juvenile's parent, after due notice to the parent and after a hearing, the court may
42 order that the parent pay a reasonable sum that will cover, in whole or in part, the
43 support of the juvenile after the order is entered. If the court requires the payment of
44 child support, the amount of the payments shall be determined as provided in G.S.

1 50-13.4(c). If the court places a juvenile in the custody of a county department of
2 social services and if the court finds that the parent is unable to pay the cost of the
3 support required by the juvenile, the cost shall be paid by the county department of
4 social services in whose custody the juvenile is placed, provided the juvenile is not
5 receiving care in an institution owned or operated by the State or federal government
6 or any subdivision thereof.

7 (e) Failure of a parent who is personally served to participate in or comply with
8 this section may result in a civil proceeding for contempt.

9 "§ 7B-905. Dispositional order.

10 (a) The dispositional order shall be in writing and shall contain appropriate
11 findings of fact and conclusions of law. The court shall state with particularity, both
12 orally and in the written order of disposition, the precise terms of the disposition
13 including the kind, duration, and the person who is responsible for carrying out the
14 disposition and the person or agency in whom custody is vested.

15 (b) A dispositional order under which a juvenile is removed from the custody of a
16 parent or person standing in loco parentis shall direct that the review hearing
17 required by G.S. 7B-906 be held within six months of the date of the juvenile's
18 placement in custody and, if practicable, shall set the date and time for the review
19 hearing.

20 (c) Any order directing placement of a juvenile in foster care shall also contain:

21 (1) A finding that the juvenile's continuation in or return to the
22 juvenile's home would be contrary to the juvenile's best interests;
23 and

24 (2) Findings as to whether reasonable efforts have been made to
25 prevent or eliminate the need for placement of the juvenile in
26 foster care. A finding that reasonable efforts were not made shall
27 not preclude entry of a dispositional order authorizing placement
28 in foster care when the court finds that such placement is needed
29 for protection of the juvenile. When efforts to prevent the need for
30 the juvenile's placement are precluded by an immediate threat of
31 harm to the juvenile, the court may find that placement of the
32 juvenile in the absence of such efforts is reasonable.

33 The order may provide for services or other efforts aimed at returning the juvenile
34 promptly to a safe home. If the court finds through written findings of fact that efforts
35 to eliminate the need for placement of the juvenile in custody clearly would be futile
36 or would be inconsistent with the juvenile's safety and need for a safe, permanent
37 home within a reasonable period of time, the court shall specify in its order that
38 reunification efforts are not required or order that reunification efforts cease.

39 (d) An order that places a juvenile in the custody of a county department of social
40 services for placement shall specify that the juvenile's placement and care are the
41 responsibility of the county department of social services and that the county
42 department is to provide or arrange for the foster care or other placement of the
43 juvenile.

44 "§ 7B-906. Review of custody order.

1 (a) In any case where custody is removed from a parent, the court shall conduct a
2 review within six months of the date the order was entered, shall conduct a second
3 review within six months after the first review, and shall conduct subsequent reviews
4 at least every year thereafter. The director of social services shall make timely
5 requests to the clerk to calendar the case at a session of court scheduled for the
6 hearing of juvenile matters within six months of the date the order was entered. The
7 director shall make timely requests for calendaring subsequent reviews. The clerk
8 shall give 15 days' notice of the review to the parent or the person standing in loco
9 parentis, the juvenile, if 12 years of age or more, the guardian, foster parent,
10 custodian or agency with custody, the guardian ad litem, and any other person the
11 court may specify, indicating the court's impending review.

12 (b) Notwithstanding other provisions of this Article, the court may waive the
13 holding of review hearings required by subsection (a) of this section, may require
14 written reports to the court by the agency or person holding custody in lieu of review
15 hearings, or order that review hearings be held less often than every 12 months, if the
16 court finds by clear, cogent, and convincing evidence that:

- 17 (1) The juvenile has resided with a relative or has been in the custody
18 of another suitable person for a period of at least one year;
- 19 (2) The placement is stable and continuation of the placement is in the
20 juvenile's best interests;
- 21 (3) Neither the juvenile's best interests nor the rights of any party
22 require that review hearings be held every 12 months;
- 23 (4) All parties are aware that the matter may be brought before the
24 court for review at any time by the filing of a motion for review or
25 on the court's own motion; and
- 26 (5) The court order has designated the relative or other suitable
27 person as the juvenile's permanent caretaker or guardian of the
28 person.

29 The court may not waive or refuse to conduct a review hearing if a party files a
30 motion seeking the review.

31 (c) At every review hearing, the court shall consider information from the
32 department of social services, the juvenile, the parent or person standing in loco
33 parentis, the custodian, the foster parent, the guardian ad litem, and any public or
34 private agency which will aid it in its review.

35 In each case the court shall consider the following criteria and make written
36 findings regarding those that are relevant:

- 37 (1) Services which have been offered to reunite the family, or whether
38 efforts to reunite the family clearly would be futile or inconsistent
39 with the juvenile's safety and need for a safe, permanent home
40 within a reasonable period of time.
- 41 (2) Where the juvenile's return home is unlikely, the efforts which
42 have been made to evaluate or plan for other methods of care.
- 43 (3) Goals of the foster care placement and the appropriateness of the
44 foster care plan.

- 1 (4) A new foster care plan, if continuation of care is sought, that
2 addresses the role the current foster parent will play in the
3 planning for the juvenile.
4 (5) Reports on the placements the juvenile has had and any services
5 offered to the juvenile and the parent.
6 (6) When and if termination of parental rights should be considered.
7 (7) Any other criteria the court deems necessary.

8 (d) The court, after making findings of fact, may appoint a guardian of the person
9 for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by
10 G.S. 7B-903, including the authority to place the juvenile in the custody of either
11 parent or any relative found by the court to be suitable and found by the court to be
12 in the best interests of the juvenile. If the juvenile is placed in or remains in the
13 custody of the department of social services, the court may authorize the department
14 to arrange and supervise a visitation plan. Except for such visitation, the juvenile
15 shall not be returned to the parent or person standing in loco parentis without a
16 hearing at which the court finds sufficient facts to show that the juvenile will receive
17 proper care and supervision. The court may enter an order continuing the placement
18 under review or providing for a different placement as is deemed to be in the best
19 interests of the juvenile. If at any time custody is restored to a parent, the court shall
20 be relieved of the duty to conduct periodic judicial reviews of the placement.

21 (e) At a hearing designated by the court, but at least within 12 months after the
22 juvenile's placement, a review hearing shall be held under this section and designated
23 as a permanency-planning hearing. The purpose of the hearing shall be to develop a
24 plan to achieve a safe, permanent home for the juvenile within a reasonable period of
25 time. Notice of the hearing shall inform the parties of the purpose of the hearing. At
26 the conclusion of the hearing, if the juvenile is not returned home, the court shall
27 make specific findings as to the best plan of care to achieve a safe, permanent home
28 for the juvenile within a reasonable period of time and shall enter an order consistent
29 with those findings.

30 (f) The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any
31 order entered under this section which continues the foster care placement of a
32 juvenile.

33 "§ 7B-907. Posttermination of parental rights' placement court review.

34 (a) The purpose of each placement review is to ensure that every reasonable effort
35 is being made to provide for a permanent placement plan for the juvenile who has
36 been placed in the custody of a county director or licensed child-placing agency,
37 which is consistent with the juvenile's best interests. At each review hearing the court
38 may consider information from the department of social services, the licensed
39 child-placing agency, the guardian ad litem, the juvenile, the foster parent, and any
40 other person or agency the court determines is likely to aid in the review.

41 (b) The court shall conduct a placement review not later than six months from the
42 date of the termination hearing when parental rights have been terminated by a
43 petition brought by any person or agency designated in G.S. 7B-1102(2) through (5)
44 and a county director or licensed child-placing agency has custody of the juvenile.

1 The court shall conduct reviews every six months until the juvenile is placed for
2 adoption and the adoption petition is filed by the adoptive parents:

3 (1) No more than 30 days and no less than 15 days prior to each
4 review, the clerk shall give notice of the review to the juvenile if
5 the juvenile is at least 12 years of age, the legal custodian of the
6 juvenile, the foster parent, the guardian ad litem, if any, and any
7 other person the court may specify. Only the juvenile, if the
8 juvenile is at least 12 years of age, the legal custodian of the
9 juvenile, the foster parent, and the guardian ad litem shall attend
10 the review hearings, except as otherwise directed by the court.

11 (2) If a guardian ad litem for the juvenile has not been appointed
12 previously by the court in the termination proceeding, the court, at
13 the initial six-month review hearing, may appoint a guardian ad
14 litem to represent the juvenile. The court may continue the case
15 for such time as is necessary for the guardian ad litem to become
16 familiar with the facts of the case.

17 (c) The court shall consider at least the following in its review:

18 (1) The adequacy of the plan developed by the county department of
19 social services or a licensed child-placing agency for a permanent
20 placement relative to the juvenile's best interests and the efforts of
21 the department or agency to implement such plan;

22 (2) Whether the juvenile has been listed for adoptive placement with
23 the North Carolina Adoption Resource Exchange, the North
24 Carolina Photo Adoption Listing Service (PALS), or any other
25 specialized adoption agency; and

26 (3) The efforts previously made by the department or agency to find a
27 permanent home for the juvenile.

28 (d) The court, after making findings of fact, shall affirm the county department's
29 or child-placing agency's plans or require specific additional steps which are
30 necessary to accomplish a permanent placement which is in the best interests of the
31 juvenile.

32 (e) If the juvenile has been placed for adoption prior to the date scheduled for
33 the review, written notice of said placement shall be given to the clerk to be placed
34 in the court file, and the review hearing shall be cancelled with notice of said
35 cancellation given by the clerk to all persons previously notified.

36 (f) The process of selection of specific adoptive parents shall be the responsibility
37 of and within the discretion of the county department of social services or licensed
38 child-placing agency. The guardian ad litem may request information from and
39 consult with the county department or child-placing agency concerning the selection
40 process. If the guardian ad litem requests information about the selection process, the
41 county shall provide the information within five days. Any issue of abuse of
42 discretion by the county department or child-placing agency in the selection process
43 must be raised by the guardian ad litem within 10 days following the date the agency

1 notifies the court and the guardian ad litem in writing of the filing of the adoption
2 petition.

3 **"§ 7B-908. Review of agency's plan for placement.**

4 (a) The director of social services or the director of the licensed private child-
5 placing agency shall promptly notify the clerk to calendar the case for review of the
6 department's or agency's plan for the juvenile at a session of court scheduled for the
7 hearing of juvenile matters in any case where:

8 (1) One parent has surrendered a juvenile for adoption under the
9 provisions of Part 7 of Article 3 of Chapter 48 of the General
10 Statutes and the termination of parental rights proceedings have
11 not been instituted against the nonsurrendering parent within six
12 months of the surrender by the other parent, or

13 (2) Both parents have surrendered a juvenile for adoption under the
14 provisions of Part 7 of Article 3 of Chapter 48 of the General
15 Statutes and that juvenile has not been placed for adoption within
16 six months from the date of the more recent parental surrender.

17 (b) In any case where an adoption is dismissed or withdrawn and the juvenile
18 returns to foster care with a department of social services or a licensed private child-
19 placing agency, then the department of social services or licensed child-placing
20 agency shall notify the clerk, within 30 days from the date the juvenile returns to
21 care, to calendar the case for review of the agency's plan for the child at a session of
22 court scheduled for the hearing of juvenile matters.

23 (c) Notification of the court required under subsection (a) or (b) of this section
24 shall be by a petition for review. The petition shall set forth the circumstances
25 necessitating the review under subsection (a) or (b) of this section. The review shall
26 be conducted within 30 days following the filing of the petition for review unless the
27 court shall otherwise direct. The court shall conduct reviews every six months until
28 the juvenile is placed for adoption and the adoption petition is filed by the adoptive
29 parents. The initial review and all subsequent reviews shall be conducted pursuant to
30 G.S. 7B-907.

31 **"§ 7B-909. Review of voluntary foster care placements.**

32 (a) The court shall review the placement of any juvenile in foster care made
33 pursuant to a voluntary agreement between the juvenile's parents or guardian and a
34 county department of social services and shall make findings from evidence presented
35 at a review hearing with regard to:

36 (1) The voluntariness of the placement;

37 (2) The appropriateness of the placement;

38 (3) Whether the placement is in the best interests of the juvenile; and

39 (4) The services that have been or should be provided to the parents,
40 guardian, foster parents, and juvenile, as the case may be, either (i)
41 to improve the placement or (ii) to eliminate the need for the
42 placement.

43 (b) The court may approve the continued placement of the juvenile in foster care
44 on a voluntary agreement basis, disapprove the continuation of the voluntary

1 placement, or direct the department of social services to petition the court for legal
2 custody if the placement is to continue.

3 (c) An initial review hearing shall be held not more than 180 days after the
4 juvenile's placement and shall be calendared by the clerk for hearing within such
5 period upon timely request by the director of social services. Additional review
6 hearings shall be held at such times as the court shall deem appropriate and shall
7 direct, either upon its own motion or upon written request of the parents, guardian,
8 foster parents, or director of social services. A juvenile placed under a voluntary
9 agreement between the juvenile's parent or guardian and the county department of
10 social services shall not remain in placement more than 12 months without the filing
11 of a petition alleging abuse, neglect, or dependency.

12 (d) The clerk shall give at least 15 days' advance written notice of the initial and
13 subsequent review hearings to the parents or guardian of the juvenile, to the juvenile
14 if 12 or more years of age, to the director of social services, and to any other persons
15 whom the court may specify.

16 "ARTICLE 10.

17 "Modification and Enforcement of Dispositional Orders; Appeals.

18 "§ 7B-1000. Authority to modify or vacate.

19 (a) Upon motion in the cause or petition, and after notice, the court may conduct
20 a review hearing to determine whether the order of the court is in the best interests
21 of the juvenile, and the court may modify or vacate the order in light of changes in
22 circumstances or the needs of the juvenile.

23 (b) In any case where the court finds the juvenile to be abused, neglected, or
24 dependent, the jurisdiction of the court to modify any order or disposition made in
25 the case shall continue during the minority of the juvenile, until terminated by order
26 of the court, or until the juvenile is otherwise emancipated.

27 "§ 7B-1001. Right to appeal.

28 Upon motion of a proper party as defined in G.S. 7B-1002, review of any final
29 order of the court in a juvenile matter under this Article shall be before the Court of
30 Appeals. Notice of appeal shall be given in open court at the time of the hearing or
31 in writing within 10 days after entry of the order. However, if no disposition is made
32 within 60 days after entry of the order, written notice of appeal may be given within
33 70 days after such entry. A final order shall include:

34 (1) Any order finding absence of jurisdiction;

35 (2) Any order which in effect determines the action and prevents a
36 judgment from which appeal might be taken;

37 (3) Any order of disposition after an adjudication that a juvenile is
38 abused, neglected, or dependent; or

39 (4) Any order modifying custodial rights.

40 "§ 7B-1002. Proper parties for appeal.

41 An appeal may be taken by the guardian ad litem, or juvenile, the juvenile's
42 parent, guardian, custodian, or caretaker, or the petitioner. The State's appeal is
43 limited to any final order.

44 "§ 7B-1003. Disposition pending appeal.

Pending disposition of an appeal, the return of the juvenile to the custody of the parent, guardian, custodian, or caretaker of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care.

"§ 7B-1004. Disposition after appeal.

Upon the affirmation of the order of adjudication or disposition of the court by the Court of Appeals or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter the original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within 10 days thereafter as to why the modifying order should be vacated or altered.

"ARTICLE 11.

"Termination of Parental Rights.

"§ 7B-1100. Legislative intent; construction of Article.

The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

(1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile's biological or legal parents when the parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.

(2) It is the further purpose of this Article to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.

(3) Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict.

(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child Custody Jurisdiction Act.

"§ 7B-1101. Jurisdiction.

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition.

1 The court shall have jurisdiction to terminate the parental rights of any parent
2 irrespective of the age of the parent. The parent has the right to counsel and to
3 appointed counsel in cases of indigency unless the parent waives the right. The fees
4 of appointed counsel shall be borne by the Administrative Office of the Courts. In
5 addition to the right to appointed counsel set forth above, a guardian ad litem shall
6 be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a
7 parent in the following cases:

8 (1) Where it is alleged that a parent's rights should be terminated
9 pursuant to G.S. 7B-1110(7); or

10 (2) Where the parent is under the age of 18 years.

11 The fees of the guardian ad litem shall be borne by the Administrative Office of the
12 Courts when the court finds that the respondent is indigent. In other cases the fees of
13 the court-appointed guardian ad litem shall be a proper charge against the
14 respondent if the respondent does not secure private legal counsel. Provided, that
15 before exercising jurisdiction under this Article, the court shall find that it would
16 have jurisdiction to make a child-custody determination under the provisions of G.S.
17 50A-3. Provided, further, that the clerk of superior court shall have jurisdiction for
18 adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General
19 Statutes generally.

20 **§ 7B-1102. Who may petition.**

21 A petition to terminate the parental rights of either or both parents to his, her, or
22 their minor juvenile may only be filed by:

23 (1) Either parent seeking termination of the right of the other parent;
24 or

25 (2) Any person who has been judicially appointed as the guardian of
26 the person of the juvenile; or

27 (3) Any county department of social services, consolidated county
28 human services agency, or licensed child-placing agency to whom
29 custody of the juvenile has been given by a court of competent
30 jurisdiction; or

31 (4) Any county department of social services, consolidated county
32 human services agency, or licensed child-placing agency to which
33 the juvenile has been surrendered for adoption by one of the
34 parents or by the guardian of the person of the juvenile, pursuant
35 to G.S. 48-9(a)(1); or

36 (5) Any person with whom the juvenile has resided for a continuous
37 period of two years or more next preceding the filing of the
38 petition; or

39 (6) Any guardian ad litem appointed to represent the minor juvenile
40 pursuant to G.S. 7B-601 who has not been relieved of this
41 responsibility and who has served in this capacity for at least one
42 continuous year; or

43 (7) Any person who has filed a petition for adoption pursuant to
44 Chapter 48 of the General Statutes.

1 "§ 7B-1103. Petition.

2 The petition shall be verified by the petitioner and shall be entitled 'In Re (last
3 name of juvenile)', a minor juvenile; and shall set forth such of the following facts as
4 are known; and with respect to the facts which are unknown the petitioner shall so
5 state:

- 6 (1) The name of the juvenile as it appears on the juvenile's birth
7 certificate, the date and place of birth, and the county where the
8 juvenile is presently residing.
- 9 (2) The name and address of the petitioner and facts sufficient to
10 identify the petitioner as one entitled to petition under G.S. 7B-
11 1102.
- 12 (3) The name and address of the parents of the juvenile. If the name
13 or address of one or both parents is unknown to the petitioner, the
14 petitioner shall set forth with particularity the petitioner's efforts to
15 ascertain the identity or whereabouts of the parent or parents. The
16 information may be contained in an affidavit attached to the
17 petition and incorporated therein by reference.
- 18 (4) The name and address of any person appointed as guardian of the
19 person of the juvenile pursuant to the provisions of Chapter 35A of
20 the General Statutes, or of G.S. 7B-600.
- 21 (5) The name and address of any person or agency to whom custody
22 of the juvenile has been given by a court of this or any other state;
23 and a copy of the custody order shall be attached to the petition.
- 24 (6) Facts that are sufficient to warrant a determination that one or
25 more of the grounds for terminating parental rights exist.
- 26 (7) That the petition has not been filed to circumvent the provisions of
27 Chapter 50A of the General Statutes, the Uniform Child Custody
28 Jurisdiction Act.

29 "§ 7B-1104. Preliminary hearing; unknown parent.

30 (a) If either the name or identity of any parent whose parental rights the petitioner
31 seeks to terminate is not known to the petitioner, the court shall, within 10 days from
32 the date of filing of the petition, or during the next term of court in the county where
33 the petition is filed if there is no court in the county in that 10-day period, conduct a
34 preliminary hearing to ascertain the name or identity of such parent.

35 (b) The court may, in its discretion, inquire of any known parent of the juvenile
36 concerning the identity of the unknown parent and may appoint a guardian ad litem
37 for the unknown parent to conduct a diligent search for the parent. Should the court
38 ascertain the name or identity of the parent, it shall enter a finding to that effect; and
39 the parent shall be summoned to appear in accordance with G.S. 7B-1105.

40 (c) Notice of the preliminary hearing need be given only to the petitioner who
41 shall appear at the hearing; but the court may cause summons to be issued to any
42 person directing the person to appear and testify.

43 (d) If the court is unable to ascertain the name or identity of the unknown parent,
44 the court shall order publication of notice of the termination proceeding and shall

1 specifically order the place or places of publication and the contents of the notice
2 which the court concludes is most likely to identify the juvenile to such unknown
3 parent. The notice shall be published in a newspaper qualified for legal advertising in
4 accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by
5 the court, once a week for three successive weeks. Provided, further, the notice shall:

6 (1) Designate the court in which the petition is pending;

7 (2) Be directed to 'the father (mother) (father and mother) of a male
8 (female) juvenile born on or aboutin

9 (date)

10County,

11 (city)

12 respondent';

13 (State)

14 (3) Designate the docket number and title of the case (the court may
15 direct the actual name of the title be eliminated and the words 'In
16 Re Doe' substituted therefor);

17 (4) State that a petition seeking to terminate the parental rights of the
18 respondent has been filed;

19 (5) Direct the respondent to answer the petition within 30 days after a
20 date stated in the notice, exclusive of such date, which date so
21 stated shall be the date of first publication of notice and be
22 substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and

23 (6) State that the respondent's parental rights to the juvenile will be
24 terminated upon failure to answer the petition within the time
25 prescribed.

26 Upon completion of the service, an affidavit of the publisher shall be filed with the
27 court.

28 (e) The court shall issue the order required by subsections (b) and (d) of this
29 section within 30 days from the date of the preliminary hearing unless the court shall
30 determine that additional time for investigation is required.

31 (f) Upon the failure of the parent served by publication pursuant to subsection (d)
32 of this section to answer the petition within the time prescribed, the court shall issue
33 an order terminating all parental rights of the unknown parent.

34 **"§ 7B-1105. Issuance of summons.**

35 (a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court
36 shall cause a summons to be issued. The summons shall be directed to the following
37 persons or agency, not otherwise a party petitioner, who shall be named as
38 respondents:

39 (1) The parents of the juvenile;

40 (2) Any person who has been judicially appointed as guardian of the
41 person of the juvenile;

42 (3) The custodian of the juvenile appointed by a court of competent
43 jurisdiction;

1 (4) Any county department of social services or licensed child-placing
2 agency to whom a juvenile has been released by one parent
3 pursuant to Part 7 of Article 3 of Chapter 48 of the General
4 Statutes; and

5 (5) The juvenile, if the juvenile is 12 years of age or older at the time
6 the petition is filed.

7 Provided, no summons need be directed to or served upon any parent who has
8 previously surrendered the juvenile to a county department of social services or
9 licensed child-placing agency nor to any parent who has consented to the adoption of
10 the juvenile by the petitioner. The summons shall notify the respondents to file a
11 written answer within 30 days after service of the summons and petition. Service of
12 the summons shall be completed as provided under the procedures established by
13 G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under
14 disability even though the parent is a minor.

15 (b) The summons shall be issued for the purpose of terminating parental rights
16 pursuant to the provisions of subsection (a) of this section and shall include:

17 (1) The name of the minor juvenile;

18 (2) Notice that a written answer to the petition must be filed with the
19 clerk who signed the petition within 30 days after service of the
20 summons and a copy of the petition, or the parent's rights may be
21 terminated;

22 (3) Notice that if they are indigent, the parents are entitled to
23 appointed counsel. The parents may contact the clerk immediately
24 to request counsel;

25 (4) Notice that this is a new case. Any attorney appointed previously
26 will not represent the parents in this proceeding unless ordered by
27 the court;

28 (5) Notice that the date, time, and place of the hearing will be mailed
29 by the clerk upon filing of the answer or 30 days from the date of
30 service if no answer is filed; and

31 (6) Notice of the purpose of the hearing and notice that the parents
32 may attend the termination hearing.

33 **"§ 7B-1106. Failure of respondents to answer.**

34 Upon the failure of the respondents to file written answer to the petition with the
35 court within 30 days after service of the summons and petition, or within the time
36 period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by
37 publication, the court shall issue an order terminating all parental and custodial rights
38 of the respondent or respondents with respect to the juvenile; provided the court
39 shall order a hearing on the petition and may examine the petitioner or others on the
40 facts alleged in the petition.

41 **"§ 7B-1107. Answer of respondents.**

42 (a) Any respondent may file a written answer to the petition. The answer shall
43 admit or deny the allegations of the petition and shall set forth the name and address
44 of the answering respondent or the respondent's attorney.

1 (b) If an answer denies any material allegation of the petition, the court shall
2 appoint a guardian ad litem for the juvenile to represent the best interests of the
3 juvenile, unless the petition was filed by the guardian ad litem pursuant to G.S. 7B-
4 1102. A licensed attorney shall be appointed to assist those guardians ad litem who
5 are not attorneys licensed to practice in North Carolina. The appointment, duties,
6 and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S.
7 7B-603. The court shall conduct a special hearing after notice of not less than 10 days
8 nor more than 30 days to the petitioner, the answering respondent, and the guardian
9 ad litem for the juvenile to determine the issues raised by the petition and answer.
10 Notice of the hearing shall be deemed to have been given upon the depositing thereof
11 in the United States mail, first-class postage prepaid, and addressed to the petitioner,
12 respondent, and guardian ad litem or their counsel of record, at the addresses
13 appearing in the petition and responsive pleading.

14 (c) In proceedings under this Article, the appointment of a guardian ad litem shall
15 not be required except, as provided above, in cases in which an answer is filed
16 denying material allegations, or as required under G.S. 7B-1101; but the court may, in
17 its discretion, appoint a guardian ad litem for a juvenile, either before or after
18 determining the existence of grounds for termination of parental rights, in order to
19 assist the court in determining the best interests of the juvenile.

20 (d) If a guardian ad litem has previously been appointed for the juvenile under
21 G.S. 7B-601, and the appointment of a guardian ad litem could also be made under
22 this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney
23 appointed to assist that guardian, shall also represent the juvenile in all proceedings
24 under this Article and shall have the duties and payment of a guardian ad litem
25 appointed under this section, unless the court determines that the best interests of the
26 juvenile require otherwise.

27 **"§ 7B-1108. Adjudicatory hearing on termination.**

28 (a) The hearing on the termination of parental rights shall be conducted by the
29 court sitting without a jury. Reporting of the hearing shall be as provided by G.S.
30 7A-198 for reporting civil trials.

31 (b) The court shall inquire whether the juvenile's parents are present at the
32 hearing and, if so, whether they are represented by counsel. If the parents are not
33 represented by counsel, the court shall inquire whether the parents desire counsel but
34 are indigent. In the event that the parents desire counsel but are indigent as defined
35 in G.S. 7A-450(a) and are unable to obtain counsel to represent them, the court shall
36 appoint counsel to represent them. The court shall grant the parents such an
37 extension of time as is reasonable to permit their appointed counsel to prepare their
38 defense to the termination petition. In the event that the parents do not desire
39 counsel and are present at the hearing, the court shall examine each parent and make
40 findings of fact sufficient to show that the waivers were knowing and voluntary. This
41 examination shall be reported as provided in G.S. 7A-198.

42 (c) The court may, upon finding that reasonable cause exists, order the juvenile to
43 be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or
44 private agency, or any other expert in order that the juvenile's psychological or

1 physical condition or needs may be ascertained or, in the case of a parent whose
2 ability to care for the juvenile is at issue, the court may order a similar examination
3 of any parent of the juvenile.

4 (d) The court may for good cause shown continue the hearing for such time as is
5 required for receiving additional evidence, any reports or assessments which the court
6 has requested, or any other information needed in the best interests of the juvenile.

7 (e) The court shall take evidence, find the facts, and shall adjudicate the existence
8 or nonexistence of any of the circumstances set forth in G.S. 7B-1110 which authorize
9 the termination of parental rights of the respondent.

10 (f) All findings of fact shall be based on clear, cogent, and convincing evidence.
11 No husband-wife or physician-patient privilege shall be grounds for excluding any
12 evidence regarding the existence or nonexistence of any circumstance authorizing the
13 termination of parental rights.

14 **"§ 7B-1109. Disposition.**

15 (a) Should the court determine that any one or more of the conditions authorizing
16 a termination of the parental rights of a parent exist, the court shall issue an order
17 terminating the parental rights of such parent with respect to the juvenile unless the
18 court shall further determine that the best interests of the juvenile require that the
19 parental rights of the parent not be terminated.

20 (b) Should the court conclude that, irrespective of the existence of one or more
21 circumstances authorizing termination of parental rights, the best interests of the
22 juvenile require that rights should not be terminated, the court shall dismiss the
23 petition, but only after setting forth the facts and conclusions upon which the
24 dismissal is based.

25 (c) Should the court determine that circumstances authorizing termination of
26 parental rights do not exist, the court shall dismiss the petition, making appropriate
27 findings of fact and conclusions.

28 (d) Counsel for the petitioner shall serve a copy of the termination of parental
29 rights order upon the guardian ad litem for the juvenile, if any, and upon the
30 juvenile if the juvenile is 12 years of age or older.

31 (e) The court may tax the cost of the proceeding to any party.

32 **"§ 7B-1110. Grounds for terminating parental rights.**

33 The court may terminate the parental rights upon a finding of one or more of the
34 following:

35 (1) The parent has abused or neglected the juvenile. The juvenile
36 shall be deemed to be abused or neglected if the court finds the
37 juvenile to be an abused juvenile within the meaning of G.S. 7B-
38 101 or a neglected juvenile within the meaning of G.S. 7B-101.

39 (2) The parent has willfully left the juvenile in foster care for more
40 than 12 months without showing to the satisfaction of the court
41 that reasonable progress under the circumstances has been made
42 within 12 months in correcting those conditions which led to the
43 removal of the juvenile. Provided, however, that no parental rights

1 shall be terminated for the sole reason that the parents are unable
2 to care for the juvenile on account of their poverty.

3 (3) The burden in such proceedings shall be upon the petitioner to
4 prove the facts justifying such termination by clear and convincing
5 evidence.

6 (4) The juvenile has been placed in the custody of a county
7 department of social services, a licensed child-placing agency, a
8 child-caring institution, or a foster home, and the parent, for a
9 continuous period of six months next preceding the filing of the
10 petition, has willfully failed for such period to pay a reasonable
11 portion of the cost of care for the juvenile although physically and
12 financially able to do so.

13 (5) One parent has been awarded custody of the juvenile by judicial
14 decree or has custody by agreement of the parents, and the other
15 parent whose parental rights are sought to be terminated has for a
16 period of one year or more next preceding the filing of the petition
17 willfully failed without justification to pay for the care, support,
18 and education of the juvenile, as required by said decree or
19 custody agreement.

20 (6) The father of a juvenile born out of wedlock has not, prior to the
21 filing of a petition to terminate parental rights:

22 a. Established paternity judicially or by affidavit which has
23 been filed in a central registry maintained by the
24 Department of Health and Human Services; provided, the
25 court shall inquire of the Department of Health and Human
26 Services as to whether such an affidavit has been so filed
27 and shall incorporate into the case record the Department's
28 certified reply; or

29 b. Legitimated the juvenile pursuant to provisions of G.S. 49-
30 10 or filed a petition for this specific purpose; or

31 c. Legitimated the juvenile by marriage to the mother of the
32 juvenile; or

33 d. Provided substantial financial support or consistent care with
34 respect to the juvenile and mother.

35 (7) That the parent is incapable of providing for the proper care and
36 supervision of the juvenile, such that the juvenile is a dependent
37 juvenile within the meaning of G.S. 7B-101, and that there is a
38 reasonable probability that such incapability will continue for the
39 foreseeable future. Incapability under this subdivision may be the
40 result of substance abuse, mental retardation, mental illness,
41 organic brain syndrome, or any other similar cause or condition.

42 (8) The parent has willfully abandoned the juvenile for at least six
43 consecutive months immediately preceding the filing of the
44 petition. For the purpose of this subdivision, a juvenile may be

1 willfully abandoned by the juvenile's natural father if the mother
2 of the juvenile had been willfully abandoned by and was living
3 separate and apart from the father at the time of the juvenile's
4 birth, although the father may not have known of such birth; but in
5 any event the juvenile must be over the age of three months at the
6 time of the filing of the petition.

7 **"§ 7B-1111. Effects of termination order.**

8 An order terminating the parental rights completely and permanently terminates
9 all rights and obligations of the parent to the juvenile and of the juvenile to the
10 parent arising from the parental relationship, except that the juvenile's right of
11 inheritance from the juvenile's parent shall not terminate until a final order of
12 adoption is issued. The parent is not thereafter entitled to notice of proceedings to
13 adopt the juvenile and may not object thereto or otherwise participate therein:

14 (1) If the juvenile had been placed in the custody of or released for
15 adoption by one parent to a county department of social services
16 or licensed child-placing agency and is in the custody of the agency
17 at the time of the filing of the petition, including a petition filed
18 pursuant to G.S. 7B-1102(6), that agency shall, upon entry of the
19 order terminating parental rights, acquire all of the rights for
20 placement of the juvenile as the agency would have acquired had
21 the parent whose rights are terminated released the juvenile to
22 that agency pursuant to the provisions of Part 7 of Article 3 of
23 Chapter 48 of the General Statutes, including the right to consent
24 to the adoption of the juvenile.

25 (2) Except as provided in subdivision (1) above, upon entering an
26 order terminating the parental rights of one or both parents, the
27 court may place the juvenile in the custody of the petitioner, or
28 some other suitable person, or in the custody of the department of
29 social services or licensed child-placing agency, as may appear to
30 be in the best interests of the juvenile.

31 **"§ 7B-1112. Appeals; modification of order after affirmation.**

32 Any juvenile, parent, guardian, custodian, caretaker, or agency who is a party to a
33 proceeding under this Article may appeal from an adjudication or any order of
34 disposition to the Court of Appeals, provided that notice of appeal is given in open
35 court at the time of the hearing or in writing within 10 days after the hearing.
36 Pending disposition of an appeal, the court may enter a temporary order affecting the
37 custody or placement of the juvenile as the court finds to be in the best interests of
38 the juvenile or the best interests of the State. Upon the affirmation of the order of
39 adjudication or disposition of the court in a juvenile case by the Court of Appeals, or
40 by the Supreme Court in the event of an appeal, the court shall have authority to
41 modify or alter its original order of adjudication or disposition as the court finds to
42 be in the best interests of the juvenile to reflect any adjustment made by the
43 juvenile or change in circumstances during the period of time the case on appeal was
44 pending, provided that if the modifying order be entered ex parte, the court shall give

1 notice to interested parties to show cause, if any there be, within 10 days thereafter,
2 as to why the modifying order should be vacated or altered.

3 "ARTICLE 12.

4 "Guardian ad Litem Program.

5 "§ 7B-1200. Office of Guardian ad Litem Services established.

6 There is established within the Administrative Office of the Courts an Office of
7 Guardian ad Litem Services to provide services in accordance with G.S. 7B-601 to
8 abused, neglected, or dependent juveniles involved in judicial proceedings and to
9 assure that all participants in these proceedings are adequately trained to carry out
10 their responsibilities. Each local program shall consist of volunteer guardians ad
11 litem, at least one program attorney, a program coordinator who is a paid State
12 employee, and any clerical staff as the Administrative Office of the Courts in
13 consultation with the local program deems necessary. The Administrative Office of
14 the Courts shall adopt rules and regulations necessary and appropriate for the
15 administration of the program.

16 "§ 7B-1201. Implementation and administration.

17 (a) Local Programs. -- The Administrative Office of the Courts shall, in
18 cooperation with each chief district court judge and other personnel in the district,
19 implement and administer the program mandated by this Article. Where a local
20 program has not yet been established in accordance with this Article, the district
21 court district shall operate a guardian ad litem program approved by the
22 Administrative Office of the Courts.

23 (b) Advisory Committee Established. -- The Director of the Administrative Office
24 of the Courts shall appoint a Guardian ad Litem Advisory Committee consisting of at
25 least five members to advise the Office of Guardian ad Litem Services in matters
26 related to this program. The members of the Advisory Committee shall receive the
27 same per diem and reimbursement for travel expenses as members of State boards
28 and commissions generally.

29 "§ 7B-1202. Conflict of interest or impracticality of implementation.

30 If a conflict of interest prohibits a local program from providing representation to
31 an abused, neglected, or dependent juvenile, the court may appoint any member of
32 the district bar to represent the juvenile. If the Administrative Office of the Courts
33 determines that within a particular district court district the implementation of a local
34 program is impractical, or that an alternative plan meets the conditions of G.S. 7B-
35 1203, the Administrative Office of the Courts shall waive the establishment of the
36 program within the district.

37 "§ 7B-1203. Alternative plans.

38 A district court district shall be granted a waiver from the implementation of a
39 local program if the Administrative Office of the Courts determines that the following
40 conditions are met:

41 (1) An alternative plan has been developed to provide adequate
42 guardian ad litem services for every juvenile consistent with the
43 duties stated in G.S. 7B-601; and

1 (2) The proposed alternative plan will require no greater proportion of
2 State funds than the district court district's abuse and neglect
3 caseload represents to the State's abuse and neglect caseload.
4 Computation of abuse and neglect caseloads shall include such
5 factors as the juvenile population, number of substantiated abuse
6 and neglect reports, number of abuse and neglect petitions, number
7 of abused and neglected juveniles in care to be reviewed pursuant
8 to G.S. 7B-906, nature of the district's district court caseload, and
9 number of petitions to terminate parental rights.

10 When an alternative plan is approved pursuant to this section, the Administrative
11 Office of the Courts shall retain authority to monitor implementation of the said plan
12 in order to assure compliance with the requirements of this Article and G.S. 7B-601.
13 In any district court district where the Administrative Office of the Courts determines
14 that implementation of an alternative plan is not in compliance with the requirements
15 of this section, the Administrative Office of the Courts may implement and
16 administer a program authorized by this Article.

17 **"§ 7B-1204. Civil liability of volunteers.**

18 Any volunteer participating in a judicial proceeding pursuant to the program
19 authorized by this Article shall not be civilly liable for acts or omissions committed in
20 connection with the proceeding if the volunteer acted in good faith and was not
21 guilty of gross negligence.

22 **"ARTICLE 13.**

23 **"Prevention of Abuse and Neglect.**

24 **"§ 7B-1300. Purpose.**

25 It is the expressed intent of this Article to make the prevention of abuse and
26 neglect, as defined in G.S. 7B-101, a priority of this State and to establish the
27 Children's Trust Fund as a means to that end.

28 **"§ 7B-1301. Council on Prevention of Abuse and Neglect.**

29 (a) For purposes of implementing this program, the State Board of Education
30 shall designate the Interagency Advisory Council on Community Schools in the
31 Department of Public Instruction as the Advisory Council on Prevention of Child
32 Abuse and Neglect, hereinafter called the Council.

33 (b) Staff and support services for implementing this program shall be provided by
34 the Division of Community Schools in the Department of Public Instruction.

35 (c) In order to carry out the purposes of this Article:

36 (1) The Council shall, with the assistance of the Division of
37 Community Schools, review applications and make
38 recommendations to the State Board of Education concerning the
39 awarding of contracts pursuant to this Article.

40 (2) The State Board of Education shall contract with public or private
41 nonprofit organizations, agencies, schools, or with qualified
42 individuals to operate community-based educational and service
43 programs designed to prevent the occurrence of abuse and neglect.
44 Every contract entered into by the State Board of Education shall

1 contain provisions that at least twenty-five percent (25%) of the
2 total funding required for a program be provided by the
3 administering organization in the form of in-kind or other services
4 and that a mechanism for evaluation of services provided under
5 the contract be included in the services to be performed. In
6 addition, every proposal to the Council for funding pursuant to this
7 Article shall include assurances that the proposal has been
8 forwarded to the local department of social services for comment
9 so that the Council may consider coordination and duplication of
10 effort on the local level as criteria in making recommendations to
11 the State Board of Education.

12 (3) The State Board of Education shall, with the assistance of the
13 Division of Community Schools, develop appropriate guidelines
14 and criteria for awarding contracts pursuant to this Article. These
15 criteria shall include, but not be limited to: documentation of need
16 within the proposed geographical impact area; diversity of
17 geographical areas of programs funded pursuant to this Article;
18 demonstrated effectiveness of the proposed strategy or program for
19 preventing abuse and neglect; reasonableness of implementation
20 plan for achieving stated objectives; utilization of community
21 resources including volunteers; provision for an evaluation
22 component that will provide outcome data; plan for dissemination
23 of the program for implementation in other communities; and
24 potential for future funding from private sources.

25 (4) The State Board of Education shall, with the assistance of the
26 Division of Community Schools, develop guidelines for regular
27 monitoring of contracts awarded pursuant to this Article in order
28 to maximize the investments in prevention programs by the
29 Children's Trust Fund and to establish appropriate accountability
30 measures for administration of contracts.

31 (5) The State Board of Education shall develop a State plan for the
32 prevention of abuse and neglect for submission to the Governor,
33 the President of the Senate, and the Speaker of the House of
34 Representatives.

35 (d) To assist in implementing this Article, the State Board of Education may
36 accept contributions, grants, or gifts in cash or otherwise from persons, associations,
37 or corporations. All moneys received by the State Board of Education from
38 contributions, grants, or gifts and not through appropriation by the legislature shall be
39 deposited in the Children's Trust Fund. Disbursements of the funds shall be on the
40 authorization of the State Board of Education or a duly authorized representative
41 thereof. In order to maintain an effective expenditure and revenue control, such
42 funds shall be subject in all respects to State law and regulations, but no
43 appropriation shall be required to permit expenditure of the funds.

44 "§ 7B-1302. Programs.

1 (a) Programs contracted for under this Article are intended to prevent abuse and
2 neglect of juveniles. Abuse and neglect prevention programs are defined to be those
3 programs and services which impact on juveniles and families before any
4 substantiated incident of abuse or neglect has occurred. These programs may include,
5 but are not limited to:

6 (1) Community-based educational programs on prenatal care, perinatal
7 bonding, child development, basic child care, care of children with
8 special needs, and coping with family stress; and

9 (2) Community-based programs relating to crisis care, aid to parents,
10 and support groups for parents and their children experiencing
11 stress within the family unit.

12 (b) No more than twenty percent (20%) of each year's total awards may be
13 utilized for funding State-level programs to coordinate community-based programs.

14 "§ 7B-1303. Children's Trust Fund.

15 There is established a fund to be known as the 'Children's Trust Fund,' in the
16 Department of State Treasurer, which shall be funded pursuant to G.S. 161-11.1, and
17 which shall be used by the State Board of Education to fund abuse and neglect
18 prevention programs so authorized by this Article.

19 "ARTICLE 14.

20 "North Carolina Child Fatality Prevention System.

21 "§ 7B-1400. Declaration of public policy.

22 The General Assembly finds that it is the public policy of this State to prevent the
23 abuse, neglect, and death of juveniles. The General Assembly further finds that the
24 prevention of the abuse, neglect, and death of juveniles is a community responsibility;
25 that professionals from disparate disciplines have responsibilities for children or
26 juveniles and have expertise that can promote their safety and well-being; and that
27 multidisciplinary reviews of the abuse, neglect, and death of juveniles can lead to a
28 greater understanding of the causes and methods of preventing these deaths. It is,
29 therefore, the intent of the General Assembly, through this Article, to establish a
30 statewide multidisciplinary, multiagency child fatality prevention system consisting of
31 the State Team established in G.S. 7B-1404 and the Local Teams established in G.S.
32 7B-1406. The purpose of the system is to assess the records of selected cases in which
33 children are being served by child protective services and the records of all deaths of
34 children in North Carolina from birth to age 18 in order to (i) develop a
35 communitywide approach to the problem of child abuse and neglect, (ii) understand
36 the causes of childhood deaths, (iii) identify any gaps or deficiencies that may exist in
37 the delivery of services to children and their families by public agencies that are
38 designed to prevent future child abuse, neglect, or death, and (iv) make and
39 implement recommendations for changes to laws, rules, and policies that will support
40 the safe and healthy development of our children and prevent future child abuse,
41 neglect, and death.

42 "§ 7B-1401. Definitions.

43 The following definitions apply in this Article:

- 1 (1) Additional Child Fatality. -- Any death of a child that did not
2 result from suspected abuse or neglect and about which no report
3 of abuse or neglect had been made to the county department of
4 social services within the previous 12 months.
- 5 (2) Local Team. -- A Community Child Protection Team or a Child
6 Fatality Prevention Team.
- 7 (3) State Team. -- The North Carolina Child Fatality Prevention
8 Team.
- 9 (4) Task Force. -- The North Carolina Child Fatality Task Force.
- 10 (5) Team Coordinator. -- The Child Fatality Prevention Team
11 Coordinator.

12 **"§ 7B-1402. Task Force -- creation; membership; vacancies.**

13 (a) There is created the North Carolina Child Fatality Task Force within the
14 Department of Health and Human Services for budgetary purposes only.

15 (b) The Task Force shall be composed of 35 members, 11 of whom shall be ex
16 officio members, four of whom shall be appointed by the Governor, 10 of whom shall
17 be appointed by the Speaker of the House of Representatives, and 10 of whom shall
18 be appointed by the President Pro Tempore of the Senate. The ex officio members
19 other than the Chief Medical Examiner shall be nonvoting members and may
20 designate representatives from their particular departments, divisions, or offices to
21 represent them on the Task Force. The members shall be as follows:

- 22 (1) The Chief Medical Examiner;
- 23 (2) The Attorney General;
- 24 (3) The Director of the Division of Social Services;
- 25 (4) The Director of the State Bureau of Investigation;
- 26 (5) The Director of the Division of Maternal and Child Health of the
27 Department of Health and Human Services;
- 28 (6) The Director of the Governor's Youth Advocacy and Involvement
29 Office;
- 30 (7) The Superintendent of Public Instruction;
- 31 (8) The Chairman of the State Board of Education;
- 32 (9) The Director of the Division of Mental Health, Developmental
33 Disabilities, and Substance Abuse Services;
- 34 (10) The Secretary of the Department of Health and Human Services;
- 35 (11) The Director of the Administrative Office of the Courts;
- 36 (12) A director of a county department of social services, appointed by
37 the Governor upon recommendation of the President of the North
38 Carolina Association of County Directors of Social Services;
- 39 (13) A representative from a Sudden Infant Death Syndrome counseling
40 and education program, appointed by the Governor upon
41 recommendation of the Director of the Division of Maternal and
42 Child Health of the Department of Health and Human Services;

- 1 (14) A representative from the North Carolina Child Advocacy
2 Institute, appointed by the Governor upon recommendation of the
3 President of the Institute;
4 (15) A director of a local department of health, appointed by the
5 Governor upon the recommendation of the President of the North
6 Carolina Association of Local Health Directors;
7 (16) A representative from a private group, other than the North
8 Carolina Child Advocacy Institute, that advocates for children,
9 appointed by the Speaker of the House of Representatives upon
10 recommendation of private child advocacy organizations;
11 (17) A pediatrician, licensed to practice medicine in North Carolina,
12 appointed by the Speaker of the House of Representatives upon
13 recommendation of the North Carolina Pediatric Society;
14 (18) A representative from the North Carolina League of
15 Municipalities, appointed by the Speaker of the House of
16 Representatives upon recommendation of the League;
17 (19) Two public members, appointed by the Speaker of the House of
18 Representatives;
19 (20) A county or municipal law enforcement officer, appointed by the
20 President Pro Tempore of the Senate upon recommendation of
21 organizations that represent local law enforcement officers;
22 (21) A district attorney, appointed by the President Pro Tempore of the
23 Senate upon recommendation of the President of the North
24 Carolina Conference of District Attorneys;
25 (22) A representative from the North Carolina Association of County
26 Commissioners, appointed by the President Pro Tempore of the
27 Senate upon recommendation of the Association;
28 (23) Two public members, appointed by the President Pro Tempore of
29 the Senate; and
30 (24) Five members of the Senate, appointed by the President Pro
31 Tempore of the Senate, and five members of the House of
32 Representatives, appointed by the Speaker of the House of
33 Representatives.

34 (c) All members of the Task Force are voting members. Vacancies in the
35 appointed membership shall be filled by the appointing officer who made the initial
36 appointment. At the first meeting the members shall elect a chair who shall preside
37 for the duration of the Task Force.

38 § 7B-1403. Task Force -- duties.

39 The Task Force shall:

- 40 (1) Undertake a statistical study of the incidences and causes of child
41 deaths in this State during 1988 and 1989 and establish a profile of
42 child deaths. The study shall include (i) an analysis of all
43 community and private and public agency involvement with the

1 decedents and their families prior to death, and (ii) an analysis of
2 child deaths by age, cause, and geographic distribution;

3 (2) Develop a system for multidisciplinary review of child deaths. In
4 developing such a system, the Task Force shall study the operation
5 of existing Local Teams. The Task Force shall also consider the
6 feasibility and desirability of local or regional review teams and,
7 should it determine such teams to be feasible and desirable,
8 develop guidelines for the operation of the teams. The Task Force
9 shall also examine the laws, rules, and policies relating to
10 confidentiality of and access to information that affect those
11 agencies with responsibilities for children, including State and local
12 health, mental health, social services, education, and law
13 enforcement agencies, to determine whether those laws, rules, and
14 policies inappropriately impede the exchange of information
15 necessary to protect children from preventable deaths, and, if so,
16 recommend changes to them;

17 (3) Receive and consider reports from the State Team; and

18 (4) Perform any other studies, evaluations, or determinations the Task
19 Force considers necessary to carry out its mandate.

20 **§ 7B-1404. State Team -- creation; membership; vacancies.**

21 (a) There is created the North Carolina Child Fatality Prevention Team within
22 the Department of Health and Human Services for budgetary purposes only.

23 (b) The State Team shall be composed of the following 11 members of whom nine
24 members are ex officio and two are appointed:

25 (1) The Chief Medical Examiner, who shall chair the State Team;

26 (2) The Attorney General;

27 (3) The Director of the Division of Social Services, Department of
28 Health and Human Services;

29 (4) The Director of the State Bureau of Investigation;

30 (5) The Director of the Division of Maternal and Child Health of the
31 Department of Health and Human Services;

32 (6) The Superintendent of Public Instruction;

33 (7) The Director of the Division of Mental Health, Developmental
34 Disabilities, and Substance Abuse Services, Department of Health
35 and Human Services;

36 (8) The Director of the Administrative Office of the Courts;

37 (9) The pediatrician appointed pursuant to G.S. 7B-1402(b) to the
38 Task Force;

39 (10) A public member, appointed by the Governor; and

40 (11) The Team Coordinator.

41 The ex officio members other than the Chief Medical Examiner may designate a
42 representative from their departments, divisions, or offices to represent them on the
43 State Team.

1 (c) All members of the State Team are voting members. Vacancies in the
2 appointed membership shall be filled by the appointing officer who made the initial
3 appointment.

4 "§ 7B-1405. State Team -- duties.

5 The State Team shall:

- 6 (1) Review current deaths of children when those deaths are attributed
7 to child abuse or neglect or when the decedent was reported as an
8 abused or neglected juvenile pursuant to G.S. 7B-301 at any time
9 before death;
- 10 (2) Report to the Task Force during the existence of the Task Force,
11 in the format and at the time required by the Task Force, on the
12 State Team's activities and its recommendations for changes to any
13 law, rule, and policy that would promote the safety and well-being
14 of children;
- 15 (3) Upon request of a Local Team, provide technical assistance to the
16 Team;
- 17 (4) Periodically assess the operations of the multidisciplinary child
18 fatality prevention system and make recommendations for changes
19 as needed;
- 20 (5) Work with the Team Coordinator to develop guidelines for
21 selecting child deaths to receive detailed, multidisciplinary death
22 reviews by Local Teams that review cases of additional child
23 fatalities; and
- 24 (6) Receive reports of findings and recommendations from Local
25 Teams that review cases of additional child fatalities and work with
26 the Team Coordinator to implement recommendations.

27 "§ 7B-1406. Community Child Protection Teams; Child Fatality Prevention Teams;
28 creation and duties.

29 (a) Community Child Protection Teams are established in every county of the
30 State. Each Community Child Protection Team shall:

- 31 (1) Review, in accordance with the procedures established by the
32 director of the county department of social services under G.S. 7B-
33 1409:
- 34 a. Selected active cases in which children are being served by
35 child protective services; and
- 36 b. Cases in which a child died as a result of suspected abuse or
37 neglect, and
- 38 1. A report of abuse or neglect has been made about the
39 child or the child's family to the county department
40 of social services within the previous 12 months, or
- 41 2. The child or the child's family was a recipient of
42 child protective services within the previous 12
43 months.

1 (2) Submit annually to the board of county commissioners
2 recommendations, if any, and advocate for system improvements
3 and needed resources where gaps and deficiencies may exist.

4 In addition, each Community Child Protection Team may review the records of all
5 additional child fatalities and report findings in connection with these reviews to the
6 Team Coordinator.

7 (b) Any Community Child Protection Team that determines it will not review
8 additional child fatalities shall notify the Team Coordinator. In accordance with the
9 plan established under G.S. 7B-1408(1), a separate Child Fatality Prevention Team
10 shall be established in that county to conduct these reviews. Each Child Fatality
11 Prevention Team shall:

12 (1) Review the records of all cases of additional child fatalities.

13 (2) Submit annually to the board of county commissioners
14 recommendations, if any, and advocate for system improvements
15 and needed resources where gaps and deficiencies may exist.

16 (3) Report findings in connection with these reviews to the Team
17 Coordinator.

18 (c) All reports to the Team Coordinator under this section shall include:

19 (1) A listing of the system problems identified through the review
20 process and recommendations for preventive actions;

21 (2) Any changes that resulted from the recommendations made by the
22 Local Team;

23 (3) Information about each death reviewed; and

24 (4) Any additional information requested by the Team Coordinator.

25 **§ 7B-1407. Local Teams; composition.**

26 (a) Each Local Team shall consist of representatives of public and nonpublic
27 agencies in the community that provide services to children and their families and
28 other individuals who represent the community. No single team shall encompass a
29 geographic or governmental area larger than one county.

30 (b) Each Local Team shall consist of the following persons:

31 (1) The director of the county department of social services and a
32 member of the director's staff;

33 (2) A local law enforcement officer, appointed by the board of county
34 commissioners;

35 (3) An attorney from the district attorney's office, appointed by the
36 district attorney;

37 (4) The executive director of the local community action agency, as
38 defined by the Department of Health and Human Services, or the
39 executive director's designee;

40 (5) The superintendent of each local school administrative unit located
41 in the county, or the superintendent's designee;

42 (6) A member of the county board of social services, appointed by the
43 chair of that board;

- 1 (7) A local mental health professional, appointed by the director of the
2 area authority established under Chapter 122C of the General
3 Statutes;
4 (8) The local guardian ad litem coordinator, or the coordinator's
5 designee;
6 (9) The director of the local department of public health; and
7 (10) A local health care provider, appointed by the local board of
8 health.

9 (c) In addition, a Local Team that reviews the records of additional child fatalities
10 shall include the following four additional members:

- 11 (1) An emergency medical services provider or firefighter, appointed
12 by the board of county commissioners;
13 (2) A district court judge, appointed by the chief district judge in that
14 district;
15 (3) A county medical examiner, appointed by the Chief Medical
16 Examiner;
17 (4) A representative of a local child care facility or Head Start
18 program, appointed by the director of the county department of
19 social services; and
20 (5) A parent of a child who died before reaching the child's
21 eighteenth birthday, to be appointed by the board of county
22 commissioners.

23 (d) The Team Coordinator shall serve as an ex officio member of each Local
24 Team that reviews the records of additional child fatalities. The board of county
25 commissioners may appoint a maximum of five additional members to represent
26 county agencies or the community at large to serve on any Local Team. Vacancies on
27 a Local Team shall be filled by the original appointing authority.

28 (e) Each Local Team shall elect a member to serve as chair at the Team's
29 pleasure.

30 (f) Each Local Team shall meet at least four times each year.

31 (g) The director of the local department of social services shall call the first
32 meeting of the Community Child Protection Team. The director of the local
33 department of health, upon consultation with the Team Coordinator, shall call the
34 first meeting of the Child Fatality Prevention Team. Thereafter, the chair of each
35 Local Team shall schedule the time and place of meetings, in consultation with these
36 directors, and shall prepare the agenda. The chair shall schedule Team meetings no
37 less often than once per quarter and often enough to allow adequate review of the
38 cases selected for review. Within three months of election, the chair shall participate
39 in the appropriate training developed under this Article.

40 **"§ 7B-1408. Child Fatality Prevention Team Coordinator; duties.**

41 The Child Fatality Prevention Team Coordinator shall serve as liaison between the
42 State Team and the Local Teams that review records of additional child fatalities and
43 shall provide technical assistance to these Local Teams. The Team Coordinator shall:

- 1 (1) Develop a plan to establish Local Teams that review the records of
2 additional child fatalities in each county.
- 3 (2) Develop model operating procedures for these Local Teams that
4 address when public meetings should be held, what items should
5 be addressed in public meetings, what information may be released
6 in written reports, and any other information the Team
7 Coordinator considers necessary.
- 8 (3) Provide structured training for these Local Teams at the time of
9 their establishment, and continuing technical assistance thereafter.
- 10 (4) Provide statistical information on all child deaths occurring in each
11 county to the appropriate Local Team, and assure that all child
12 deaths in a county are assessed through the multidisciplinary
13 system.
- 14 (5) Monitor the work of these Local Teams.
- 15 (6) Receive reports of findings, and other reports that the Team
16 Coordinator may require, from these Local Teams.
- 17 (7) Report the aggregated findings of these Local Teams to each Local
18 Team that reviews the records of additional child fatalities and to
19 the State Team.
- 20 (8) Evaluate the impact of local efforts to identify problems and make
21 changes.

22 **"§ 7B-1409. Community Child Protection Teams; duties of the director of the county**
23 **department of social services.**

24 In addition to any other duties as a member of the Community Child Protection
25 Team, and in connection with the reviews under G.S. 7B-1406(a)(1), the director of
26 the county department of social services shall:

- 27 (1) Assure the development of written operating procedures in
28 connection with these reviews, including frequency of meetings,
29 confidentiality policies, training of members, and duties and
30 responsibilities of members;
- 31 (2) Assure that the Team defines the categories of cases that are
32 subject to its review;
- 33 (3) Determine and initiate the cases for review;
- 34 (4) Bring for review any case requested by a Team member;
- 35 (5) Provide staff support for these reviews;
- 36 (6) Maintain records, including minutes of all official meetings, lists of
37 participants for each meeting of the Team, and signed
38 confidentiality statements required under G.S. 7B-1413, in
39 compliance with applicable rules and law; and
- 40 (7) Report quarterly to the county board of social services, or as
41 required by the board, on the activities of the Team.

42 **"§ 7B-1410. Local Teams; duties of the director of the local department of health.**

1 In addition to any other duties as a member of the Local Team and in connection
2 with reviews of additional child fatalities, the director of the local department of
3 health shall:

- 4 (1) Distribute copies of the written procedures developed by the Team
5 Coordinator under G.S. 7B-1408 to the administrators of all
6 agencies represented on the Local Team and to all members of the
7 Local Team;
- 8 (2) Maintain records, including minutes of all official meetings, lists of
9 participants for each meeting of the Local Team, and signed
10 confidentiality statements required under G.S. 7B-1413, in
11 compliance with applicable rules and law;
- 12 (3) Provide staff support for these reviews; and
- 13 (4) Report quarterly to the local board of health, or as required by the
14 board, on the activities of the Local Team.

15 **§ 7B-1411. Community Child Protection Teams; responsibility for training of team**
16 **members.**

17 The Division of Social Services, Department of Health and Human Services, shall
18 develop and make available, on an ongoing basis, for the members of Local Teams
19 that review active cases in which children are being served by child protective
20 services, training materials that address the role and function of the Local Team,
21 confidentiality requirements, an overview of child protective services law and policy,
22 and Team record keeping.

23 **§ 7B-1412. Task Force -- reports.**

24 (a) The Task Force may make a written report to the Governor and General
25 Assembly within one week of the convening of the 1998 Regular Session of the 1997
26 General Assembly. The Task Force shall make a final written report to the Governor
27 and General Assembly within the first week of the convening of the 1999 General
28 Assembly. The final report shall include final conclusions and recommendations for
29 each of the Task Force's duties, as well as any other recommendations for changes to
30 any law, rule, and policy that it has determined will promote the safety and well-
31 being of children. Any recommendations of changes to law, rule, or policy shall be
32 accompanied by specific legislative or policy proposals and detailed fiscal notes
33 setting forth the costs to the State.

34 (b) After the Task Force provides its final report to the Governor and General
35 Assembly, the Task Force shall cease to be in existence.

36 **§ 7B-1413. Access to records.**

37 (a) The State Team, the Local Teams, and the Task Force during its existence,
38 shall have access to all medical records, hospital records, and records maintained by
39 this State, any county, or any local agency as necessary to carry out the purposes of
40 this Article, including police investigations data, medical examiner investigative data,
41 health records, mental health records, and social services records. The State Team,
42 the Task Force, and the Local Teams shall not, as part of the reviews authorized
43 under this Article, contact, question, or interview the child, the parent of the child, or
44 any other family member of the child whose record is being reviewed. Any member

1. of a Local Team may share, only in an official meeting of that Local Team, any
2 information available to that member that the Local Team needs to carry out its
3 duties.

4 (b) Meetings of the State Team and the Local Teams are not subject to the
5 provisions of Article 33C of Chapter 143 of the General Statutes. However, the
6 Local Teams may hold periodic public meetings to discuss, in a general manner not
7 revealing confidential information about children and families, the findings of their
8 reviews and their recommendations for preventive actions. Minutes of all public
9 meetings, excluding those of executive sessions, shall be kept in compliance with
10 Article 33C of Chapter 143 of the General Statutes. Any minutes or any other
11 information generated during any closed session shall be sealed from public
12 inspection.

13 (c) All otherwise confidential information and records acquired by the State
14 Team, the Local Teams, and the Task Force during its existence, in the exercise of
15 their duties are confidential; are not subject to discovery or introduction into
16 evidence in any proceedings; and may only be disclosed as necessary to carry out the
17 purposes of the State Team, the Local Teams, and the Task Force. In addition, all
18 otherwise confidential information and records created by a Local Team in the
19 exercise of its duties are confidential; are not subject to discovery or introduction into
20 evidence in any proceedings; and may only be disclosed as necessary to carry out the
21 purposes of the Local Team. No member of the State Team, a Local Team, nor any
22 person who attends a meeting of the State Team or a Local Team, may testify in any
23 proceeding about what transpired at the meeting, about information presented at the
24 meeting, or about opinions formed by the person as a result of the meetings. This
25 subsection shall not, however, prohibit a person from testifying in a civil or criminal
26 action about matters within that person's independent knowledge.

27 (d) Each member of a Local Team and invited participant shall sign a statement
28 indicating an understanding of and adherence to confidentiality requirements,
29 including the possible civil or criminal consequences of any breach of confidentiality.

30 (e) Cases receiving child protective services at the time of review by a Local
31 Team shall have an entry in the child's protective services record to indicate that the
32 case was received by that Team. Additional entry into the record shall be at the
33 discretion of the director of the county department of social services.

34 (f) The Social Services Commission shall adopt rules to implement this section in
35 connection with reviews conducted by Community Child Protection Teams. The
36 Health Services Commission shall adopt rules to implement this section in connection
37 with Local Teams that review additional child fatalities. In particular, these rules
38 shall allow information generated by an executive session of a Local Team to be
39 accessible for administrative or research purposes only.

40 **"§ 7B-1414. Administration; funding.**

41 (a) To the extent of funds available, the chairs of the Task Force and State Team
42 may hire staff or consultants to assist the Task Force and the State Team in
43 completing their duties.

1 (b) Members, staff, and consultants of the Task Force or State Team shall receive
2 travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or
3 G.S. 138-6, as the case may be, paid from funds appropriated to implement this
4 Article and within the limits of those funds.

5 (c) With the approval of the Legislative Services Commission, legislative staff and
6 space in the Legislative Building and the Legislative Office Building may be made
7 available to the Task Force.

8 "SUBCHAPTER II. UNDISCIPLINED AND DELINQUENT JUVENILES.

9 "ARTICLE 15.

10 "Purposes; Definitions.

11 "§ 7B-1500. Purpose.

12 This Subchapter shall be interpreted and construed so as to implement the
13 following purposes and policies:

- 14 (1) To protect the public from acts of delinquency.
15 (2) To deter delinquency and crime, including patterns of repeat
16 offending:
17 a. By providing swift, effective dispositions that emphasize the
18 juvenile offender's accountability for the juvenile's actions;
19 and
20 b. By providing appropriate rehabilitative services to juveniles
21 and their families.
22 (3) To provide an effective system of intake services for the screening
23 and evaluation of complaints and, in appropriate cases, where
24 court intervention is not necessary to ensure public safety, to refer
25 juveniles to community-based resources.
26 (4) To provide uniform procedures that assure fairness and equity; that
27 protect the constitutional rights of juveniles, parents, and victims;
28 and that encourage the court and others involved with juvenile
29 offenders to proceed with all possible speed in making and
30 implementing determinations required by this Subchapter.

31 "§ 7B-1501. Definitions.

32 In this Subchapter, unless the context clearly requires otherwise, the following
33 words have the listed meanings:

- 34 (1) Chief court counselor. -- The person responsible for administration
35 and supervision of juvenile intake, probation, and post-release
36 supervision in each judicial district, operating under the
37 supervision of the Secretary of the Department of Juvenile Justice.
38 (2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
39 deputy clerk.
40 (3) Community-based program. -- A program providing nonresidential
41 or residential treatment to a juvenile under the jurisdiction of the
42 juvenile court in the community where the juvenile's family lives.
43 A community-based program may include specialized foster care,
44 family counseling, shelter care, and other appropriate treatment.

- 1 (4) Court. -- The district court division of the General Court of
2 Justice.
- 3 (5) Court counselor. -- A person responsible for probation and post-
4 release supervision to juveniles under the supervision of the chief
5 court counselor.
- 6 (6) Custodian. -- The person or agency that has been awarded legal
7 custody of a juvenile by a court.
- 8 (7) Delinquent juvenile. -- Any juvenile who, while less than 16 years
9 of age but at least 6 years of age, commits a crime or infraction
10 under State law or under an ordinance of local government,
11 including violation of the motor vehicle laws.
- 12 (8) Department. -- The North Carolina Department of Juvenile Justice.
- 13 (9) Detention. -- The secure confinement of a juvenile pursuant to a
14 court order.
- 15 (10) Detention facility. -- A facility authorized to provide secure
16 confinement and care for juveniles. Detention facilities include
17 both State and locally administered detention homes, centers, and
18 facilities.
- 19 (11) District. -- Any district court district as established by G.S. 7A-133.
- 20 (12) Extended jurisdiction. -- Juvenile court jurisdiction, pursuant to a
21 court order, over a person who is at least 18 years of age and has
22 not reached the person's nineteenth birthday.
- 23 (13) Holdover facility. -- A place in a jail which has been approved by
24 the Department of Health and Human Services as meeting the
25 State standards for detention as required in G.S. 153A-221
26 providing close supervision where the juvenile cannot converse
27 with, see, or be seen by the adult population.
- 28 (14) House arrest. -- A requirement that the juvenile remain at the
29 juvenile's residence unless the court or the juvenile court
30 counselor authorizes the juvenile to leave for specific purposes
31 such as employment, counseling, a course of study, or vocational
32 training. The juvenile may be required to wear a device that
33 permits the supervising agency to monitor electronically the
34 juvenile's compliance.
- 35 (15) In loco parentis. -- A person acting in loco parentis means one,
36 other than parents or legal guardian, who has assumed the status
37 and obligation of a parent without being awarded the legal custody
38 of a juvenile by a court.
- 39 (16) Intake counselor. -- A person who screens and evaluates a
40 complaint alleging that a juvenile is delinquent or undisciplined to
41 determine whether the complaint should be filed as a petition.
- 42 (17) Interstate Compact on Juveniles. -- An agreement ratified by 50
43 states and the District of Columbia providing a formal means of
44 returning a juvenile, who is an absconder, escapee, or runaway, to

- 1 the juvenile's home state, and codified in Article 28 of this
2 Chapter.
- 3 (18) Judge. -- Any district court judge.
- 4 (19) Judicial district. -- Any district court district as established by G.S.
5 7A-133.
- 6 (20) Juvenile. -- Except as provided in subdivisions (7) and (28) of this
7 section, any person who has not reached the person's eighteenth
8 birthday and is not married, emancipated, or a member of the
9 armed services of the United States. Wherever the term 'juvenile'
10 is used with reference to rights and privileges, that term
11 encompasses the attorney for the juvenile as well.
- 12 (21) Juvenile court. -- Any district court exercising jurisdiction pursuant
13 to this Chapter.
- 14 (22) Petitioner. -- The individual who initiates court action by the filing
15 of a petition or a motion for review alleging the matter for
16 adjudication.
- 17 (23) Post-release supervision. -- The supervision of a juvenile who has
18 been returned to the community after having been committed to
19 the Department of Juvenile Justice.
- 20 (24) Probation. -- The status of a juvenile who has been adjudicated
21 delinquent, is subject to specified conditions under the supervision
22 of a court counselor, and may be returned to the court for
23 violation of those conditions during the period of probation.
- 24 (25) Prosecutor. -- The district attorney or assistant district attorney
25 assigned by the district attorney to juvenile proceedings.
- 26 (26) Secretary. -- The Secretary of the Department of Juvenile Justice.
- 27 (27) Teen court program. -- A community resource for the diversion of
28 cases in which a juvenile has allegedly committed certain offenses
29 not involving violence or personal injury for hearing by a jury of
30 the juvenile's peers, which may assign the juvenile to counseling,
31 restitution, curfews, community service, or other rehabilitative
32 measures.
- 33 (28) Undisciplined juvenile. --
- 34 a. A juvenile who, while less than 16 years of age but at least 6
35 years of age, is unlawfully absent from school; or is regularly
36 disobedient to and beyond the disciplinary control of the
37 juvenile's parent, guardian, or custodian; or is regularly
38 found in places where it is unlawful for a juvenile to be; or
39 has run away from home; or
- 40 b. A juvenile who is 16 or 17 years of age and who is regularly
41 disobedient to and beyond the disciplinary control of the
42 juvenile's parent, guardian, or custodian; or is regularly
43 found in places where it is unlawful for a juvenile to be; or
44 has run away from home.

1 (29) Wilderness program. -- A rehabilitative residential treatment
2 program in a rural or outdoor setting.

3 The singular includes the plural, unless otherwise specified.

4 "ARTICLE 16.

5 "Jurisdiction.

6 "§ 7B-1600. Jurisdiction over undisciplined juveniles.

7 (a) The court has exclusive, original jurisdiction over any case involving a juvenile
8 who is alleged to be undisciplined. For purposes of determining jurisdiction, the age
9 of the juvenile at the time of the alleged offense governs.

10 (b) When the court obtains jurisdiction over a juvenile under this section,
11 jurisdiction shall continue until terminated by order of the court, the juvenile reaches
12 the age of 18 years, or the juvenile is emancipated.

13 (c) The court has jurisdiction over the parent, guardian, or custodian of a juvenile
14 who is under the jurisdiction of the court pursuant to this section, if the parent,
15 guardian, or custodian has been served with a summons pursuant to G.S. 7B-1805.

16 "§ 7B-1601. Jurisdiction over delinquent juveniles.

17 (a) The court has exclusive, original jurisdiction over any case involving a juvenile
18 who is alleged to be delinquent. For purposes of determining jurisdiction, the age of
19 the juvenile at the time of the alleged offense governs.

20 (b) When the court obtains jurisdiction over a juvenile alleged to be delinquent,
21 jurisdiction shall continue until terminated by order of the court or until the juvenile
22 reaches the age of 18 years, except as provided otherwise in this Article.

23 (c) When delinquency proceedings cannot be concluded before the juvenile
24 reaches the age of 18 years, the court retains jurisdiction for the sole purpose of
25 conducting proceedings pursuant to Article 22 of this Chapter and either transferring
26 the case to superior court for trial as an adult or dismissing the petition.

27 (d) When the court has not obtained jurisdiction over a juvenile before the
28 juvenile reaches the age of 18, for a felony and any related misdemeanors the juvenile
29 allegedly committed on or after the juvenile's thirteenth birthday and prior to the
30 juvenile's sixteenth birthday, the court has jurisdiction for the sole purpose of
31 conducting proceedings pursuant to Article 22 of this Chapter and either transferring
32 the case to superior court for trial as an adult or dismissing the petition.

33 (e) The court has jurisdiction over delinquent juveniles in the custody of the
34 Department and over proceedings to determine whether a juvenile who is under the
35 post-release supervision of the court counselor has violated the terms of the juvenile's
36 post-release supervision.

37 (f) The court has jurisdiction over persons 18 years of age or older who are under
38 the extended jurisdiction of the juvenile court.

39 (g) The court has jurisdiction over the parent, guardian, or custodian of a juvenile
40 who is under the jurisdiction of the court pursuant to this section if the parent,
41 guardian, or custodian has been served with a summons pursuant to G.S. 7B-1805.

42 "§ 7B-1602. Extended jurisdiction over a delinquent juvenile under certain
43 circumstances.

1 If the court orders that jurisdiction be extended pursuant to G.S. 7B-2513,
2 jurisdiction over a juvenile shall continue after the juvenile reaches the age of 18
3 years until (i) jurisdiction is terminated by order of the court or (ii) the juvenile
4 reaches the age of 19 years.

5 **"§ 7B-1603. Jurisdiction in certain circumstances.**

6 The court has exclusive original jurisdiction of the following proceedings:

7 (1) Proceedings under the Interstate Compact on the Placement of
8 Children set forth in Article 38 of this Chapter;

9 (2) Proceedings involving judicial consent for emergency surgical or
10 medical treatment for a juvenile when the juvenile's parent,
11 guardian, custodian, or other person standing in loco parentis
12 refuses to consent for treatment to be rendered; and

13 (3) Proceedings to determine whether a juvenile should be
14 emancipated.

15 **"§ 7B-1604. Limitations on juvenile court jurisdiction.**

16 (a) Any juvenile, including a juvenile who is under the jurisdiction of the court,
17 who commits a criminal offense after the juvenile's sixteenth birthday is subject to
18 prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an
19 adult for the commission of a criminal offense.

20 (b) A juvenile who is transferred to and convicted in superior court shall be
21 prosecuted as an adult for any criminal offense the juvenile commits after the
22 superior court conviction.

23 **"ARTICLE 17.**

24 **"Screening of Delinquency and Undisciplined Complaints.**

25 **"§ 7B-1700. Intake services.**

26 The chief court counselor, under the direction of the Secretary, shall establish
27 intake services in each judicial district of the State for all delinquency and
28 undisciplined cases.

29 The purpose of intake services shall be to determine from available evidence
30 whether there are reasonable grounds to believe the facts alleged are true, to
31 determine whether the facts alleged constitute a delinquent or undisciplined offense
32 within the jurisdiction of the court, to determine whether the facts alleged are
33 sufficiently serious to warrant court action, and to obtain assistance from community
34 resources when court referral is not necessary. The intake counselor shall not engage
35 in field investigations to substantiate complaints or to produce supplementary
36 evidence but may refer complainants to law enforcement agencies for those purposes.

37 **"§ 7B-1701. Preliminary inquiry.**

38 When a complaint is received, the intake counselor shall make a preliminary
39 determination as to whether the juvenile is within the jurisdiction of the court as a
40 delinquent or undisciplined juvenile. If the intake counselor finds that the facts
41 contained in the complaint do not state a case within the jurisdiction of the court,
42 that legal sufficiency has not been established, or that the matters alleged are
43 frivolous, the intake counselor, without further inquiry, shall refuse authorization to
44 file the complaint as a petition.

1 When requested by the intake counselor, the prosecutor shall assist in determining
2 the sufficiency of evidence as it affects the quantum of proof and the elements of
3 offenses.

4 The intake counselor, without further inquiry, shall authorize the complaint to be
5 filed as a petition if the intake counselor finds reasonable grounds to believe that the
6 juvenile has committed one of the following nondivertible offenses:

7 (1) Murder;

8 (2) First-degree rape or second degree rape;

9 (3) First-degree sexual offense or second degree sexual offense;

10 (4) Arson;

11 (5) Any violation of Article 5, Chapter 90 of the General Statutes that
12 would constitute a felony if committed by an adult;

13 (6) First degree burglary;

14 (7) Crime against nature; or

15 (8) Any felony which involves the willful infliction of serious bodily
16 injury upon another or which was committed by use of a deadly
17 weapon.

18 **"§ 7B-1702. Evaluation.**

19 Upon a finding of legal sufficiency, except in cases involving nondivertible offenses
20 set out in G.S. 7B-1701, the intake counselor shall determine whether a complaint
21 should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the
22 case resolved without further action. In making the decision, the counselor shall
23 consider criteria provided by the Secretary. The intake process shall include the
24 following steps if practicable:

25 (1) Interviews with the complainant and the victim if someone other
26 than the complainant;

27 (2) Interviews with the juvenile and the juvenile's parent, guardian, or
28 custodian;

29 (3) Interviews with persons known to have relevant information about
30 the juvenile or the juvenile's family.

31 Interviews required by this section shall be conducted in person unless it is necessary
32 to conduct them by telephone.

33 **"§ 7B-1703. Evaluation decision.**

34 (a) The intake counselor shall complete evaluation of a complaint within 15 days
35 of receipt of the complaint, with an extension for a maximum of 15 additional days at
36 the discretion of the chief court counselor. The intake counselor shall decide within
37 this time period whether a complaint shall be filed as a juvenile petition.

38 (b) If the intake counselor determines that a complaint should be filed as a
39 petition, the counselor shall file the petition as soon as practicable, but in any event
40 within 15 days after the complaint is received, with an extension for a maximum of
41 15 additional days at the discretion of the chief court counselor. The intake
42 counselor shall assist the complainant when necessary with the preparation and filing
43 of the petition, shall include on it the date and the words 'Approved for Filing', shall
44 sign it, and shall transmit it to the clerk of superior court.

1 (c) If the intake counselor determines that a petition should not be filed, the
2 intake counselor shall notify the complainant immediately in writing with reasons for
3 the decision and shall include notice of the complainant's right to have the decision
4 reviewed by the prosecutor. The intake counselor shall sign the complaint after
5 indicating on it:

- 6 (1) The date of the determination;
- 7 (2) The words 'Not Approved for Filing'; and
- 8 (3) Whether the matter is 'Closed' or 'Diverted and Retained'.

9 Except as provided in G.S. 7B-1706, any complaint not approved for filing as a
10 juvenile petition shall be destroyed by the intake counselor after holding the
11 complaint for a temporary period to allow review as provided in G.S. 7B-1705.

12 **"§ 7B-1704. Request for review by prosecutor.**

13 The complainant has five calendar days, from receipt of the intake counselor's
14 decision not to approve the filing of a petition, to request review by the prosecutor.
15 The intake counselor shall notify the prosecutor immediately of such request and
16 shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify
17 the complainant and the intake counselor of the time and place for the review.

18 **"§ 7B-1705. Review of determination that petition should not be filed.**

19 No later than 20 days after the complainant is notified, the prosecutor shall review
20 the intake counselor's determination that a juvenile petition should not be filed.
21 Review shall include conferences with the complainant and the intake counselor. At
22 the conclusion of the review, the prosecutor shall: (i) affirm the decision of the intake
23 counselor or direct the filing of a petition and (ii) notify the complainant of the
24 prosecutor's action.

25 **"§ 7B-1706. Diversion plans and referral.**

26 (a) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon
27 a finding of legal sufficiency the intake counselor may divert the juvenile pursuant to
28 a diversion plan, which may include referring the juvenile to any of the following
29 resources:

- 30 (1) An appropriate public or private resource;
- 31 (2) Restitution;
- 32 (3) Community service;
- 33 (4) Victim-offender mediation;
- 34 (5) Regimented physical training;
- 35 (6) Counseling;
- 36 (7) A teen court program, as set forth in subsection (c) of this section.

37 As part of a diversion plan, the intake counselor may enter into a diversion
38 contract with the juvenile and the juvenile's parent, guardian, or custodian.

39 (b) Unless the offense is one in which a petition is required by G.S. 7B-1701,
40 upon a finding of legal sufficiency the intake counselor may enter into a diversion
41 contract with the juvenile and the parent, guardian, or custodian; provided, a
42 diversion contract requires the consent of the juvenile and the juvenile's parent,
43 guardian, or custodian. A diversion contract shall:

- 1 (1) State conditions by which the juvenile agrees to abide and any
2 actions the juvenile agrees to take;
- 3 (2) State conditions by which the parent, guardian, or custodian agrees
4 to abide and any actions the parent, guardian, or custodian agrees
5 to take;
- 6 (3) Describe the role of the court counselor in relation to the juvenile
7 and the parent, guardian, or custodian;
- 8 (4) Specify the length of the contract, which shall not exceed six
9 months;
- 10 (5) Indicate that all parties understand and agree that:
 - 11 a. The juvenile's violation of the contract may result in the
12 filing of the complaint as a petition; and
 - 13 b. The juvenile's successful completion of the contract shall
14 preclude the filing of a petition.

15 After a diversion contract is signed by the parties, the intake counselor shall
16 provide copies of the contract to the juvenile and the juvenile's parent, guardian, or
17 custodian. The intake counselor shall notify any agency or other resource from
18 which the juvenile or the juvenile's parent, guardian, or custodian will be seeking
19 services or treatment pursuant to the terms of the contract. At any time during the
20 term of the contract if the court counselor determines that the juvenile has failed to
21 comply substantially with the terms of the contract, the court counselor shall file the
22 complaint as a petition. Unless the court counselor has filed the complaint as a
23 petition, the counselor shall close the juvenile's file in regard to the diverted matter
24 within six months after the date of the contract.

25 (c) If a teen court program has been established in the district, the intake
26 counselor, upon a finding of legal sufficiency, may refer any case in which a juvenile
27 has allegedly committed an offense that would be an infraction or misdemeanor if
28 committed by an adult to a teen court program. However, the counselor shall not
29 refer a case to a teen court program (i) if the juvenile has been referred to a teen
30 court program previously, or (ii) if the juvenile is alleged to have committed any of
31 the following offenses:

- 32 (1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-
33 138.5, or 20-138.7, or any other motor vehicle violation;
- 34 (2) A Class A1 misdemeanor;
- 35 (3) An assault in which a weapon is used; or
- 36 (4) A controlled substance offense under Article 5 of Chapter 90 of
37 the General Statutes, other than simple possession of a Schedule
38 VI drug or alcohol.

39 (d) The intake counselor shall maintain diversion plans and contracts entered into
40 pursuant to this section to allow intake counselors to determine when a juvenile has
41 had a complaint diverted previously. Diversion plans and contracts are not public
42 records under Chapter 132 of the General Statutes, shall not be included in the
43 clerk's record pursuant to G.S. 7B-3000, and shall be withheld from public inspection
44 or examination. Diversion plans and contracts shall be destroyed when the juvenile

1 reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of
2 the court, whichever is longer.

3 (e) No later than 60 days after the intake counselor diverts a juvenile, the intake
4 counselor shall determine whether the juvenile and the juvenile's parent, guardian, or
5 custodian have complied with the terms of the diversion plan or contract. In making
6 this determination, the intake counselor shall contact any referral resources to
7 determine whether the juvenile and the juvenile's parent, guardian, or custodian
8 complied with any recommendations for treatment or services made by the resource.
9 If the juvenile and the juvenile's parent, guardian, or custodian have not complied,
10 the intake counselor shall reconsider the decision to divert and may authorize the
11 filing of the complaint as a petition within 10 days after making the determination. If
12 the intake counselor does not file a petition, the intake counselor may continue to
13 monitor the case for up to six months from the date of the diversion plan or contract.
14 At any point during that time period if the juvenile and the juvenile's parent,
15 guardian, or custodian fail to comply, the intake counselor shall reconsider the
16 decision to divert and may authorize the filing of the complaint as a petition. After
17 six months, the intake counselor shall close the diversion plan or contract file.

18 "ARTICLE 18.

19 "Venue; Petition; Summons.

20 "§ 7B-1800. Venue.

21 A proceeding in which a juvenile is alleged to be delinquent or undisciplined shall
22 be commenced and adjudicated in the district in which the offense is alleged to have
23 occurred. When a proceeding is commenced in a district other than that of the
24 juvenile's residence, the court shall proceed to adjudication in that district. After
25 adjudication, these procedures shall be available to the court:

- 26 (1) The court may transfer the proceeding to the court in the district
27 where the juvenile resides for disposition.
28 (2) Where the proceeding is not transferred under subdivision (1) of
29 this section, the court shall immediately notify the chief district
30 judge in the district in which the juvenile resides. If the chief
31 district judge requests a transfer within five days after receipt of
32 notification, the court shall transfer the proceeding.
33 (3) Where the proceeding is not transferred under subdivision (1) or
34 (2), the court, upon motion of the juvenile, shall transfer the
35 proceeding to the court in the district where the juvenile resides
36 for disposition. The court shall advise the juvenile of the juvenile's
37 right to transfer under this section.

38 "§ 7B-1801. Pleading and process.

39 The pleading in a juvenile action is the petition. The process in a juvenile action is
40 the summons.

41 "§ 7B-1802. Petition.

42 The petition shall contain the name, date of birth, and address of the juvenile and
43 the name and last known address of the juvenile's parent, guardian, or custodian.

1 The petition shall allege the facts which invoke jurisdiction over the juvenile. The
2 petition shall not contain information on more than one juvenile.

3 A petition in which delinquency is alleged shall contain a plain and concise
4 statement, without allegations of an evidentiary nature, asserting facts supporting
5 every element of a criminal offense and the juvenile's commission thereof with
6 sufficient precision clearly to apprise the juvenile of the conduct which is the subject
7 of the allegation.

8 Sufficient copies of the petition shall be prepared so that copies will be available
9 for the juvenile, for each parent if living separate and apart, for the court counselor,
10 for the prosecutor, and for any person determined by the court to be a necessary
11 party.

12 **"§ 7B-1803. Receipt of complaints; filing of petition.**

13 (a) All complaints concerning a juvenile alleged to be delinquent or undisciplined
14 shall be referred to the intake counselor for screening and evaluation. Thereafter, if
15 the intake counselor determines that a petition should be filed, the petition shall be
16 drawn by the intake counselor or the clerk, signed by the complainant, and verified
17 before an official authorized to administer oaths. If the circumstances indicate a need
18 for immediate attachment of jurisdiction and if the intake counselor is out of the
19 county or otherwise unavailable to receive a complaint and to draw a petition when
20 it is needed, the clerk shall assist the complainant in communicating the complaint to
21 the intake counselor by telephone and, with the approval of the intake counselor,
22 shall draw a petition and file it when signed and verified. A copy of the complaint
23 and petition shall be transmitted to the intake counselor. Procedures for receiving
24 delinquency and undisciplined complaints and drawing petitions thereon, consistent
25 with this Article and Article 17 of this Chapter shall be established by administrative
26 order of the chief judge in each judicial district.

27 (b) If review is requested pursuant to G.S. 7B-1704, the prosecutor shall review a
28 complaint and any decision of the intake counselor not to authorize that the
29 complaint be filed as a petition. If the prosecutor, after review, authorizes a
30 complaint to be filed as a petition, the prosecutor shall prepare the complaint to be
31 filed by the clerk as a petition, recording the day of filing.

32 **"§ 7B-1804. Commencement of action.**

33 (a) An action is commenced by the filing of a petition in the clerk's office when
34 that office is open, or by a magistrate's acceptance of a petition for filing pursuant to
35 subsection (b) of this section when the clerk's office is closed.

36 (b) When the office of the clerk is closed and an intake counselor requests a
37 petition alleging a juvenile to be delinquent or undisciplined, a magistrate may draw
38 and verify the petition and accept it for filing, which acceptance shall constitute
39 filing. The magistrate's authority under this subsection is limited to emergency
40 situations when a petition is required in order to obtain a secure or nonsecure
41 custody order. Any petition accepted for filing under this subsection shall be
42 delivered to the clerk's office for processing as soon as that office is open for
43 business.

44 **"§ 7B-1805. Issuance of summons.**

1 (a) Immediately after a petition has been filed alleging that a juvenile is
2 undisciplined or delinquent, the clerk shall issue a summons to the juvenile and to
3 the parent, guardian, or custodian requiring them to appear for a hearing at the time
4 and place stated in the summons. A copy of the petition shall be attached to each
5 summons.

6 (b) A summons shall be on a printed form supplied by the Administrative Office
7 of the Courts and shall include:

8 (1) Notice of the nature of the proceeding and the purpose of the
9 hearing scheduled on the summons.

10 (2) Notice of any right to counsel and information about how to seek
11 the appointment of counsel prior to a hearing.

12 (3) Notice that, if the court determines at the adjudicatory hearing that
13 the allegations of the petition are true, the court will conduct a
14 dispositional hearing and will have jurisdiction to enter orders
15 affecting substantial rights of the juvenile and of the parent,
16 guardian, or custodian, including orders that:

17 a. Affect the juvenile's custody;

18 b. Impose conditions on the juvenile;

19 c. Require that the juvenile receive medical, psychiatric,
20 psychological, or other treatment and that the parent,
21 guardian, or custodian participate in the treatment;

22 d. Require the parent, guardian, or custodian to undergo
23 psychiatric, psychological, or other treatment or counseling;

24 e. Order the parent to pay for treatment that is ordered for the
25 juvenile or the parent; and

26 f. Order the parent to pay support for the juvenile for any
27 period the juvenile does not reside with the parent or to pay
28 attorneys' fees or other expenses as ordered by the court.

29 (4) Notice that the parent, guardian, or custodian shall be required to
30 attend scheduled hearings and that failure without reasonable
31 cause to attend may result in proceedings for contempt of court.

32 (5) Notice that the parent, guardian, or custodian shall be responsible
33 for bringing the juvenile before the court at any hearing the
34 juvenile is required to attend and that failure without reasonable
35 cause to bring the juvenile before the court may result in
36 proceedings for contempt of court.

37 (c) The summons shall advise the parent, guardian, or custodian that upon
38 service, jurisdiction over the parent, guardian, or custodian is obtained and that
39 failure of the parent, guardian, or custodian to appear or bring the juvenile before the
40 court without reasonable cause or to comply with any order of the court pursuant to
41 Article 27 of this Chapter may cause the court to issue a show cause order for
42 contempt. The summons shall contain the following language in bold type:

1 'TO THE PARENT, GUARDIAN, OR CUSTODIAN: YOUR FAILURE TO APPEAR
2 IN COURT FOR A SCHEDULED HEARING OR TO COMPLY WITH AN ORDER
3 OF THE COURT MAY RESULT IN A FINDING OF CONTEMPT.'

4 (d) A summons shall be directed to the person summoned to appear and shall be
5 delivered to any person authorized to serve process.

6 "§ 7B-1806. Service of summons.

7 The summons and petition shall be personally served upon the parent, the
8 guardian, or custodian and the juvenile not less than five days prior to the date of the
9 scheduled hearing. The time for service may be waived in the discretion of the court.

10 If the parent, guardian, or custodian entitled to receive a summons cannot be
11 found by a diligent effort, the court may authorize service of the summons and
12 petition by mail or by publication. The cost of the service by publication shall be
13 advanced by the petitioner and may be charged as court costs as the court may direct.

14 The court may issue a show cause order for contempt against a parent, guardian,
15 or custodian who is personally served and fails without reasonable cause to appear
16 and to bring the juvenile before the court.

17 The provisions of G.S. 15A-301(a), (c), (d), and (e) relating to criminal process
18 apply to juvenile process; provided the period of time for return of an unserved
19 summons is 30 days.

20 "§ 7B-1806.1. Notice to parent and juvenile of scheduled hearings.

21 The clerk shall give to all parties, including both parents of the juvenile, five days
22 written notice of the date and time of all scheduled hearings unless the party is
23 notified in open court or the court orders otherwise.

24 "§ 7B-1807. First appearance for felony cases.

25 (a) A juvenile who is alleged in the petition to have committed an offense that
26 would be a felony if committed by an adult shall be summoned to appear before the
27 court for a first appearance within 10 days of the filing of the petition. If the juvenile
28 is in secure or nonsecure custody, the first appearance shall take place at the initial
29 hearing required by G.S. 7B-1906. Unless the juvenile is in secure or nonsecure
30 custody, the court may continue the first appearance to a time certain for good cause.

31 (b) At the first appearance, the court shall:

- 32 (1) Inform the juvenile of the allegations set forth in the petition;
- 33 (2) Determine whether the juvenile has retained counsel or has been
34 assigned counsel and, if the juvenile is not represented by counsel,
35 appoint counsel for the juvenile;
- 36 (3) If applicable, inform the juvenile of the date of the probable cause
37 hearing, which shall be within 15 days of the first appearance; and
- 38 (4) Inform the parent, guardian, or custodian that the parent, guardian,
39 or custodian is required to attend all hearings scheduled in the
40 matter and may be held in contempt of court for failure to attend
41 any scheduled hearing.

42 "ARTICLE 19.

43 "Temporary Custody; Secure and Nonsecure Custody;
44 Custody Hearings.

1 "§ 7B-1900. Taking a juvenile into temporary custody.

2 Temporary custody means the taking of physical custody and providing personal
3 care and supervision until a court order for secure or nonsecure custody can be
4 obtained. A juvenile may be taken into temporary custody without a court order
5 under the following circumstances:

- 6 (1) By a law enforcement officer if grounds exist for the arrest of an
7 adult in identical circumstances under G.S. 15A-401(b).
8 (2) By a law enforcement officer or a court counselor if there are
9 reasonable grounds to believe that the juvenile is an undisciplined
10 juvenile.
11 (3) By a law enforcement officer, by a court counselor, by a member
12 of the Black Mountain Center, Alcohol Rehabilitation Center, and
13 Juvenile Evaluation Center Joint Security Force established
14 pursuant to G.S. 122C-421, or by personnel of the Department if
15 there are reasonable grounds to believe the juvenile is an
16 absconder from any residential facility operated by the Department
17 or from an approved detention facility.

18 "§ 7B-1901. Duties of person taking juvenile into temporary custody.

19 (a) A person who takes a juvenile into custody without a court order under G.S.
20 7B-1900(1) or (2) shall proceed as follows:

- 21 (1) Notify the juvenile's parent, guardian, or custodian that the
22 juvenile has been taken into temporary custody and advise the
23 parent, guardian, or custodian of the right to be present with the
24 juvenile until a determination is made as to the need for secure or
25 nonsecure custody. Failure to notify the parent, guardian, or
26 custodian that the juvenile is in custody shall not be grounds for
27 release of the juvenile.
28 (2) Release the juvenile to the juvenile's parent, guardian, or custodian
29 if the person having the juvenile in temporary custody decides that
30 continued custody is unnecessary. In the case of a juvenile
31 unlawfully absent from school, if continued custody is unnecessary,
32 the person having temporary custody may deliver the juvenile to
33 the juvenile's school or, if the local city or county government and
34 the local school board adopt a policy, to a place in the local school
35 administrative unit.
36 (3) If the juvenile is not released, request that a petition be drawn
37 pursuant to G.S. 7B-1803 or G.S. 7B-1804. Once the petition has
38 been drawn and verified, the person shall communicate with the
39 intake counselor. If the intake counselor approves the filing of the
40 petition, the intake counselor shall contact the judge, or the person
41 delegated authority pursuant to G.S. 7B-1902 if other than the
42 intake counselor, for a determination of the need for continued
43 custody.

1 (b) A juvenile taken into temporary custody under this Article shall not be held
2 for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a
3 Saturday, Sunday, or legal holiday, unless a petition or motion for review has been
4 filed and an order for secure or nonsecure custody has been entered.

5 (c) A person who takes a juvenile into custody under G.S. 7B-1900(3), after
6 receiving an order for secure custody, shall transport the juvenile to the nearest
7 approved facility providing secure custody. The person then shall contact the
8 administrator of the facility from which the juvenile absconded, who shall be
9 responsible for returning the juvenile to that facility.

10 **"§ 7B-1902. Authority to issue custody orders; delegation.**

11 In the case of any juvenile alleged to be within the jurisdiction of the court, when
12 the court finds it necessary to place the juvenile in custody, the court may order that
13 the juvenile be placed in secure or nonsecure custody pursuant to criteria set out in
14 G.S. 7B-1903.

15 Any district court judge may issue secure and nonsecure custody orders pursuant
16 to G.S. 7B-1903. The chief district court judge may delegate the court's authority to
17 the chief court counselor or the chief court counselor's counseling staff by
18 administrative order filed in the office of the clerk of superior court. The
19 administrative order shall specify which persons may be contacted for approval of a
20 secure or nonsecure custody order. The chief district court judge shall not delegate
21 the court's authority to detain or house juveniles in holdover facilities pursuant to
22 G.S. 7B-1905 or G.S. 7B-2509.

23 **"§ 7B-1903. Criteria for secure or nonsecure custody.**

24 (a) When a request is made for nonsecure custody, the court shall first consider
25 release of the juvenile to the juvenile's parent, guardian, custodian, or other
26 responsible adult. An order for nonsecure custody shall be made only when there is a
27 reasonable factual basis to believe the matters alleged in the petition are true, and
28 that:

- 29 (1) The juvenile is a runaway and consents to nonsecure custody; or
30 (2) The juvenile meets one or more of the criteria for secure custody,
31 but the court finds it in the best interests of the juvenile that the
32 juvenile be placed in a nonsecure placement.

33 (b) When a request is made for secure custody, the court may order secure custody
34 only where the court finds there is a reasonable factual basis to believe that the
35 juvenile committed the offense as alleged in the petition, and that:

- 36 (1) The juvenile is charged with a felony and has demonstrated that
37 the juvenile is a danger to property or persons;
38 (2) The juvenile is charged with a misdemeanor at least one element
39 of which is assault on a person;
40 (3) The juvenile has willfully failed to appear on a pending
41 delinquency charge or on charges of violation of probation or post-
42 release supervision, providing the juvenile was properly notified;
43 (4) A delinquency charge is pending against the juvenile, and there is
44 reasonable cause to believe the juvenile will not appear in court;

- 1 (5) The juvenile is an absconder from (i) any residential facility
2 operated by the Department or any detention facility in this State
3 or (ii) any comparable facility in another state;
- 4 (6) There is reasonable cause to believe the juvenile should be
5 detained for the juvenile's own protection because the juvenile has
6 recently suffered or attempted self-inflicted physical injury. In such
7 case, the juvenile must have been refused admission by one
8 appropriate hospital, and the period of secure custody is limited to
9 24 hours to determine the need for inpatient hospitalization. If the
10 juvenile is placed in secure custody, the juvenile shall receive
11 continuous supervision and a physician shall be notified
12 immediately;
- 13 (7) The juvenile is alleged to be undisciplined by virtue of the
14 juvenile's being a runaway and is inappropriate for nonsecure
15 custody placement or refuses nonsecure custody, and the court
16 finds that the juvenile needs secure custody for up to 24 hours,
17 excluding Saturdays, Sundays, and State holidays, or where
18 circumstances require, for a period not to exceed 72 hours to
19 evaluate the juvenile's need for medical or psychiatric treatment or
20 to facilitate reunion with the juvenile's parents; or
- 21 (8) The juvenile is alleged to be undisciplined and has willfully failed
22 to appear in court after proper notice; the juvenile shall be brought
23 to court as soon as possible and in no event should be held more
24 than 24 hours, excluding Saturdays, Sundays, and State holidays or
25 where circumstances require for a period not to exceed 72 hours.
- 26 (c) When a juvenile has been adjudicated delinquent, the court may order secure
27 custody pending the dispositional hearing or pending placement of the juvenile
28 pursuant to G.S. 7B-2504.
- 29 (d) The court may order secure custody for a juvenile who is alleged to have
30 violated the conditions of the juvenile's probation or post-release supervision, but
31 only if the juvenile is alleged to have committed acts that damage property or injure
32 persons.
- 33 (e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this
34 section are met, the court may enter an order directing an officer or other authorized
35 person to assume custody of the juvenile and to take the juvenile to the place
36 designated in the order.
- 37 **"§ 7B-1904. Order for secure or nonsecure custody.**
- 38 The custody order shall be in writing and shall direct a law enforcement officer or
39 other authorized person to assume custody of the juvenile and to make due return on
40 the order. The official executing the order shall give a copy of the order to the
41 juvenile's parent, guardian, or custodian. If the order is for secure custody, copies of
42 the petition and custody order shall accompany the juvenile to the detention facility
43 or holdover facility of the jail. A message of the Division of Criminal Information,
44 State Bureau of Investigation, stating that a juvenile petition and secure custody order

1 relating to a specified juvenile are on file in a particular county shall be authority to
2 detain the juvenile in secure custody until a copy of the juvenile petition and secure
3 custody order can be forwarded to the juvenile detention facility. The copies of the
4 juvenile petition and secure custody order shall be transmitted to the detention
5 facility no later than 72 hours after the initial detention of the juvenile.

6 An officer receiving an order for custody which is complete and regular on its face
7 may execute it in accordance with its terms and need not inquire into its regularity or
8 continued validity, nor does the officer incur criminal or civil liability for its
9 execution.

10 **"§ 7B-1905. Place of secure or nonsecure custody.**

11 (a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in
12 nonsecure custody with a department of social services or a person designated in the
13 order for temporary residential placement in:

- 14 (1) A licensed foster home or a home otherwise authorized by law to
15 provide such care;
16 (2) A facility operated by a department of social services; or
17 (3) Any other home or facility approved by the court and designated
18 in the order.

19 In placing a juvenile in nonsecure custody, the court shall first consider whether a
20 relative of the juvenile is willing and able to provide proper care and supervision of
21 the juvenile. If the court finds that the relative is willing and able to provide proper
22 care and supervision, the court shall order placement of the juvenile with the relative.
23 Placement of a juvenile outside of this State shall be in accordance with the Interstate
24 Compact on the Placement of Children set forth in Article 38 of this Chapter.

25 (b) A juvenile meeting the criteria set out in G.S. 7B-1903(b), (c), or (d) may be
26 temporarily detained in an approved detention facility which shall be separate from
27 any jail, lockup, prison, or other adult penal institution, except as provided in
28 subsection (c) of this section. It shall be unlawful for a county or any unit of
29 government to operate a juvenile detention facility unless the facility meets the
30 standards and rules adopted by the Department of Health and Human Services.

31 (c) A juvenile who has allegedly committed an offense that would be a Class A,
32 B1, B2, C, D, or E felony if committed by an adult may be detained in secure custody
33 in a holdover facility up to 72 hours, if the court, based on information provided by
34 the court counselor, determines that no acceptable alternative placement is available
35 and the protection of the public requires the juvenile be housed in a holdover facility.

36 **"§ 7B-1906. Secure or nonsecure custody hearings.**

37 (a) No juvenile shall be held under a secure custody order for more than five
38 calendar days or under a nonsecure custody order for more than seven calendar days
39 without a hearing on the merits or an initial hearing to determine the need for
40 continued custody. A hearing conducted under this subsection may not be continued
41 or waived. In every case in which an order has been entered by an official exercising
42 authority delegated pursuant to G.S. 7B-1902, a hearing to determine the need for
43 continued custody shall be conducted on the day of the next regularly scheduled
44 session of district court in the city or county where the order was entered if the

1 session precedes the expiration of the applicable time period set forth in this
2 subsection. If the session does not precede the expiration of the time period, the
3 hearing may be conducted at another regularly scheduled session of district court in
4 the district where the order was entered.

5 (b) As long as the juvenile remains in secure or nonsecure custody, further
6 hearings to determine the need for continued secure custody shall be held at intervals
7 of no more than 10 calendar days. A subsequent hearing on continued nonsecure
8 custody shall be held within seven business days, excluding Saturdays, Sundays, and
9 legal holidays, of the initial hearing required in subsection (a) of this section and
10 hearings thereafter shall be held at intervals of no more than 30 calendar days. In the
11 case of a juvenile alleged to be delinquent, further hearings may be waived only with
12 the consent of the juvenile, through counsel for the juvenile.

13 (c) The court shall determine whether a juvenile who is alleged to be delinquent
14 has retained counsel or has been assigned counsel; and, if the juvenile is not
15 represented by counsel, appoint counsel for the juvenile.

16 (d) At a hearing to determine the need for continued custody, the court shall
17 receive testimony and shall allow the juvenile and the juvenile's parent, guardian, or
18 custodian an opportunity to introduce evidence, to be heard in their own behalf, and
19 to examine witnesses. The State shall bear the burden at every stage of the
20 proceedings to provide clear and convincing evidence that restraints on the juvenile's
21 liberty are necessary and that no less intrusive alternative will suffice. The court shall
22 not be bound by the usual rules of evidence at the hearings.

23 (e) The court shall be bound by criteria set forth in G.S. 7B-1903 in determining
24 whether continued custody is warranted.

25 (f) The court may impose appropriate restrictions on the liberty of a juvenile who
26 is released from secure custody, including:

27 (1) Release on the written promise of the juvenile's parent, guardian,
28 or custodian to produce the juvenile in court for subsequent
29 proceedings;

30 (2) Release into the care of a responsible person or organization;

31 (3) Release conditioned on restrictions on activities, associations,
32 residence, or travel if reasonably related to securing the juvenile's
33 presence in court; or

34 (4) Any other conditions reasonably related to securing the juvenile's
35 presence in court.

36 (g) If the court determines that the juvenile meets the criteria in G.S. 7B-1903 and
37 should continue in custody, the court shall issue an order to that effect. The order
38 shall be in writing with appropriate findings of fact. The findings of fact shall include
39 the evidence relied upon in reaching the decision and the purposes which continued
40 custody is to achieve.

41 (h) The court may conduct a hearing to determine the need to continue custody
42 by audio and video transmission between the court and the juvenile in which the
43 parties can see and hear each other. If the juvenile has counsel, the juvenile may
44 communicate fully and confidentially with the juvenile's attorney during the

1 proceeding. Prior to the use of audio and video transmission, the procedures and
2 type of equipment for audio and video transmission shall be submitted to the
3 Administrative Office of the Courts by the chief district court judge and approved by
4 the Administrative Office of the Courts.

5 **"§ 7B-1907. Telephonic communication authorized.**

6 All communications, notices, orders, authorizations, and requests authorized or
7 required by G.S. 7B-1901, 7B-1903, and 7B-1904 may be made by telephone when
8 other means of communication are impractical. All written orders pursuant to
9 telephonic communication shall bear the name and the title of the person
10 communicating by telephone, the signature and the title of the official entering the
11 order, and the hour and the date of the authorization.

12 **"ARTICLE 20.**

13 **"Basic Rights.**

14 **"§ 7B-2000. Juvenile's right to counsel; presumption of indigence.**

15 (a) A juvenile alleged to be within the jurisdiction of the court has the right to be
16 represented by counsel in all proceedings. The court shall appoint counsel for the
17 juvenile, unless counsel is retained for the juvenile, in any proceeding in which the
18 juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or
19 adjudicated to be undisciplined.

20 (b) All juveniles shall be conclusively presumed to be indigent, and it shall not be
21 necessary for the court to receive from any juvenile an affidavit of indigency.

22 **"§ 7B-2001. Appointment of guardian.**

23 In any case when no parent, guardian, or custodian appears in a hearing with the
24 juvenile or when the court finds it would be in the best interests of the juvenile, the
25 court may appoint a guardian of the person for the juvenile. The guardian shall
26 operate under the supervision of the court with or without bond and shall file only
27 such reports as the court shall require. Unless the court orders otherwise, the
28 guardian:

- 29 (1) Shall have the care, custody, and control of the juvenile or may
30 arrange a suitable placement for the juvenile.
- 31 (2) May represent the juvenile in legal actions before any court.
- 32 (3) May consent to certain actions on the part of the juvenile in place
33 of the parent, guardian, or custodian, including (i) marriage, (ii)
34 enlisting in the armed forces, and (iii) enrollment in school.
- 35 (4) May consent to any necessary remedial, psychological, medical, or
36 surgical treatment for the juvenile.

37 The authority of the guardian shall continue until the guardianship is terminated by
38 court order, until the juvenile is emancipated pursuant to Subchapter IV of this
39 Chapter, or until the juvenile reaches the age of majority.

40 **"§ 7B-2002. Payment of court-appointed attorney.**

41 An attorney appointed pursuant to G.S. 7B-2000 or pursuant to any other
42 provision of this Subchapter shall be paid a reasonable fee fixed by the court in the
43 same manner as fees for attorneys appointed in cases of indigency through the
44 Administrative Office of the Courts. The court may require payment of the

1 attorneys' fees from a person other than the juvenile as provided in G.S. 7A-450.1,
2 7A-450.2, and 7A-450.3. A person who does not comply with the court's order of
3 payment may be found in civil contempt as provided in G.S. 5A-21.

4 "ARTICLE 21.

5 "Law Enforcement Procedures in Delinquency Proceedings.

6 "§ 7B-2100. Role of the law enforcement officer.

7 A law enforcement officer who takes a juvenile into temporary custody should
8 select the most appropriate course of action to the situation, the needs of the juvenile,
9 and the protection of the public safety. The officer may:

- 10 (1) Release the juvenile, with or without first counseling the juvenile;
11 (2) Release the juvenile to the juvenile's parent, guardian, or
12 custodian;
13 (3) Refer the juvenile to community resources;
14 (4) Seek a petition; or
15 (5) Seek a petition and request a custody order.

16 "§ 7B-2101. Interrogation procedures.

17 (a) Any juvenile in custody must be advised prior to questioning:

- 18 (1) That the juvenile has a right to remain silent;
19 (2) That any statement the juvenile does make can be and may be
20 used against the juvenile;
21 (3) That the juvenile has a right to have a parent, guardian, or
22 custodian present during questioning; and
23 (4) That the juvenile has a right to consult with an attorney and that
24 one will be appointed for the juvenile if the juvenile is not
25 represented and wants representation.

26 (b) When the juvenile is less than 14 years of age, no in-custody admission or
27 confession resulting from interrogation may be admitted into evidence unless the
28 confession or admission was made in the presence of the juvenile's parent, guardian,
29 custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian
30 as well as the juvenile must be advised of the juvenile's rights as set out in subsection
31 (a) of this section; however, a parent, guardian, or custodian may not waive any right
32 on behalf of the juvenile.

33 (c) If the juvenile indicates in any manner and at any stage of questioning pursuant
34 to this section that the juvenile does not wish to be questioned further, the officer
35 shall cease questioning.

36 (d) Before admitting into evidence any statement resulting from custodial
37 interrogation, the court shall find that the juvenile knowingly, willingly, and
38 understandingly waived the juvenile's rights.

39 "§ 7B-2102. Fingerprinting and photographing juveniles.

40 (a) A law enforcement officer or agency may fingerprint and photograph a
41 juvenile in custody who is alleged to have committed an offense that would be a
42 felony if committed by an adult.

43 (b) If a law enforcement officer or agency does not take the fingerprints or a
44 photograph of the juvenile pursuant to subsection (a) of this section or the

1 fingerprints or photograph have been destroyed pursuant to subsection (e) of this
2 section, a law enforcement officer or agency shall fingerprint and photograph a
3 juvenile who has been adjudicated delinquent if the juvenile was 10 years of age or
4 older at the time the juvenile committed an offense that would be a felony if
5 committed by an adult.

6 (c) A law enforcement officer or agency who fingerprints or photographs a
7 juvenile pursuant to this section shall do so in a proper format for transfer to the
8 State Bureau of Investigation and the Federal Bureau of Investigation. Fingerprints
9 obtained pursuant to this section shall be transferred to the State Bureau of
10 Investigation and placed in the Automated Fingerprint Identification System (AFIS)
11 to be used for all investigative and comparison purposes. Photographs obtained
12 pursuant to this section shall be placed in a format approved by the State Bureau of
13 Investigation and may be used for all investigative or comparison purposes.
14 Fingerprints of a juvenile who has been adjudicated delinquent for an offense that
15 would be a Class A, B1, B2, C, D, or E felony if committed by an adult, and who was
16 10 years of age or older at the time the juvenile committed the offense, shall be
17 transferred to the Federal Bureau of Investigation to be used for all investigative or
18 comparison purposes.

19 (d) Fingerprints and photographs taken pursuant to this section are not public
20 records under Chapter 132 of the General Statutes, shall not be included in the
21 clerk's record pursuant to G.S. 7B-3000, shall be withheld from public inspection or
22 examination, and shall not be eligible for expunction pursuant to G.S. 7B-3200.
23 Fingerprints and photographs taken pursuant to this section shall be maintained
24 separately from any juvenile record, other than the electronic file maintained by the
25 State Bureau of Investigation.

26 (e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of
27 this section, the custodian of records shall destroy all fingerprints and photographs at
28 the earlier of the following:

- 29 (1) The intake counselor or prosecutor does not file a petition against
30 the juvenile;
31 (2) The court does not find probable cause pursuant to G.S. 7B-2202;
32 or
33 (3) The juvenile is not adjudicated delinquent.

34 The chief court counselor shall notify the local custodian of records, and the local
35 custodian of records shall notify any other record-holding agencies, when a decision
36 is made not to file a petition, the court does not find probable cause, or the court
37 does not adjudicate the juvenile delinquent.

38 "§ 7B-2103. Authority to issue nontestimonial identification order where juvenile
39 alleged to be delinquent.

40 Except as provided in G.S. 7B-2102, nontestimonial identification procedures shall
41 not be conducted on any juvenile without a court order issued pursuant to this
42 Article unless the juvenile has been charged as an adult or transferred to superior
43 court for trial as an adult in which case procedures applicable to adults, as set out in
44 Articles 14 and 23 of Chapter 15A of the General Statutes, shall apply. A

1 nontestimonial identification order authorized by this Article may be issued by any
2 judge of the district court or of the superior court upon request of a prosecutor. As
3 used in this Article, 'nontestimonial identification' means identification by
4 fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens,
5 saliva samples, hair samples, or other reasonable physical examination, handwriting
6 exemplars, voice samples, photographs, and lineups or similar identification
7 procedures requiring the presence of a juvenile.

8 **"§ 7B-2104. Time of application for nontestimonial identification order.**

9 A request for a nontestimonial identification order may be made prior to taking a
10 juvenile into custody or after custody and prior to the adjudicatory hearing.

11 **"§ 7B-2105. Grounds for nontestimonial identification order.**

12 (a) Except as provided in subsection (b) of this section, a nontestimonial
13 identification order may issue only on affidavit or affidavits sworn to before the court
14 and establishing the following grounds for the order:

- 15 (1) That there is probable cause to believe that an offense has been
16 committed that would be a felony if committed by an adult;
17 (2) That there are reasonable grounds to suspect that the juvenile
18 named or described in the affidavit committed the offense; and
19 (3) That the results of specific nontestimonial identification procedures
20 will be of material aid in determining whether the juvenile named
21 in the affidavit committed the offense.

22 (b) A nontestimonial identification order to obtain a blood specimen from a
23 juvenile may issue only on affidavit or affidavits sworn to before the court and
24 establishing the following grounds for the order:

- 25 (1) That there is probable cause to believe that an offense has been
26 committed that would be a felony if committed by an adult;
27 (2) That there is probable cause to believe that the juvenile named or
28 described in the affidavit committed the offense; and
29 (3) That there is probable cause to believe that obtaining a blood
30 specimen from the juvenile will be of material aid in determining
31 whether the juvenile named in the affidavit committed the offense.

32 **"§ 7B-2106. Issuance of order.**

33 Upon a showing that the grounds specified in G.S. 7B-2105 exist, the judge may
34 issue an order following the same procedure as in the case of adults under G.S.
35 15A-274, 15A-275, 15A-276, 15A-277, 15A-278, 15A-279, 15A-280, and 15A-282.

36 **"§ 7B-2107. Nontestimonial identification order at request of juvenile.**

37 A juvenile in custody for or charged with an offense which if committed by an
38 adult would be a felony offense may request that nontestimonial identification
39 procedures be conducted. If it appears that the results of specific nontestimonial
40 identification procedures will be of material aid to the juvenile's defense, the judge to
41 whom the request was directed must order the State to conduct the identification
42 procedures.

43 **"§ 7B-2108. Destruction of records resulting from nontestimonial identification**
44 **procedures.**

1 The results of any nontestimonial identification procedures shall be retained or
2 disposed of as follows:

- 3 (1) If a petition is not filed against a juvenile who has been the subject
4 of nontestimonial identification procedures, all records of the
5 evidence shall be destroyed.
- 6 (2) If the juvenile is not adjudicated delinquent or convicted in
7 superior court following transfer, all records resulting from a
8 nontestimonial order shall be destroyed. Further, in the case of a
9 juvenile who is under 13 years of age and who is adjudicated
10 delinquent for an offense that would be less than a felony if
11 committed by an adult, all records shall be destroyed.
- 12 (3) If a juvenile 13 years of age or older is adjudicated delinquent for
13 an offense that would be a felony if committed by an adult, all
14 records resulting from a nontestimonial order may be retained in
15 the court file. Special precautions shall be taken to ensure that
16 these records will be maintained in a manner and under sufficient
17 safeguards to limit their use to inspection by law enforcement
18 officers for comparison purposes in the investigation of a crime.
- 19 (4) If the juvenile is transferred to and convicted in superior court, all
20 records resulting from nontestimonial identification procedures
21 shall be processed as in the case of an adult.
- 22 (5) Any evidence seized pursuant to a nontestimonial order shall be
23 retained by law enforcement officers until further order is entered
24 by the court.
- 25 (6) Destruction of nontestimonial identification records pursuant to
26 this section shall be performed by the law enforcement agency
27 having possession of the records. Following destruction, the law
28 enforcement agency shall make written certification to the court of
29 the destruction.

30 "§ 7B-2109. Penalty for willful violation.

31 Any person who willfully violates provisions of this Article which prohibit
32 conducting nontestimonial identification procedures without an order issued by the
33 court shall be guilty of a Class 1 misdemeanor.

34 "ARTICLE 22.

35 "Probable Cause Hearing and Transfer Hearing.

36 "§ 7B-2200. Transfer of jurisdiction of juvenile to superior court; direct filing in
37 superior court.

38 (a) Except as provided in subsection (b) of this section, after notice, hearing, and a
39 finding of probable cause the court may, upon motion of the prosecutor or the
40 juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to
41 superior court if the juvenile was 13 years of age or older at the time the juvenile
42 allegedly committed an offense that would be a felony if committed by an adult. If
43 the alleged felony constitutes a Class A felony and the court finds probable cause, the
44 court shall transfer the case to the superior court for trial as in the case of adults.

1 (b) Notwithstanding G.S. 7B-1601, the prosecutor may file charges in superior
2 court against a juvenile who was 15 years of age at the time the juvenile allegedly
3 committed an offense that would be a Class A, B1, B2, C, D, or E felony if
4 committed by an adult.

5 "§ 7B-2201. Fingerprinting juvenile transferred to superior court.

6 When jurisdiction over a juvenile is transferred to the superior court, the juvenile
7 shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau
8 of Investigation.

9 "§ 7B-2202. Probable cause hearing.

10 (a) The court shall conduct a hearing to determine probable cause in all felony
11 cases in which a juvenile was 13 years of age or older when the offense was allegedly
12 committed. The hearing shall be conducted within 15 days of the date of the
13 juvenile's first appearance. The court may continue the hearing for good cause.

14 (b) At the probable cause hearing:

15 (1) A prosecutor shall represent the State;

16 (2) The juvenile shall be represented by counsel;

17 (3) The juvenile may testify, call, and examine witnesses, and present
18 evidence; and

19 (4) Each witness shall testify under oath or affirmation and be subject
20 to cross-examination.

21 (c) The State shall by nonhearsay evidence, or by evidence that satisfies an
22 exception to the hearsay rule, show that there is probable cause to believe that the
23 offense charged has been committed and that there is probable cause to believe that
24 the juvenile committed it, except:

25 (1) A report or copy of a report made by a physicist, chemist, firearms
26 identification expert, fingerprint technician, or an expert or
27 technician in some other scientific, professional, or medical field,
28 concerning the results of an examination, comparison, or test
29 performed in connection with the case in issue, when stated by that
30 person in a report made by the juvenile, is admissible in evidence;

31 (2) If there is no serious contest, reliable hearsay is admissible to prove
32 value, ownership of property, possession of property in a person
33 other than the juvenile, lack of consent of the owner, possessor, or
34 custodian of property to the breaking or entering of premises,
35 chain of custody, and authenticity of signatures.

36 (d) Counsel for the juvenile may waive in writing the right to the hearing and
37 stipulate to a finding of probable cause.

38 (e) If probable cause is found and transfer to superior court is not required by G.S.
39 7B-2200, upon motion of the prosecutor or the juvenile's attorney or upon its own
40 motion, the court shall either proceed to a transfer hearing or set a date for that
41 hearing. If the juvenile has not received notice of the intention to seek transfer at
42 least five days prior to the probable cause hearing, the court shall continue the
43 transfer hearing.

44 (f) If the court does not find probable cause for a felony offense, the court shall:

- 1 (1) Dismiss the proceeding, or
2 (2) If the court finds probable cause to believe that the juvenile
3 committed a lesser included offense that would constitute a
4 misdemeanor if committed by an adult, either proceed to an
5 adjudicatory hearing or set a date for that hearing.

6 **"§ 7B-2203. Transfer hearing.**

7 (a) At the transfer hearing, the prosecutor and the juvenile may be heard and may
8 offer evidence, and the juvenile's attorney may examine any court or probation
9 records, or other records the court may consider in determining whether to transfer
10 the case.

11 (b) In the transfer hearing, the court shall determine whether the protection of the
12 public and the needs of the juvenile will be served by transfer of the case to superior
13 court and shall consider the following factors:

- 14 (1) The age of the juvenile;
15 (2) The maturity of the juvenile;
16 (3) The intellectual functioning of the juvenile;
17 (4) The prior record of the juvenile;
18 (5) Prior attempts to rehabilitate the juvenile;
19 (6) Facilities or programs available to the court prior to the expiration
20 of the court's jurisdiction under this Subchapter and the likelihood
21 that the juvenile would benefit from treatment or rehabilitative
22 efforts;
23 (7) Whether the alleged offense was committed in an aggressive,
24 violent, premeditated, or willful manner; and
25 (8) The seriousness of the offense and whether the protection of the
26 public requires that the juvenile be prosecuted as an adult.

27 (c) Any order of transfer shall specify the reasons for transfer. When the case is
28 transferred to superior court, the superior court has jurisdiction over that felony, any
29 offense based on the same act or transaction or on a series of acts or transactions
30 connected together or constituting parts of a single scheme or plan of that felony, and
31 any greater or lesser included offense of that felony.

32 (d) If the court does not transfer the case to superior court, the court shall either
33 proceed to an adjudicatory hearing or set a date for that hearing.

34 **"§ 7B-2204. Right to pretrial release; detention.**

35 Once the order of transfer has been entered, the juvenile has the right to pretrial
36 release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall
37 specify the person or persons to whom the juvenile may be released. Pending release,
38 the court shall order that the juvenile be detained in a detention facility while
39 awaiting trial. The court may order the juvenile to be held in a holdover facility at
40 any time the presence of the juvenile is required in court for pretrial hearings or trial,
41 if the court finds that it would be inconvenient to return the juvenile to the detention
42 facility.

43 Should the juvenile be found guilty, or enter a plea of guilty or no contest to a
44 criminal offense in superior court and receive an active sentence, then immediate

1 transfer to the Department of Correction shall be ordered. Until such time as the
2 juvenile is transferred to the Department of Correction, the juvenile may be detained
3 in a holdover facility. The juvenile may not be detained in a detention facility
4 pending transfer to the Department of Correction.

5 The juvenile may be kept by the Department of Correction as a safekeeper until
6 the juvenile is placed in an appropriate correctional program.

7 "§ 7B-2205. When jeopardy attaches.

8 Jeopardy attaches in an adjudicatory hearing when the court begins to hear
9 evidence.

10 "ARTICLE 23.

11 "Discovery.

12 "§ 7B-2300. Disclosure of evidence by petitioner.

13 (a) Statement of the Juvenile. -- Upon motion of a juvenile alleged to be
14 delinquent, the court shall order the petitioner:

15 (1) To permit the juvenile to inspect and copy any relevant written or
16 recorded statements within the possession, custody, or control of
17 the petitioner made by the juvenile or any other party charged in
18 the same action; and

19 (2) To divulge, in written or recorded form, the substance of any oral
20 statement made by the juvenile or any other party charged in the
21 same action.

22 (b) Names of Witnesses. -- Upon motion of the juvenile, the court shall order the
23 petitioner to furnish the names of persons to be called as witnesses. A copy of the
24 record of witnesses under the age of 16 shall be provided by the petitioner to the
25 juvenile upon the juvenile's motion if accessible to the petitioner.

26 (c) Documents and Tangible Objects. -- Upon motion of the juvenile, the court
27 shall order the petitioner to permit the juvenile to inspect and copy books, papers,
28 documents, photographs, motion pictures, mechanical or electronic recordings,
29 tangible objects, or portions thereof:

30 (1) Which are within the possession, custody, or control of the
31 petitioner, the prosecutor, or any law enforcement officer
32 conducting an investigation of the matter alleged; and

33 (2) Which are material to the preparation of the defense, are intended
34 for use by the petitioner as evidence, or were obtained from or
35 belong to the juvenile.

36 (d) Reports of Examinations and Tests. -- Upon motion of a juvenile, the court
37 shall order the petitioner to permit the juvenile to inspect and copy results of physical
38 or mental examinations or of tests, measurements, or experiments made in connection
39 with the case, within the possession, custody, or control of the petitioner. In addition
40 upon motion of a juvenile, the court shall order the petitioner to permit the juvenile
41 to inspect, examine, and test, subject to appropriate safeguards, any physical evidence
42 or a sample of it or tests or experiments made in connection with the evidence in the
43 case if it is available to the petitioner, the prosecutor, or any law enforcement officer

1 conducting an investigation of the matter alleged and if the petitioner intends to offer
2 the evidence at trial.

3 (e) Except as provided in subsections (a) through (d) of this section, this Article
4 does not require the production of reports, memoranda, or other internal documents
5 made by the petitioner, law enforcement officers, or other persons acting on behalf of
6 the petitioner in connection with the investigation or prosecution of the case or of
7 statements made by witnesses or the petitioner to anyone acting on behalf of the
8 petitioner.

9 (f) Nothing in this section prohibits a petitioner from making voluntary disclosures
10 in the interest of justice.

11 **"§ 7B-2301. Disclosure of evidence by juvenile.**

12 (a) Names of Witnesses. -- Upon motion of the petitioner, the court shall order the
13 juvenile to furnish to the petitioner the names of persons to be called as witnesses.

14 (b) Documents and Tangible Objects. -- If the court grants any relief sought by the
15 juvenile under G.S. 7B-2300, upon motion of the petitioner, the court shall order the
16 juvenile to permit the petitioner to inspect and copy books, papers, documents,
17 photographs, motion pictures, mechanical or electronic recordings, tangible objects,
18 or portions thereof which are within the possession, custody, or control of the
19 juvenile and which the juvenile intends to introduce in evidence.

20 (c) Reports of Examinations and Tests. -- If the court grants any relief sought by
21 the juvenile under G.S. 7B-2300, upon motion of the petitioner, the court shall order
22 the juvenile to permit the petitioner to inspect and copy results of physical or mental
23 examinations or of tests, measurements, or experiments made in connection with the
24 case within the possession and control of the juvenile which the juvenile intends to
25 introduce in evidence or which were prepared by a witness whom the juvenile
26 intends to call if the results relate to the witness's testimony. In addition, upon
27 motion of a petitioner, the court shall order the juvenile to permit the petitioner to
28 inspect, examine, and test, subject to appropriate safeguards, any physical evidence or
29 a sample of it if the juvenile intends to offer the evidence or tests or experiments
30 made in connection with the evidence in the case.

31 **"§ 7B-2302. Regulation of discovery; protective orders.**

32 (a) Upon written motion of a party and a finding of good cause, the court may at
33 any time order that discovery or inspection be denied, restricted, or deferred.

34 (b) The court may permit a party seeking relief under subsection (a) of this section
35 to submit supporting affidavits or statements to the court for in camera inspection. If
36 thereafter the court enters an order granting relief under subsection (a) of this
37 section, the material submitted in camera must be available to the Court of Appeals
38 in the event of an appeal.

39 **"§ 7B-2303. Continuing duty to disclose.**

40 If a party, subject to compliance with an order issued pursuant to this Article,
41 discovers additional evidence prior to or during the hearing or decides to use
42 additional evidence, and if the evidence is or may be subject to discovery or
43 inspection under this Article, the party shall promptly notify the other party of the
44 existence of the additional evidence or of the name of each additional witness.

1 "ARTICLE 24.

2 "Hearing Procedures.

3 "§ 7B-2400. Amendment of petition.

4 The court may permit a petition to be amended when the amendment does not
5 change the nature of the offense alleged. If a motion to amend is allowed, the
6 juvenile shall be given a reasonable opportunity to prepare a defense to the amended
7 allegations.

8 "§ 7B-2401. Determination of incapacity to proceed; evidence; temporary
9 commitment; temporary orders.

10 The provisions of G.S. 15A-1001, 15A-1002, and 15A-1003 apply to all cases in
11 which a juvenile is alleged to be delinquent. No juvenile committed under this
12 section may be placed in a situation where the juvenile will come in contact with
13 adults committed for any purpose.

14 "§ 7B-2402. Open hearings.

15 All hearings authorized or required pursuant to this Subchapter shall be open to
16 the public unless the court closes the hearing or part of the hearing for good cause,
17 upon motion of a party or its own motion.

18 "§ 7B-2403. Adjudicatory hearing.

19 The adjudicatory hearing shall be held within a reasonable time in the district at
20 the time and place the chief district judge designates.

21 "§ 7B-2404. Participation of the prosecutor.

22 A prosecutor shall represent the State in contested delinquency hearings including
23 first appearance, detention, probable cause, transfer, adjudicatory, dispositional,
24 probation revocation, post-release supervision, and extended jurisdiction hearings.

25 "§ 7B-2405. Conduct of the adjudicatory hearing.

26 The adjudicatory hearing shall be a judicial process designed to determine whether
27 the juvenile is undisciplined or delinquent. In the adjudicatory hearing, the court
28 shall protect the following rights of the juvenile and the juvenile's parent, guardian,
29 or custodian to assure due process of law:

30 (1) The right to written notice of the facts alleged in the petition;

31 (2) The right to counsel;

32 (3) The right to confront and cross-examine witnesses;

33 (4) The privilege against self-incrimination;

34 (5) The right of discovery; and

35 (6) All rights afforded adult offenders except the right to bail, the right
36 of self-representation, and the right of trial by jury.

37 "§ 7B-2406. Continuances.

38 The court for good cause may continue the hearing for as long as is reasonably
39 required to receive additional evidence, reports, or assessments that the court has
40 requested, or other information needed in the best interests of the juvenile and to
41 allow for a reasonable time for the parties to conduct expeditious discovery.
42 Otherwise, continuances shall be granted only in extraordinary circumstances when
43 necessary for the proper administration of justice or in the best interests of the
44 juvenile.

1. "§ 7B-2407. When admissions by juvenile may be accepted.

2 (a) The court may accept an admission from a juvenile only after first addressing
3 the juvenile personally and:

4 (1) Informing the juvenile that the juvenile has a right to remain silent
5 and that any statement the juvenile makes may be used against the
6 juvenile;

7 (2) Determining that the juvenile understands the nature of the charge;

8 (3) Informing the juvenile that the juvenile has a right to deny the
9 allegations;

10 (4) Informing the juvenile that by the juvenile's admissions the
11 juvenile waives the juvenile's right to be confronted by the
12 witnesses against the juvenile;

13 (5) Determining that the juvenile is satisfied with the juvenile's
14 representation; and

15 (6) Informing the juvenile of the most restrictive disposition on the
16 charge.

17 (b) By inquiring of the prosecutor, the juvenile's attorney, and the juvenile
18 personally, the court shall determine whether there were any prior discussions
19 involving admissions, whether the parties have entered into any arrangement with
20 respect to the admissions and the terms thereof, and whether any improper pressure
21 was exerted. The court may accept an admission from a juvenile only after
22 determining that the admission is a product of informed choice.

23 (c) The court may accept an admission only after determining that there is a
24 factual basis for the admission. This determination may be based upon any of the
25 following information: a statement of the facts by the prosecutor; a written statement
26 of the juvenile; sworn testimony which may include reliable hearsay; or a statement of
27 facts by the juvenile's attorney.

28 "§ 7B-2408. Rules of evidence.

29 If the juvenile denies the allegations of the petition, the court shall proceed in
30 accordance with the rules of evidence applicable to criminal cases. In addition, no
31 statement made by a juvenile to the intake counselor during the preliminary inquiry
32 and evaluation process shall be admissible prior to the dispositional hearing.

33 "§ 7B-2409. Quantum of proof in adjudicatory hearing.

34 The allegations of a petition alleging the juvenile is delinquent shall be proved
35 beyond a reasonable doubt. The allegations in a petition alleging undisciplined
36 behavior shall be proved by clear and convincing evidence.

37 "§ 7B-2410. Record of proceedings.

38 All adjudicatory and dispositional hearings and hearings on probable cause and
39 transfer to superior court shall be recorded by stenographic notes or by electronic or
40 mechanical means. Records shall be reduced to a written transcript only when timely
41 notice of appeal has been given. The court may order that other hearings be
42 recorded.

43 "§ 7B-2411. Adjudication.

1 If the court finds that the allegations in the petition have been proved as provided
2 in G.S. 7B-2409, the court shall so state. If the court finds that the allegations have
3 not been proved, the court shall dismiss the petition with prejudice and the juvenile
4 shall be released from secure or nonsecure custody if the juvenile is in custody.

5 "§ 7B-2412. Legal effect of adjudication of delinquency.

6 An adjudication that a juvenile is delinquent or commitment of a juvenile to the
7 Department shall neither be considered conviction of any criminal offense nor cause
8 the juvenile to forfeit any citizenship rights.

9 "§ 7B-2413. Predisposition investigation and report.

10 The court shall proceed to the dispositional hearing upon receipt of sufficient
11 social, medical, psychiatric, psychological, and educational information. No
12 predisposition report shall be submitted to or considered by the court prior to the
13 completion of the adjudicatory hearing. The court shall permit the juvenile to inspect
14 any predisposition report to be considered by the court in making the disposition
15 unless the court determines that disclosure would seriously harm the juvenile's
16 treatment or rehabilitation or would violate a promise of confidentiality. Opportunity
17 to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent,
18 guardian, or custodian at the dispositional hearing. The court may order counsel not
19 to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or
20 custodian if the court finds that disclosure would seriously harm the treatment or
21 rehabilitation of the juvenile or would violate a promise of confidentiality given to a
22 source of information.

23 "ARTICLE 25.

24 "Dispositions.

25 "§ 7B-2500. Purpose.

26 The purpose of dispositions in juvenile actions is to design an appropriate plan to
27 meet the needs of the juvenile and to achieve the objectives of the State in exercising
28 jurisdiction, including the protection of the public. The court should develop a
29 disposition in each case that:

30 (1) Promotes public safety;

31 (2) Emphasizes accountability and responsibility of both the parent,
32 guardian, or custodian and the juvenile for the juvenile's conduct;
33 and

34 (3) Provides the appropriate consequences, treatment, training, and
35 rehabilitation to assist the juvenile toward becoming a
36 nonoffending, responsible, and productive member of the
37 community.

38 "§ 7B-2500.1. Dispositional hearing.

39 (a) The dispositional hearing may be informal, and the court may consider written
40 reports or other evidence concerning the needs of the juvenile.

41 (b) The juvenile and the juvenile's parent, guardian, or custodian shall have an
42 opportunity to present evidence, and they may advise the court concerning the
43 disposition they believe to be in the best interests of the juvenile.

1 (c) In choosing among statutorily permissible dispositions, the court shall select the
2 most appropriate disposition both in terms of kind and duration for the delinquent
3 juvenile. Within the guidelines set forth in G.S. 7B-2505, the court shall select a
4 disposition that is designed to protect the public and to meet the needs and best
5 interests of the juvenile, based upon:

6 (1) The seriousness of the offense;

7 (2) The need to hold the juvenile accountable;

8 (3) The importance of protecting the public safety;

9 (4) The degree of culpability indicated by the circumstances of the
10 particular case; and

11 (5) The rehabilitative and treatment needs of the juvenile.

12 (d) The court may dismiss the case, or continue the case for no more than six
13 months in order to allow the family an opportunity to meet the needs of the juvenile
14 through more adequate home supervision, through placement in a private or
15 specialized school or agency, through placement with a relative, or through some
16 other plan approved by the court.

17 **§ 7B-2500.2. Evaluation and treatment of undisciplined and delinquent juveniles.**

18 (a) In any case, the court may order that the juvenile be examined by a physician,
19 psychiatrist, psychologist, or other qualified expert as may be needed for the court to
20 determine the needs of the juvenile.

21 (b) Upon completion of the examination, the court shall conduct a hearing to
22 determine whether the juvenile is in need of medical, surgical, psychiatric,
23 psychological, or other evaluation or treatment and who should pay the cost of the
24 evaluation or treatment. The county manager, or any other person who is designated
25 by the chair of the board of county commissioners, of the county of the juvenile's
26 residence shall be notified of the hearing, and allowed to be heard. If the court finds
27 the juvenile to be in need of medical, surgical, psychiatric, psychological, or other
28 evaluation or treatment, the court shall permit the parent, guardian, custodian, or
29 other responsible persons to arrange for evaluation or treatment. If the parent,
30 guardian, or custodian declines or is unable to make necessary arrangements, the
31 court may order the needed evaluation or treatment, surgery, or care, and the court
32 may order the parent to pay the cost of the care pursuant to Article 27 of this
33 Chapter. If the court finds the parent is unable to pay the cost of evaluation or
34 treatment, the court shall order the county to arrange for evaluation or treatment of
35 the juvenile and to pay for the cost of the evaluation or treatment. The county
36 department of social services shall recommend the facility that will provide the
37 juvenile with evaluation or treatment.

38 (c) If the court believes, or if there is evidence presented to the effect that the
39 juvenile is mentally ill or is developmentally disabled, the court shall refer the
40 juvenile to the area mental health, developmental disabilities, and substance abuse
41 services director for appropriate action. A juvenile shall not be committed directly to
42 a State hospital or mental retardation center; and orders purporting to commit a
43 juvenile directly to a State hospital or mental retardation center except for an
44 examination to determine capacity to proceed shall be void and of no effect. The area

1 mental health, developmental disabilities, and substance abuse director shall be
2 responsible for arranging an interdisciplinary evaluation of the juvenile and
3 mobilizing resources to meet the juvenile's needs. If institutionalization is determined
4 to be the best service for the juvenile, admission shall be with the voluntary consent
5 of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a
6 mental hospital or retardation center admission after such institutionalization is
7 recommended by the area mental health, developmental disabilities, and substance
8 abuse director, the signature and consent of the court may be substituted for that
9 purpose. In all cases in which a regional mental hospital refuses admission to a
10 juvenile referred for admission by the court and an area mental health,
11 developmental disabilities, and substance abuse director or discharges a juvenile
12 previously admitted on court referral prior to completion of the juvenile's treatment,
13 the hospital shall submit to the court a written report setting out the reasons for
14 denial of admission or discharge and setting out the juvenile's diagnosis, indications
15 of mental illness, indications of need for treatment, and a statement as to the location
16 of any facility known to have a treatment program for the juvenile in question.

17 **"§ 7B-2501. Dispositional alternatives for undisciplined juveniles.**

18 The following alternatives for disposition shall be available to the court exercising
19 jurisdiction over a juvenile who has been adjudicated undisciplined. The court may
20 combine any of the applicable alternatives when the court finds it to be in the best
21 interests of the juvenile:

- 22 (1) In the case of any juvenile who needs more adequate care or
23 supervision or who needs placement, the judge may:
- 24 a. Require that the juvenile be supervised in the juvenile's own
25 home by a department of social services in the juvenile's
26 county of residence, a court counselor, or other personnel as
27 may be available to the court, subject to conditions
28 applicable to the parent, guardian, or custodian or the
29 juvenile as the judge may specify; or
 - 30 b. Place the juvenile in the custody of a parent, guardian,
31 custodian, relative, private agency offering placement
32 services, or some other suitable person; or
 - 33 c. Place the juvenile in the custody of a department of social
34 services in the county of the juvenile's residence, or in the
35 case of a juvenile who has legal residence outside the State,
36 in the physical custody of a department of social services in
37 the county where the juvenile is found so that agency may
38 return the juvenile to the responsible authorities in the
39 juvenile's home state. The director may, unless otherwise
40 ordered by the judge, arrange for, provide, or consent to,
41 needed routine or emergency medical or surgical care or
42 treatment. In the case where the parent is unknown,
43 unavailable, or unable to act on behalf of the child or
44 children, the director may, unless otherwise ordered by the

1 judge, arrange for, provide or consent to any psychiatric,
2 psychological, educational, or other remedial evaluations or
3 treatment for the juvenile placed by a judge or the judge's
4 designee in the custody or physical custody of a county
5 department of social services under the authority of this or
6 any other Chapter of the General Statutes. Prior to
7 exercising this authority, the director shall make reasonable
8 efforts to obtain consent from a parent or guardian of the
9 affected child. If the director cannot obtain consent, the
10 director shall promptly notify the parent or guardian that
11 care or treatment has been provided and shall give the
12 parent or guardian frequent status reports on the
13 circumstances of the child. Upon request of a parent or
14 guardian of the affected child, the results or records of the
15 aforementioned evaluations, findings, or treatment shall be
16 made available to the parent or guardian by the director
17 unless prohibited by G.S. 122C-53(d).

18 (2) Place the juvenile under the protective supervision of a court
19 counselor for no more than one year.

20 (3) Excuse the juvenile from compliance with the compulsory school
21 attendance law when the court finds that suitable alternative plans
22 can be arranged by the family through other community resources
23 for one of the following: an education related to the needs or
24 abilities of the juvenile including vocational education or special
25 education; a suitable plan of supervision or placement; or some
26 other plan that the court finds to be in the best interests of the
27 juvenile.

28 **§ 7B-2502. Conditions of protective supervision for undisciplined juveniles.**

29 The court may place a juvenile on protective supervision pursuant to G.S. 7B-2501
30 so that the court counselor may (i) assist the juvenile in securing social, medical, and
31 educational services and (ii) visit and work with the family as a unit to ensure the
32 juvenile is provided proper supervision and care. The court may impose any
33 combination of the following conditions of protective supervision that are related to
34 the needs of the juvenile, including:

35 (1) That the juvenile shall remain on good behavior and not violate
36 any laws;

37 (2) That the juvenile attend school regularly;

38 (3) That the juvenile maintain passing grades in up to four courses
39 during each grading period and meet with the court counselor and
40 a representative of the school to make a plan for how to maintain
41 those passing grades;

42 (4) That the juvenile not associate with specified persons or be in
43 specified places;

44 (5) That the juvenile abide by a prescribed curfew;

- 1 (6) That the juvenile report to a court counselor as often as required
2 by a court counselor;
3 (7) That the juvenile be employed regularly if not attending school;
4 and
5 (8) That the juvenile satisfy any other conditions determined
6 appropriate by the court.

7 **"§ 7B-2503. Contempt of court for undisciplined juveniles.**

8 Upon motion of the court counselor or on the court's own motion, the court may
9 issue an order directing a juvenile who has been adjudicated undisciplined to appear
10 and show cause why the juvenile should not be held in contempt for willfully failing
11 to comply with an order of the court. The first time the juvenile is held in contempt,
12 the court may order the juvenile confined in an approved detention facility for a
13 period not to exceed 24 hours. The second time the juvenile is held in contempt, the
14 court may order the juvenile confined in an approved detention facility for a period
15 not to exceed three days. The third time and all subsequent times the juvenile is held
16 in contempt, the court may order the juvenile confined in an approved detention
17 facility for a period not to exceed five days.

18 **"§ 7B-2504. Dispositional alternatives for delinquent juveniles.**

19 The court exercising jurisdiction over a juvenile who has been adjudicated
20 delinquent may use the following alternatives in accordance with the dispositional
21 structure set forth in G.S. 7B-2505:

- 22 (1) In the case of any juvenile who needs more adequate care or
23 supervision or who needs placement, the judge may:
24 a. Require that a juvenile be supervised in the juvenile's own
25 home by the department of social services in the juvenile's
26 county, a court counselor, or other personnel as may be
27 available to the court, subject to conditions applicable to the
28 parent, guardian, or custodian or the juvenile as the judge
29 may specify; or
30 b. Place the juvenile in the custody of a parent, guardian,
31 custodian, relative, private agency offering placement
32 services, or some other suitable person; or
33 c. Place the juvenile in the custody of the department of social
34 services in the county of his residence, or in the case of a
35 juvenile who has legal residence outside the State, in the
36 physical custody of a department of social services in the
37 county where the juvenile is found so that agency may
38 return the juvenile to the responsible authorities in the
39 juvenile's home state. The director may, unless otherwise
40 ordered by the judge, arrange for, provide, or consent to,
41 needed routine or emergency medical or surgical care or
42 treatment. In the case where the parent is unknown,
43 unavailable, or unable to act on behalf of the child or
44 children, the director may, unless otherwise ordered by the

1 judge, arrange for, provide, or consent to any psychiatric,
2 psychological, educational, or other remedial evaluations or
3 treatment for the juvenile placed by a judge or his designee
4 in the custody or physical custody of a county department of
5 social services under the authority of this or any other
6 Chapter of the General Statutes. Prior to exercising this
7 authority, the director shall make reasonable efforts to
8 obtain consent from a parent or guardian of the affected
9 child. If the director cannot obtain such consent, the
10 director shall promptly notify the parent or guardian that
11 care or treatment has been provided and shall give the
12 parent or guardian frequent status reports on the
13 circumstances of the child. Upon request of a parent or
14 guardian of the affected child, the results or records of the
15 aforementioned evaluations, findings, or treatment shall be
16 made available to such parent or guardian by the director
17 unless prohibited by G.S. 122C-53(d).

- 18 (2) Excuse the juvenile from compliance with the compulsory school
19 attendance law when the court finds that suitable alternative plans
20 can be arranged by the family through other community resources
21 for one of the following: an education related to the needs or
22 abilities of the juvenile including vocational education or special
23 education; a suitable plan of supervision or placement; or some
24 other plan that the court finds to be in the best interests of the
25 juvenile.
- 26 (3) Order the juvenile to cooperate with a community-based program
27 or a professional residential or nonresidential treatment program.
28 Participation in the programs shall not exceed 12 months.
- 29 (4) Require restitution, full or partial, payable within a 12-month
30 period to any person who has suffered loss or damage as a result of
31 the offense committed by the juvenile. The court may determine
32 the amount, terms, and conditions of the restitution. If the juvenile
33 participated with another person or persons, all participants should
34 be jointly and severally responsible for the payment of restitution;
35 however, the court shall not require the juvenile to make
36 restitution if the juvenile satisfies the court that the juvenile does
37 not have, and could not reasonably acquire, the means to make
38 restitution.
- 39 (5) Impose a fine related to the seriousness of the juvenile's offense. If
40 the juvenile has the ability to pay the fine, it shall not exceed the
41 maximum fine for the offense if committed by an adult.
- 42 (6) Order the juvenile to perform supervised community service
43 consistent with the juvenile's age, skill, and ability, specifying the
44 nature of the work and the number of hours required. The work

- 1 shall be related to the seriousness of the juvenile's offense and in
2 no event may the obligation to work exceed 12 months.
3 (7) Order the juvenile to participate in the victim-offender
4 reconciliation program.
5 (8) Place the juvenile on probation under the supervision of a court
6 counselor, as specified in G.S. 7B-2506.
7 (9) Order that the juvenile shall not be licensed to operate a motor
8 vehicle in the State of North Carolina for as long as the court
9 retains jurisdiction over the juvenile or for any shorter period of
10 time and notify the Division of Motor Vehicles of that order.
11 (10) Impose a curfew upon the juvenile.
12 (11) Order the juvenile to cooperate with placement in a residential
13 treatment facility or in a group home other than a multipurpose
14 group home operated by a State agency.
15 (12) Order the juvenile to cooperate with placement in a wilderness
16 program.
17 (13) Impose confinement on an intermittent basis in an approved
18 detention facility. Confinement shall be limited to not more than
19 five 24-hour periods, the timing of which is determined by the
20 court in its discretion.
21 (14) Place the juvenile on intensive probation under the supervision of
22 a court counselor.
23 (15) Order the juvenile to cooperate with a supervised day program
24 requiring the juvenile to be present at a specified place for all or
25 part of every day or of certain days. The court also may require the
26 juvenile to comply with any other reasonable conditions specified
27 in the dispositional order that are designed to facilitate supervision.
28 (16) Order the juvenile to participate in a regimented training program.
29 (17) Order the juvenile to submit to house arrest.
30 (18) Suspend imposition of a more severe, statutorily permissible
31 disposition with the provision that the juvenile meet certain
32 conditions agreed to by the juvenile and specified in the
33 dispositional order. The conditions shall not exceed the allowable
34 dispositions for the level under which disposition is being imposed.
35 (19) Order that the juvenile be confined in a secure juvenile detention
36 facility for a term of up to 14 24-hour periods, which confinement
37 shall not be imposed consecutively with intermittent confinement
38 pursuant to subdivision (13) of this section at the same
39 dispositional hearing.
40 (20) Order the residential placement of a juvenile in a multipurpose
41 group home operated by a State agency.
42 (21) Commit the juvenile to the Department in accordance with G.S.
43 7B-2509 for a period of not less than six months.
44 "§ 7B-2504.1. Delinquency history levels.

1 (a) Generally. -- The delinquency history level for a delinquent juvenile is
2 determined by calculating the sum of the points assigned to each of the juvenile's
3 prior adjudications and to the juvenile's probation status, if any, that the court finds
4 to have been proved in accordance with this section.

5 (b) Points. -- Points are assigned as follows:

6 (1) For each prior adjudication of a Class A through E felony offense,
7 4 points.

8 (2) For each prior adjudication of a Class F through I felony offense
9 or Class A1 misdemeanor offense, 2 points.

10 (3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor
11 offense, 1 point.

12 (4) If the juvenile was on probation at the time of adjudication, 2
13 points.

14 (c) Delinquency History Levels. -- The delinquency history levels are:

15 (1) Low -- No more than 1 point.

16 (2) Medium -- At least 2, but not more than 3 points.

17 (3) High -- At least 4 points.

18 In determining the delinquency history level, the classification of a prior offense is
19 the classification assigned to that offense at the time the juvenile committed the
20 offense for which disposition is being ordered.

21 (d) Multiple Prior Adjudications Obtained in One Court Session. -- For purposes
22 of determining the delinquency history level, if a juvenile is adjudicated delinquent
23 for more than one offense in a single session of district court, only the adjudication
24 for the offense with the highest point total is used.

25 (e) Classification of Prior Adjudications From Other Jurisdictions. -- Except as
26 otherwise provided in this subsection, an adjudication occurring in a jurisdiction
27 other than North Carolina is classified as a Class I felony if the jurisdiction in which
28 the offense occurred classifies the offense as a felony, or is classified as a Class 3
29 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as
30 a misdemeanor. If the juvenile proves by the preponderance of the evidence that an
31 offense classified as a felony in the other jurisdiction is substantially similar to an
32 offense that is a misdemeanor in North Carolina, the conviction is treated as that
33 class of misdemeanor for assigning delinquency history level points. If the State
34 proves by the preponderance of the evidence that an offense classified as either a
35 misdemeanor or a felony in the other jurisdiction is substantially similar to an offense
36 in North Carolina that is classified as a Class I felony or higher, the conviction is
37 treated as that class of felony for assigning delinquency history level points. If the
38 State proves by the preponderance of the evidence that an offense classified as a
39 misdemeanor in the other jurisdiction is substantially similar to an offense classified
40 as a Class A1 misdemeanor in North Carolina, the adjudication is treated as a Class
41 A1 misdemeanor for assigning delinquency history level points.

42 (f) Proof of Prior Adjudications. -- A prior adjudication shall be proved by any of
43 the following methods:

44 (1) Stipulation of the parties.

- 1 (2) An original or copy of the court record of the prior adjudication.
- 2 (3) A copy of records maintained by the Division of Criminal
- 3 Information or by the Department.
- 4 (4) Any other method found by the court to be reliable.

5 The State bears the burden of proving, by a preponderance of the evidence, that a
6 prior adjudication exists and that the juvenile before the court is the same person as
7 the juvenile named in the prior adjudication. The original or a copy of the court
8 records or a copy of the records maintained by the Division of Criminal Information
9 or of the Department, bearing the same name as that by which the juvenile is
10 charged, is prima facie evidence that the juvenile named is the same person as the
11 juvenile before the court, and that the facts set out in the record are true. For
12 purposes of this subsection, 'a copy' includes a paper writing containing a
13 reproduction of a record maintained electronically on a computer or other data
14 processing equipment, and a document produced by a facsimile machine. The
15 prosecutor shall make all feasible efforts to obtain and present to the court the
16 juvenile's full record. Evidence presented by either party at trial may be utilized to
17 prove prior adjudications. If asked by the juvenile, the prosecutor shall furnish the
18 juvenile's prior adjudications to the juvenile within a reasonable time sufficient to
19 allow the juvenile to determine if the record available to the prosecutor is accurate.
20 "§ 7B-2505. Dispositional limits for each class of offense and delinquency history
21 level.

- 22 (a) Offense Classification. -- The offense classifications are as follows:
- 23 (1) Violent -- adjudication of a Class A through E felony offense;
 - 24 (2) Serious -- adjudication of a Class F through I felony offense or a
 - 25 Class A1 misdemeanor;
 - 26 (3) Minor -- adjudication of a Class 1, 2, or 3 misdemeanor.
- 27 (b) Delinquency History Levels. -- A delinquency history level shall be
28 determined for each delinquent juvenile as provided in G.S. 7B-2504.1.
- 29 (c) Level 1 -- Community Disposition. -- A court exercising jurisdiction over a
30 juvenile who has been adjudicated delinquent and for whom the dispositional chart
31 in subsection (f) of this section prescribes a Level 1 disposition may provide for
32 evaluation and treatment under G.S. 7B-2500.2 and for any of the dispositional
33 alternatives contained in subdivisions (1) through (13) of G.S. 7B-2504. In
34 determining which dispositional alternative is appropriate, the court shall consider
35 the needs of the juvenile, the appropriate community resources available to meet
36 those needs, and the protection of the public.
- 37 (d) Level 2 -- Intermediate Disposition. -- A court exercising jurisdiction over a
38 juvenile who has been adjudicated delinquent and for whom the dispositional chart
39 in subsection (f) of this section prescribes a Level 2 disposition may provide for
40 evaluation and treatment under G.S. 7B-2500.2 and for any of the dispositional
41 alternatives contained in subdivisions (1) through (20) of G.S. 7B-2504, but shall
42 provide for at least one of the intermediate dispositions authorized in subdivisions
43 (12) and (14) through (20) of G.S. 7B-2504. In determining which dispositional
44 alternative is appropriate, the court shall consider the needs of the juvenile, the

1 appropriate community resources available to meet those needs, and the protection of
 2 the public.

3 (e) Level 3 -- Commitment. -- A court exercising jurisdiction over a juvenile who
 4 has been adjudicated delinquent and for whom the dispositional chart in subsection
 5 (f) of this section prescribes a Level 3 disposition shall commit the juvenile to the
 6 Department in accordance with G.S. 7B-2504(21). However, a court may impose a
 7 Level 2 disposition rather than a Level 3 disposition if the court submits written
 8 findings on the record that substantiate extraordinary needs on the part of the
 9 offending juvenile.

10 (f) Dispositions for Each Class of Offense and Delinquency History Level;
 11 Disposition Chart Described. -- The authorized disposition for each class of offense
 12 and delinquency history level is as specified in the chart below. Delinquency history
 13 levels are indicated horizontally on the top of the chart. Classes of offense are
 14 indicated vertically on the left side of the chart. Each cell on the chart indicates
 15 which of the dispositional levels described in subsections (c) through (e) of this
 16 section are prescribed for that combination of offense classification and delinquency
 17 history level:

18

19 DELINQUENCY HISTORY

20 <u>OFFENSE</u>	21 <u>LOW</u>	22 <u>MEDIUM</u>	23 <u>HIGH</u>
24 <u>VIOLENT</u>	25 <u>Level 2 or 3</u>	26 <u>Level 3</u>	27 <u>Level 3</u>
28 <u>SERIOUS</u>	29 <u>Level 1 or 2</u>	30 <u>Level 2</u>	31 <u>Level 2 or 3</u>
32 <u>MINOR</u>	33 <u>Level 1</u>	34 <u>Level 1 or 2</u>	35 <u>Level 2.</u>

36 (g) The court may consider as a mitigating factor evidence of a juvenile's
 37 cooperation with law enforcement in providing information about other persons with
 38 whom the juvenile acted in the commission of the offense for which the juvenile was
 39 adjudicated. A mitigating factor may be used in determining the appropriate
 40 dispositional options within the level prescribed by the dispositional chart in
 41 subsection (f) of this section.

42 (h) If a juvenile is adjudicated of more than one offense at the same time, the
 43 court shall consolidate the offenses for disposition and impose a single disposition for
 44 the consolidated offenses. The disposition shall be specified for the class of offense
 and delinquency history level of the most serious offense.

45 **"§ 7B-2506. Conditions of probation; violation of probation.**

46 (a) In any case where a juvenile is placed on probation pursuant to G.S. 7B-
 47 2504(8), the court counselor shall have the authority to visit the juvenile where the
 48 juvenile resides. The court may impose conditions of probation that are related to
 49 the needs of the juvenile and that are reasonably necessary to ensure that the juvenile
 50 will lead a law-abiding life, including:

- 1 (1) That the juvenile shall remain on good behavior and not violate
2 any laws.
- 3 (2) That the juvenile attend school regularly.
- 4 (3) That the juvenile maintain passing grades in up to four courses
5 during each grading period and meet with the court counselor and
6 a representative of the school to make a plan for how to maintain
7 those passing grades.
- 8 (4) That the juvenile not associate with specified persons or be in
9 specified places.
- 10 (5) That the juvenile remain free of any controlled substance included
11 in any schedule of Article 5 of Chapter 90 of the General Statutes,
12 the Controlled Substances Act, and the juvenile submit to random
13 drug testing.
- 14 (6) That the juvenile abide by a prescribed curfew.
- 15 (7) That the juvenile submit to a warrantless search at reasonable
16 times.
- 17 (8) That the juvenile possess no firearm, explosive device, or other
18 deadly weapon.
- 19 (9) That the juvenile report to a court counselor as often as required
20 by a court counselor.
- 21 (10) That the juvenile make specified financial restitution or pay a fine
22 in accordance with G.S. 7B-2504(4) and (5).
- 23 (11) That the juvenile be employed regularly if not attending school.
- 24 (12) That the juvenile satisfy any other conditions determined
25 appropriate by the court.

26 (b) In addition to the regular conditions of probation specified in subsection (a) of
27 this section, the court may order the juvenile to comply, if directed to comply by the
28 court counselor, with one or more of the following conditions:

- 29 (1) Perform up to 20 hours of community service;
- 30 (2) Submit to substance abuse monitoring and treatment;
- 31 (3) Cooperate with electronic monitoring;
- 32 (4) Cooperate with intensive supervision; and
- 33 (5) Participate in a life skills or an educational skills program
34 administered by the Department.

35 (c) An order of probation shall remain in force for a period not to exceed two
36 years from the date entered. Prior to expiration of an order of probation, the court
37 may extend it for an additional period of one year after a hearing if the court finds
38 that the extension is necessary to protect the community or to safeguard the welfare
39 of the juvenile.

40 (d) If the juvenile violates the conditions of probation set by the court, the court
41 may elect to continue the original conditions of probation, modify the conditions of
42 probation, or, except as provided in subsection (e) of this section, order a new
43 disposition at the next higher level on the disposition chart in G.S. 7B-2505. In the
44 court's discretion, part of the new disposition may include an order of confinement in

1 a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-
2 2505.

3 **"§ 7B-2507. Probation review.**

4 The court may review the progress of any juvenile on probation at any time during
5 the period of probation or at the end of probation. Except as provided in G.S. 7B-
6 2506, the conditions or duration of probation may be modified only as provided in
7 this Subchapter and only after there is notice and a hearing. If a juvenile violates the
8 conditions of probation, the juvenile and the juvenile's parent, guardian, or custodian
9 after notice may be required to appear before the court and the court may make any
10 disposition of the matter authorized by this Subchapter. At the end of or at any time
11 during probation, the court may terminate probation by written order upon finding
12 that there is no further need for supervision. The finding and order terminating
13 probation may be entered in chambers in the absence of the juvenile and may be
14 based on a report from the court counselor or, at the election of the court, the order
15 may be entered with the juvenile present after notice and a hearing.

16 **"§ 7B-2508. Dispositional order.**

17 The dispositional order shall be in writing and shall contain appropriate findings of
18 fact and conclusions of law. The court shall state with particularity, both orally and in
19 the written order of disposition, the precise terms of the disposition including the
20 kind, duration, and the person who is responsible for carrying out the disposition and
21 the person or agency in whom custody is vested.

22 **"§ 7B-2509. Commitment of delinquent juvenile to Department.**

23 (a) Pursuant to G.S. 7B-2504 and G.S. 7B-2505, the court may commit a
24 delinquent juvenile who is at least 10 years of age to the Department for placement in
25 one of the residential facilities operated by the Department. Commitment shall be for
26 a definite or indefinite term of at least six months. In no event shall the term exceed
27 the nineteenth birthday of the juvenile.

28 (b) The court may commit a juvenile to a definite term of not more than two
29 years if the court finds that the juvenile is 14 years of age or older, has been
30 previously adjudicated delinquent for two or more felony offenses, and has been
31 previously committed to a residential facility operated by the Department.

32 (c) The chief court counselor shall have the responsibility for transporting the
33 juvenile to the residential facility designated by the Department. The juvenile shall be
34 accompanied to the residential facility by a person of the same sex.

35 (d) The chief court counselor shall ensure that the records requested by the
36 Secretary or the Secretary's designee accompany the juvenile upon transportation for
37 admittance to a training school or, if not obtainable at the time of admission, are sent
38 to the training school within 15 days of the admission. If records requested by the
39 Department for admission do not exist, to the best knowledge of the chief court
40 counselor, the chief court counselor shall so stipulate in writing to the training school.
41 If such records do exist, but the chief court counselor is unable to obtain copies of
42 them, a district court may order that the records from public agencies be made
43 available to the training school. Records that are confidential by law shall remain
44 confidential and the Department shall be bound by the specific laws governing the

1 confidentiality of these records. All records shall be used in a manner consistent with
2 the best interests of the juvenile.

3 (e) A commitment order accompanied by information requested by the Secretary
4 shall be forwarded to the Department. The Secretary shall place the juvenile in the
5 residential facility that would best provide for the juvenile's needs and shall notify the
6 committing court. The Secretary may assign a juvenile committed for delinquency to
7 any institution or other program of the Department or licensed by the Department,
8 which program is appropriate to the needs of the juvenile.

9 (f) When the court commits a juvenile to the Department, the Secretary shall
10 prepare a plan for care or treatment within 30 days after assuming custody of the
11 juvenile.

12 (g) Commitment of a juvenile to the Department does not terminate the court's
13 continuing jurisdiction over the juvenile and the juvenile's parent, guardian, or
14 custodian. Commitment of a juvenile to the Department transfers only physical
15 custody of the juvenile. Legal custody remains with the parent, guardian, custodian,
16 agency, or institution in whom it was vested.

17 (h) Pending placement of a juvenile with the Department, the court may house a
18 juvenile who has been adjudicated delinquent for an offense that would be a Class A,
19 B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72
20 hours if the court, based on the information provided by the court counselor,
21 determines that no acceptable alternative placement is available and the protection of
22 the public requires that the juvenile be housed in a holdover facility.

23 "§ 7B-2510. Post-release supervision planning; release.

24 (a) The Secretary shall be responsible for evaluation of the progress of each
25 juvenile at least once every six months as long as the juvenile remains in the care of
26 the Department. If the Secretary determines that a juvenile is ready for release, the
27 Secretary shall initiate a post-release supervision planning process. The post-release
28 supervision planning process shall be defined by rules and regulations of the
29 Department, but shall include the following:

30 (1) Written notification shall be given to the court that ordered
31 commitment.

32 (2) A post-release supervision planning conference shall be held
33 involving as many as possible of the following: the juvenile, the
34 juvenile's parent, guardian, or custodian, court counselors who
35 have supervised the juvenile on probation or will supervise the
36 juvenile on post-release supervision, and staff of the facility that
37 found the juvenile ready for release. The planning conference shall
38 include personal contact and evaluation rather than telephonic
39 notification.

40 (3) The planning conference participants shall consider, based on the
41 individual needs of the juvenile and pursuant to rules adopted by
42 the Department, placement of the juvenile in any program under
43 the auspices of the Department, including the Community-Based
44 Alternatives programs, that, in the judgment of the Department,

1 may serve as a transitional placement, pending release under G.S.
2 7B-2512.

3 (b) The Department shall develop the plan in writing and base the terms on the
4 needs of the juvenile and the protection of the public. Every plan shall require the
5 juvenile to complete at least 90 days of post-release supervision.

6 (c) The Department shall release a juvenile under a plan of post-release
7 supervision at least 90 days prior to the later of:

8 (1) Completion of the juvenile's definite term of commitment; or

9 (2) If the juvenile is committed for an indefinite term, either on the
10 juvenile's eighteenth birthday if no motion for extended
11 jurisdiction has been filed pursuant to G.S. 7B-2513 or on the
12 juvenile's nineteenth birthday.

13 (d) Notwithstanding Articles 30 and 31 of Subchapter III of this Chapter, before
14 the court releases a juvenile who is serving a commitment for a Class A or B1 felony
15 to post-release supervision, the Department shall notify, at least 45 days in advance of
16 the scheduled release date, by first-class mail at the last known address:

17 (1) The juvenile;

18 (2) The juvenile's parent, guardian, or custodian;

19 (3) The district attorney of the district where the juvenile was
20 adjudicated;

21 (4) The head law enforcement agency that took the juvenile into
22 custody; and

23 (5) The victim and any of the victim's immediate family members who
24 have requested in writing to be notified.

25 The notification shall include only the juvenile's name, offense, date of
26 commitment, and date of consideration for release. A copy of the notice shall be
27 placed in the juvenile's file.

28 (e) The Department may release a juvenile under an indefinite commitment to
29 post-release supervision only after the juvenile has been committed for a period of at
30 least six months.

31 (f) A juvenile committed to the Department for a definite term shall receive credit
32 toward that term for the time the juvenile spends on post-release supervision.

33 **"§ 7B-2511. Revocation of post-release supervision.**

34 If a juvenile fails to complete the terms of post-release supervision, the court
35 counselor providing post-release supervision may make a motion for review in the
36 court in the district where the juvenile has been residing during post-release
37 supervision. The court shall hold a hearing to determine whether there has been a
38 violation. With respect to any hearing pursuant to this section, the juvenile:

39 (1) Shall have reasonable notice in writing of the nature and content
40 of the allegations in the motion, including notice that the purpose
41 of the hearing is to determine whether the juvenile has violated the
42 terms of post-release supervision to the extent that post-release
43 supervision should be revoked;

44 (2) Shall be represented by an attorney at the hearing;

1 (3) Shall have the right to confront and cross-examine any persons
2 who have made allegations against the juvenile; and

3 (4) May admit, deny, or explain the violation alleged and may present
4 proof, including affidavits or other evidence, in support of the
5 juvenile's contentions. A record of the proceeding shall be made
6 and preserved in the juvenile's record.

7 If the court determines that the juvenile has violated the terms of post-release
8 supervision, the court may revoke the post-release supervision or make any other
9 disposition authorized by this Subchapter.

10 If the court revokes the post-release supervision, the chief court counselor shall
11 have the responsibility for returning the juvenile to the facility specified by the
12 Department.

13 "§ 7B-2512. Final discharge.

14 (a) The Department shall release a juvenile only after the juvenile completes post-
15 release supervision or when the juvenile is released to the Department of Correction
16 pursuant to G.S. 15A-1340.16B.

17 (b) Notwithstanding the provisions of this section, in no event shall a juvenile
18 remain committed after the juvenile's eighteenth birthday except pursuant to G.S.
19 7B-2513.

20 "§ 7B-2513. Extended jurisdiction under certain circumstances; review hearing.

21 (a) By order of the court, juvenile court jurisdiction over a juvenile may be
22 extended past the age of 18 years until the person reaches the person's nineteenth
23 birthday. The provisions of this Subchapter shall apply to any person under the
24 jurisdiction of the juvenile court pursuant to this section, regardless of whether the
25 term 'person' or 'juvenile' is used in the provision.

26 (b) When the chief court counselor, or the Department if the juvenile is committed
27 to the Department, determines a juvenile should remain under the jurisdiction of the
28 court for a period of time after the age of 18 years, the chief court counselor or
29 Department shall file a motion for a review hearing in the judicial district where the
30 juvenile was adjudicated. This motion shall be filed at least 180 days prior to the
31 eighteenth birthday of the juvenile. The chief court counselor or Department shall
32 notify the juvenile, the juvenile's attorney, and the juvenile's parent, guardian, or
33 custodian in writing of the date and time of the scheduled hearing at least 10 days
34 prior to the scheduled hearing date.

35 (c) Within 30 days after the motion is filed, the court shall conduct a review
36 hearing to determine whether the juvenile shall remain under the jurisdiction of the
37 court. The court counselor and the prosecutor shall attend the hearing and, if the
38 court requests, present testimony or evidence as to whether the juvenile continues to
39 be in need of and can benefit from further treatment or services.

40 (d) In determining whether to order that the juvenile remain under the
41 jurisdiction of the court, the court shall consider:

42 (1) The recommendation of the chief court counselor or the Secretary
43 based on the juvenile's progress;

1 (2) The likelihood that continued jurisdiction will lead to further
2 rehabilitation;

3 (3) The safety and protection of the facility's juvenile population, if
4 applicable; and

5 (4) The protection of the public.

6 (e) If the court orders the juvenile remain under the jurisdiction of the court and
7 the juvenile is committed to the Department, commitment shall be for a definite term
8 or an indefinite term not to exceed the nineteenth birthday of the person.

9 (f) The Secretary shall modify the plan for care or treatment of the juvenile
10 prepared pursuant to G.S. 7B-2509.

11 **"§ 7B-2514. Transfer authority of Governor.**

12 The Governor may order transfer of any person less than 18 years of age from any
13 jail or penal facility of the State to one of the residential facilities operated by the
14 Department in appropriate circumstances, provided the Governor shall consult with
15 the Department concerning the feasibility of the transfer in terms of available space,
16 staff, and suitability of program.

17 When an inmate, committed to the Department of Correction, is transferred by the
18 Governor to a residential program operated by the Department, the Department may
19 release the juvenile based on the needs of the juvenile and the best interests of the
20 State. Transfer shall not divest the probation or parole officer of the officer's
21 responsibility to supervise the inmate on release.

22 **"ARTICLE 26.**

23 **"Modification and Enforcement of Dispositional Orders; Appeals.**

24 **"§ 7B-2600. Authority to modify or vacate.**

25 (a) Upon motion in the cause or petition, and after notice, the court may conduct
26 a review hearing to determine whether the order of the court is in the best interests
27 of the juvenile, and the court may modify or vacate the order in light of changes in
28 circumstances or the needs of the juvenile.

29 (b) In a case of delinquency, the court may reduce the nature or the duration of
30 the disposition on the basis that it was imposed in an illegal manner or is unduly
31 severe with reference to the seriousness of the offense, the culpability of the juvenile,
32 or the dispositions given to juveniles convicted of similar offenses.

33 (c) In any case where the court finds the juvenile to be delinquent or
34 undisciplined, the jurisdiction of the court to modify any order or disposition made in
35 the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile
36 reaches the age of 19 years, if the court has extended jurisdiction, or (iii) until
37 terminated by order of the court.

38 **"§ 7B-2601. Request for modification for lack of suitable services.**

39 If the Secretary finds that any juvenile committed to the Department's care is not
40 suitable for its program, the Secretary may make a motion in the cause so that the
41 court may make an alternative disposition that is consistent with G.S. 7B-2505.

42 **"§ 7B-2602. Right to appeal.**

43 Upon motion of a proper party as defined in G.S. 7B-2603, review of any final
44 order of the court in a juvenile matter under this Article shall be before the Court of

1 Appeals. Notice of appeal shall be given in open court at the time of the hearing or
2 in writing within 10 days after entry of the order. However, if no disposition is made
3 within 60 days after entry of the order, written notice of appeal may be given within
4 70 days after such entry. A final order shall include:

- 5 (1) Any order finding absence of jurisdiction;
- 6 (2) Any order which in effect determines the action and prevents a
7 judgment from which appeal might be taken;
- 8 (3) Any order of disposition after an adjudication that a juvenile is
9 delinquent or undisciplined; or
- 10 (4) Any order modifying custodial rights.

11 **"§ 7B-2603. Proper parties for appeal.**

12 An appeal may be taken by the juvenile, the juvenile's parent, guardian, or
13 custodian, or the State or county agency. The State's appeal is limited to the
14 following orders in delinquency or undisciplined cases:

- 15 (1) An order finding a State statute to be unconstitutional; and
- 16 (2) Any order which terminates the prosecution of a petition by
17 upholding the defense of double jeopardy, by holding that a cause
18 of action is not stated under a statute, or by granting a motion to
19 suppress.

20 **"§ 7B-2604. Disposition pending appeal.**

21 Pending disposition of an appeal, the release of the juvenile, with or without
22 conditions, should issue in every case unless the court orders otherwise. For
23 compelling reasons which must be stated in writing, the court may enter a temporary
24 order affecting the custody or placement of the juvenile as the court finds to be in the
25 best interests of the juvenile or the State.

26 **"§ 7B-2605. Disposition after appeal.**

27 Upon the affirmation of the order of adjudication or disposition of the court by the
28 Court of Appeals or by the Supreme Court in the event of an appeal, the court shall
29 have authority to modify or alter the original order of adjudication or disposition as
30 the court finds to be in the best interests of the juvenile to reflect any adjustment
31 made by the juvenile or change in circumstances during the period of time the appeal
32 was pending. If the modifying order is entered ex parte, the court shall give notice to
33 interested parties to show cause within 10 days thereafter as to why the modifying
34 order should be vacated or altered.

35 **"ARTICLE 27.**

36 **"Authority Over Parents of Juveniles**
37 **Adjudicated Delinquent or Undisciplined.**

38 **"§ 7B-2700. Appearance in court.**

39 (a) The parent, guardian, or custodian of a juvenile under the jurisdiction of the
40 juvenile court shall attend the hearings of which the parent, guardian, or custodian
41 receives notice. The court may excuse the appearance of either or both parents or
42 the guardian or custodian at subsequent hearings. Unless so excused, the willful
43 failure of a parent, guardian, or custodian to attend a hearing of which the parent,
44 guardian, or custodian has notice shall be grounds for contempt.

1 (b) No employer may discharge or demote any employee because the employee is
2 required to appear in court pursuant to this section. Any employer who violates any
3 provision of this section shall be liable in a civil action for reasonable damages
4 suffered by an employee as a result of the violation, and an employee discharged or
5 demoted in violation of this section shall be entitled to be reinstated to the
6 employee's former position. The burden of proof shall be upon the employee. The
7 statute of limitations for actions under this section shall be one year pursuant to G.S.
8 1-54.

9 "§ 7B-2701. Parental responsibility classes.

10 The court may order the parent of a juvenile who has been adjudicated
11 undisciplined or delinquent to attend parental responsibility classes if those classes
12 are available in the judicial district in which the parent resides.

13 "§ 7B-2702. Medical, surgical, psychiatric, or psychological evaluation or treatment of
14 juvenile or parent.

15 (a) If the court orders medical, surgical, psychiatric, psychological, or other
16 evaluation or treatment pursuant to G.S. 7B-2500.2, the court may order the parent
17 or other responsible parties to pay the cost of the treatment or care ordered.

18 (b) At the dispositional hearing or a subsequent hearing, if the court finds that it
19 is in the best interests of the juvenile for the parent, guardian, or custodian to be
20 directly involved in the juvenile's evaluation or treatment, the court may order that
21 person to participate in medical, psychiatric, psychological, or other evaluation or
22 treatment of the juvenile. The cost of the evaluation or treatment shall be paid
23 pursuant to G.S. 7B-2500.2.

24 (c) At the dispositional hearing or a subsequent hearing, the court may determine
25 whether the best interests of the juvenile require that the parent, guardian, or
26 custodian undergo psychiatric, psychological, or other evaluation or treatment or
27 counseling directed toward remedying behaviors or conditions that led to or
28 contributed to the juvenile's adjudication or to the court's decision to remove custody
29 of the juvenile from the parent, guardian, or custodian. If the court finds that the best
30 interests of the juvenile require the parent, guardian, or custodian undergo evaluation
31 or treatment, it may order that person to comply with a plan of evaluation or
32 treatment approved by the court or condition legal custody or physical placement of
33 the juvenile with the parent, guardian, or custodian upon that person's compliance
34 with the plan of evaluation or treatment.

35 (d) In cases in which the court has ordered the parent of the juvenile, rather than
36 a guardian or custodian, to comply with or undergo evaluation or treatment, the
37 court may order the parent to pay the cost of evaluation or treatment ordered
38 pursuant to this subsection. In cases in which the court has conditioned legal custody
39 or physical placement of the juvenile with the parent upon the parent's compliance
40 with a plan of evaluation or treatment, the court may charge the cost of the
41 evaluation or treatment to the county of the juvenile's residence if the court finds the
42 parent is unable to pay the cost of the evaluation or treatment. In all other cases, if
43 the court finds the parent is unable to pay the cost of the evaluation or treatment
44 ordered pursuant to this subsection, the court may order the parent to receive

1 evaluation or treatment currently available from the area mental health program that
2 serves the parent's catchment area.

3 **"§ 7B-2703. Compliance with orders of court.**

4 (a) The court may order the parent, guardian, or custodian, to the extent that
5 person is able to do so, to provide transportation for a juvenile to keep an
6 appointment with a court counselor or to comply with other orders of the court.

7 (b) The court may order a parent, guardian, or custodian to cooperate with and
8 assist the juvenile in complying with the terms and conditions of probation or other
9 orders of the court.

10 **"§ 7B-2704. Payment of support or other expenses; assignment of insurance coverage.**

11 At the dispositional hearing or a subsequent hearing, if the court finds that the
12 parent is able to do so, the court may order the parent to:

13 (1) Pay a reasonable sum that will cover in whole or in part the
14 support of the juvenile. If the court requires the payment of child
15 support, the amount of the payments shall be determined as
16 provided in G.S. 50-13.4;

17 (2) Pay a fee for probation supervision or residential facility costs;

18 (3) Assign private insurance coverage to cover medical costs while the
19 juvenile is in secure detention, training school, or other out-of-
20 home placement; and

21 (4) Pay court-appointed attorneys' fees.

22 If the court places a juvenile in the custody of a county department of social services
23 and if the court finds that the parent is unable to pay the cost of the support required
24 by the juvenile, the cost shall be paid by the county department of social services in
25 whose custody the juvenile is placed, provided the juvenile is not receiving care in an
26 institution owned or operated by the State or federal government or any subdivision
27 thereof.

28 **"§ 7B-2705. Contempt for failure to comply.**

29 Upon motion of the court counselor or prosecutor or upon the court's own
30 motion, the court may issue an order directing the parent, guardian, or custodian to
31 appear and show cause why the parent, guardian, or custodian should not be found
32 or held in civil or criminal contempt for willfully failing to comply with an order of
33 the court. Chapter 5A of the General Statutes shall govern contempt proceedings
34 initiated pursuant to this Article.

35 **"ARTICLE 28.**

36 **"Interstate Compact on Juveniles.**

37 **"§ 7B-2800. Execution of Compact.**

38 The Governor is hereby authorized and directed to execute a Compact on behalf
39 of this State with any other state or states legally joining therein in the form
40 substantially as follows: The contracting states solemnly agree.

41 **"§ 7B-2801. Findings and purposes.**

42 Juveniles who are not under proper supervision and control, or who have
43 absconded, escaped, or run away, are likely to endanger their own health, morals,
44 and welfare, and the health, morals, and welfare of others. The cooperation of the

1 states party to this Compact is therefore necessary to provide for the welfare and
2 protection of juveniles and of the public with respect to:

- 3 (1) Cooperative supervision of delinquent juveniles on probation or
4 parole;
- 5 (2) The return, from one state to another, of delinquent juveniles who
6 have escaped or absconded;
- 7 (3) The return, from one state to another, of nondelinquent juveniles
8 who have run away from home; and
- 9 (4) Additional measures for the protection of juveniles and of the
10 public, which any two or more of the party states may find
11 desirable to undertake cooperatively.

12 In carrying out the provisions of this Compact, the party states shall be guided by
13 the noncriminal, reformatory, and protective policies which guide their laws
14 concerning delinquent, neglected, or dependent juveniles generally. It shall be the
15 policy of the states party to this Compact to cooperate and observe their respective
16 responsibilities for the prompt return and acceptance of juveniles and delinquent
17 juveniles who become subject to the provisions of this Compact. The provisions of
18 this Compact shall be reasonably and liberally construed to accomplish the foregoing
19 purposes.

20 **"§ 7B-2802. Existing rights and remedies.**

21 All remedies and procedures provided by this Compact are in addition to and not
22 in substitution for other rights, remedies, and procedures and are not in derogation of
23 parental rights and responsibilities.

24 **"§ 7B-2803. Definitions.**

25 For the purposes of this Compact, 'delinquent juvenile' means any juvenile who
26 has been adjudged delinquent and who, at the time the provisions of this Compact
27 are invoked, is still subject to the jurisdiction of the court that has made adjudication
28 or to the jurisdiction or supervision of an agency or institution pursuant to an order
29 of the court; 'probation or parole' means any kind of post-release supervision of
30 juveniles authorized under the laws of the states party hereto; 'court' means any court
31 having jurisdiction over delinquent, neglected, or dependent children; 'state' means
32 any state, territory, or possession of the United States, the District of Columbia, and
33 the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a
34 place at which a home or regular place of abode is maintained.

35 **"§ 7B-2804. Return of runaways.**

36 (a) The parent, guardian, person, or agency entitled to legal custody of a juvenile
37 who has not been adjudged delinquent but who has run away without the consent of
38 the parent, guardian, person, or agency may petition the appropriate court in the
39 demanding state for the issuance of a requisition for the juvenile's return. The
40 petition shall state the name and age of the juvenile, the name of the petitioner and
41 the basis of entitlement to the juvenile's custody, the circumstances of the running
42 away, the juvenile's location if known at the time application is made, and any other
43 facts that may tend to show that the juvenile who has run away is endangering the
44 juvenile's own welfare or the welfare of others and is not an emancipated minor. The

1 petition shall be verified by affidavit, shall be executed in duplicate, and shall be
2 accompanied by two certified copies of the document or documents on which the
3 petitioner's entitlement to the juvenile's custody is based, such as birth certificates,
4 letters of guardianship, or custody decrees. Any further affidavits and other
5 documents as may be deemed proper may be submitted with the petition. The judge
6 of the court to which this application is made may hold a hearing thereon to
7 determine whether for the purposes of this Compact the petitioner is entitled to the
8 legal custody of the juvenile, whether or not it appears that the juvenile has in fact
9 run away without consent, whether or not the juvenile is an emancipated minor, and
10 whether or not it is in the best interests of the juvenile to compel the juvenile's return
11 to the state. If the judge determines, either with or without a hearing, that the
12 juvenile should be returned, the judge shall present to the appropriate court or to the
13 executive authority of the state where the juvenile is alleged to be located a written
14 requisition for the return of the juvenile. The requisition shall set forth the name and
15 age of the juvenile, the determination of the court that the juvenile has run away
16 without the consent of a parent, guardian, person, or agency entitled to legal custody,
17 and that it is in the best interests and for the protection of the juvenile that the
18 juvenile be returned. In the event that a proceeding for the adjudication of the
19 juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at
20 the time when the juvenile runs away, the court may issue a requisition for the return
21 of the juvenile upon its own motion, regardless of the consent of the parent, guardian,
22 person, or agency entitled to legal custody, reciting therein the nature and
23 circumstances of the pending proceeding. The requisition shall in every case be
24 executed in duplicate and shall be signed by the judge. One copy of the requisition
25 shall be filed with the Compact Administrator of the demanding state, there to
26 remain on file subject to the provisions of law governing records of the court. Upon
27 the receipt of a requisition demanding the return of a juvenile who has run away, the
28 court or the executive authority to whom the requisition is addressed shall issue an
29 order to any peace officer or other appropriate person directing that person to take
30 into custody and detain the juvenile. The detention order must substantially recite the
31 facts necessary to the validity of its issuance hereunder. No juvenile detained upon
32 the order shall be delivered over to the officer whom the court has appointed to
33 receive the juvenile unless the juvenile first is taken before a judge of a court in the
34 state, who shall inform the juvenile of the demand made for the juvenile's return, and
35 who may appoint counsel or guardian ad litem for the juvenile. If the court finds that
36 the requisition is in order, the court shall deliver the juvenile over to the officer
37 appointed to receive the juvenile by the court demanding the juvenile. The court,
38 however, may fix a reasonable time to be allowed for the purpose of testing the
39 legality of the proceeding.

40 Upon reasonable information that a person is a juvenile who has run away from
41 another state party to this Compact without the consent of a parent, guardian, person,
42 or agency entitled to legal custody, the juvenile may be taken into custody without a
43 requisition and brought before a judge of the appropriate court who may appoint
44 counsel or guardian ad litem for the juvenile and who shall determine after a hearing

1 whether sufficient cause exists to hold the person, subject to the order of the court,
2 for the juvenile's own protection and welfare, for such a time not exceeding 90 days
3 as will enable the return of the juvenile to another state party to this Compact
4 pursuant to a requisition for return from a court of that state. If, at the time when a
5 state seeks the return of a juvenile who has run away, there is pending in the state
6 wherein the juvenile is found, any criminal charge, or any proceeding to have the
7 juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the
8 juvenile is suspected of having committed within the state a criminal offense or an act
9 of juvenile delinquency, the juvenile shall not be returned without the consent of the
10 state until discharged from prosecution or other form of proceeding, imprisonment,
11 detention, or supervision for the offense or juvenile delinquency. The duly accredited
12 officers of any state party to this Compact, upon the establishment of their authority
13 and the identity of the juvenile being returned, shall be permitted to transport the
14 juvenile through any and all states party to this Compact, without interference. Upon
15 return of the juvenile to the state from which the juvenile ran away, the juvenile shall
16 be subject to such further proceedings as may be appropriate under the laws of that
17 state.

18 (b) The state to which the juvenile is returned under this Article shall be
19 responsible for payment of the transportation costs of return.

20 (c) The term 'juvenile' as used in this Article means any person who is a minor
21 under the law of the state of residence of the parent, guardian, person, or agency
22 entitled to the legal custody of the minor.

23 **"§ 7B-2805. Return of escapees and absconders.**

24 (a) The appropriate person or authority from whose probation or parole
25 supervision a delinquent juvenile has absconded or from whose institutional custody a
26 delinquent juvenile has escaped shall present to the appropriate court or to the
27 executive authority of the state where the delinquent juvenile is alleged to be located
28 a written requisition for the return of the delinquent juvenile. The requisition shall
29 state the name and age of the delinquent juvenile, the particulars of the juvenile's
30 adjudication as a delinquent juvenile, the circumstances of the breach of the terms of
31 probation or parole or of the juvenile's escape from an institution or agency vested
32 with legal custody or supervision, and the location of the delinquent juvenile, if
33 known, at the time the requisition is made. The requisition shall be verified by
34 affidavit, shall be executed in duplicate, and shall be accompanied by two certified
35 copies of the judgment, formal adjudication, or order of commitment which subjects
36 the delinquent juvenile to probation or parole or to the legal custody of the
37 institution or agency concerned. Any further affidavits and documents as may be
38 deemed proper may be submitted with the requisition. One copy of the requisition
39 shall be filed with the Compact Administrator of the demanding state, there to
40 remain on file subject to the provisions of the law governing records of the
41 appropriate court. Upon the receipt of a requisition demanding the return of a
42 delinquent juvenile who has absconded or escaped, the court or the executive
43 authority to whom the requisition is addressed shall issue an order to any peace
44 officer or other appropriate person directing the person to take into custody and

1 detain such delinquent juvenile. The detention order must substantially recite the
2 facts necessary to the validity of its issuance hereunder. No delinquent juvenile
3 detained upon the order shall be delivered over to the officer whom the appropriate
4 person or authority demanding the juvenile has appointed to receive the juvenile,
5 unless the juvenile is first taken forthwith before a judge of an appropriate court in
6 the state, who shall inform the juvenile of the demand made for the return and who
7 may appoint counsel or guardian ad litem for the juvenile. If the judge of the court
8 finds that the requisition is in order, the judge shall deliver the delinquent juvenile
9 over to the officer whom the appropriate person or authority demanding the juvenile
10 appointed to receive the juvenile. The judge, however, may fix a reasonable time to
11 be allowed for the purpose of testing the legality of the proceeding.

12 Upon reasonable information that a person is a delinquent juvenile who has
13 absconded while on probation or parole, or escaped from an institution or agency
14 vested with legal custody or supervision in any state party to this Compact, the
15 person may be taken into custody in any other state party to this Compact without a
16 requisition. But in that event, the juvenile shall be taken forthwith before a judge of
17 the appropriate court, who may appoint counsel or guardian ad litem for the person
18 and who shall determine after a hearing, whether sufficient cause exists to hold the
19 person subject to the order of the court for a length of time, not exceeding 90 days, as
20 will enable detention of the juvenile under a detention order issued on a requisition
21 pursuant to this Article. If, at the time when a state seeks the return of a delinquent
22 who has either absconded while on probation or parole or escaped from an
23 institution or agency vested with legal custody or supervision, there is pending in the
24 state wherein the juvenile is detained any criminal charge or any proceeding to have
25 the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if
26 the juvenile is suspected of having committed a criminal offense or an act of juvenile
27 delinquency within the state, the juvenile shall not be returned without the consent of
28 the state until discharged from prosecution or other form of proceeding,
29 imprisonment, detention, or supervision for the offense or juvenile delinquency. The
30 duly accredited officers of any state party to this Compact, upon the establishment of
31 their authority and the identity of the delinquent juvenile being returned, shall be
32 permitted to transport the delinquent juvenile through any and all states party to this
33 Compact, without interference. Upon return to the state from which the juvenile
34 escaped or absconded, the delinquent juvenile shall be subject to any further
35 proceedings appropriate under the laws of that state.

36 (b) The state to which a delinquent juvenile is returned under this Article shall be
37 responsible for the payment of transportation costs of the return.

38 **"§ 7B-2806. Voluntary return procedure.**

39 Any delinquent juvenile who has absconded while on probation or parole, or
40 escaped from an institution or agency vested with legal custody or supervision in any
41 state party to this Compact, and any juvenile who has run away from any state party
42 to this Compact, who is taken into custody without a requisition in another state
43 party to this Compact under the provisions of G.S. 7B-2804(a) or G.S. 7B-2805(a),
44 may consent to the immediate return of the juvenile to the state from which the

1 juvenile absconded, escaped, or ran away. Consent shall be given by the juvenile or
2 delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, by
3 executing or subscribing a writing in the presence of a judge of the appropriate court,
4 which states that the juvenile or delinquent juvenile and the juvenile's counsel or
5 guardian ad litem, if any, consent to return of the juvenile to the demanding state.
6 Before consent is executed or subscribed, however, the judge, in the presence of
7 counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile
8 of the juvenile's rights under this Compact. When the consent has been duly
9 executed, it shall be forwarded to and filed with the Compact Administrator of the
10 state in which the court is located, and the judge shall direct the officer having the
11 juvenile or delinquent juvenile in custody to deliver the juvenile to the duly
12 accredited officer or officers of the state demanding return of the juvenile and shall
13 cause to be delivered to the officer or officers a copy of the consent. The court may,
14 however, upon the request of the state to which the juvenile or delinquent juvenile is
15 being returned, order the juvenile to return unaccompanied to the state and shall
16 provide the juvenile with a copy of the court order; in that event a copy of the
17 consent shall be forwarded to the Compact Administrator of the state to which the
18 juvenile or delinquent juvenile is ordered to return.

19 **"§ 7B-2807. Cooperative supervision of probationers and parolees.**

20 (a) That the duly constituted judicial and administrative authorities of a state party
21 to this Compact (herein called 'sending state') may permit any delinquent juvenile
22 within such state, placed on probation or parole, to reside in any other state party to
23 this Compact (herein called 'receiving state') while on probation or parole, and the
24 receiving state shall accept the delinquent juvenile, if the parent, guardian, or person
25 entitled to the legal custody of the delinquent juvenile is residing or undertakes to
26 reside within the receiving state. Before granting permission, opportunity shall be
27 given to the receiving state to make investigations as it deems necessary. The
28 authorities of the sending state shall send to the authorities of the receiving state
29 copies of pertinent court orders, social case studies, and all other available
30 information which may be of value to and assist the receiving state in supervising a
31 probationer or parolee under this Compact. A receiving state, in its discretion, may
32 agree to accept supervision of a probationer or parolee in cases where the parent,
33 guardian, or person entitled to the legal custody of the delinquent juvenile is not a
34 resident of the receiving state, and if so accepted, the sending state may transfer the
35 supervision accordingly.

36 (b) That each receiving state will assume the duties of visitation and of supervision
37 over any delinquent juvenile and in the exercise of those duties will be governed by
38 the same standards of visitation and supervision that prevail for its own delinquent
39 juveniles released on probation or parole.

40 (c) That, after consultation between the appropriate authorities of the sending state
41 and of the receiving state as to the desirability and necessity of returning the
42 delinquent juvenile, the duly accredited officers of a sending state may enter a
43 receiving state and there apprehend and retake any delinquent juvenile on probation
44 or parole. For that purpose, no formalities will be required other than establishing the

1 authority of the officer and the identity of the delinquent juvenile to be retaken and
2 returned. The decision of the sending state to retake a delinquent juvenile on
3 probation or parole shall be conclusive upon and not reviewable within the receiving
4 state, but if, at the time the sending state seeks to retake a delinquent juvenile on
5 probation or parole, there is pending against the juvenile within the receiving state
6 any criminal charge or any proceeding to have the juvenile adjudicated a delinquent
7 juvenile for any act committed in the state or if the juvenile is suspected of having
8 committed within the state a criminal offense or an act of juvenile delinquency, the
9 juvenile shall not be returned without the consent of the receiving state until
10 discharged from prosecution or other form of proceeding, imprisonment, detention,
11 or supervision for the offense or juvenile delinquency. The duly accredited officers of
12 the sending state shall be permitted to transport delinquent juveniles being so
13 returned through any and all states party to this Compact without interference.

14 (d) The sending state shall be responsible under this Article for paying the costs of
15 transporting any delinquent juvenile to the receiving state or of returning any
16 delinquent juvenile to the sending state.

17 **"§ 7B-2808. Responsibility for costs.**

18 (a) The provisions of G.S. 7B-2804(b), 7B-2805(b), and 7B-2807(d) shall not be
19 construed to alter or affect any internal relationship among the departments, agencies,
20 and officers of and in the government of a party state, or between a party state and its
21 subdivisions, as to the payment of costs or responsibilities therefor.

22 (b) Nothing in this Compact shall be construed to prevent any party state or
23 subdivision thereof from asserting any right against any person, agency, or other
24 entity in regard to costs for which such party state or subdivision thereof may be
25 responsible pursuant to G.S. 7B-2804(b), 7B-2805(b), and 7B-2807(d).

26 **"§ 7B-2809. Detention practices.**

27 To every extent possible, it shall be the policy of states party to this Compact that
28 no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or
29 lockup, nor be detained or transported in association with criminal, vicious, or
30 dissolute persons.

31 **"§ 7B-2810. Supplementary agreements.**

32 The duly constituted administrative authorities of a state party to this Compact
33 may enter into supplementary agreements with any other state or states party hereto
34 for the cooperative care, treatment, and rehabilitation of delinquent juveniles
35 whenever they find that the agreements will improve the facilities or programs
36 available for care, treatment, and rehabilitation. Care, treatment, and rehabilitation
37 may be provided in an institution located within any state entering into a
38 supplementary agreement. Supplementary agreements shall:

39 (1) Provide the rates to be paid for the care, treatment, and custody of
40 delinquent juveniles taking into consideration the character of
41 facilities, services, and subsistence furnished;

42 (2) Provide that the delinquent juvenile shall be given a court hearing
43 prior to the juvenile being sent to another state for care, treatment,
44 and custody;

- 1 (3) Provide that the state receiving a delinquent juvenile in one of its
2 institutions shall act solely as agent for the state sending the
3 delinquent juvenile;
4 (4) Provide that the sending state shall at all times retain jurisdiction
5 over delinquent juveniles sent to an institution in another state;
6 (5) Provide for reasonable inspection of the institutions by the sending
7 state;
8 (6) Provide that the consent of the parent, guardian, person, or agency
9 entitled to the legal custody of the delinquent juvenile shall be
10 secured prior to the juvenile being sent to another state; and
11 (7) Make provisions for any other matters and details as shall be
12 necessary to protect the rights and equities of delinquent juveniles
13 and of the cooperating states.

14 **"§ 7B-2811. Acceptance of federal and other aid.**

15 Any state party to this Compact may accept any and all donations, gifts, and grants
16 of money, equipment, and services from the federal or any local government, or any
17 agency thereof and from any person, firm, or corporation, for any of the purposes and
18 functions of this Compact, and may receive and utilize, the same subject to the terms,
19 conditions, and regulations governing such donations, gifts, and grants.

20 **"§ 7B-2812. Compact administrators.**

21 The governor of each state party to this Compact shall designate an officer who,
22 acting jointly with like officers of other party states, shall promulgate rules and
23 regulations to carry out more efficiently the terms and provisions of this Compact.

24 **"§ 7B-2813. Execution of Compact.**

25 This Compact shall become operative immediately upon its execution by any state
26 as between it and any other state or states so executing. When executed it shall have
27 the full force and effect of law within the state, the form of execution to be in
28 accordance with the laws of the executing state.

29 **"§ 7B-2814. Renunciation.**

30 This Compact shall continue in force and remain binding upon each executing
31 state until renounced by it. Renunciation of this Compact shall be by the same
32 authority which executed it, by sending six months' notice in writing of its intention
33 to withdraw from the Compact to the other states party hereto. The duties and
34 obligations of a renouncing state under G.S. 7B-2807 hereof shall continue as to
35 parolees and probationers residing therein at the time of withdrawal until retaken or
36 finally discharged. Supplementary agreements entered into under G.S. 7B-2810 hereof
37 shall be subject to renunciation as provided by supplementary agreements and shall
38 not be subject to the six months' renunciation notice of the present section.

39 **"§ 7B-2815. Severability.**

40 The provisions of this Compact shall be severable and if any phrase, clause,
41 sentence, or provision of this Compact is declared to be contrary to the constitution
42 of any participating state or of the United States or the applicability thereof to any
43 government, agency, person, or circumstances is held invalid, the validity of the
44 remainder of this Compact and the applicability thereof to any government, agency,

1 person, or circumstances shall not be affected thereby. If this Compact shall be held
2 contrary to the constitution of any state participating therein, the Compact shall
3 remain in full force and effect as to the remaining states and in full force and effect
4 as to the state affected as to all severable matters.

5 **"§ 7B-2816. Authority of Governor to designate Compact Administrator.**

6 Pursuant to said Compact, the Governor is hereby authorized and empowered to
7 designate an officer who shall be the Compact Administrator and who, acting jointly
8 with like officers of other party states, shall adopt rules and regulations to carry out
9 more effectively the terms of the Compact. The Compact Administrator shall serve
10 subject to the pleasure of the Governor. The Compact Administrator is hereby
11 authorized, empowered, and directed to cooperate with all departments, agencies,
12 and officers of and in the government of this State and its subdivisions in facilitating
13 the proper administration of the Compact or of any supplementary agreement or
14 agreements entered into by this State hereunder.

15 **"§ 7B-2817. Authority of Compact Administrator to enter into supplementary**
16 **agreements.**

17 The Compact Administrator is hereby authorized and empowered to enter into
18 supplementary agreements with appropriate officials of other states pursuant to the
19 Compact. In the event that the supplementary agreement shall require or contemplate
20 the use of any institution or facility of this State or require or contemplate the
21 provision of any service by this State, the supplementary agreement shall have no
22 force or effect until approved by the head of the department or agency under whose
23 jurisdiction said institution or facility is operated or whose department or agency will
24 be charged with the rendering of the service.

25 **"§ 7B-2818. Discharging financial obligations imposed by Compact or agreement.**

26 The Compact Administrator, subject to the approval of the Director of the Budget,
27 may make or arrange for any payments necessary to discharge any financial
28 obligations imposed upon this State by the Compact or by any supplementary
29 agreement entered into thereunder.

30 **"§ 7B-2819. Enforcement of Compact.**

31 The courts, departments, agencies, and officers of this State and subdivisions shall
32 enforce this Compact and shall do all things appropriate to the effectuation of its
33 purposes and intent which may be within their respective jurisdictions.

34 **"§ 7B-2820. Additional procedure for returning runaways not precluded.**

35 In addition to any procedure provided in G.S. 7B-2804 and G.S. 7B-2806 of the
36 Compact for the return of any runaway juvenile, the particular states, the juvenile or
37 the juvenile's parents, the courts, or other legal custodian involved may agree upon
38 and adopt any other plan or procedure legally authorized under the laws of this State
39 and the other respective party states for the return of any runaway juvenile.

40 **"§ 7B-2821. Proceedings for return of runaways under G.S. 7B-2804 of Compact;**
41 **'juvenile' construed.**

42 The judge of any court in North Carolina to which an application is made for the
43 return of a runaway under the provisions of G.S. 7B-2804 of the Interstate Compact
44 on Juveniles shall hold a hearing thereon to determine whether for the purposes of

1. the Compact the petitioner is entitled to the legal custody of the juvenile, whether or
2 not it appears that the juvenile has in fact run away without consent, whether or not
3 the juvenile is an emancipated minor and whether or not it is in the best interests of
4 the juvenile to compel the return of the juvenile to the state. The judge of any court
5 in North Carolina, finding that a requisition for the return of a juvenile under the
6 provisions of G.S. 7B-2804 of the Compact is in order, shall upon request fix a
7 reasonable time to be allowed for the purpose of testing the legality of the
8 proceeding. The period of time for holding a juvenile in custody under the provisions
9 of G.S. 7B-2804 of the Compact for the protection and welfare of the juvenile, subject
10 to the order of a court of this State, to enable the juvenile's return to another state
11 party to the Compact pursuant to a requisition for return from a court of that state,
12 shall not exceed 30 days. In applying the provisions of G.S. 7B-2804 of the Compact
13 to secure the return of a runaway from North Carolina, the courts of this State shall
14 construe the word 'juvenile' as used in this Article to mean any person who has not
15 reached the person's eighteenth birthday.

16 **"§ 7B-2822. Interstate parole and probation hearing procedures for juveniles.**

17 Where supervision of a parolee or probationer is being administered pursuant to
18 the Interstate Compact on Juveniles, the appropriate judicial or administrative
19 authorities in this State shall notify the Compact Administrator of the sending state
20 whenever, in their view, consideration should be given to retaking or reincarceration
21 for a parole or a probation violation. Prior to giving of notification, a hearing shall be
22 held in accordance with this Article within a reasonable time, unless the hearing is
23 waived by the parolee or probationer. The appropriate officer or officers of this State
24 shall, as soon as practicable, following termination of any hearing, report to the
25 sending state, furnish a copy of the hearing record, and make recommendations
26 regarding the disposition to be made of the parolee or probationer by the sending
27 state. Pending any proceeding pursuant to this section, the appropriate officers of this
28 State may take custody of and detain the parolee or probationer involved for a period
29 not to exceed 10 days prior to the hearing and, if it appears to the hearing officer or
30 officers that retaking or reincarceration is likely to follow, for a reasonable period
31 after the hearing or waiver as may be necessary to arrange for retaking or the
32 reincarceration.

33 **"§ 7B-2823. Hearing officers.**

34 Any hearing pursuant to this Article may be before the Administrator of the
35 Interstate Compact on Juveniles, a deputy of the Administrator, or any other person
36 authorized pursuant to the juvenile laws of this State to hear cases of alleged juvenile
37 parole or probation violations, except that no hearing officer shall be the person
38 making the allegation of violation.

39 **"§ 7B-2824. Due process at parole or probation violation hearing.**

40 With respect to any hearing pursuant to this Article, the parolee or probationer:

41 (1) Shall have reasonable notice in writing of the nature and content
42 of the allegations to be made, including notice that the purpose of
43 the hearing is to determine whether there is probable cause to

- 1 believe that the parolee or probationer has committed a violation
2 that may lead to a revocation of parole or probation;
3 (2) Shall be permitted to advise with any persons whose assistance the
4 parolee or probationer reasonably desires, prior to the hearing;
5 (3) Shall have the right to confront and examine any persons who
6 have made allegations against the parolee or probationer, unless
7 the hearing officer determines that confrontation would present a
8 substantial present or subsequent danger of harm to the person or
9 persons; and
10 (4) May admit, deny, or explain the violation alleged and may present
11 proof, including affidavits and other evidence, in support of the
12 parolee's or probationer's contentions.

13 A record of the proceedings shall be made and preserved.

14 **"§ 7B-2825. Effect of parole or probation violation hearing outside State.**

15 In any case of alleged parole or probation violation by a person being supervised
16 in another state pursuant to the Interstate Compact on Juveniles, any appropriate
17 judicial or administrative officer or agency in another state is authorized to hold a
18 hearing on the alleged violation. Upon receipt of the record of a parole or probation
19 violation hearing held in another state pursuant to a statute substantially similar to
20 this Article, such record shall have the same standing and effect as though the
21 proceeding of which it is a record was had before the appropriate officer or officers
22 in this State, and any recommendations contained in or accompanying the record
23 shall be fully considered by the appropriate officer or officers of this State in making
24 disposition of the matter.

25 **"§ 7B-2826. Amendment to Interstate Compact on Juveniles concerning interstate**
26 **rendition of juveniles alleged to be delinquent.**

27 (a) This amendment shall provide additional remedies and shall be binding only as
28 among and between those party states which specifically execute the same.

29 (b) All provisions and procedures of G.S. 7B-2805 and G.S. 7B-2806 of the
30 Interstate Compact on Juveniles shall be construed to apply to any juvenile charged
31 with being a delinquent by reason of a violation of any criminal law. Any juvenile,
32 charged with being a delinquent by reason of violating any criminal law, shall be
33 returned to the requesting state upon a requisition to the state where the juvenile may
34 be found. A petition in the case shall be filed in a court of competent jurisdiction in
35 the requesting state where the violation of criminal law is alleged to have been
36 committed. The petition may be filed regardless of whether the juvenile has left the
37 state before or after the filing of the petition. The requisition described in G.S. 7B-
38 2805 of the Compact shall be forwarded by the judge of the court in which the
39 petition has been filed.

40 **"§ 7B-2827. Out-of-State Confinement Amendment.**

41 (a) The Out-of-State Confinement Amendment to the Interstate Compact on
42 Juveniles is hereby enacted into law and entered into by this State with all other
43 states legally joining therein in the form substantially as follows:

- 1 (1) Whenever the fully constituted judicial or administrative
2 authorities in a sending state shall determine that confinement of a
3 probationer or reconfinement of a parolee is necessary or
4 desirable, the officials may direct that the confinement or
5 reconfinement be in an appropriate institution for delinquent
6 juveniles within the territory of the receiving state, the receiving
7 state to act in that regard solely as agent for the sending state.
- 8 (2) Escapees and absconders who would otherwise be returned
9 pursuant to G.S. 7B-2805 of the Compact may be confined or
10 reconfined in the receiving state pursuant to this amendment. In
11 any case in which the information and allegations are required to
12 be made and furnished in a requisition pursuant to G.S. 7B-2805,
13 the sending state shall request confinement or reconfinement in the
14 receiving state. Whenever applicable, detention orders, as provided
15 in G.S. 7B-2805, may be employed pursuant to this paragraph
16 preliminary to disposition of the escapee or absconder.
- 17 (3) The confinement or reconfinement of a parolee, probationer,
18 escapee, or absconder pursuant to this amendment shall require
19 the concurrence of the appropriate judicial or administrative
20 authorities of the receiving state.
- 21 (4) As used in this amendment: (i) 'sending state' means a sending
22 state as that term is used in G.S. 7B-2807 of the Compact or the
23 state from which a delinquent juvenile has escaped or absconded
24 within the meaning of G.S. 7B-2805 of the Compact; (ii) 'receiving
25 state' means any state, other than the sending state, in which a
26 parolee, probationer, escapee, or absconder may be found,
27 provided that the state is a party to this amendment.
- 28 (5) Every state which adopts this amendment shall designate at least
29 one of its institutions for delinquent juveniles as a 'Compact
30 Institution' and shall confine persons therein as provided in
31 subdivision (1) of this subsection unless the sending and receiving
32 state in question shall make specific contractual arrangements to
33 the contrary. All states party to this amendment shall have access
34 to 'Compact Institutions' at all reasonable hours for the purpose of
35 inspecting the facilities thereof and for the purpose of visiting such
36 of the State's delinquents as may be confined in the institution.
- 37 (6) Persons confined in 'Compact Institutions' pursuant to the terms of
38 this Compact shall at all times be subject to the jurisdiction of the
39 sending state and may at any time be removed from the 'Compact
40 Institution' for transfer to an appropriate institution within the
41 sending state, for return to probation or parole, for discharge, or
42 for any purpose permitted by the laws of the sending state.
- 43 (7) All persons who may be confined in a 'Compact Institution'
44 pursuant to the provisions of this amendment shall be treated in a

1 reasonable and humane manner. The fact of confinement or
2 reconfinement in a receiving state shall not deprive any person so
3 confined or reconfinement of any rights which the person would have
4 had if confined or reconfinement in an appropriate institution of the
5 sending state. No agreement to submit to confinement or
6 reconfinement pursuant to the terms of this amendment may be
7 construed as a waiver of any rights which the delinquent would
8 have had if the person had been confined or reconfinement in any
9 appropriate institution of the sending state, except that the hearing
10 or hearings, if any, to which a parolee, probationer, escapee, or
11 absconder may be entitled (prior to confinement or reconfinement)
12 by the laws of the sending state may be had before the appropriate
13 judicial or administrative officers of the receiving state. In this
14 event, said judicial and administrative officers shall act as agents of
15 the sending state after consultation with appropriate officers of the
16 sending state.

17 (8) Any receiving state incurring costs or other expenses under this
18 amendment shall be reimbursed in the amount of the costs or other
19 expenses by the sending state unless the states concerned shall
20 specifically otherwise agree. Any two or more states party to this
21 amendment may enter into supplementary agreements determining
22 a different allocation of costs as among themselves.

23 (9) This amendment shall take initial effect when entered into by any
24 two or more states party to the Compact and shall be effective as
25 to those states which have specifically enacted this amendment.
26 Rules and regulations necessary to effectuate the terms of this
27 amendment may be adopted by the appropriate officers of those
28 states which have enacted this amendment.

29 (b) In addition to any institution in which the authorities of this State may
30 otherwise confine or order the confinement of a delinquent juvenile, the authorities
31 may, pursuant to the Out-of-State Confinement Amendment to the Interstate
32 Compact on Juveniles, confine or order the confinement of a delinquent juvenile in a
33 Compact Institution within another party state.

34 "SUBCHAPTER III. JUVENILE RECORDS.

35 "ARTICLE 29.

36 "Records and Social Reports of Cases of Abuse,
37 Neglect, and Dependency.

38 "§ 7B-2900. Definitions.

39 The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this Subchapter.

40 "§ 7B-2901. Confidentiality of records.

41 (a) The clerk shall maintain a complete record of all juvenile cases filed in the
42 clerk's office alleging abuse, neglect, or dependency. The records shall be withheld
43 from public inspection and, except as provided in this subsection, may be examined
44 only by order of the court. The record shall include the summons, petition, custody

1 order, court order, written motions, the electronic or mechanical recording of the
2 hearing, and other papers filed in the proceeding. The recording of the hearing shall
3 be reduced to a written transcript only when notice of appeal has been timely given.
4 After the time for appeal has expired with no appeal having been filed, the recording
5 of the hearing may be erased or destroyed upon the written order of the court.

6 (b) The Director of the Department of Social Services shall maintain a record of
7 the cases of juveniles under protective custody by the Department or under
8 placement by the court, which shall include family background information; reports
9 of social, medical, psychiatric, or psychological information concerning a juvenile or
10 the juvenile's family; interviews with the juvenile's family; or other information which
11 the court finds should be protected from public inspection in the best interests of the
12 juvenile. The records maintained pursuant to this subsection may be examined only
13 by order of the court except that the guardian ad litem, or juvenile, shall have the
14 right to examine them.

15 (c) In the case of a child victim, the court may order the sharing of information
16 among such public agencies as the court deems necessary to reduce the trauma to the
17 child victim.

18 (d) The court's entire record of a proceeding involving consent for an abortion on
19 an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General
20 Statutes is not a matter of public record, shall be maintained separately from any
21 juvenile record, shall be withheld from public inspection, and may be examined only
22 by order of the court, by the unemancipated minor, or by the unemancipated minor's
23 attorney or guardian ad litem.

24 **"§ 7B-2902. Disclosure in child fatality or near fatality cases.**

25 (a) The following definitions apply in this section:

- 26 (1) Child fatality. -- The death of a child from suspected abuse,
27 neglect, or maltreatment.
- 28 (2) Findings and information. -- A written summary, as allowed by
29 subsections (c) through (f) of this section, of actions taken or
30 services rendered by a public agency following receipt of
31 information that a child might be in need of protection. The
32 written summary shall include any of the following information the
33 agency is able to provide:
- 34 a. The dates, outcomes, and results of any actions taken or
35 services rendered.
- 36 b. The results of any review by the State Child Fatality
37 Prevention Team, a local child fatality prevention team, a
38 local community child protection team, the Child Fatality
39 Task Force, or any public agency.
- 40 c. Confirmation of the receipt of all reports, accepted or not
41 accepted by the county department of social services, for
42 investigation of suspected child abuse, neglect, or
43 maltreatment, including confirmation that investigations
44 were conducted, the results of the investigations, a

1 description of the conduct of the most recent investigation
2 and the services rendered, and a statement of basis for the
3 department's decision.

4 (3) Near fatality. -- A case in which a physician determines that a child
5 is in serious or critical condition as the result of sickness or injury
6 caused by suspected abuse, neglect, or maltreatment.

7 (4) Public agency. -- Any agency of State government or its
8 subdivisions as defined in G.S. 132-1(a).

9 (b) Notwithstanding any other provision of law and subject to the provisions of
10 subsections (c) through (f) of this section, a public agency shall disclose to the public,
11 upon request, the findings and information related to a child fatality or near fatality
12 if:

13 (1) A person is criminally charged with having caused the child
14 fatality or near fatality; or

15 (2) The district attorney has certified that a person would be charged
16 with having caused the child fatality or near fatality but for that
17 person's prior death.

18 (c) Nothing herein shall be deemed to authorize access to the confidential records
19 in the custody of a public agency, or the disclosure to the public of the substance or
20 content of any psychiatric, psychological, or therapeutic evaluations or like materials
21 or information pertaining to the child or the child's family unless directly related to
22 the cause of the child fatality or near fatality, or the disclosure of information that
23 would reveal the identities of persons who provided information related to the
24 suspected abuse, neglect, or maltreatment of the child.

25 (d) Within five working days from the receipt of a request for findings and
26 information related to a child fatality or near fatality, a public agency shall consult
27 with the appropriate district attorney and provide the findings and information unless
28 the agency has a reasonable belief that release of the information:

29 (1) Is not authorized by subsections (a) and (b) of this section;

30 (2) Is likely to cause mental or physical harm or danger to a minor
31 child residing in the deceased or injured child's household;

32 (3) Is likely to jeopardize the State's ability to prosecute the defendant;

33 (4) Is likely to jeopardize the defendant's right to a fair trial;

34 (5) Is likely to undermine an ongoing or future criminal investigation;
35 or

36 (6) Is not authorized by federal law and regulations.

37 (e) Any person whose request is denied may apply to the appropriate superior
38 court for an order compelling disclosure of the findings and information of the public
39 agency. The application shall set forth, with reasonable particularity, factors
40 supporting the application. The superior court shall have jurisdiction to issue such
41 orders. Actions brought pursuant to this section shall be set down for immediate
42 hearing, and subsequent proceedings in such actions shall be accorded priority by the
43 appellate courts. After the court has reviewed the specific findings and information,

1 in camera, the court shall issue an order compelling disclosure unless the court finds
2 that one or more of the circumstances in subsection (d) of this section exist.

3 (f) Access to criminal investigative reports and criminal intelligence information
4 of public law enforcement agencies and confidential information in the possession of
5 the State Child Fatality Prevention Team, the local teams, and the Child Fatality
6 Task Force, shall be governed by G.S. 132-1.4 and G.S. 7B-1413 respectively.
7 Nothing herein shall be deemed to require the disclosure or release of any
8 information in the possession of a district attorney.

9 (g) Any public agency or its employees acting in good faith in disclosing or
10 declining to disclose information pursuant to this section shall be immune from any
11 criminal or civil liability that might otherwise be incurred or imposed for such action.

12 (h) Nothing herein shall be deemed to narrow or limit the definition of 'public
13 records' as set forth in G.S. 132-1(a).

14 "ARTICLE 30.

15 "Juvenile Records and Social Reports of
16 Delinquency and Undisciplined Cases.

17 "§ 7B-3000. Juvenile court records.

18 (a) The clerk shall maintain a complete record of all juvenile cases filed in the
19 clerk's office to be known as the juvenile record. The record shall include the
20 summons and petition, any secure or nonsecure custody order, any electronic or
21 mechanical recording of hearings, and any written motions, orders, or papers filed in
22 the proceeding.

23 (b) All juvenile records shall be withheld from public inspection and, except as
24 provided in this subsection, may be examined only by order of the court. Except as
25 provided in subsection (c) of this section, the following persons may examine the
26 juvenile's record and obtain copies of written parts of the record without an order of
27 the court:

28 (1) The juvenile and the juvenile's attorney;

29 (2) The juvenile's parent, guardian, or custodian, or authorized
30 representative;

31 (3) The prosecutor; and

32 (4) Court counselors.

33 Except as provided in subsection (c) of this section, law enforcement officers sworn in
34 this State may examine, but not photocopy, the juvenile's record without an order of
35 the court.

36 (c) The court may direct the clerk to 'seal' any portion of a juvenile's record.
37 The clerk shall secure any sealed portion of a juvenile record in an envelope clearly
38 marked 'SEALED; MAY BE EXAMINED ONLY BY ORDER OF THE COURT',
39 or with similar notice, and shall permit examination or copying of sealed portions of
40 a juvenile's record only pursuant to a court order specifically authorizing inspection
41 or copying.

42 (d) Any portion of a juvenile's record consisting of an electronic or mechanical
43 recording of a hearing shall be transcribed only when notice of appeal has been
44 timely given and shall be copied electronically or mechanically, only by order of the

1 court. After the time for appeal has expired with no appeal having been filed, the
2 court may enter a written order directing the clerk to destroy the recording of the
3 hearing.

4 (e) The juvenile's record of an adjudication of delinquency for an offense that
5 would be a felony if committed by an adult may be used by law enforcement, the
6 magistrate, and the prosecutor for pretrial release and plea negotiating decisions.

7 (f) The juvenile's record of an adjudication of delinquency for an offense that
8 would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used
9 in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule
10 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a),
11 G.S. 15A-1340.16(d), or G.S. 15A-2000(e). The record may be so used only by order
12 of the court in the subsequent criminal proceeding, upon motion of the prosecutor,
13 after an in camera hearing to determine whether the record in question is admissible.

14 (g) Except as provided in subsection (d) of this section, a juvenile's record shall
15 be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the
16 Department of Juvenile Justice.

17 **"§ 7B-3001. Other records relating to juveniles.**

18 (a) The chief court counselor shall maintain a record of all cases of juveniles under
19 supervision of court counselors, to be known as the court counselor's record. The
20 court counselor's record shall include family background information; reports of
21 social, medical, psychiatric, or psychological information concerning a juvenile or the
22 juvenile's family; probation reports; interviews with the juvenile's family; or other
23 information the court finds should be protected from public inspection in the best
24 interests of the juvenile.

25 (b) Unless jurisdiction of the juvenile has been transferred to superior court, all
26 law enforcement records and files concerning a juvenile shall be kept separate from
27 the records and files of adults and shall be withheld from public inspection. The
28 following persons may examine and obtain copies of law enforcement records and
29 files concerning a juvenile without an order of the court:

- 30 (1) The juvenile and the juvenile's attorney;
31 (2) The juvenile's parent, guardian, custodian, or authorized
32 representative;
33 (3) The district attorney or prosecutor;
34 (4) Court counselors; and
35 (5) Law enforcement officers sworn in this State.

36 Otherwise, the records and files may be examined or copied only by order of the
37 court.

38 (c) All records and files maintained by the Department pursuant to this Chapter
39 shall be withheld from public inspection. The following persons may examine and
40 obtain copies of the Department records and files concerning a juvenile without an
41 order of the court:

- 42 (1) The juvenile and the juvenile's attorney;
43 (2) The juvenile's parent, guardian, custodian, or authorized
44 representative;

1 subsequently been adjudicated delinquent or convicted as an adult
2 of any felony or misdemeanor other than a traffic violation under
3 the laws of the United States, or the laws of this State or any other
4 state;

5 (2) Verified affidavits of two persons, who are not related to the
6 petitioner or to each other by blood or marriage, that they know
7 the character and reputation of the petitioner in the community in
8 which the petitioner lives and that the petitioner's character and
9 reputation are good;

10 (3) A statement that the petition is a motion in the cause in the case
11 wherein the petitioner was adjudicated delinquent or
12 undisciplined.

13 The petition shall be served upon the district attorney in the district wherein
14 adjudication occurred. The district attorney shall have 10 days thereafter in which to
15 file any objection thereto and shall be duly notified as to the date of the hearing on
16 the petition.

17 (d) If the court, after hearing, finds that the petitioner satisfies the conditions set
18 out in subsections (a) or (b) of this section, the petitioner shall order and direct the
19 clerk and all law enforcement agencies to expunge their records of the adjudication
20 including all references to arrests, complaints, referrals, petitions, and orders.

21 (e) The clerk shall forward a certified copy of the order to the sheriff, chief of
22 police, or other law enforcement agency.

23 (f) Records of a juvenile adjudicated delinquent or undisciplined being
24 maintained by the chief court counselor, an intake counselor or a court counselor
25 shall be retained or disposed of as provided by the Department.

26 (g) Records of a juvenile adjudicated delinquent or undisciplined being
27 maintained by personnel at a residential facility operated by the Department, shall be
28 retained or disposed of as provided by the Department.

29 (h) Any person who was alleged to be delinquent as a juvenile and has attained
30 the age of 16 years, or was alleged to be undisciplined as a juvenile and has attained
31 the age of 18 years, may file a petition in the court in which the person was alleged
32 to be delinquent or undisciplined, for expunction of all juvenile records of the
33 juvenile having been alleged to be delinquent or undisciplined if the court dismissed
34 the juvenile petition without an adjudication that the juvenile was delinquent or
35 undisciplined. The petition shall be served on the chief court counselor in the district
36 where the juvenile petition was filed. The chief court counselor shall have 10 days
37 thereafter in which to file a written objection in the court. If no objection is filed, the
38 court may grant the petition without a hearing. If an objection is filed or the court so
39 directs, a hearing shall be scheduled and the chief court counselor shall be notified as
40 to the date of the hearing. If the court finds at the hearing that the petitioner satisfies
41 the conditions specified herein, the court shall order the clerk and the appropriate
42 law enforcement agencies to expunge their records of the allegations of delinquent or
43 undisciplined acts including all references to arrests, complaints, referrals, juvenile
44 petitions, and orders. The clerk shall forward a certified copy of the order of

1 expunction to the sheriff, chief of police, or other appropriate law enforcement
2 agency, and to the chief court counselor, and these specified officials shall
3 immediately destroy all records relating to the allegations that the juvenile was
4 delinquent or undisciplined.

5 **"§ 7B-3201. Effect of expunction.**

6 (a) Whenever a juvenile's record is expunged, with respect to the matter in which
7 the record was expunged, the juvenile who is the subject of the record and the
8 juvenile's parent may inform any person or organization including employers, banks,
9 credit companies, insurance companies, and schools that the juvenile was not
10 arrested, did not appear before the court, and was not adjudicated delinquent or
11 undisciplined.

12 (b) Notwithstanding subsection (a) of this section, in any delinquency case if the
13 juvenile is the defendant and chooses to testify or if the juvenile is not the defendant
14 and is called as a witness, the juvenile may be ordered to testify with respect to
15 whether the juvenile was adjudicated delinquent.

16 **"§ 7B-3202. Notice of expunction.**

17 Upon expunction of a juvenile's record, the clerk shall send a written notice to the
18 juvenile at the juvenile's last known address informing the juvenile that the record
19 has been expunged and with respect to the matter involved, the juvenile may inform
20 any person that the juvenile has no record. The notice shall inform the juvenile
21 further that if the matter involved is a delinquency record, the juvenile may inform
22 any person that the juvenile was not arrested or adjudicated delinquent except that
23 upon testifying in a delinquency proceeding, the juvenile may be required by a court
24 to disclose that the juvenile was adjudicated delinquent.

25 **"ARTICLE 33.**

26 **"Computation of Recidivism Rates.**

27 **"§ 7B-3300. Juvenile recidivism rates.**

28 (a) On an annual basis, the Department of Juvenile Justice shall compute the
29 recidivism rate of juveniles who are adjudicated delinquent for offenses that would be
30 Class A, B1, B2, C, D, or E felonies if committed by adults and who subsequently are
31 adjudicated delinquent or convicted and shall report the statistics to the Joint
32 Legislative Commission on Governmental Operations by December 31 each year.

33 (b) The chief court counselor of each judicial district shall forward to the
34 Department relevant information, as determined by the Department, regarding every
35 juvenile who is adjudicated delinquent for an offense that would be a Class A, B1,
36 B2, C, D, or E felony if committed by an adult for the purpose of computing the
37 statistics required by this section.

38 **"SUBCHAPTER IV. PARENTAL AUTHORITY; EMANCIPATION.**

39 **"ARTICLE 34.**

40 **"Parental Authority Over Juveniles.**

41 **"§ 7B-3400. Juvenile under 18 subject to parents' control.**

42 Notwithstanding any other provision of law, any juvenile under 18 years of age,
43 except as provided in G.S. 7B-3401 and G.S. 7B-3402, shall be subject to the
44 supervision and control of the juvenile's parents.

1 "§ 7B-3400.1. Definitions.

2 The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this Subchapter.

3 "§ 7B-3401. Exceptions.

4 This Article shall not apply to any juvenile under the age of 18 who is married or
5 who is serving in the armed forces of the United States, or who has been
6 emancipated.

7 "§ 7B-3402. No criminal liability created.

8 This Article shall not be interpreted to place any criminal liability on a parent for
9 any act of the parent's juvenile 16 years of age or older.

10 "§ 7B-3403. Enforcement.

11 The provisions of this Article may be enforced by the parent, guardian, or person
12 standing in loco parentis to the child by filing a civil action in the district court of the
13 county where the child can be found or the county of the plaintiff's residence. Upon
14 the institution of such action by a verified complaint, alleging that the defendant
15 juvenile has left home or has left the place where the juvenile has been residing and
16 refuses to return and comply with the direction and control of the plaintiff, the court
17 may issue an order directing the juvenile personally to appear before the court at a
18 specified time to be heard in answer to the allegations of the plaintiff and to comply
19 with further orders of the court. Such orders shall be served by the sheriff upon the
20 juvenile and upon any other person named as a party defendant in such action. At
21 the time of the issuance of the order directing the juvenile to appear, the court may
22 in the same order, or by separate order, order the sheriff to enter any house, building,
23 structure or conveyance for the purpose of searching for the juvenile and serving the
24 order and for the purpose of taking custody of the person of the juvenile in order to
25 bring the juvenile before the court. Any order issued at said hearing shall be treated
26 as a mandatory injunction and shall remain in full force and effect until the juvenile
27 reaches the age of 18, or until further orders of the court. Within 30 days after the
28 hearing on the original order, the juvenile, or anyone acting in the juvenile's behalf,
29 may file a verified answer to the complaint. Upon the filing of an answer by or on
30 behalf of the juvenile, any district court judge holding court in the county or district
31 court district as defined in G.S. 7A-133 where the action was instituted shall have
32 jurisdiction to hear the matter, without a jury, and to make findings of fact,
33 conclusions of law, and render judgment thereon. Appeals from the district court to
34 the Court of Appeals shall be allowed as in civil actions generally. The district court
35 issuing the original order or the district court hearing the matter after answer has
36 been filed shall also have authority to order that any person named defendant in the
37 order or judgment shall not harbor, keep, or allow the defendant juvenile to remain
38 on the person's premises or in the person's home. Failure of any defendant to
39 comply with the terms of said order or judgment shall be punishable as for contempt.

40 "ARTICLE 35.

41 "Emancipation.

42 "§ 7B-3500. Who may petition.

43 Any juvenile who is 16 years of age or older and who has resided in the same
44 county in North Carolina or on federal territory within the boundaries of North

1 Carolina for six months next preceding the filing of the petition may petition the
2 court in that county for a judicial decree of emancipation.

3 **"§ 7B-3501. Petition.**

4 The petition shall be signed and verified by the petitioner and shall contain the
5 following information:

- 6 (1) The full name of the petitioner and the petitioner's birth date, and
7 state and county of birth;
- 8 (2) A certified copy of the petitioner's birth certificate;
- 9 (3) The name and last known address of the parent, guardian, or
10 custodian;
- 11 (4) The petitioner's address and length of residence at that address;
- 12 (5) The petitioner's reasons for requesting emancipation; and
- 13 (6) The petitioner's plan for meeting the petitioner's needs and living
14 expenses which plan may include a statement of employment and
15 wages earned that is verified by the petitioner's employer.

16 **"§ 7B-3502. Summons.**

17 A copy of the filed petition along with a summons shall be served upon the
18 petitioner's parent, guardian, or custodian who shall be named as respondents. The
19 summons shall include the time and place of the hearing and shall notify the
20 respondents to file written answer within 30 days after service of the summons and
21 petition. In the event that personal service cannot be obtained, service shall be in
22 accordance with G.S. 1A-1, Rule 4(j).

23 **"§ 7B-3503. Hearing.**

24 The court, sitting without a jury, shall permit all parties to present evidence and to
25 cross-examine witnesses. The petitioner has the burden of showing by a
26 preponderance of the evidence that emancipation is in the petitioner's best interests.
27 Upon finding that reasonable cause exists, the court may order the juvenile to be
28 examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other
29 expert to evaluate the juvenile's mental or physical condition. The court may
30 continue the hearing and order investigation by a court counselor or by the county
31 department of social services to substantiate allegations of the petitioner or
32 respondents.

33 No husband-wife or physician-patient privilege shall be grounds for excluding any
34 evidence in the hearing.

35 **"§ 7B-3504. Considerations for emancipation.**

36 In determining the best interests of the petitioner and the need for emancipation,
37 the court shall review the following considerations:

- 38 (1) The parental need for the earnings of the petitioner;
- 39 (2) The petitioner's ability to function as an adult;
- 40 (3) The petitioner's need to contract as an adult or to marry;
- 41 (4) The employment status of the petitioner and the stability of the
42 petitioner's living arrangements;
- 43 (5) The extent of family discord which may threaten reconciliation of
44 the petitioner with the petitioner's family;

1 (6) The petitioner's rejection of parental supervision or support; and

2 (7) The quality of parental supervision or support.

3 **"§ 7B-3505. Final decree of emancipation.**

4 After reviewing the considerations for emancipation, the court may enter a decree
5 of emancipation if the court determines:

6 (1) That all parties are properly before the court or were duly served
7 and failed to appear and that time for filing an answer has expired;
8 and

9 (2) That the petitioner has shown a proper and lawful plan for
10 adequately providing for the petitioner's needs and living expenses;
11 and

12 (3) That the petitioner is knowingly seeking emancipation and fully
13 understands the ramifications of the act; and

14 (4) That emancipation is in the best interests of the petitioner.

15 The decree shall set out the court's findings.

16 If the court determines that the criteria in subdivisions (1) through (4) are not met,
17 the court shall order the proceeding dismissed.

18 **"§ 7B-3506. Costs of court.**

19 The court may tax the costs of the proceeding to any party or may, for good cause,
20 order the costs remitted.

21 The clerk may collect costs for furnishing to the petitioner a certificate of
22 emancipation which shall recite the name of the petitioner and the fact of the
23 petitioner's emancipation by court decree and shall have the seal of the clerk affixed
24 thereon.

25 **"§ 7B-3507. Legal effect of final decree.**

26 As of entry of the final decree of emancipation:

27 (1) The petitioner has the same right to make contracts and
28 conveyances, to sue and to be sued, and to transact business as if
29 the petitioner were an adult.

30 (2) The parent or guardian is relieved of all legal duties and
31 obligations owed to the petitioner and is divested of all rights with
32 respect to the petitioner.

33 (3) The decree is irrevocable.

34 Notwithstanding any other provision of this section, a decree of emancipation shall
35 not alter the application of G.S. 14-326.1 or the petitioner's right to inherit property
36 by intestate succession.

37 **"§ 7B-3508. Appeals.**

38 Any petitioner, parent, or guardian who is a party to a proceeding under this
39 Article may appeal from any order of disposition to the Court of Appeals provided
40 that notice of appeal is given in open court at the time of the hearing or in writing
41 within 10 days after the hearing. Pending disposition of an appeal, the court may
42 enter a temporary order affecting the custody or placement of the petitioner as the
43 court finds to be in the best interests of the petitioner or the State.

44 **"§ 7B-3509. Application of common law.**

1 A married juvenile is emancipated by this Article. All other common-law
2 provisions for emancipation are superseded by this Article.

3 "ARTICLE 36.

4 "Judicial Consent for Emergency Surgical or Medical Treatment.

5 "§ 7B-3600. Judicial authorization of emergency treatment; procedure.

6 A juvenile in need of emergency treatment under Article 1A of Chapter 90 of the
7 General Statutes, whose physician is barred from rendering necessary treatment by
8 reason of parental refusal to consent to treatment, may receive treatment with court
9 authorization under the following procedure:

10 (1) The physician shall sign a written statement setting out:

- 11 a. The treatment to be rendered and the emergency need for
12 treatment;
13 b. The refusal of the parent, guardian, or person standing in
14 loco parentis to consent to the treatment; and
15 c. The impossibility of contacting a second physician for a
16 concurring opinion on the need for treatment in time to
17 prevent immediate harm to the juvenile.

18 (2) Upon examining the physician's written statement prescribed in
19 subdivision (1) of this section and finding:

- 20 a. That the statement is in accordance with this Article, and
21 b. That the proposed treatment is necessary to prevent
22 immediate harm to the juvenile.

23 The court may issue a written authorization for the proposed
24 treatment to be rendered.

25 (3) In acute emergencies in which time may not permit
26 implementation of the written procedure set out in subdivisions (1)
27 and (2) of this section, the court may authorize treatment in person
28 or by telephone upon receiving the oral statement of a physician
29 satisfying the requirements of subdivision (1) of this section and
30 upon finding that the proposed treatment is necessary to prevent
31 immediate harm to the juvenile.

32 (4) The court's authorization for treatment overriding parental refusal
33 to consent should not be given without attempting to offer the
34 parent an opportunity to state the reasons for refusal; however,
35 failure of the court to hear the parent's objections shall not
36 invalidate judicial authorization under this Article.

37 (5) The court's authorization for treatment under subdivisions (1) and
38 (2) of this section shall be issued in duplicate. One copy shall be
39 given to the treating physician and the other copy shall be attached
40 to the physician's written statement and filed as a juvenile
41 proceeding in the office of the clerk of court.

42 (6) The court's authorization for treatment under subdivision (3) of
43 this section shall be reduced to writing as soon as possible,
44 supported by the physician's written statement as prescribed in

1 subdivision (1) of this section and shall be filed as prescribed in
2 subdivision (5) of this section.

3 The court's authorization for treatment under this Article shall have the same effect
4 as parental consent for treatment.

5 Following the court's authorization for treatment and after giving notice to the
6 juvenile's parent, the court shall conduct a hearing in order to provide for payment
7 for the treatment rendered. The court may order the parent or other responsible
8 parties to pay the cost of treatment. If the court finds the parent is unable to pay the
9 cost of treatment, the cost shall be a charge upon the county when so ordered.

10 This Article shall operate as a remedy in addition to the provisions in G.S. 7B-903,
11 7B-2501, and 7B-2504.

12 "SUBCHAPTER V. PLACEMENT OF JUVENILES.

13 "ARTICLE 37.

14 "Placing or Adoption of Juvenile Delinquents or Dependents.

15 "§ 7B-3700. Consent required for bringing child into State for placement or adoption.

16 (a) No person, agency, association, institution, or corporation shall bring or send
17 into the State any child for the purpose of giving custody of the child to some person
18 in the State or procuring adoption by some person in the State without first obtaining
19 the written consent of the Department of Health and Human Services.

20 (b) The person with whom a child is placed for either of the purposes set out in
21 subsection (a) of this section shall be responsible for the child's proper care and
22 training. The Department of Health and Human Services or its agents shall have the
23 same right of visitation and supervision of the child and the home in which it is
24 placed as in the case of a child placed by the Department or its agents as long as the
25 child shall remain within the State and until the child shall have reached the age of
26 18 years or shall have been legally adopted.

27 "§ 7B-3701. Bond required.

28 The Social Services Commission may, in its discretion, require of a person, agency,
29 association, institution, or corporation which brings or sends a child into the State
30 with the written consent of the Department of Health and Human Services, as
31 provided by G.S. 7B-3700, a continuing bond in a penal sum not in excess of one
32 thousand dollars (\$1,000) with such conditions as may be prescribed and such sureties
33 as may be approved by the Department of Health and Human Services. Said bond
34 shall be made in favor of and filed with the Department of Health and Human
35 Services with the premium prepaid by the said person, agency, association, institution
36 or corporation desiring to place such child in the State.

37 "§ 7B-3702. Consent required for removing child from State.

38 No child shall be taken or sent out of the State for the purpose of placing the child
39 in a foster home or in a child-caring institution without first obtaining the written
40 consent of the Department of Health and Human Services. The foster home or child-
41 caring institution in which the child is placed shall report to the Department of
42 Health and Human Services at such times as the Department of Health and Human
43 Services may direct as to the location and well-being of such child until the child
44 shall have reached the age of 18 years or shall have been legally adopted.

1 "§ 7B-3703. Violation of Article a misdemeanor.

2 Every person acting for himself or for an agency who violates any of the provisions
3 of this Article or who shall intentionally make any false statements to the Social
4 Services Commission or the Secretary or an employee thereof acting for the
5 Department of Health and Human Services in an official capacity in the placing or
6 adoption of juvenile delinquents or dependents shall, upon conviction thereof, be
7 guilty of a Class 2 misdemeanor.

8 "§ 7B-3704. Definitions.

9 The term 'Department' wherever used in this Article shall be construed to mean
10 the Department of Health and Human Services.

11 "§ 7B-3705. Application of Article.

12 None of the provisions of this Article shall apply when a child is brought into or
13 sent into, or taken out of, or sent out of the State, by the guardian of the person of
14 such child, or by a parent, stepparent, grandparent, uncle or aunt of such child, or by
15 a brother, sister, half brother, or half sister of such child, if such brother, sister, half
16 brother, or half sister is 18 years of age or older.

17 "ARTICLE 38.

18 "Interstate Compact on the Placement of Children.

19 "§ 7B-3800. Adoption of Compact.

20 The Interstate Compact on the Placement of Children is hereby enacted into law
21 and entered into with all other jurisdictions legally joining therein in a form
22 substantially as contained in this Article. It is the intent of the General Assembly that
23 Article 4 of this Chapter shall govern interstate placements of children between
24 North Carolina and any other jurisdictions not a party to this Compact. It is the
25 intent of the General Assembly that Chapter 48 of the General Statutes shall govern
26 the adoption of children within the boundaries of North Carolina.

27 Article I. Purpose and Policy.

28 It is the purpose and policy of the party states to cooperate with each other in the
29 interstate placement of children to the end that:

30 (a) Each child requiring placement shall receive the maximum opportunity to be
31 placed in a suitable environment and with persons or institutions having appropriate
32 qualifications and facilities to provide a necessary and desirable degree and type of
33 care.

34 (b) The appropriate authorities in a state where a child is to be placed may have
35 full opportunity to ascertain the circumstances of the proposed placement, thereby
36 promoting full compliance with applicable requirements for the protection of the
37 child.

38 (c) The proper authorities of the state from which the placement is made may
39 obtain the most complete information on the basis of which to evaluate a projected
40 placement before it is made.

41 (d) Appropriate jurisdictional arrangements for the care of children will be
42 promoted.

43 Article II. Definitions.

44 As used in this Compact:

- 1 (a) 'Child' means a person who, by reason of minority, is legally
2 subject to parental, guardianship or similar control.
- 3 (b) 'Sending agency' means a party state officer or employee thereof; a
4 subdivision of a party state, or officer or employee thereof; a court
5 of a party state; a person, corporation, association, charitable
6 agency or other entity which sends, brings, or causes to be sent or
7 brought any child to another party state.
- 8 (c) 'Receiving state' means the state to which a child is sent, brought,
9 or caused to be sent or brought, whether by public authorities or
10 private persons or agencies, and whether for placement with state
11 or local public authorities of [or] for placement with private
12 agencies or persons.
- 13 (d) 'Placement' means the arrangement for the care of a child in a
14 family free or boarding home or in a child-caring agency or
15 institution but does not include any institution caring for the
16 mentally ill, mentally defective or epileptic or any institution
17 primarily educational in character, and any hospital or other
18 medical facility.
- 19 (e) 'Appropriate public authorities' as used in Article III shall, with
20 reference to this State, mean the Department of Health and
21 Human Services and said agency shall receive and act with
22 reference to notices required by Article III.
- 23 (f) 'Appropriate authority in the receiving state' as used in paragraph
24 (a) of Article V shall, with reference to this State, mean the
25 Secretary.
- 26 (g) 'Executive head' as used in Article VII means the Governor.

27 Article III. Conditions for Placement.

28 (a) No sending agency shall send, bring, or cause to be sent or brought into any
29 other party state any child for placement in foster care or as a preliminary to a
30 possible adoption unless the sending agency shall comply with each and every
31 requirement set forth in this Article and with the applicable laws of the receiving
32 state governing the placement of children therein.

33 (b) Prior to sending, bringing or causing any child to be sent or brought into a
34 receiving state for placement in foster care or as a preliminary to a possible adoption,
35 the sending agency shall furnish the appropriate public authorities in the receiving
36 state written notice of the intention to send, bring, or place the child in the receiving
37 state. The notice shall contain:

- 38 (1) The name, date, and place of birth of the child.
- 39 (2) The identity and address or addresses of the parents or legal
40 guardian.
- 41 (3) The name and address of the person, agency or institution to or
42 with which the sending agency proposes to send, bring, or place
43 the child.

1 (4) A full statement of the reasons for such proposed action and
2 evidence of the authority pursuant to which the placement is
3 proposed to be made.

4 (c) Any public officer or agency in a receiving state which is in receipt of a notice
5 pursuant to paragraph (b) of this Article may request of the sending agency, or any
6 other appropriate officer or agency of or in the sending agency's state, and shall be
7 entitled to receive therefrom, such supporting or additional information as it may
8 deem necessary under the circumstances to carry out the purpose and policy of this
9 Compact.

10 (d) The child shall not be sent, brought, or caused to be sent or brought into the
11 receiving state until the appropriate public authorities in the receiving state shall
12 notify the sending agency, in writing, to the effect that the proposed placement does
13 not appear to be contrary to the interests of the child.

14 Article IV. Penalty for Illegal Placement.

15 The sending, bringing, or causing to be sent or brought into any receiving state of
16 a child in violation of the terms of this Compact shall constitute a violation of the
17 laws respecting the placement of children of both the state in which the sending
18 agency is located or from which it sends or brings the child and of the receiving state.
19 Such violation may be punished or subjected to penalty in either jurisdiction in
20 accordance with its laws. In addition to liability for any such punishment or penalty,
21 any such violation shall constitute full and sufficient grounds for the suspension or
22 revocation of any license, permit, or other legal authorization held by the sending
23 agency which empowers or allows it to place, or care for children.

24 Article V. Retention of Jurisdiction.

25 (a) The sending agency shall retain jurisdiction over the child sufficient to
26 determine all matters in relation to the custody, supervision, care, treatment, and
27 disposition of the child which it would have had if the child had remained in the
28 sending agency's state, until the child is adopted, reaches majority, becomes self-
29 supporting or is discharged with the concurrence of the appropriate authority in the
30 receiving state. Such jurisdiction shall also include the power to effect or cause the
31 return of the child or its transfer to another location and custody pursuant to law.
32 The sending agency shall continue to have financial responsibility for support and
33 maintenance of the child during the period of the placement. Nothing contained
34 herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with
35 an act of delinquency or crime committed therein.

36 (b) When the sending agency is a public agency, it may enter into an agreement
37 with an authorized public or private agency in the receiving state providing for the
38 performance of one or more services in respect of such case by the latter as agent for
39 the sending agency.

40 (c) Nothing in this Compact shall be construed to prevent a private charitable
41 agency authorized to place children in the receiving state from performing services or
42 acting as agent in that state for a private charitable agency of the sending state; nor to
43 prevent the agency in the receiving state from discharging financial responsibility for

1 the support and maintenance of a child who has been placed on behalf of the sending
2 agency without relieving the responsibility set forth in paragraph (a) hereof.

3 Article VI. Institutional Care of Delinquent Children.

4 A child adjudicated delinquent may be placed in an institution in another party
5 jurisdiction pursuant to this Compact but no such placement shall be made unless the
6 child is given a court hearing on notice to the parent or guardian with opportunity to
7 be heard, prior to the child's being sent to such other party jurisdiction for
8 institutional care and the court finds that:

9 (1) Equivalent facilities for the child are not available in the sending
10 agency's jurisdiction; and

11 (2) Institutional care in the other jurisdiction is in the best interests of
12 the child and will not produce undue hardship.

13 Article VII. Compact Administrator.

14 The executive head of each jurisdiction party to this Compact shall designate an
15 officer who shall be general coordinator of activities under this Compact in the
16 officer's jurisdiction and who, acting jointly with like officers of other party
17 jurisdictions, shall have power to promulgate rules and regulations to carry out more
18 effectively the terms and provisions of this Compact.

19 Article VIII. Limitations.

20 This Compact shall not apply to: (a) the sending or bringing of a child into a
21 receiving state by the child's parent, stepparent, grandparent, adult brother or sister,
22 adult uncle or aunt, or the child's guardian and leaving the child with any such
23 relative or nonagency guardian in the receiving state. (b) Any placement, sending or
24 bringing of a child into a receiving state pursuant to any other interstate compact to
25 which both the state from which the child is sent or brought and the receiving state
26 are party, or to any other agreement between said states which has the force of law.

27 Article IX. Enactment and Withdrawal.

28 This Compact shall be open to joinder by any state, territory or possession of the
29 United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with
30 the consent of Congress, the government of Canada or any province thereof. It shall
31 become effective with respect to any such jurisdiction when such jurisdiction has
32 enacted the same into law. Withdrawal from this Compact shall be by the enactment
33 of a statute repealing the same, but shall not take effect until two years after the
34 effective date of such statute and until written notice of the withdrawal has been
35 given by the withdrawing state to the governor of each other party jurisdiction.
36 Withdrawal of a party state shall not affect the rights, duties and obligations under
37 this Compact of any sending agency therein with respect to a placement made prior
38 to the effective date of withdrawal.

39 Article X. Construction and Severability.

40 The provisions of this Compact shall be liberally construed to effectuate the
41 purposes thereof. The provisions of this Compact shall be severable and if any
42 phrase, clause, sentence or provision of this Compact is declared to be contrary to the
43 constitution of any party state or of the United States or the applicability thereof to
44 any government, agency, person or circumstance is held invalid, the validity of the

1 remainder of this Compact and the applicability thereof to any government, agency,
2 person or circumstance shall not be affected thereby. If this Compact shall be held
3 contrary to the constitution of any state party thereto, the Compact shall remain in
4 full force and effect as to the remaining states and in full force and effect as to the
5 state affected as to all severable matters.

6 **"§ 7B-3801. Financial responsibility under Compact.**

7 Financial responsibility for any child placed pursuant to the provisions of the
8 Interstate Compact on the Placement of Children shall be determined in accordance
9 with the provisions of Article V thereof in the first instance. However, in the event of
10 partial or complete default of performance thereunder, the provisions of any other
11 state laws fixing responsibility for the support of children also may be invoked.

12 **"§ 7B-3802. Agreements under Compact.**

13 The officers and agencies of this State and its subdivisions having authority to
14 place children are hereby empowered to enter into agreements with appropriate
15 officers or agencies of or in other party states pursuant to paragraph (b) of Article V
16 of the Interstate Compact on the Placement of Children. Any such agreement which
17 contains a financial commitment or imposes a financial obligation on this State or
18 subdivision or agency thereof shall not be binding unless it has the approval in
19 writing of the Secretary of the Department of Health and Human Services in the case
20 of the State and of the county director of social services in the case of a county or
21 other subdivision of the State.

22 **"§ 7B-3803. Visitation, inspection or supervision.**

23 Any requirements for visitation, inspection or supervision of children, homes,
24 institutions or other agencies in another party state which may apply under the laws
25 of this State shall be deemed to be met if performed pursuant to an agreement
26 entered into by appropriate officers or agencies of this State or a subdivision thereof
27 as contemplated by paragraph (b) of Article V of the Interstate Compact on the
28 Placement of Children.

29 **"§ 7B-3804. Compact to govern between party states.**

30 The provisions of Article 37 of this Chapter shall not apply to placements made
31 pursuant to the Interstate Compact on the Placement of Children.

32 **"§ 7B-3805. Placement of delinquents.**

33 Any court having jurisdiction to place delinquent children may place such a child
34 in an institution or in another state pursuant to Article VI of the Interstate Compact
35 on the Placement of Children and shall retain jurisdiction as provided in Article V
36 thereof.

37 **"§ 7B-3806. Compact Administrator.**

38 The Governor is hereby authorized to appoint a Compact Administrator in
39 accordance with the terms of said Article VII."

40 Section 5. Article 81B of Chapter 15A of the General Statutes is
41 amended by adding a new section to read:

42 **"§ 15A-1340.16B. Sentencing of juveniles.**

43 (a) If a juvenile was under 16 years of age at the time the juvenile committed a
44 felony offense and has been convicted of the offense, the court shall impose a

1 sentence in accordance with G.S. 15A-1340.17. Notwithstanding other requirements
2 of this Chapter, the court may suspend the sentence and place the juvenile on
3 probation on the condition that the juvenile successfully complete any of the
4 applicable terms and conditions set forth in G.S. 15A-1343 and G.S. 7B-2504 that the
5 court deems appropriate. In determining the appropriate terms and conditions, the
6 court shall consider the dispositional report of the chief court counselor.

7 (b) In no event shall a person placed on probation pursuant to this section be
8 confined by the Department past that person's nineteenth birthday.

9 (c) In determining whether to suspend the sentence and place the juvenile on
10 probation, the court shall consider:

11 (1) The age of the juvenile;

12 (2) The physical, mental, and emotional needs of the juvenile; and

13 (3) The resources available to the juvenile pursuant to G.S. 7B-2504
14 and the applicability of the resources to the needs of the juvenile.

15 (d) If the court suspends the sentence of the juvenile pursuant to subsection (a) of
16 this section, the court shall order that a probation officer and a juvenile court
17 counselor be assigned to supervise and monitor the progress of the juvenile. Except
18 as provided in subsection (d) of this section, any violations of probation shall be
19 determined and heard pursuant to Article 82 of Chapter 15A of the General Statutes.

20 (e) In the judgment suspending the sentence, the court shall limit jurisdiction to
21 alter or revoke the suspension. This limitation requires that the suspension may be
22 reduced, continued, extended, modified, or revoked only by the sentencing judge or,
23 if the sentencing judge is no longer on the bench, by a presiding judge in the court
24 where the juvenile was sentenced.

25 (f) Parts 1, 2, and 3 of Article 27A of Chapter 14 of the General Statutes applies
26 to juveniles sentenced for offenses set forth in G.S. 14-208.6(5)."

27 Section 6. G.S. 115C-404 reads as rewritten:

28 "**§ 115C-404. Use of juvenile court information.**

29 (a) Written notifications received in accordance with ~~G.S. 7A-675.4~~ G.S. 7B-3101
30 and information gained from examination of juvenile records in accordance with G.S.
31 7B-3100 are confidential records, are not public records as defined under G.S.132-1,
32 and shall not be made part of the student's official record under G.S. 115C-402.
33 Immediately upon receipt, the principal shall maintain these documents in a safe,
34 locked record storage that is separate from the student's other school records. ~~The~~
35 ~~principal shall maintain these documents until the principal receives notification that~~
36 ~~the judge dismissed the petition under G.S. 7A-637, the judge transferred jurisdiction~~
37 ~~over the student to superior court under G.S. 7A-608, or the judge granted the~~
38 ~~student's petition for expunction of the records. At that time, the~~ The principal shall
39 shred, burn, or otherwise destroy ~~the~~ documents received in accordance with G.S.
40 7B-3100 to protect the confidentiality of ~~this information.~~ the information when the
41 principal receives notification that the court dismissed the petition under G.S. 7B-
42 2411, the court transferred jurisdiction over the student to superior court under G.S.
43 7B-2200, or the court granted the student's petition for expunction of the records.
44 The principal shall shred, burn, or otherwise destroy all information gained from

1 examination of juvenile records in accordance with G.S. 7B-3100 when the principal
2 finds that the school no longer needs the information to protect the safety of or to
3 improve the education opportunities for the student or others. In no case shall the
4 principal make a copy of these documents.

5 (b) Documents received under this section ~~may~~ shall be used only to protect the
6 safety of or to improve the education opportunities for the student or others.
7 Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a
8 decision to suspend or expel a student. Upon receipt of each document, the principal
9 shall share the document with those individuals who have (i) direct guidance,
10 teaching, or supervisory responsibility for the student, and (ii) a specific need to
11 know in order to protect the safety of the student or others. Those individuals shall
12 indicate in writing that they have read the document and that they agree to maintain
13 its confidentiality. Failure to maintain the confidentiality of these documents as
14 required by this section is grounds for the dismissal of an employee who is not a
15 career employee and is grounds for dismissal of an employee who is a career
16 employee, in accordance with G.S. 115C-325(e)(1)i.

17 (c) If the student graduates, withdraws from school, is suspended for the
18 remainder of the school year, is expelled, or transfers to another school, the principal
19 shall return ~~the~~ all documents not destroyed in accordance with subsection (a) of this
20 section to the juvenile court counselor and, if applicable, shall provide the counselor
21 with the name and address of the school to which the student is transferring."

22 Section 7. G.S. 143-661(a) reads as rewritten:

23 "(a) The Criminal Justice Information Network Governing Board is established
24 within the Department of Justice, State Bureau of Investigation, to operate the State's
25 Criminal Justice Information Network, the purpose of which shall be to provide the
26 governmental and technical information systems infrastructure necessary for
27 accomplishing State and local governmental public safety and justice functions in the
28 most effective manner by appropriately and efficiently sharing criminal justice and
29 juvenile justice information among law enforcement, judicial, and corrections
30 agencies. The Board is established within the Department of Justice, State Bureau of
31 Investigation, for organizational and budgetary purposes only and the Board shall
32 exercise all of its statutory powers in this Article independent of control by the
33 Department of Justice."

34 Section 8. (a) G.S. 164-36 reads as rewritten:

35 "**§ 164-36. Powers and duties.**

36 (a) Sentences established for violations of the State's criminal laws should be based
37 on the established purposes of our criminal justice and corrections systems. The
38 Commission shall evaluate sentencing laws and policies in relationship to both the
39 stated purposes of the criminal justice and corrections systems and the availability of
40 sentencing options. The Commission shall make recommendations to the General
41 Assembly for the modification of sentencing laws and policies, and for the addition,
42 deletion, or expansion of sentencing options as necessary to achieve policy goals. The
43 Commission shall make a report of its recommendations, including any recommended
44 legislation, to the General Assembly annually.

1 (b) Dispositions established for violations by juveniles of the State's criminal laws
2 should be based on the established purposes set forth in Chapter 7B of the General
3 Statutes. The Commission shall evaluate dispositional laws and policies in
4 relationship to both the stated purposes of Chapter 7B of the General Statutes and
5 the availability of dispositional alternatives. The Commission shall make
6 recommendations to the General Assembly for the modification of dispositional laws
7 and policies, and for the addition, deletion, or expansion of dispositional alternatives
8 as necessary to achieve policy goals. The Commission shall make a report of its
9 recommendations, including any recommended legislation, to the General Assembly
10 annually."

11 (b) G.S. 164-40 reads as rewritten:

12 "**§ 164-40. Correction population simulation ~~model~~; model; Department of Juvenile**
13 **Justice facilities population simulation model.**

14 (a) The Commission shall develop a correctional population simulation model, and
15 shall have first priority to apply the model to a given fact situation, or theoretical
16 change in the sentencing laws, when requested to do so by the Chairman, the
17 Executive Director, or the Commission as a whole.

18 The Executive Director or the Chairman shall make the model available to
19 respond to inquiries by any State legislator, or by the Secretary of the Department of
20 Correction, in second priority to the work of the Commission.

21 (b) The Commission shall develop a Department of Juvenile Justice facilities
22 population simulation model, and shall have first priority to apply the model to a
23 given fact situation, or theoretical change in the dispositional laws set forth in
24 Chapter 7B of the General Statutes, when requested to do so by the Chairman, the
25 Executive Director, or the Commission as a whole.

26 The Executive Director or the Chairman shall make the model available to
27 respond to inquiries by any State legislator, or by the Secretary of the Department of
28 Juvenile Justice, in second priority to the work of the Commission."

29 (c) G.S. 164-42.1 reads as rewritten:

30 "**§ 164-42.1. Policy recommendations.**

31 (a) Using the studies of the Special Committee on Prisons, the Governor's Crime
32 Commission, and other analyses, including testimony from representatives of the
33 bodies that conducted the analyses, the Commission shall:

34 (1) Determine the long-range needs of the criminal justice and
35 corrections systems and recommend policy priorities for those
36 systems;

37 (2) Determine the long-range information needs of the criminal justice
38 and corrections systems and acquire that information as it becomes
39 available;

40 (3) Identify critical problems in the criminal justice and corrections
41 systems and recommend strategies to solve those problems;

42 (4) Assess the cost-effectiveness of the use of State and local funds in
43 the criminal justice and corrections systems;

- 1 (5) Recommend the goals, priorities, and standards for the allocation
- 2 of criminal justice and corrections funds;
- 3 (6) Recommend means to improve the deterrent and rehabilitative
- 4 capabilities of the criminal justice and corrections systems;
- 5 (7) Propose plans, programs, and legislation for improving the
- 6 effectiveness of the criminal justice and corrections systems;
- 7 (8) Determine the sentencing structures for parole decisions;
- 8 (9) Examine the impact of mandatory sentence lengths as opposed to
- 9 the deterrent effect of minimum mandatory terms of imprisonment;
- 10 (10) Examine good time and gain time practices;
- 11 (11) Study the value of presentence reports;
- 12 (12) Consider the rehabilitative potential of the offender and the
- 13 appropriate rehabilitative placement;
- 14 (13) Examine the impact of imprisonment on families of offenders;
- 15 (14) Examine the impact of imprisonment on the ability of the offender
- 16 to make restitution; ~~and~~
- 17 (15) Study the need for an amendment to Article XI, Section 1 of the
- 18 State Constitution to include restitution, restraints on liberty, work
- 19 programs, or other punishments to the list of punishments allowed
- 20 under that section; and
- 21 (16) Study the costs and consequences of criminal behavior in North
- 22 Carolina and consider the value of preventing crimes by using
- 23 incarceration to deter both prospective criminals and convicted
- 24 criminals from future crimes.

25 (b) Using the studies and analyses available, including testimony from
26 representatives of the bodies that conducted the analyses, the Commission shall:

- 27 (1) Determine the long-range needs of the juvenile justice system and
- 28 recommend policy priorities for that system;
- 29 (2) Determine the long-range information needs of the juvenile justice
- 30 system and acquire that information as it becomes available;
- 31 (3) Identify critical problems in the juvenile justice system and
- 32 recommend strategies to solve those problems;
- 33 (4) Assess the cost-effectiveness of the use of State and local funds in
- 34 the juvenile justice system; and
- 35 (5) Recommend the goals, priorities, and standards for the allocation
- 36 of juvenile justice funds."

37 (d) G.S. 164-43 reads as rewritten:

38 "**§ 164-43. Priority of duties; reports; continuing duties.**

39 (a) The Commission shall have two primary duties, and other secondary duties
40 essential to accomplishing the primary ones. The Commission may establish
41 subcommittees or advisory committees composed of Commission members to
42 accomplish duties imposed by this Article.

43 It is the legislative intent that the Commission attach priority to accomplish the
44 following primary duties:

- 1 (1) The classification of criminal offenses as described in G.S. 164-41
2 and the formulation of sentencing structures as described in G.S.
3 164-42; and
- 4 (2) The formulation of proposals and recommendations as described in
5 G.S. 164-42.1 and G.S. 164-42.2.
- 6 (b) The Commission shall report its findings and recommendations to the 1991
7 General Assembly, 1991 Regular Session. The report shall describe the status of the
8 Commission's work, and shall include any completed policy recommendations.
- 9 (c) The Commission shall report on its progress in formulating recommendations
10 for the classification and ranges of punishment for felonies and misdemeanors,
11 required by G.S. 164-41, and sentencing structures, established pursuant to G.S. 164-
12 42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final
13 report on these recommendations no later than 30 days after the convening of the
14 1993 Session of the General Assembly.
- 15 (d) Once the primary duties of the Commission have been accomplished, it shall
16 have the continuing duty to monitor and review the criminal justice and corrections
17 systems and the juvenile justice system in this State to ensure that ~~sentencing remains~~
18 sentences and dispositions remain uniform and consistent, and that the goals and
19 policies established by the State are being implemented by sentencing and
20 dispositional practices, and it shall recommend methods by which this ongoing work
21 may be accomplished and by which the correctional population simulation model and
22 the Department of Juvenile Justice facilities population simulation model developed
23 pursuant to G.S. 164-40 shall continue to be used by the State.
- 24 (e) Upon adoption of a system for the classification of offenses formulated
25 pursuant to G.S. 164-41, the Commission or its successor shall review all proposed
26 legislation which creates a new criminal offense, changes the classification of an
27 offense, or changes the range of punishment or dispositional level for a particular
28 classification, and shall make recommendations to the General Assembly.
- 29 (f) In the case of a new criminal offense, the Commission or its successor shall
30 determine whether the proposal places the offense in the correct classification, based
31 upon the considerations and principles set out in G.S. 164-41. If the proposal does
32 not assign the offense to a classification, it shall be the duty of the Commission or its
33 successor to recommend the proper classification placement.
- 34 (g) In the case of proposed changes in the classification of an offense or changes
35 in the range of punishment or dispositional level for a classification, the Commission
36 or its successor shall determine whether such a proposed change is consistent with the
37 considerations and principles set out in G.S. 164-41, and shall report its findings to
38 the General Assembly.
- 39 (h) The Commission or its successor shall meet within 10 days after the last day
40 for filing general bills in the General Assembly for the purpose of reviewing bills as
41 described in subsections (e), (f), and (g). The Commission or its successor shall
42 include in its report on a bill an analysis based on an application of the correctional
43 population simulation model or the Department of Juvenile Justice facilities
44 population simulation model to the provisions of the bill."

1 (e) G.S. 164-44 reads as rewritten:

2 "**§ 164-44. Statistical information; financial or other aid.**

3 (a) The Commission shall have the secondary duty of collecting, developing, and
4 maintaining statistical data relating to ~~sentencing and corrections~~ sentencing,
5 corrections, and juvenile justice so that the primary duties of the Commission will be
6 formulated using data that is valid, accurate, and relevant to this State. All State
7 agencies shall provide data as it is requested by the Commission. All meetings of the
8 Commission shall be open to the public and the information presented to the
9 Commission shall be available to any State agency or member of the General
10 Assembly.

11 (b) The Commission shall have the authority to apply for, accept, and use any
12 gifts, grants, or financial or other aid, in any form, from the federal government or
13 any agency or instrumentality thereof, or from the State or from any other source
14 including private associations, foundations, or corporations to accomplish any of the
15 duties set out in this Chapter."

16 **PART III. REGISTRATION OF CERTAIN JUVENILES.**

17 Section 9. Effective October 1, 1999, Article 25 of Chapter 7B of the
18 General Statutes is amended by adding a new section to read:

19 "**§ 7B-2505.1. Registration of certain delinquent juveniles.**

20 In any case in which a juvenile, who was at least eleven years of age at the time of
21 the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first-
22 degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sexual
23 offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape
24 or sexual offense), the judge, upon a finding that the juvenile is a danger to the
25 community, may order that the juvenile register in accordance with Part 4 of Article
26 27A of Chapter 14 of the General Statutes."

27 **PART IV. PREVENTION STATUTORY RECOMMENDATIONS EDUCATING**
28 **CHILDREN EXPULLED FROM SCHOOL**

29 Section 10. G.S. 115C-12(24) reads as rewritten:

30 "(24) Duty to Develop Guidelines for Alternative Learning Programs,
31 Provide Technical Assistance on Implementation of Programs, and
32 Evaluate Programs. -- The State Board of Education shall adopt
33 guidelines for assigning students to alternative learning programs.
34 These guidelines shall include (i) a description of the programs
35 and services that are recommended to be provided in alternative
36 learning ~~programs and programs~~, (ii) a process for ensuring that an
37 assignment is appropriate for the student and that the student's
38 parents are involved in the ~~decision~~ decision, and (iii) strategies
39 for providing alternative learning programs, when feasible and
40 appropriate, for students who are subject to long-term suspension
41 or expulsion.

42 The State Board of Education shall also adopt guidelines to
43 require that local school administrative units shall use (i) the
44 teachers allocated for students assigned to alternative learning

1 programs pursuant to the regular teacher allotment and (ii) the
2 teachers allocated for students assigned to alternative learning
3 programs only to serve the needs of these students.

4 The State Board of Education shall provide technical support to
5 local school administrative units to assist them in developing and
6 implementing plans for alternative learning programs.

7 The State Board shall evaluate the effectiveness of alternative
8 learning programs and, in its discretion, of any other programs
9 funded from the Alternative Schools/At-Risk Student allotment.
10 Local school administrative units shall report to the State Board of
11 Education on how funds in the Alternative Schools/At-Risk
12 Student allotment are spent and shall otherwise cooperate with the
13 State Board of Education in evaluating the alternative learning
14 programs."

15 Section 11. G.S. 115C-105.47(b) reads as rewritten:

16 "(b) Each plan shall include each of the following components:

- 17 (1) Clear statements of the standard of behavior expected of students
18 at different grade levels and of school personnel and clear
19 statements of the consequences that will result from one or more
20 violations of those standards. There shall be a statement of
21 consequences for students under the age of 13 who physically
22 assault and seriously injure a teacher or other individual on school
23 property or at a school-sponsored or school-related activity. The
24 consequences may include placement in an alternative setting.
- 25 (2) A clear statement of the responsibility of the superintendent for
26 coordinating the adoption and the implementation of the plan,
27 evaluating principals' performance regarding school safety,
28 monitoring and evaluating the implementation of safety plans at
29 the school level, and coordinating with local law enforcement and
30 court officials appropriate aspects of implementation of the plan.
31 The statement of responsibility shall provide appropriate
32 disciplinary consequences that may occur if the superintendent fails
33 to carry out these responsibilities. These consequences may include
34 a reprimand in the superintendent's personnel file or withholding
35 of the superintendent's salary, or both.
- 36 (3) A clear statement of the responsibility of the school principal for
37 restoring, if necessary, and maintaining a safe, secure, and orderly
38 school environment and of the consequences that may occur if the
39 principal fails to meet that responsibility. The principal's duties
40 shall include exhibiting appropriate leadership for school personnel
41 and students, providing for alternative placements for students who
42 are seriously disruptive, reporting all criminal acts under G.S.
43 115C-288(g), and providing appropriate disciplinary consequences
44 for disruptive students. The consequences to the principal that may

- 1 occur shall include a reprimand in the principal's personnel file
2 and disciplinary proceedings under G.S. 115C-325.
- 3 (4) Clear statements of the roles of other administrators, teachers, and
4 other school personnel in restoring, if necessary, and maintaining a
5 safe, secure, and orderly school environment.
- 6 (5) Procedures for identifying and serving the needs of students who
7 are at risk of academic failure or of engaging in disruptive or
8 disorderly behavior.
- 9 (6) Mechanisms for assessing the needs of disruptive and disorderly
10 students, providing them with services to assist them in achieving
11 academically and in modifying their behavior, and removing them
12 from the classroom when necessary.
- 13 (6a) Strategies for providing alternative learning programs, when
14 feasible and appropriate, for students who are subject to long-term
15 suspension or expulsion.
- 16 (7) Measurable objectives for improving school safety and order.
- 17 (8) Measures of the effectiveness of efforts to assist students at risk of
18 academic failure or of engaging in disorderly or disruptive
19 behavior.
- 20 (9) Professional development clearly matched to the goals and
21 objectives of the plan.
- 22 (10) A plan to work effectively with local law enforcement officials and
23 court officials to ensure that schools are safe and laws are enforced.
- 24 (11) A plan to provide access to information to the school community,
25 parents, and representatives of the local community on the ongoing
26 implementation of the local plan, monitoring of the local plan, and
27 the integration of educational and other services for students into
28 the total school program.
- 29 (12) The name and role description of the person responsible for
30 implementation of the plan.
- 31 (13) Direction to school improvement teams within the local school
32 administrative unit to consider the special conditions at their
33 schools and to incorporate into their school improvement plans the
34 appropriate components of the local plan for maintaining safe and
35 orderly schools.
- 36 (14) A clear and detailed statement of the planned use of federal, State,
37 and local funds allocated for at-risk students, alternative schools, or
38 both.
- 39 (15) Any other information the local board considers necessary or
40 appropriate to implement this Article.

41 A local board may develop its plan under this section by conducting a
42 comprehensive review of its existing policies, plans, statements, and procedures to
43 determine whether they: (i) are effective; (ii) have been updated to address recent
44 changes in the law; (iii) meet the current needs of each school in the local school

1 administrative unit; and (iv) address the components required to be included in the
2 local plan. The board then may consolidate and supplement any previously
3 developed policies, plans, statements, and procedures that the board determines are
4 effective and updated, meet the current needs of each school, and meet the
5 requirements of this subsection.

6 Once developed, the board shall submit the local plan to the State Board of
7 Education and shall ensure the plan is available and accessible to parents and the
8 school community. The board shall provide annually to the State Board information
9 that demonstrates how the At-Risk Student Services/Alternative Schools Funding
10 Allotment has been used to (i) prevent academic failure or (ii) promote school
11 safety."

12 PART V. CONFORMING STATUTORY CHANGES

13 Section 12. (a) G.S. 8-53.1 reads as rewritten:

14 "§ 8-53.1. Physician-patient privilege waived in child abuse.

15 Notwithstanding the provisions of G.S. 8-53, the physician-patient privilege shall
16 not be ground for excluding evidence regarding the abuse or neglect of a child under
17 the age of 16 years or regarding an illness of or injuries to such child or the cause
18 thereof in any judicial proceeding related to a report pursuant to the North Carolina
19 Juvenile Code, ~~Subchapter XI of Chapter 7A~~ 7B of the General Statutes of North
20 Carolina."

21 (b) G.S. 8-53.3 reads as rewritten:

22 "§ 8-53.3. Communications between psychologist and client or patient.

23 No person, duly authorized as a licensed psychologist or licensed psychological
24 associate, nor any of his or her employees or associates, shall be required to disclose
25 any information which he or she may have acquired in the practice of psychology and
26 which information was necessary to enable him or her to practice psychology. Any
27 resident or presiding judge in the district in which the action is pending may, subject
28 to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her
29 opinion disclosure is necessary to a proper administration of justice. If the case is in
30 district court the judge shall be a district court judge, and if the case is in superior
31 court the judge shall be a superior court judge.

32 Notwithstanding the provisions of this section, the psychologist-client or patient
33 privilege shall not be grounds for failure to report suspected child abuse or neglect to
34 the appropriate county department of social services, or for failure to report a
35 disabled adult suspected to be in need of protective services to the appropriate
36 county department of social services. Notwithstanding the provisions of this section,
37 the psychologist-client or patient privilege shall not be grounds for excluding
38 evidence regarding the abuse or neglect of a child, or an illness of or injuries to a
39 child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or
40 exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the
41 cause thereof, in any judicial proceeding related to a report pursuant to the Child
42 Abuse Reporting Law, ~~Article 44 of Chapter 7A~~, Article 3 of Chapter 7B of the
43 General Statutes, or to the Protection of the Abused, Neglected, or Exploited
44 Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

1 (c) G.S. 8-57.1 reads as rewritten:

2 "**§ 8-57.1. Husband-wife privilege waived in child abuse.**

3 Notwithstanding the provisions of G.S. 8-56 and G.S. 8-57, the husband-wife
4 privilege shall not be ground for excluding evidence regarding the abuse or neglect of
5 a child under the age of 16 years or regarding an illness of or injuries to such child or
6 the cause thereof in any judicial proceeding related to a report pursuant to the Child
7 Abuse Reporting Law, ~~Article 8 of Chapter 110~~ Article 3 of Chapter 7B of the
8 General Statutes of North Carolina."

9 (d) G.S. 14-208.6B reads as rewritten:

10 "**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in**
11 **superior court.**

12 A juvenile transferred to superior court pursuant to ~~G.S. 7A-608~~ G.S. 7B-2200 who
13 is convicted of a sexually violent offense or an offense against a minor as defined in
14 G.S. 14-208.6 shall register in accordance with this Article just as an adult convicted
15 of the same offense must register."

16 (e) G.S. 15A-502(c) reads as rewritten:

17 "(c) This section does not authorize the taking of photographs or fingerprints of a
18 juvenile alleged to be delinquent except under ~~G.S. 7A-596 through 7A-601 and~~
19 ~~7A-603.~~ Article 21 of Chapter 7B of the General Statutes."

20 (f) G.S. 35A-1371 reads as rewritten:

21 "**§ 35A-1371. Jurisdiction; limits.**

22 Notwithstanding the provisions of Subchapter II of this Chapter, the clerk of
23 superior court shall have original jurisdiction for the appointment of a standby
24 guardian for a minor child under this Article. Provided that the clerk shall have no
25 jurisdiction, no standby guardian may be appointed under this Article, and no
26 designation may become effective under this Article when a district court has
27 assumed jurisdiction over the minor child in an action under Chapter 50 of the
28 General Statutes or in an abuse, neglect, or dependency proceeding under
29 ~~Subchapter XI of Chapter 7A~~ Subchapter I of Chapter 7B of the General Statutes, or
30 when a court in another state has assumed such jurisdiction under a comparable
31 statute."

32 (g) G.S. 48-2-102(b) reads as rewritten:

33 "(b) If an adoptee is also the subject of a pending proceeding under ~~Subchapter~~
34 ~~XI of Chapter 7A~~ Chapter 7B of the General Statutes, then the district court having
35 jurisdiction under ~~Chapter 7A~~ 7B shall retain jurisdiction until the final order of
36 adoption is entered. The district court may waive jurisdiction for good cause."

37 (h) G.S. 48-3-201(d) reads as rewritten:

38 "(d) An agency having legal and physical custody of a minor may place the minor
39 for adoption at any time after a relinquishment is executed by anyone as permitted by
40 G.S. 48-3-701. The agency may place the minor for adoption even if other consents
41 are required before an adoption can be granted, unless an individual whose consent is
42 required notifies the agency in writing of the individual's objections before the
43 placement. The agency shall act promptly after accepting a relinquishment to obtain
44 all other necessary consents, relinquishments, or terminations of any guardian's

1 authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant
2 to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes."

3 (i) G.S. 48-2-304(c) reads as rewritten:

4 "(c) A petition to adopt a minor under Article 3 of this Chapter shall also state:

- 5 (1) A description of the source of placement and the date of
6 placement of the adoptee with the petitioner; and
7 (2) That the provisions of the Interstate Compact on the Placement of
8 Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of Chapter 7B of the
9 General Statutes, were followed if the adoptee was brought into
10 this State from another state for purposes of adoption."

11 (j) G.S. 48-2-603 reads as rewritten:

12 **"§ 48-2-603. Hearing on, or disposition of, petition to adopt a minor.**

13 (a) At the hearing on, or disposition of, a petition to adopt a minor, the court
14 shall grant the petition upon finding by a preponderance of the evidence that the
15 adoption will serve the best interest of the adoptee, and that:

- 16 (1) At least 90 days have elapsed since the filing of the petition for
17 adoption, unless the court for cause waives this requirement;
18 (2) The adoptee has been in the physical custody of the petitioner for
19 at least 90 days; unless the court for cause waives this requirement;
20 (3) Notice of the filing of the petition has been served on any person
21 entitled to receive notice under Part 4 of this Article;
22 (4) Each necessary consent, relinquishment, waiver, or judicial order
23 terminating parental rights, has been obtained and filed with the
24 court and the time for revocation has expired;
25 (5) Any assessment required by this Chapter has been filed with and
26 considered by the court;
27 (6) If applicable, the requirements of the Interstate Compact on the
28 Placement of Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of Chapter
29 7B of the General Statutes, have been met;
30 (7) Any motion to dismiss the proceeding has been denied;
31 (8) Each petitioner is a suitable adoptive parent;
32 (9) Any accounting and affidavit required under G.S. 48-2-602 has
33 been reviewed by the court, and the court has denied, modified, or
34 ordered reimbursement of any payment or disbursement that
35 violates Article 10 or is unreasonable when compared with the
36 expenses customarily incurred in connection with an adoption;
37 (10) The petitioner has received information about the adoptee and the
38 adoptee's biological family if required by G.S. 48-3-205; and
39 (11) There has been substantial compliance with the provisions of this
40 Chapter.

41 (b) If the Court finds a violation of this Chapter pursuant to Article 10 or of the
42 Interstate Compact on the Placement of Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of
43 Chapter 7B of the General Statutes, but determines that in every other respect there

- 1 has been substantial compliance with the provisions of this Chapter, and the adoption
2 will serve the best interest of the adoptee, the court shall:
- 3 (1) Grant the petition to adopt; and
4 (2) Impose the sanctions provided by this Chapter against any
5 individual or entity who has committed a prohibited act or report
6 the violations to the appropriate legal authorities.
- 7 (c) The court on its own motion may continue the hearing for further evidence."
8 (j1) G.S. 48-2-305(7) reads as rewritten:
9 "(7) Any signed copy of the form required by the Interstate Compact
10 on the Placement of Children, ~~G.S. 110-57.1, et seq.~~ Article 38 of
11 Chapter 7B of the General Statutes, authorizing a minor to come
12 into this State;"
- 13 (k) G.S. 48-3-207 reads as rewritten:
14 **"§ 48-3-207. Interstate placements.**
15 An interstate placement of a minor for purposes of adoption shall comply with the
16 Interstate Compact on the Placement of Children, ~~G.S. 110-57.1 et seq.~~ Article 38 of
17 Chapter 7B of the General Statutes."
- 18 (l) G.S. 48-3-603(a)(1) reads as rewritten:
19 "(1) An individual whose parental rights and duties have been
20 terminated under ~~Article 24B of Chapter 7A~~ Article 11 of Chapter
21 7B of the General Statutes or by a court of competent jurisdiction
22 in another state;"
- 23 (m) G.S. 50-13.1(f) reads as rewritten:
24 "(f) Neither the mediator nor any party or other person involved in mediation
25 sessions under this section shall be competent to testify to communications made
26 during or in furtherance of such mediation sessions; provided, there is no privilege as
27 to communications made in furtherance of a crime or fraud. Nothing in this
28 subsection shall be construed as permitting an individual to obtain immunity from
29 prosecution for criminal conduct or as excusing an individual from the reporting
30 requirements of ~~G.S. 7A-543~~ Article 3 of Chapter 7B of the General Statutes or G.S.
31 108A-102."
- 32 (n) G.S. 50A-25 reads as rewritten:
33 **"§ 50A-25. Emergency orders.**
34 Nothing in this Chapter shall be interpreted to limit the authority of the court to
35 issue an interlocutory order under the provisions of G.S. 50-13.5(d)(2); or a secure or
36 nonsecure custody order under the provisions of ~~G.S. 7A-573.~~ G.S. 7B-502."
- 37 (o) G.S. 50B-6 reads as rewritten:
38 **"§ 50B-6. Construction of Chapter.**
39 This Chapter shall not be construed as granting a status to any person for any
40 purpose other than those expressly stated herein. This Chapter shall not be construed
41 as relieving any person or institution of the duty to report to the department of social
42 services, as required by ~~G.S. 7A-543,~~ G.S. 7B-301, if the person or institution has
43 cause to suspect that a juvenile is abused or neglected."
- 44 (p) G.S. 51-2(a) reads as rewritten:

1 "(a) All unmarried persons of 18 years, or older, may lawfully marry, except as
2 hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of
3 age may marry, and the register of deeds may issue a license for such marriage, only
4 after there shall have been filed with the register of deeds a written consent to such
5 marriage, said consent having been signed by the appropriate person as follows:

- 6 (1) By the father if the male or female child applying to marry resides
7 with his or her father, but not with his or her mother;
- 8 (2) By the mother if the male or female child applying to marry
9 resides with his or her mother, but not with his or her father;
- 10 (3) By either the mother or father, without preference, if the male or
11 female child applying to marry resides with his or her mother and
12 father;
- 13 (4) By a person, agency, or institution having legal custody, standing in
14 loco parentis, or serving as guardian of such male or female child
15 applying to marry.

16 Such written consent shall not be required for an emancipated minor if a certificate
17 of emancipation issued pursuant to ~~Article 56 of Chapter 7A~~ 35 of Chapter 7B of the
18 General Statutes or a certified copy of a final decree or certificate of emancipation
19 from this or any other jurisdiction is filed with the register of deeds."

20 (q) G.S. 90-21.6(1) reads as rewritten:

21 "(1) 'Unemancipated minor' or 'minor' means any person under the
22 age of 18 who has not been married or has not been emancipated
23 pursuant to ~~Article 56 of Chapter 7A~~ 35 of Chapter 7B of the
24 General Statutes."

25 (r) G.S. 90-21.8(f) reads as rewritten:

26 "(f) The court shall make written findings of fact and conclusions of law
27 supporting its decision and shall order that a confidential record of the evidence be
28 maintained. If the court finds that the minor has been a victim of incest, whether
29 felonious or misdemeanor, it shall advise the Director of the Department of Social
30 Services of its findings for further action pursuant to ~~Article 44 of Chapter 7A~~ 3 of
31 Chapter 7B of the General Statutes."

32 (s) G.S. 108A-14(a)(11) reads as rewritten:

33 "(11) To investigate reports of child abuse and neglect and to take
34 appropriate action to protect such children pursuant to the Child
35 Abuse Reporting Law, ~~Article 44 of Chapter 7A;~~ Article 3 of
36 Chapter 7B of the General Statutes;"

37 (t) G.S. 110-102 reads as rewritten:

38 "**§ 110-102. Information for parents.**

39 The Secretary shall provide to each operator of a child care facility a summary of
40 this Article for the parents, guardian, or full-time custodian of each child receiving
41 child care in the facility to be distributed by the operator. The summary shall include
42 the name and address of the Secretary and the address of the Commission. The
43 summary shall also include a statement regarding the mandatory duty prescribed in
44 ~~G.S. 7A-543~~ G.S. 7B-301 of any person suspecting child abuse or neglect has taken

1 place in child care, or elsewhere, to report to the county Department of Social
2 Services. The statement shall include the definitions of child abuse and neglect
3 described in the Juvenile Code in ~~G.S. 7A-517~~ 7B-101 and of child abuse described
4 in the Criminal Code in G.S. 14-318.2 and G.S. 14-318.4. The statement shall stress
5 that this reporting law does not require that the person reporting reveal the person's
6 identity."

7 (u) G.S. 110-105.2(a) reads as rewritten:

8 "(a) For purposes of this Article, child abuse and neglect, as defined in ~~G.S.~~
9 ~~7A-517~~ G.S. 7B-101 and in G.S. 14-318.2 and G.S. 14-318.4, occurring in child care
10 facilities, are violations of the licensure standards and of the licensure law."

11 (v) G.S. 110-147 reads as rewritten:

12 "**§ 110-147. Purpose.**

13 It is the expressed intent of this Article to make the prevention of child abuse and
14 neglect as defined in ~~G.S. 7A-517~~, G.S. 7B-101, a priority of this State and to
15 establish the Children's Trust Fund as a means to that end."

16 (w) G.S. 114-15.3 reads as rewritten:

17 "**§ 114-15.3. Investigations of child sexual abuse in child care.**

18 The Director of the Bureau may form a task force to investigate and gather
19 evidence following a notification by the director of a county department of social
20 services, pursuant to ~~G.S. 7A-543~~, G.S. 7B-301, that child sexual abuse may have
21 occurred in a child care facility."

22 (x) G.S. 115C-378 reads as rewritten:

23 "**§ 115C-378. Children required to attend.**

24 Every parent, guardian or other person in this State having charge or control of a
25 child between the ages of seven and 16 years shall cause such child to attend school
26 continuously for a period equal to the time which the public school to which the
27 child is assigned shall be in session. Every parent, guardian, or other person in this
28 State having charge or control of a child under age seven who is enrolled in a public
29 school in grades kindergarten through two shall also cause such child to attend school
30 continuously for a period equal to the time which the public school to which the
31 child is assigned shall be in session unless the child has withdrawn from school. No
32 person shall encourage, entice or counsel any such child to be unlawfully absent from
33 school. The parent, guardian, or custodian of a child shall notify the school of the
34 reason for each known absence of the child, in accordance with local school policy.

35 The principal, superintendent, or teacher who is in charge of such school shall
36 have the right to excuse a child temporarily from attendance on account of sickness
37 or other unavoidable cause which does not constitute unlawful absence as defined by
38 the State Board of Education. The term 'school' as used herein is defined to embrace
39 all public schools and such nonpublic schools as have teachers and curricula that are
40 approved by the State Board of Education.

41 All nonpublic schools receiving and instructing children of a compulsory school
42 age shall be required to keep such records of attendance and render such reports of
43 the attendance of such children and maintain such minimum curriculum standards as
44 are required of public schools; and attendance upon such schools, if the school

1 refuses or neglects to keep such records or to render such reports, shall not be
2 accepted in lieu of attendance upon the public school of the district to which the
3 child shall be assigned: Provided, that instruction in a nonpublic school shall not be
4 regarded as meeting the requirements of the law unless the courses of instruction run
5 concurrently with the term of the public school in the district and extend for at least
6 as long a term.

7 The principal or his designee shall notify the parent, guardian, or custodian of his
8 child's excessive absences after the child has accumulated three unexcused absences
9 in a school year. After not more than six unexcused absences, the principal shall
10 notify the parent, guardian, or custodian by mail that he may be in violation of the
11 Compulsory Attendance Law and may be prosecuted if the absences cannot be
12 justified under the established attendance policies of the State and local boards of
13 education. Once the parents are notified, the school attendance counselor shall work
14 with the child and his family to analyze the causes of the absences and determine
15 steps, including adjustment of the school program or obtaining supplemental services,
16 to eliminate the problem. The attendance counselor may request that a law-
17 enforcement officer accompany him if he believes that a home visit is necessary.

18 After 10 accumulated unexcused absences in a school year the principal shall
19 review any report or investigation prepared under G.S. 115C-381 and shall confer
20 with the student and his parent, guardian, or custodian if possible to determine
21 whether the parent, guardian, or custodian has received notification pursuant to this
22 section and made a good faith effort to comply with the law. If the principal
23 determines that parent, guardian, or custodian has not, he shall notify the district
24 attorney. If he determines that parent, guardian, or custodian has, he may file a
25 complaint with the juvenile intake counselor ~~under G.S. 7A-561~~ pursuant to Chapter
26 7B of the General Statutes that the child is habitually absent from school without a
27 valid excuse. Evidence that shows that the parents, guardian, or custodian were
28 notified and that the child has accumulated 10 absences which cannot be justified
29 under the established attendance policies of the local board shall establish a prima
30 facie case that the child's parent, guardian, or custodian is responsible for the
31 absences."

32 (y) G.S. 115C-400 reads as rewritten:

33 "**§ 115C-400. School personnel to report child abuse.**

34 Any person who has cause to suspect child abuse or neglect has a duty to report
35 the case of the child to the Director of Social Services of the county, as provided in
36 ~~G.S. 7A-543 to 7A-552. Article 3 of Chapter 7B of the General Statutes.~~"

37 (z) G.S. 115C-404(a) reads as rewritten:

38 "(a) Written notifications received in accordance with ~~G.S. 7A-675.1~~ Article 31 of
39 Chapter 7B of the General Statutes are confidential records, are not public records as
40 defined under G.S.132-1, and shall not be made part of the student's official record
41 under G.S. 115C-402. Immediately upon receipt, the principal shall maintain these
42 documents in a safe, locked record storage that is separate from the student's other
43 school records. The principal shall maintain these documents until the principal
44 receives notification that the judge dismissed the ~~petition under G.S. 7A-637,~~ petition,

1 the judge transferred jurisdiction over the student to superior court under G.S.
2 ~~7A-608~~, court, or the judge granted the student's petition for expunction of the
3 ~~records~~. records pursuant to Chapter 7B of the General Statutes. At that time, the
4 principal shall shred, burn, or otherwise destroy the documents to protect the
5 confidentiality of this information. In no case shall the principal make a copy of these
6 documents."

7 (aa) G.S. 122C-54(h) reads as rewritten:

8 "(h) A facility shall disclose confidential information for purposes of complying
9 with Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the General Statutes and Article 6
10 of Chapter 108A of the General Statutes, or as required by other State or federal
11 law."

12 (bb) G.S. 122C-66(e) reads as rewritten:

13 "(e) The duty imposed by this section is in addition to any duty imposed by G.S.
14 ~~7A-543~~ 7B-301 or G.S. 108A-102."

15 (cc) G.S. 122C-223(c) reads as rewritten:

16 "(c) If the legally responsible person cannot be located within 72 hours of
17 admission, the responsible professional shall initiate proceedings for juvenile
18 protective services as described in Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the
19 General Statutes in either the minor's county of residence or in the county in which
20 the facility is located."

21 (dd) G.S. 122C-421(a) reads as rewritten:

22 "(a) The Secretary may designate one or more special police officers who shall
23 make up a joint security force to enforce the law of North Carolina and any
24 ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or
25 pursuant to the authority granted the Department by any other law on the territory of
26 the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile
27 Evaluation Center, all in Buncombe County. After taking the oath of office for law
28 enforcement officers as set out in G.S. 11-11, these special police officers have the
29 same powers as peace officers now vested in sheriffs within the territory embraced by
30 the named centers. These special police officers shall also have the power prescribed
31 by ~~G.S. 7A-571(a)(4)~~ G.S. 7B-1900 outside the territory embraced by the named
32 centers but within the confines of Buncombe County. These special police officers
33 may arrest persons outside the territory of the named centers but within the confines
34 of Buncombe County when the person arrested has committed a criminal offense
35 within that territory, for which the officers could have arrested the person within that
36 territory, and the arrest is made during the person's immediate and continuous flight
37 from that territory."

38 (ee) G.S. 131D-10.2(3) reads as rewritten:

39 "(3) 'Child' means an individual less than 18 years of age, who has not
40 been emancipated under the provisions of ~~Article 56 of Chapter~~
41 ~~7A~~ Article 35 of Chapter 7B of the General Statutes."

42 (ff) G.S. 131D-10.4(3) reads as rewritten:

43 "(3) Secure detention facilities as specified in Article ~~5 of Chapter~~
44 ~~134A~~ 40 of Chapter 7B of the General Statutes;"

1 (gg) G.S. 132-1.4(l) reads as rewritten:

2 "(l) Records of investigations of alleged child abuse shall be governed by ~~G.S.~~
3 ~~7A-675.~~ Article 29 of Chapter 7B of the General Statutes."

4 (hh) G.S. 143-576(1) reads as rewritten:

5 "(1) Review current deaths of children when those deaths are attributed
6 to child abuse or neglect or when the decedent was reported as an
7 abused or neglected juvenile pursuant to ~~G.S. 7A-543~~ G.S. 7B-301
8 at any time before death;"

9 (ii) G.S. 143B-168.14(a)(3) reads as rewritten:

10 "(3) Each local partnership shall adopt procedures to ensure that all
11 personnel who provide services to young children and their
12 families under this Part know and understand their responsibility
13 to report suspected child abuse, neglect, or dependency, as defined
14 in ~~G.S. 7A-517.~~ G.S. 7B-101."

15 (jj) G.S. 143B-496 reads as rewritten:

16 "**§ 143B-496. Definitions.**

17 For the purpose of this Part:

18 (1) 'Missing child' means a juvenile as defined in G.S. ~~7A-517(20)~~ 7B-
19 101 whose location has not been determined, who has been
20 reported as missing to a law-enforcement agency, and whose
21 parent's, spouse's, guardian's or legal custodian's temporary or
22 permanent residence is in North Carolina or is believed to be in
23 North Carolina.

24 (2) 'Missing person' means any individual who is 18 years of age or
25 older, whose temporary or permanent residence is in North
26 Carolina, or is believed to be in North Carolina, whose location
27 has not been determined, and who has been reported as missing to
28 a law-enforcement agency.

29 (3) 'Missing person report' is a report prepared on a prescribed form
30 for transmitting information about a missing person or a missing
31 child to an appropriate law-enforcement agency."

32 (kk) G.S. 153A-221.1 reads as rewritten:

33 "**§ 153A-221.1. Standards and inspections.**

34 The legal responsibility of the Secretary of Health and Human Services and the
35 Social Services Commission for State services to county juvenile detention homes
36 under this Article is hereby confirmed and shall include the following: development
37 of State standards under the prescribed procedures; inspection; consultation; technical
38 assistance; and training. Further, the legal responsibility of the Department of Health
39 and Human Services is hereby expanded to give said Department the same legal
40 responsibility as to the State-administered regional detention homes which shall be
41 developed by the State Department of Correction as provided by ~~G.S. 134A-37.~~ G.S.
42 7B-4008.

43 The Secretary of Health and Human Services shall develop new standards which
44 shall be applicable to county detention homes and regional detention homes as

1 defined by ~~G.S. 134-36~~ Article 40 of Chapter 7B of the General Statutes in line with
2 the recommendations of the report entitled Juvenile Detention in North Carolina: A
3 Study Report (January, 1973) where practicable, and such new standards shall
4 become effective not later than July 1, 1977.

5 The Secretary of Health and Human Services shall also develop standards under
6 which a local jail may be approved as a holdover facility for not more than five
7 calendar days pending placement in a juvenile detention home which meets State
8 standards, providing the local jail is so arranged that any child placed in the holdover
9 facility cannot converse with, see, or be seen by the adult population of the jail while
10 in the holdover facility. The personnel responsible for the administration of a jail
11 with an approved holdover facility shall provide close supervision of any child placed
12 in the holdover facility for the protection of the child."

13 Section 13. Effective October 1, 1999, G.S. 14-208.31 reads as rewritten:

14 "**§ 14-208.31. File with Police Information Network.**

15 (a) The Division shall include the registration information in the Police
16 Information Network as set forth in G.S. 114-10.1.

17 (b) The Division shall maintain the registration information permanently even
18 after the registrant's reporting requirement expires; however, the records shall remain
19 confidential in accordance with ~~G.S. 7A-675~~. Article 32 of Chapter 7B of the General
20 Statutes."

21 **PART VI. UNCODIFIED RECOMMENDATIONS.**

22 Section 14. The Department of Justice shall revise the Division of
23 Criminal Information's juvenile arrest form that is used by State and local law
24 enforcement agencies to provide more realistic reporting options and case disposition
25 information. The Department of Justice shall rename the "Juvenile Arrest" form the
26 "Juvenile Contact Report", with instructions to law enforcement "Use to Record the
27 Handling of Juveniles Who Commit Criminal Offenses" and shall amend the report
28 based on the form included with Recommendation 51 of the March 10, 1998, final
29 report of the Governor's Commission on Juvenile Crime and Justice.

30 Section 15. (a) The Department of Justice shall develop and administer
31 minority sensitivity training for all law enforcement personnel throughout the State.
32 The Department shall ensure that all persons who work with minority juveniles in the
33 juvenile justice system are taught how to communicate effectively with minority
34 juveniles and how to recognize and address the needs of those juveniles. The
35 Department shall also advise all law enforcement and professionals who work within
36 the juvenile justice system of ways to improve the treatment of minority juveniles so
37 that all juveniles receive equal treatment. The Department shall conduct the
38 minority sensitivity training annually and, prior to the training each year, shall assess
39 whether minorities are receiving fair and equal treatment in the juvenile justice
40 system with regard to the administration of predisposition procedures, of diversion
41 methods, of dispositional alternatives, and of treatment and post-release supervision
42 plans.

43 (b) The Department of Juvenile Justice shall ensure that all juvenile
44 court counselors and other Department personnel receive the minority sensitivity

1 training specified in subsection (a) of this section. The Chief Justice of the North
2 Carolina Supreme Court shall consider ensuring that all judges who hear cases under
3 the jurisdiction of the juvenile court receive minority sensitivity training.

4 Section 16. The Legislative Research Commission may study the
5 recommendations of the Court Improvement Project regarding the statutory
6 procedures and mandates of Subchapter I. of Chapter 7B of the General Statutes, the
7 Juvenile Code. The study may include a review of the effectiveness of the juvenile
8 justice system with regard to the disposition of abuse, neglect, and dependency cases
9 and may consider whether the recommendations of the Court Improvement Project
10 will improve the procedures and disposition of those cases. The Legislative Research
11 Commission may report its findings, recommendations, and any legislative proposals
12 to the 1999 General Assembly on or before December 1, 1999.

13 Section 17. (a) The State Board of Education shall study the feasibility
14 and advisability of delaying the start of the school day in order to provide students
15 with constructive projects and tasks during late afternoon hours of the school week.
16 If the Board recommends that the school day be delayed, the Board shall consider
17 whether the local school administrative units should provide supervision of students
18 whose working parents do not have early morning child care available.

19 (b) The State Board of Education shall report its findings,
20 recommendations, and any legislative proposals to the Joint Legislative Education
21 Oversight Committee on or before April 1, 1999.

22 Section 18. (a) The Criminal Justice Information Network Governing
23 Board created pursuant to Section 23.3 of Chapter 18 of the Session Laws of the 1996
24 Second Extra Session shall develop a comprehensive juvenile justice information
25 system. The Board shall develop a system to collect data and information about every
26 juvenile who is alleged to be delinquent from the time a complaint is filed against the
27 juvenile, including:

- 28 (1) Fingerprints and photographs taken of the juvenile;
- 29 (2) Diversion agreements or plans entered into by the juvenile;
- 30 (3) Community services provided to the juvenile and any participation
31 of the juvenile in community-based programs;
- 32 (4) Court orders or dispositions of the juvenile; and
- 33 (5) Plans for care or treatment or for post-release supervision prepared
34 by the Department of Juvenile Justice.

35 The system shall allow for information and data on juveniles to be kept in a form to
36 be shared among appropriate agencies to develop treatment and intervention plans
37 based on specific data and to allow reliable assessment and evaluation of the
38 effectiveness of rehabilitative and preventive services provided to delinquent
39 juveniles.

40 (b) The Criminal Justice Information Network Governing Board shall
41 also study the most appropriate methods and procedures for obtaining, retaining, and
42 releasing fingerprints and photographs of juveniles alleged to be delinquent,
43 including:

- 1 (1) How to identify fingerprints and photographs of juveniles,
2 including the use of social security numbers;
- 3 (2) How long fingerprints and photographs of juveniles should be
4 maintained in the criminal justice information system;
- 5 (3) The extent to which juvenile fingerprints and photographs are kept
6 confidential;
- 7 (4) The circumstances or conditions under which juvenile fingerprints
8 and photographs should be disseminated;
- 9 (5) Whether juvenile fingerprints and photographs should be kept
10 separate from adult records and files; and
- 11 (6) When the juvenile fingerprints and photographs should be
12 destroyed.

13 (c) The Criminal Justice Information Network Governing Board shall
14 consider the issue of expunction of juvenile records, including the appropriate length
15 of time juvenile records should be available to law enforcement, prosecutors, and
16 service providers and under what limitations and conditions records should be
17 expunged.

18 (d) The Criminal Justice Information Network Governing Board shall
19 report to the Chairs of the Senate and House Appropriations Subcommittees on
20 Justice and Public Safety and to the Fiscal Research Division of the General
21 Assembly on the proposed system and any findings, recommendations, and legislative
22 proposals from its study on or before April 1, 1999.

23 Section 19. (a) The Department of Juvenile Justice shall develop a cost-
24 effective plan to establish statewide community-based dispositional alternatives for
25 juveniles who are adjudicated delinquent. The plan shall include a funding strategy to
26 encourage communities to provide local resources, services, and treatment options to
27 meet the physical, emotional, and mental needs of juveniles and their families. In
28 developing the plan, the Department shall consider the following community-based
29 alternatives:

- 30 (1) Home-based family counseling with family support groups that can
31 provide required intervention services;
- 32 (2) After-school activity programs for middle school juveniles targeted
33 at potential at-risk juveniles during the time when most juvenile
34 crimes occur;
- 35 (3) Inpatient and outpatient substance abuse and sex offender
36 treatment programs;
- 37 (4) Intensive supervision of high-risk juveniles;
- 38 (5) Group homes with psychological treatment and programs for
39 juveniles who do not pose a threat to the public but who need long
40 term intervention services.

41 In addition, in developing the plan, the Department shall recommend which judicial
42 districts with high crime rates should have non-residential day reporting centers to
43 provide intensive supervision.

1 (b) The Department shall report to the Chairs of the Senate and House
2 Appropriations Subcommittees on Justice and Public Safety and to the Fiscal
3 Research Division of the General Assembly on the proposed plan, the cost of the
4 plan, and on any legislative proposals required to implement the plan on or before
5 April 1, 1999.

6 Section 20. (a) The Administrative Office of the Courts shall establish
7 pilot programs for the holding of family court within district court districts to be
8 chosen by the Administrative Office of the Courts. Each pilot program shall be
9 conducted following the guidelines for the establishment of family courts contained in
10 the report of the Commission for the Future of Justice and the Courts in North
11 Carolina and shall be assigned to hear all matters involving intrafamily rights,
12 relationships, and obligations, and all juvenile justice matters, including:

- 13 (1) Child abuse, neglect, and dependency;
- 14 (2) Delinquent and undisciplined juvenile matters;
- 15 (3) Emancipation of minors and termination of parental rights;
- 16 (4) Divorce;
- 17 (5) Annulment;
- 18 (6) Equitable distribution;
- 19 (7) Alimony and postseparation support;
- 20 (8) Child custody;
- 21 (9) Child support;
- 22 (10) Paternity;
- 23 (11) Adoption;
- 24 (12) Domestic violence civil restraining orders;
- 25 (13) Abortion consent waivers;
- 26 (14) Adult protective services; and
- 27 (15) Guardianship, involuntary commitment, and voluntary
28 admissions to mental health facilities.

29 (b) The Administrative Office of the Courts shall report to the Chairs of
30 the Senate and House Appropriations Subcommittees on Justice and Public Safety
31 and to the Fiscal Research Division of the General Assembly by March 1, 1999, on
32 the success of the pilot programs in bringing consistency, efficiency, and fairness to
33 the resolution of family matters and on the impact of the programs on caseloads in
34 the district court division.

35 Section 21. (a) The General Assembly finds that there are multiple risk
36 factors that put youth at risk of becoming delinquent, such as aggression, school
37 failure, child abuse and neglect, substance abuse, extreme economic deprivation,
38 friends who engage in problem behavior, inconsistent, ineffective discipline, poor
39 parental supervision, and family conflict. There are currently a number of screening
40 programs available through a number of State and local entities that, if better
41 coordinated, can provide adequate identification of delinquency risk factors so that
42 delinquency prevention programs and services can be effective.

43 The General Assembly further finds that there are currently a number of
44 State and local entities that provide delinquency prevention programs to at-risk youth

1 and their families, including early intervention programs and programs improving
2 cognitive and social competence and self-control skills, improving parenting skills,
3 and providing a positive role model. Many of these programs are already available
4 and need only to be made more accessible and to be better coordinated with other
5 existing programs and services.

6 (b) The Department of Juvenile Justice shall ensure that existing
7 programs made available through a number of entities, both at the State and at the
8 local level, that provide screenings that can provide adequate identification of
9 delinquency risk factors, continue to be used in a consistent, coordinated, and cost-
10 effective way so as to enable delinquency prevention programs and services to be
11 utilized in a consistent, coordinated, and cost-effective way.

12 (c) In implementing this section, the Department shall cooperate with all
13 affected State and local public and private entities, including local education
14 agencies, local health departments, developmental evaluation centers, local
15 departments of social services, the Divisions of Women and Children's Health, of
16 Social Services, and Mental Health, Developmental Disabilities, and Substance Abuse
17 Services of the Department of Health and Human Services, law enforcement
18 agencies, and nonprofit agencies.

19 (d) The Department shall report to the General Assembly by April 1,
20 1999, on its implementation of this section. This report shall include an evaluation of
21 the screenings and prevention programs, an identification of any bars in the law or in
22 any agency's policy that preclude effective cooperation, together with any legislative
23 and rule recommendations that are needed, recommendations as to any new
24 screening or prevention programs and services that are needed, and a detailed cost
25 analysis of these recommendations.

26 Section 22. (a) The Department of Juvenile Justice, in cooperation with
27 the Department of Public Instruction, shall study more effective and efficient ways to:

- 28 (1) Coordinate case management of delinquency and undisciplined
29 cases;
- 30 (2) Provide services to juveniles who are in need of treatment,
31 counseling, or rehabilitation and to the families of those juveniles,
32 including court-ordered parenting responsibility classes; and
- 33 (3) Provide the maximum protection to the public and to local school
34 administrative units, in particular, through the sharing of
35 information between agencies that work with juveniles who are
36 delinquent or undisciplined and increased accountability of those
37 juveniles and their parents.

38 The study shall include a review of all the agencies, councils, and programs that
39 provide services to juveniles, including the Center for the Prevention of School
40 Violence, School Resource Officers, the Guardian ad Litem Program of the
41 Administrative Office of the Courts, the Department of Social Services, the
42 Department of Administration, the Division of Child and Family Services, the
43 Division of Mental Health, Developmental Disabilities, and Substance Abuse
44 Services, and the Willie M. Program, and whether the agencies, councils, or programs

1 should be eliminated, consolidated, or incorporated within the Department of
2 Juvenile Justice. In determining whether to incorporate any of the above-listed
3 programs or agencies in the new department, the Department of Juvenile Justice and
4 the Department of Public Instruction shall consider the funding mechanisms of those
5 programs and agencies in an effort to operate the Department of Juvenile Justice in a
6 cost-effective and efficient manner.

7 (b) The Department of Juvenile Justice in cooperation with the
8 Department of Public Instruction, shall develop proposed rules, forms, and policies
9 required to establish the Department of Juvenile Justice and to implement the
10 objectives and mandates of Article 12 of Chapter 143B of the General Statutes, as
11 enacted by this act.

12 (c) On or before April 1, 1999, the Department of Juvenile Justice and
13 the Department of Public Instruction shall report its findings and recommendations,
14 including any legislative proposals and funding requirements that are required to
15 implement Article 12 of Chapter 143B of the General Statutes, as enacted by this act,
16 to the 1999 General Assembly by April 1, 1999.

17 **PART VII. DEPARTMENT OF JUVENILE JUSTICE STUDY AND REPORT.**

18 Section 23. The Department of Juvenile Justice shall use funds within its
19 budget to evaluate the effectiveness of the reform measures implemented pursuant to
20 the provisions of this act. The Department shall report the results of the evaluation
21 and any recommended legislative amendments to Chapter 7B of the General Statutes
22 to the Joint Legislative Commission on Governmental Operations by April 1, 2001.

23 **PART VIII. DEPARTMENT TRANSITIONAL PERIOD.**

24 Section 24. Beginning October 1, 1998, the Department of Juvenile
25 Justice shall perform all functions and duties of the Division of Youth Services of the
26 Department of Health and Human Services and of the Division of Juvenile Services
27 of the Administrative Office of the Courts and shall have all powers and authority
28 vested in those Divisions pursuant to the General Statutes, notwithstanding that
29 Section 4 of this act amends the applicable sections of the General Statutes to revise
30 statutory references to "Division of Youth Services", "Division of Juvenile Services",
31 "Juvenile Services Division", "Administrative Office of the Courts", "Director of
32 Youth Services", and "Administrator of Juvenile Services", effective July 1, 1999.

33 **PART IX. FACILITIES CONSTRUCTION.**

34 Section 25. The Office of State Construction of the Department of
35 Administration may contract for and supervise all aspects of administration, technical
36 assistance, design, construction, or demolition of any juvenile facilities authorized for
37 the 1998-99 fiscal year, including renovation of existing adult facilities to juvenile
38 facilities.

39 The facilities authorized for the 1998-99 fiscal year shall be constructed in
40 accordance with the provisions of general law applicable to the construction of State
41 facilities. If the Secretary of Administration, after consultation with the Secretary of
42 the Department of Juvenile Justice, finds that the delivery of juvenile facilities must
43 be expedited for good cause, the Office of State Construction of the Department of
44 Administration shall be exempt from the following statutes and rules implementing

1 those statutes, to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128,
2 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-
3 66, 133-1.1(g), and 143-408.1 through 143-408.7.

4 Prior to exercising the exemptions allowable under this section, the
5 Secretary of Administration shall give reasonable notice in writing of the
6 Department's intent to exercise the exemptions to the Speaker of the House, the
7 President Pro Tempore of the Senate, the Chairs of the House and Senate
8 Appropriations Committees, the Joint Legislative Commission on Governmental
9 Operations, and the Fiscal Research Division. The written notice shall contain at
10 least the following information: (i) the specific statutory requirement or requirements
11 from which the Department intends to exempt itself; (ii) the reason the exemption is
12 necessary to expedite delivery of juvenile facilities; (iii) the way in which the
13 Department anticipates the exemption will expedite the delivery of facilities; and (iv)
14 a brief summary of the proposed contract for the project which is to be exempted.

15 The Office of State Construction of the Department of Administration
16 shall have a verifiable ten percent (10%) goal for participation by minority and
17 women-owned businesses. All contracts for the design, construction, or demolition of
18 juvenile facilities shall include a penalty for failure to complete the work by a
19 specified date.

20 The Office of State Construction of the Department of Administration
21 shall consult the Department of Juvenile Justice on these projects to the extent that
22 such involvement relates to the Department's program needs and to its responsibility
23 for the care of the population of the facility.

24 (b) The Office of State Construction of the Department of
25 Administration shall provide a report by May 1, 1999, to the Chairs of the Senate and
26 House Appropriations Committees, the Joint Legislative Commission on
27 Governmental Operations, and the Fiscal Research Division as to any changes in
28 projects and allocations authorized for the 1998-99 fiscal year. The report shall
29 include information on which contractors have been selected, what contracts have
30 been entered into, the projected and actual occupancy dates of facilities contracted
31 for, the number of beds to be constructed on each project, the location of each
32 project, and the projected and actual cost of each project.

33 PART X. APPROPRIATIONS.

34 Section 26. There is established in the Office of State Budget and
35 Management a reserve fund entitled the "Juvenile Justice Reserve Fund" to provide
36 funds to implement the provisions of this act. There is appropriated from the General
37 Fund to the Office of State Budget and Management the sum of forty-two million
38 four hundred thousand dollars (\$42,400,000) for the 1998-99 fiscal year for the
39 Juvenile Justice Reserve Fund. The Office of State Budget and Management shall
40 report to the Joint Legislative Commission on Governmental Operations on the
41 intended use of the funds prior to expenditure of any funds from the Juvenile Justice
42 Reserve Fund.

43 PART XI. SEVERABILITY CLAUSE.

1 Section 27. If any section or provision of this act is declared
2 unconstitutional or invalid by the courts, it does not affect the validity of this act as a
3 whole or any part other than the part so declared to be unconstitutional or invalid.

4 **PART XII. EFFECTIVE DATES.**

5 Section 28. (a) Sections 1, 2, 19, 21, and 22 of this act become effective
6 October 1, 1998.

7 (b) Sections 3 through 8, Sections 10 through 12, and Sections 14, 15, and
8 18 of this act become effective July 1, 1999.

9 (c) Sections 9 and 13 of this act become effective October 1, 1999.

10 (d) The remainder of this act becomes effective July 1, 1998.

11 (e) G.S. 7B-1402 and G.S. 7B-1403, as enacted by Section 4 of this act,
12 are repealed February 1, 1999.

VISITOR REGISTRATION SHEET

Senate Judiciary 5/26/98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Pam Deardorff	Youth Advoc. & Invol. / DOA
April Demert	Sen Odom's office
Eric Zogry	Sentencing Commission
Matt Osborne	AOC
Pete Powell (by M.A.O.)	AOC
Stacey Parker	Sen. Barnight
Richard Koss	ALLA
Jane H. Lee	NTO
JENNIE REEVES	SEN. REEVES (MOTHER)
Pauland Pineda	Gov. Office
R. M. Young	"
Thad Davis	NCAE
Jon Carr	Jordan Price Wall Gray & Jones
Julie Stewart	CCPS
Jill Kim	Gov's Commission on Ju. Crime & Justice
VIRGINIA PRICE	DOC
Ed Taylor	AOL
Lao Rubent	CYMC
Estheria Lewis	Electricities of NC
Min Garland	Electricities
Nancy Bradley	UNCCB
Beckie Street	PPAB
ROX Azark	NCAE
PATRICK HAVNAN	Ballance Legal Intern

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Bill Alexander

NCTBA

W. J. ...

self

Alan Miles

Bartley & Dixon Ltd

Robert ...

Jordan Price Wall

Kenneth D. Swan (Intern)

Gen. Frank Ballance

David Ferrell

Hofe, McManis, Caldwell et al

Eddie Caldwell

Hofe McManis Caldwell

Ellen O. ...

CCGA Road

MINUTES
SENATE JUDICIARY COMMITTEE
May 28, 1998

The Senate Judiciary Committee met on, May 28, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Dalton to explain Senate Bill 1077 - AN ACT TO AMEND THE OFFENSES OF FIRST AND SECOND DEGREE BURGLARY.

Senator Winner moved to amend the bill on Page 1, Line 21-22 and Page 2, Line 9. (Amendment may be found on back of the explanation of the bill.)

Senator Cooper told the Committee that a vote would not be taken on this bill or on Senate Bill 909 until a new fiscal note could be obtained.

Elisa Wolper, with Fiscal Research, was recognized to respond to questions from the Committee.

Senator Cooper asked that the bill be brought back to the Committee as a Proposed Committee Substitute for further discussion.

Senator Dalton was recognized to explain Senate Bill 909 - AN ACT TO PROVIDE AN ENHANCED PENALTY FOR CERTAIN OFFENSES IF THE DEFENDANT POSSESSED OR TOOK A DANGEROUS WEAPON DURING THE OFFENSE.

Senator Odom moved to adopt a Proposed Committee Substitute for discussion. The motion carried by a majority voice vote.

Senator Cooper asked that the bill be held until a note is obtained from the Sentencing Commission and from Fiscal Research.

Representative Mosley was recognized to explain House Bill 904 - AN ACT TO PROVIDE THAT A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE SHALL BE IMPOSED FOR A SECOND OR SUBSEQUENT CONVICTION OF A CLASS B1 FELONY IF THERE ARE NO MITIGATING CIRCUMSTANCES AND THE VICTIM IS THIRTEEN YEARS OF AGE OR YOUNGER.

Senator Miller moved to amend the bill on Page 2, Line 3. The motion carried by a majority voice vote. (See attached amendment.)

Senator Blust moved to amend the bill on Page 1, Lines 19 and 20 by removing (3). The amendment was withdrawn.

Senator Odom moved to give the bill a favorable report as amended and refer it to the Appropriations Committee. The motion carried by a majority voice vote.

Senators Rand and Ballance were recognized to explain Senate Bill 1182 - AN ACT TO REPEAL THE SUNSET ON CHILD SUPPORT FEDERAL REQUIREMENTS IN ORDER TO AVOID LOSS OF FEDERAL FUNDS FOR THE 1998-99 FISCAL YEAR UNDER THE CHILD SUPPORT IV-D ENFORCEMENT PROGRAM AND UNDER THE TEMPORARY ASSISTANCE TO NEEDY FAMILIES FEDERAL BLOCK GRANT.

Senator Rand moved to amend the bill on Page 1, Line 8. The motion carried by a majority voice vote. (See attached amendment.)

Senator Rand moved to amend the bill on Page 1, Line 11. The motion carried by a majority voice vote. (See attached amendment.)

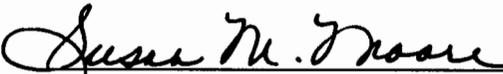
Representative Starnes was recognized to explain House Bill 594 - AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A PREGNANT WOMAN IN THE COMMISSION OF A FELONY, ACT OF DOMESTIC VIOLENCE, OR UNLAWFUL OPERATION OF A VEHICLE CAUSING A MISCARRIAGE OR STILLBIRTH.

Senator Miller moved to adopt a Proposed Committee Substitute for discussion. The motion carried by a majority voice vote.

Because of questions raised by the Committee, Senator Cooper asked that the bill be held temporarily.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, May 28, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

HB 594	Injury to Pregnant Woman	Rep. Starnes
HB 904	Life Imprison./Repeat Child Molester	Rep. Mosley
SB 1077	Amend Burglary	Sen. Dalton
SB 1182	Repeal Sunset Child Support Req.	Sen. Ballance
SB 1243	Clerks of Court on Commissions	Sen. Rand
SB 1336	Gov. DWI Amendments	Sen. Odom

Sen. Roy Cooper, III, Chairman

Posted: 05/26/98 3:20 PM

AGENDA
SENATE JUDICIARY COMMITTEE
May 28, 1998

HB 594	Injury to Pregnant Woman	Rep. Starnes
HB 904	Life Imprison./Repeat Child Molester	Rep. Mosley
SB 1077	Amend Burglary	Sen. Dalton
SB 1182	Repeal Sunset Child Support Req.	Sen. Ballance
SB 1243	Clerks of Court on Commissions	Sen. Rand
SB 1336	Gov. DWI Amendments	Sen. Odom

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1077

Short Title: Amend Burglary.

(Public)

Sponsors: Senator Dalton.

Referred to: Judiciary.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE OFFENSES OF FIRST AND SECOND DEGREE
3 BURGLARY.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 14-51 reads as rewritten:

6 "**§ 14-51. First and second degree burglary.**

7 ~~There shall be two degrees in the crime of burglary as defined at the common law.~~
8 ~~If the crime be committed in a dwelling house, or in a room used as a sleeping~~
9 ~~apartment in any building, and any person is in the actual occupation of any part of~~
10 ~~said dwelling house or sleeping apartment at the time of the commission of such~~
11 ~~crime, it shall be burglary in the first degree. If such crime be committed in a~~
12 ~~dwelling house or sleeping apartment not actually occupied by anyone at the time of~~
13 ~~the commission of the crime, or if it be committed in any house within the curtilage~~
14 ~~of a dwelling house or in any building not a dwelling house, but in which is a room~~
15 ~~used as a sleeping apartment and not actually occupied as such at the time of the~~
16 ~~commission of the crime, it shall be burglary in the second degree. For the purposes~~
17 ~~of defining the crime of burglary, larceny shall be deemed a felony without regard to~~
18 ~~the value of the property in question.~~

19 (a) First degree burglary. -- It is first degree burglary if a person does the
20 following: with the intent of committing a larceny or felony breaks or enters without
21 consent a dwelling house or a room used as a sleeping apartment in any building with
22 the intent of committing a felony, and any person is in the actual occupation of any
23 part of the dwelling house or sleeping apartment at the time of the entry.

1 (b) Second degree burglary. -- It is second degree burglary if a person does the
2 following: with the intent of committing a larceny or felony breaks or enters without
3 consent a dwelling house or sleeping apartment not actually occupied by anyone at
4 the time of the entry, or if the person enters any house within the curtilage of a
5 dwelling house or in any building not a dwelling house, but in which is a room used
6 as a sleeping apartment and not actually occupied as such at the time of the entry.

7 (c) Definition. -- For the purposes of defining the crime of burglary, larceny shall
8 be deemed a felony without regard to the value of the property in question."

9 Section 2. This act becomes effective December 1, 1997, and applies to
10 offenses committed on or after that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 28, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **SENATE BILL 1077 - AMEND BURGLARY**
Senator Dalton

Senate Bill 1077 amends the offenses of first and second degree burglary. Currently, burglary is defined by common law; G.S. 14-51 breaks the crime into degrees that depend on whether the dwelling is occupied when the breaking and entering occurs. The statute provides that there are two degrees of burglary. A person is guilty of 1st degree burglary if he or she breaks and enters without consent the dwelling house or sleeping apartment of another while it is actually occupied at night, with the intent to commit any felony or larceny therein. The elements of 2nd degree burglary are the same, except that the dwelling need not be occupied when the breaking and entering occurs, and the building broken and entered need not be a dwelling if it is "within the curtilage" of a dwelling.

Senate Bill 1077 deletes the present common-law requirement for burglary that there be a breaking and an entering, and that the breaking and entering must occur in the night-time. The bill defines first-degree burglary as (1) breaking or entering without consent, (2) with the intent of committing a larceny or felony, (3) a dwelling house or a room used as a sleeping apartment in any building, (4) and any person is actually occupying any part of the dwelling house or sleeping apartment at the time of the entry. The bill defines second-degree burglary in the same manner, except that the dwelling house or sleeping apartment need not actually be occupied by anyone at the time of the entry. Burglary in the 2nd degree also includes entering any house within the curtilage of a dwelling house.

The bill should be amended to become effective December 1, 1998 and apply to offenses committed on or after that date. The amendment would also delete redundant language regarding intent to commit a felony.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1077

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1077-ARV-001

Date _____, 1998

Comm. Sub. [
Amends Title [

Senator _____

- 1 moves to amend the bill on page 1, line 21-22,
- 2 by rewriting those lines to read:
- 3 "consent a dwelling house or a room used as a sleeping apartment in
- 4 any building, and any person is in the actual occupation of any";
- 5
- 6 and on page 2, line 9,
- 7 by deleting "1997" and substituting "1998".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1 device, or an object or substance designed, altered, used, or possessed for the purpose
2 of inflicting or threatening to inflict serious bodily injury. A closed pocket knife that
3 is neither displayed nor used is not a dangerous weapon."

4 Section 2. This act becomes effective December 1, 1997, and applies to
5 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

S909-CSRV-001

PROPOSED COMMITTEE SUBSTITUTE

S909

THIS IS A DRAFT 28-MAY-98 09:32:45

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Break & Enter/Steal Gun.

(Public)

Sponsors:

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE AN ENHANCED PENALTY FOR CERTAIN OFFENSES IF THE
3 DEFENDANT POSSESSED OR TOOK A DANGEROUS WEAPON DURING THE
4 OFFENSE.
5 The General Assembly of North Carolina enacts:
6 Section 1. Part 2 of Article 81B of Chapter 15A of the
7 General Statutes is amended by adding a new section to read:
8 "§ 15A-1340.16B. Enhanced sentence if a defendant convicted of
9 first or second degree burglary or breaking and entering also
10 possessed or took a dangerous weapon during the offense.
11 (a) When any person is convicted of an offense under G.S. 14-
12 51, 14-53, or 14-54 and the court finds that the person possessed
13 or took a dangerous weapon during the commission of the
14 underlying offense, the person shall be guilty of a felony that
15 is one class higher than the felony committed.
16 (b) Subsection (a) of this section does not apply if the
17 evidence that the person possessed or took a dangerous weapon

1 during the offense is needed to prove an element of the
2 underlying offense.

3 (c) For purposes of this section, a 'dangerous weapon' is a
4 firearm, a knife or other instrument with a point or sharp edge
5 subject to ready use as a weapon, a destructive device, or an
6 object or substance designed, altered, used, or possessed for the
7 purpose of inflicting or threatening to inflict serious bodily
8 injury. A closed pocket knife that is neither displayed nor used
9 is not a dangerous weapon."

10 Section 2. This act becomes effective December 1, 1998,
11 and applies to offenses committed on or after that date.



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Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 28, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

**RE: SENATE BILL 909 - BREAK & ENTER/STEAL GUN
Proposed Committee Substitute
Senator Dalton**

Senate Bill 909 would provide an enhanced penalty for certain offenses if the defendant possessed or took a dangerous weapon during the offense.

The bill adds a new G.S. 15A-1340.16B to provide that if a person is convicted under G.S. 14-51 (first- and second-degree burglary), 14-53 (breaking out of a dwelling house), or 14-54 (breaking or entering a building), and the sentencing judge finds that the person possessed or took a dangerous weapon during commission of the underlying offense, the person would be guilty of an offense that is one class higher than the offense committed. The enhanced sentence does not apply if evidence that the person possessed or took a dangerous weapon during the offense is needed to prove an element of the underlying offense. The new section defines "dangerous weapon" as a firearm, knife or other instrument with a point or sharp edge subject to ready use as weapon. The term also includes certain items that might be used to inflict or threaten to inflict serious bodily injury. A closed pocket knife that is neither displayed nor used is not a dangerous weapon.

The bill will become effective December 1, 1998 and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 904
Committee Substitute Favorable 4/30/97

Short Title: Life Imprison./Repeat Child Molester.

(Public)

Sponsors:

Referred to:

April 9, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A SENTENCE OF LIFE IMPRISONMENT
3 WITHOUT PAROLE SHALL BE IMPOSED FOR A SECOND OR
4 SUBSEQUENT CONVICTION OF A CLASS B1 FELONY IF THERE ARE NO
5 MITIGATING CIRCUMSTANCES AND THE VICTIM IS THIRTEEN YEARS
6 OF AGE OR YOUNGER.
7 The General Assembly of North Carolina enacts:
8 Section 1. Article 81B of Chapter 15A of the General Statutes is
9 amended by adding a new section to read:
10 "§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent
11 conviction of a Class B1 felony.
12 (a) Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, a person
13 convicted of a Class B1 felony shall be sentenced to life imprisonment without parole
14 if:
15 (1) The offense was committed against a victim who was 13 years of
16 age or younger at the time of the offense;
17 (2) The person has one or more prior convictions of a Class B1 felony;
18 and
19 (3) The court finds that there are no mitigating factors in accordance
20 with G.S. 15A-1340.16(e).
21 (b) If the sentencing court finds that there are mitigating circumstances, then the
22 court shall sentence the person in accordance with G.S. 15A-1340.17.

1 (c) A prior conviction of a Class B1 felony shall be proved in accordance with
2 G.S. 15A-1340.14."

3 Section 2. This act becomes effective December 1, 1997, and applies to
4 offenses committed on or after that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

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Raleigh, NC 27603-5925
(919) 733-6834

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Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 28, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **HOUSE BILL 904 - LIFE IMPRISONMENT/REPEAT CHILD MOLESTER**
Representative Mosley

Subcommittee Recommendation: Favorable.

House Bill 904 would provide for a sentence of life imprisonment without parole for a second or subsequent conviction of a Class B1 felony, if the victim is 13 years of age or younger and there are no mitigating circumstances. Under structured sentencing, the following are Class B1 felonies:

- first-degree rape
- first-degree sexual offense
- statutory rape or sexual offense of a person who is 13, 14, or 15 years old when the defendant is at least 6 years older than the person.

The presumptive minimum sentence for a B1 offense is 192-240 months (16-20 years). In felony sentencing, a B1 felony counts as 9 points in the prior record calculation. This means that a defendant who has committed a prior B1 felony, and who has no other prior felony convictions, is placed at prior record level IV on the sentencing grid. Under current law, this means that the 2nd time B1 offender is subject to a presumptive minimum sentence of 307-384 months active punishment (approx. 25-32 years); under this bill, if the victim of the 2nd or subsequent offense is 13 years of age or younger the offender would be subject to life imprisonment without parole. (*Life imprisonment without parole means that the person will spend the remainder of the person's natural life in prison. A defendant sentenced to life imprisonment without parole is entitled to review of that sentence by a resident superior court judge for the county in which the defendant was convicted after the defendant has served 25 years of imprisonment. The judge then recommends to the Governor or to any executive agency or board designated by the Governor whether or not the sentence of the defendant should be altered or commuted.*)

Additional Note: G.S. 15A-1340.14 provides that the State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. A prior conviction may be proved by: (1) Stipulation of the parties; (2) An original or copy of the court record of the prior conviction; (3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts; or (4) Any other method found by the court to be reliable.

The bill should be amended to become effective December 1, 1998 and apply to offenses committed on or after that date.

Class B1 felonies

§ 14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

§ 14-27.4. First-degree sexual offense.

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

§ 14-27.7A. Statutory rape or sexual offense of person who is 13, 14, or 15 years old.

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 904

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H904-ARV-001

Date _____, 1998

Comm. Sub. [YES]
Amends Title []
Second Edition

Senator _____

1 moves to amend the bill on page 2, line 3,
2 by deleting "1997" and substituting "1998".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 904

H904-ARV-001

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

Date 5-28, 1998

Comm. Sub. [YES]
Amends Title []
Second Edition

Senator MILLER

1 moves to amend the bill on page 2, line 3,
2 by deleting "1997" and substituting "1998".

SIGNED Bruce Ell
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1182

Short Title: Repeal Sunset/Child Support Req.

(Public)

Sponsors: Senators Rand and Ballance.

Referred to: Judiciary.

May 20, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE SUNSET ON CHILD SUPPORT FEDERAL
3 REQUIREMENTS IN ORDER TO AVOID LOSS OF FEDERAL FUNDS FOR
4 THE 1998-99 FISCAL YEAR UNDER THE CHILD SUPPORT IV-D
5 ENFORCEMENT PROGRAM AND UNDER THE TEMPORARY ASSISTANCE
6 TO NEEDY FAMILIES FEDERAL BLOCK GRANT.
7 The General Assembly of North Carolina enacts:
8 Section 1. Section 11.3 of S.L. 1997-443 reads as rewritten:
9 "Section 11.3. Except as otherwise provided in this act, this act becomes effective
10 ~~October 1, 1997 and expires on June 30, 1998. October 1, 1997.~~"
11 Section 2. This act is effective when it becomes law.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 28, 1998

MEMORANDUM

To: Senator Roy Cooper, Chair
Senate Judiciary Committee

From: Mary Shuping 

Re: SB 1182 - Repeal Sunset/Child Support Requirements

SB 1182 would remove the June 30, 1998 sunset provision on S.L. 1997-433, Child Support/Federal Requirements, enacted last session. This sunset was placed on the bill in order that issues relating to the implementation of the federal child support enforcement requirement could be addressed and reports made to the 1998 Regular Session of the General Assembly. Below is information on these issues.

Issues: Section 11 of S.L. 1997-433 directed the Attorney General to explore the feasibility of filing suit to challenge the federal government's authority to require states to conform with the federal child support enforcement law and report any findings and recommendations to the Short Session. Accordingly, on May 11, 1998, the Attorney General's office reported to the General Assembly that it is unlikely that North Carolina would prevail in an action for declaratory and injunctive relief.

Section 11.1 directed DHHS to apply to the U.S. Department of Health and Human Services for an exemption from implementing the requirement that parties to an action to establish paternity are not entitled to a trial by jury. (*Note: S.L. 1997-433 did not abolish the right to a jury trial for paternity establishment.*) On February 13, 1998, DHHS requested an exemption from the U.S. Department of Health and Human Services. To date, the Department has not received a response to its request for an exemption.

Background Information on S.L. 1997-433, Child Support/Federal Requirements: S.L. 1997-433 amended the child support enforcement and paternity statutes to comply with changes in federal law. Specifically, this act (1) requires employers to report information on new employees; (2) authorizes the Department of Health and Human Services (DHHS) to issue subpoenas without a court order for information needed for child support enforcement or paternity establishment; (3) gives DHHS access to data in the Department of Transportation and law enforcement agencies; (4) requires judges to impose work activities; (5) implements federal health care coverage requirements; (6) conforms the State income tax intercept law to federal law; (7) provides that social security numbers must be received as part of the drivers license application; (8) allows for temporary support orders pending a paternity determination in cases where genetic test results show a 97% or higher probability; (9) decreases the time employers have to withhold income; (10) provides that in IV-D cases, when the obligor is not subject to wage withholding and fails to make one month of child support payments, the obligor becomes subject to withholding immediately; (11) establishes lien procedures when the obligor is either three months behind or \$3,000 in arrears, whichever occurs first; (12) directs DHHS to implement an automated collection system; (13) implements federal requirements for protecting privacy rights when there is a danger that disclosure of information regarding the location of a person may result in physical and emotional harm; and, (14) authorizes DHHS and financial institutions to enter into agreements to establish the data match system.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1182

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of _____

S1182-ASC-001

Date 5-28, 1998

Comm. Sub. []
Amends Title []

Senator Rand

1 moves to amend the bill on page 1, line 8,
2 by deleting "S.L. 1997-443" and substituting "S.L. 1997-433".
3
4

SIGNED *Tommy Rand*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1182

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of _____

S1182-ASC-002

Date 5-28, 1998

Comm. Sub. []
Amends Title []

Senator Rand

1 moves to amend the bill on page 1, line 11,
2 by rewriting that line to read:

3
4
5
6

"Section 2. This act is effective June 30, 1998."

SIGNED Tim Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 594
Committee Substitute Favorable 4/29/97

Short Title: Injury to Preg. Woman.

(Public)

Sponsors:

Referred to:

March 24, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A
3 PREGNANT WOMAN IN THE COMMISSION OF A FELONY, ACT OF
4 DOMESTIC VIOLENCE, OR UNLAWFUL OPERATION OF A VEHICLE
5 CAUSING A MISCARRIAGE OR STILLBIRTH.
6 The General Assembly of North Carolina enacts:
7 Section 1. Article 6 of Chapter 14 of the General Statutes is amended by
8 adding a new section to read:
9 "§ 14-18.2. Injury to pregnant woman.
10 (a) Definitions. -- The following definitions shall apply in this section:
11 (1) Miscarriage. -- The interruption of the normal development of the
12 fetus, other than by a live birth, and which is not an induced
13 abortion permitted under G.S. 14-45.1, resulting in the complete
14 expulsion or extraction from a pregnant woman of the fetus.
15 (2) Stillbirth. -- The death of a fetus prior to the complete expulsion
16 or extraction from a woman irrespective of the duration of
17 pregnancy and which is not an induced abortion permitted under
18 G.S. 14-45.1.
19 (b) A person who in the commission of a felony causes injury to a woman,
20 knowing the woman to be pregnant, which injury results in a miscarriage or stillbirth
21 by the woman is guilty of a felony that is one class higher than the felony committed.
22 (c) A person who in the commission of a misdemeanor that is an act of domestic
23 violence as defined in Chapter 50B of the General Statutes causes injury to a woman,

1 knowing the woman to be pregnant, which results in miscarriage or stillbirth by the
2 woman is guilty of a misdemeanor that is one class higher than the misdemeanor
3 committed. If the offense was a Class A1 misdemeanor, the defendant is guilty of a
4 Class I felony.

5 (d) This section shall not apply to acts committed by a pregnant woman which
6 result in a miscarriage or stillbirth by the woman."

7 Section 2. Article 3 of Chapter 20 of the General Statutes is amended by
8 adding a new section to read:

9 "**§ 20-141.5. Injury to pregnant woman by vehicle.**

10 (a) Definitions. -- The following definitions shall apply in this section:

11 (1) Miscarriage. -- The interruption of the normal development of the
12 fetus, other than by a live birth, and which is not an induced
13 abortion permitted under G.S. 14-45.1, resulting in the complete
14 expulsion or extraction from a pregnant woman of the fetus.

15 (2) Stillbirth. -- The death of a fetus prior to the complete expulsion
16 or extraction from a woman irrespective of the duration of
17 pregnancy and which is not an induced abortion permitted under
18 G.S. 14-45.1.

19 (b) Any person who in the unlawful operation of a motor vehicle commits a
20 felony which causes a pregnant woman to suffer a miscarriage or stillbirth is guilty of
21 a felony that is one class higher than the felony committed."

22 Section 3. This act becomes effective December 1, 1997, and applies to
23 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

H594-CSR-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
H594
Committee Substitute Favorable 4/29/97

THIS IS A DRAFT 28-MAY-98 09:36:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Injury to Preg. Woman.

(Public)

Sponsors:

Referred to:

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A PREGNANT
3 WOMAN IN THE COMMISSION OF A FELONY, ACT OF DOMESTIC VIOLENCE,
4 OR UNLAWFUL OPERATION OF A VEHICLE CAUSING A MISCARRIAGE OR
5 STILLBIRTH.
6 The General Assembly of North Carolina enacts:
7 Section 1. Article 6 of Chapter 14 of the General
8 Statutes is amended by adding a new section to read:
9 "§ 14-18.2. Injury to pregnant woman.
10 (a) Definitions. -- The following definitions shall apply in
11 this section:
12 (1) Miscarriage. -- The interruption of the normal
13 development of the fetus, other than by a live
14 birth, and which is not an induced abortion
15 permitted under G.S. 14-45.1, resulting in the

1 complete expulsion or extraction from a pregnant
2 woman of the fetus.

3 (2) Stillbirth. -- The death of a fetus prior to the
4 complete expulsion or extraction from a woman
5 irrespective of the duration of pregnancy and which
6 is not an induced abortion permitted under G.S. 14-
7 45.1.

8 (b) A person who in the commission of a felony causes injury
9 to a woman, knowing the woman to be pregnant, which injury
10 results in a miscarriage or stillbirth by the woman is guilty of
11 a felony that is one class higher than the felony committed.

12 (c) A person who in the commission of a misdemeanor that is an
13 act of domestic violence as defined in Chapter 50B of the General
14 Statutes causes injury to a woman, knowing the woman to be
15 pregnant, which results in miscarriage or stillbirth by the woman
16 is guilty of a misdemeanor that is one class higher than the
17 misdemeanor committed. If the offense was a Class A1 misdemeanor,
18 the defendant is guilty of a Class I felony.

19 (d) This section shall not apply to acts committed by a
20 pregnant woman which result in a miscarriage or stillbirth by the
21 woman."

22 Section 2. Article 3 of Chapter 20 of the General
23 Statutes is amended by adding a new section to read:

24 "§ 20-141.5. Injury to pregnant woman by vehicle.

25 (a) Definitions. -- The following definitions shall apply in
26 this section:

27 (1) Miscarriage. -- The interruption of the normal
28 development of the fetus, other than by a live
29 birth, and which is not an induced abortion
30 permitted under G.S. 14-45.1, resulting in the
31 complete expulsion or extraction from a pregnant
32 woman of the fetus.

33 (2) Stillbirth. -- The death of a fetus prior to the
34 complete expulsion or extraction from a woman
35 irrespective of the duration of pregnancy and which
36 is not an induced abortion permitted under G.S. 14-
37 45.1.

38 (b) Any person who in the unlawful operation of a motor
39 vehicle commits a felony which causes a pregnant woman to suffer

1 a miscarriage or stillbirth is guilty of a felony that is one
2 class higher than the felony committed.

3 (c) This section shall not apply to acts committed by a
4 pregnant woman which result in a miscarriage or stillbirth by the
5 woman."

6 Section 3. This act becomes effective December 1, 1998,
7 and applies to offenses committed on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

REVISED

Monday, June 01, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1182** Repeal Sunset/Child Support Req.
 Draft Number: PCS 6836
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **904** Life Imprison./Repeat Child Molester
 Draft Number: PCS A487
 Sequential Referral: None
 Recommended Referral: Appropriations
 Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Name of Committee University Date 5/28/98 Jim Cooper

VISITORS: Please sign below and return to Committee Clerk!

NAME	FIRM OR STATE AGENCY AND ADDRESS
Mike Adams	DHHS / DSS
Phonda Little	DHHS / DSS
Paul K. Robbins	Dept of Justice
Lattie Fleming, clerk Rep. Edgar Starnes	
John Ruskin	NCFPC
Shannel Winner	NC SBA
Eslyne Smith	NCCADV NC NDW
Debrah Ross	ACLU
Msula Kubal	ACLU
Julie Campbell	NCASA
Jan Crutt	"
Wes Parker	GHSP
Joy Cagle	NCNA / Nurse of the Day
Joanna Schoen	NC nurses assoc.
Mae Stewart	CEPS
Alan Miles	Bailey & Dixon LLP
Brk Taylor	NCATL
Tom Henderson	CAC of NC
Jan Kamowitz	NCATA
Calvin Puller	M/T
Bernard Allen	569
Bryant Johnson	AT. Gouner
Karla H. Knotts	Charlotte Home Builders Assn
James M. Patterson	Home Builders of Charlotte
Bill Aufauld	NC PBA

VISITOR REGISTRATION SHEET

Judiciary 5/28/98 Sen. Cooper
 Name of Committee _____ Date _____

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Sam Williams	HBAC
Tom Andrews	AOC
Brenda Summers	NC Equity
Rob Selby	NCJCPD
Don Adams	NC DMV / ENFORCEMENT
Eugene Cobb	DMV
Stephen Veene	NC Med Soc
Roxia Keel	NC Med Soc
April Demert	Sen Odom's Office
John Maller	Sentencing Commission
Eric Zagry	" "
Alan Miles	Barby & Dixon LLP
Gary Gold	Cleveland County Sheriff's Office
Amy Piniak	NC Senate
Eddie Caldwell	Hoyer McNamee Caldwell
David Ferrell	Hoyer, McNamee, Caldwell et al
Luke Barber	CSPC
Piper Nieters	SBE
Uma Berkum	SBE
Derek Graham	DPI
Barry Buzga	DSS / CSE
Shanese Ansothe	DSS
Jim Drennan	AOC
Debbie Brown	REBIC, 1858 E. 3rd St., ste 350, CH, 28204

MINUTES
SENATE JUDICIARY COMMITTEE
June 2, 1998

The Senate Judiciary Committee met on Tuesday, June 2, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and told the Committee that today and Thursday would be a continuation of the discussion of Senate Bill 1260 - AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO MAKE CONFORMING CHANGES TO THE STATUTES, AND TO APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE.

Senator Cooper recognized Richard Moore, Secretary of Crime Control and Public Safety, to continue the discussion on the Agency section of the bill.

Secretary Moore directed the Committee's attention to the memo from Marcia Morey concerning the proposed juvenile justice agency structure. (See Attachment #1.)

The two primary agencies which deal with court ordered youth in North Carolina are the Division of Juvenile Services under the Administrative Office of the Courts and the Division of Youth Services under the Department of Health & Human Services.

The Juvenile Justice Commission feels that these two should be combined in order to be more efficient and to become more accountable.

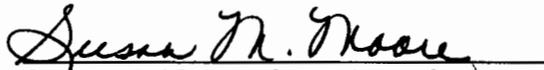
The first recommendation of the Juvenile Justice Commission in the bill is the separation of the two primary sections of the Juvenile Code. The actual changes contained in the bill are found in Attachment #2.

Senator Cooper announced that the Committee would continue the discussion of this bill at the meeting on Thursday, June 4, 1998.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, June 2, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 05/28/98 1:57 PM



Governor's Commission on Juvenile Crime and Justice

James B. Hunt Jr., Governor
Chairman

Marcia H. Morey
Executive Director

Vice Chairman
Secretary Richard H. Moore
Department of Crime Control and Public Safety

Honorary Co-chairs
Marc Basnight
Senate President Pre Tempore

Harold J. Brubaker
Speaker of the House

Commissioners
Representative Philip A. Baddour
Wayne County

Sheriff John Baker
Wake County

Dr. Jeanette Beckwith
Principal, Leesville Middle School

Lucy Bode
Wake County

Senator Roy A. Cooper III
Nash County

Representative Pete W. Cunningham
Mecklenburg County

Senator Fletcher Hartsell Jr.
Carter County

Chair, Governor's Crime Commission

Representative Joe L. Kiser
Lincoln County

Senator Jeanne Hopkins Lucas
Durham County

Chief Justice Burley Mitchell Jr.
North Carolina Supreme Court

District Attorney Ronald L. Moore
Buncombe County

Representative Charles B. Neely Jr.
Wake County

Senator T.L. "Fountain" Odom
Mecklenburg County

Judge Quentin Sumner
Nash County

Chief George Sweat
Winston-Salem Police Department

Judge Kenneth Titus
Durham County

Ex-Officio Commissioners
Dallas Cameron
Director, Administrative Office of the Courts

Secretary H. David Bruton
Department of Health and Human Services

Secretary Katie G. Dorsett
Department of Administration

Secretary Mack Jarvis
Department of Correction

Superintendent Michael Ward
Department of Public Instruction

To: Members of the Senate Judiciary Committee
From: Marcia Morey, Executive Director
Governor's Commission on Juvenile Crime and Justice
Date: June 2, 1998
RE: Additional information about the current and proposed
juvenile justice agency structure

Attached is information regarding the current and proposed juvenile justice agency structure in North Carolina. I hope this information will help to clarify any questions you have regarding the recommendation that a single juvenile justice agency be created.

- 1) chart of the proposed Department of Juvenile Justice (page 1);
- 2) flow chart of the current North Carolina juvenile justice system (page 2);
- 3) Governor Hunt's response regarding the creation of the Department of Juvenile Justice (page 3);
- 4) background information about agencies serving youth in North Carolina and the nature of conflicting policies among these agencies (pages 4-6).

AOC: Division of Juvenile Services

Employees

12 Positions in Raleigh Office - 496 Position in Field

FY: 1996-97 Expenditures: \$24,155,742

CASELOAD:

30,298 Juveniles were referred
18,848 juveniles were sent to court
9,724 cases were added to probation

DHHS: Division of Youth Services

24 State Administrators - 1200 DYS Field
Employees / and 398 other DHHS employees

FY: 1996-97 Expenditures: \$84,912,565
Training Schools/Detention/Community Based Alt

**Community Based
Alternatives - CBAs**
45 DYS Employees
FY:96-97: \$15.1 million
allocated to counties

Detention facilities
[8 state- 4 county]
176 DYS Employees
96: 5546 admissions

**Training
Schools**
5 schools
securecustody
97: Budget:
\$40 Million
811 beds

**Multipurpose
group homes
& Wilderness
Camps**
Private contract
\$11 Million

Court Counselors - Field

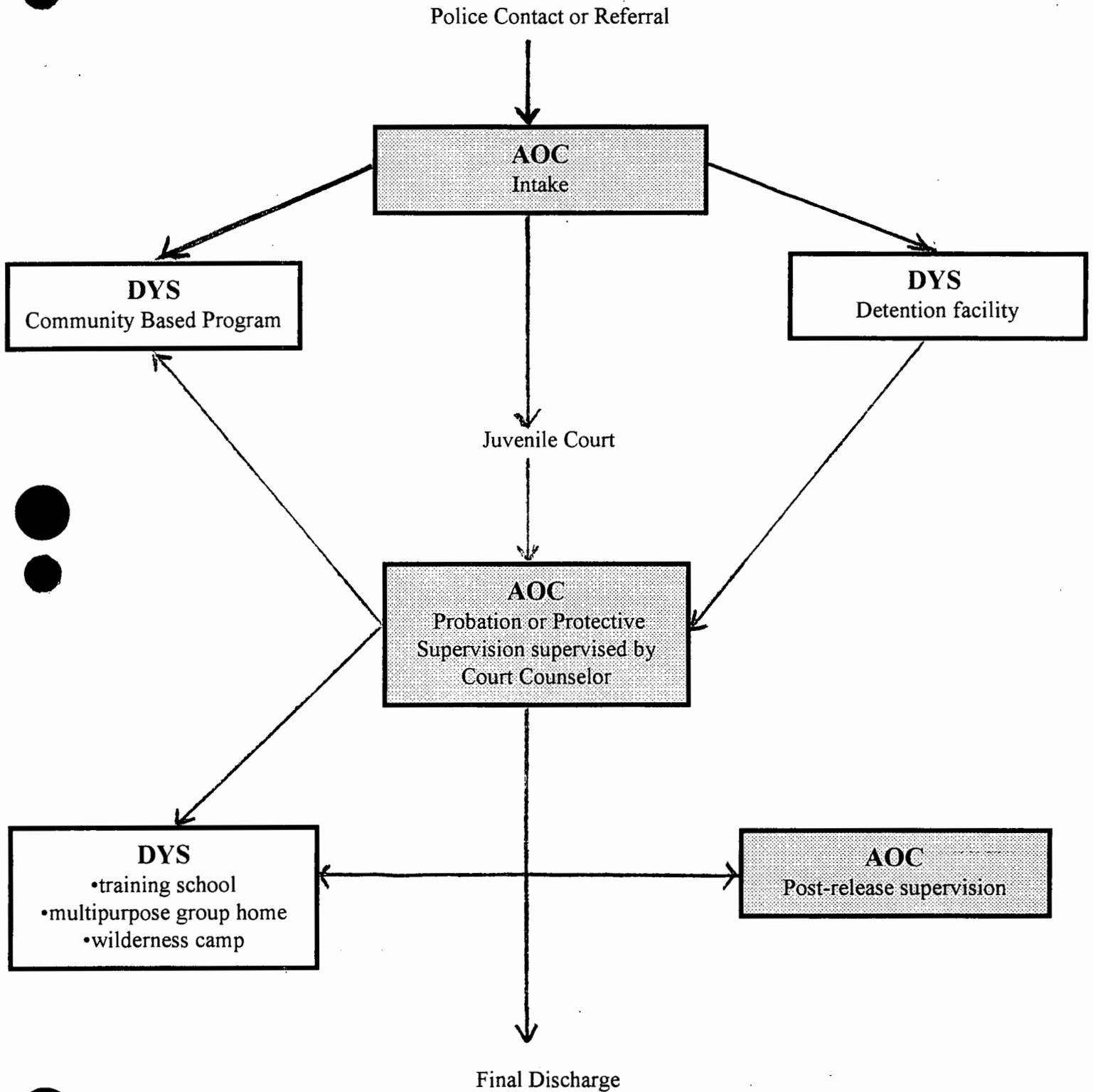
Chief Court Counselors: 38
(One Chief Court Counselor is in
charge of each judicial district.
Supervision Admin. 21
Intake Counselors: 58
(Assesses incoming cases)
Probation Counselors 252
Intensive Probation 28
Alternative to Detention 19
Other (transportation, clerical) 58

TOTAL 496

Youth Service Advisory Councils

(Each county has a council which is appointed by
County Commissioners)
Receives "CBA" funding for "Community
Based Alternatives" for youth on probation
and for prevention programs. 550 local
programs funded for court supervised youth
and prevention programs. County must
match state funds.

Juvenile Justice System in North Carolina



Governor Hunt's Juvenile Justice Reform Recommendations
*As Reported in the final report of the
Governor's Commission on Juvenile Crime and Justice*

ISSUE: THE CREATION OF THE DEPARTMENT OF JUVENILE JUSTICE

Question: *By creating a new Department of Juvenile Justice, doesn't that make government bigger and more expensive? Why fix something that is not broken?*

Governor Hunt's response:

By consolidating two separate agencies which are now housed in two separate divisions of state government, there will be a single agency that will respond and be accountable to public and legislative demands. A new Department of Juvenile Justice will not increase governmental bureaucracy, but will consolidate efforts and budgets; provide accurate information and statistics; and be more efficient and responsive to juvenile crime and prevention programs.

Why the present system is not working:

- ▶ There is no one identifiable place in state government that provides accurate information or comprehensive services to juvenile delinquency and prevention issues.
- ▶ Juvenile crime statistics and recidivism rates are not reported in a consistent manner.
- ▶ Duplicative efforts and funding streams prevent efficiency and little accountability.
- ▶ Since 1979, violent juvenile crime rates have risen 172% and the courts are handling twice the number of cases despite the fact the juvenile population has declined.

The present bifurcated juvenile justice "system" has resulted in incomprehensible information on delinquency statistics, recidivism rates and budget requests. Diverse agency philosophies and piecemeal approaches have not effectively prevented delinquent behavior.

The evidence is clear, during the last ten years, North Carolina has not responded the dramatic rise in juvenile crime. Despite the hardworking efforts of individuals, the current bifurcated system has failed. As we approach the twenty-first century, with an expected 15% rise in the juvenile population, it is past time that North Carolina prioritizes the safety of youth.

THE JUVENILE JUSTICE AGENCY SYSTEM IN NORTH CAROLINA

North Carolina's natural but unfortunate tendency over the years has been to address the problem (juvenile crime) in piecemeal fashion. We have reacted instead of prepared. We have acknowledged instead of provided. We have legislated but not funded. We have superfluous laws, outmoded laws, and inadequate laws. We have fragmented and duplicated services. We need a change.

1979 Juvenile Code Revision Committee Final Report

Eighteen years have passed since North Carolina's last comprehensive juvenile justice initiative. The work of the 1979 Commission did, in fact, result in substantial changes to North Carolina's juvenile justice system: a new Juvenile Code was implemented, status offenders were removed from training schools, and legislation required increased funding for community-based resources to reduce training school commitments. However, one of the primary recommendations, not implemented in 1979, was to create a single juvenile justice agency. Subsequently, several other study and review commissions have made findings similar to the 1979 Committee and have urged North Carolina to consolidate the intake, probation and aftercare services provided by the Administrative Office of the Courts - Juvenile Services Division (JSD) with the Department of Human Resources' Division of Youth Services (DYS) which operates detention and training school facilities and oversees Community-Based Alternatives.

In addition to the Juvenile Services Division and the Division of Youth Services, other state agencies (each with its own policies and procedures) also provide ancillary services and supervision to court-adjudicated youth:

- < Department of Public Instruction - public schools, including alternative schools
- < Department of Social Services - foster care, placement services, welfare
- < Department of Administration - advocacy for the rights of children
- < Division of Child and Family Services, Division of Mental Health, Developmental Disabilities and Substance Abuse, the Willie M. Program - treatment services

Each of these North Carolina State agencies has dedicated professionals who provide exceptional services to juveniles who become involved in the juvenile justice system. However, far too often the youth become the victims of an uncoordinated, "disjointed" system. Criticism is not directed toward individual professionals or agencies, but is targeted to the various and often conflicting and contradictory division and department policies and protocols that result in juveniles falling deeper into delinquent behavior as they are bounced from person to person, agency to agency.

Interviews from state agency workers have provided some examples of these conflicting policies. Consider the following:

- < **School safety policy:** Courts order delinquent juveniles to attend school regularly, yet often the Department of Public Instruction's (DPI) policy is to suspend these youth from public schools. Critics claim that DPI's "zero tolerance" initiatives use the "most restrictive" suspension policy, while the Juvenile Code requires the "least restrictive" means for intake and dispositions.
- < **Confidentiality policy:** In 1997, several legislative bills were introduced to the General Assembly which mandated the sharing of law enforcement and juvenile court information with

school administrators; however, juvenile confidentiality statutes prohibit the release of such information. The "policy" of most child advocates and defense attorneys is to protect this confidentiality.

- < **Law enforcement policies:** Law enforcement officers are sworn to protect public safety. With immediate arrest powers for adults, this policy is enforced. However, officers criticize the Juvenile Code requirements that only the Chief Court Counselor or a designated representative, can authorize secure-custody detention placements. Also, officers complain that juvenile confidentiality policies inhibit them from obtaining photographs and fingerprints to identify court supervised juveniles who subsequently become suspects of violent crime or who are wanted on pick up orders.
- < **County Agency policies - Mental Health:** (1) County attorneys are appearing with greater frequency in delinquency proceedings to argue that their client (agency) cannot provide the services the court is seeking, for example, sex offender treatment. This has resulted in more youth being committed to training schools. (2) Juveniles ordered to receive mental health treatment become part of the managed care system which results in limited, delayed treatment. (3) Mental health providers often do not have access to the juvenile's court or police file because of confidentiality restrictions.
- < **Juvenile Services Division:** In 1997, survey responses from court counselors indicate that many juveniles are being released from training school within six months, with few specified conditions for release, as compared to 1994, when juveniles were committed for an average of nine months, with extensive enumerated conditions for release. Court counselors express frustration that statutory "indefinite commitments" allow the release of juveniles back into the community before meaningful rehabilitation can be accomplished. Also, Juvenile Services objects to public schools' strict suspension policies which afford no alternative educational opportunities.
- < **Willie M. Program:** As a result of the 1973 class action lawsuit, approximately 1,500 youth were certified as "Willie M." in 1997. With this certification, services and treatment are provided to emotionally-behaviorally at-risk youth. Some of these Willie M. juveniles who commit crimes are committed to training school; however, the juveniles' funding as Willie M. Class members does not follow the juveniles when DYS assumes responsibility. The Willie M. policy to treat Willie M. Class members in Willie M. facilities often enables many of these juveniles to be immediately released from training school which some critics say jeopardizes public safety. There is also considerable debate over the program's expensive \$55 million budget.
- < **Division of Youth Services:** DYS policy is to treat and provide rehabilitative services for youth who are committed to their facilities. The Division believes their agency should then be responsible for post-release conditions and aftercare upon a juvenile's release, as they have worked with the juvenile during the months of confinement. Also, the Division believes many of the juvenile training school commitments are not appropriate, as they think the judicial districts should provide more community-based treatment resources for nonviolent juveniles or juveniles adjudicated of misdemeanors. Finally, funding policies from programs, such as Medicaid and school pupil allotments, are not transferred to DYS when the Division assumes custody.
- < **Department of Social Services:** Courts may order DSS to assume custody of some delinquent offenders, yet without being involved in court proceedings and knowing all relevant information,

it becomes extremely difficult for DSS to find appropriate, immediate placement.

- < **Sheriff Department transportation policies:** In some judicial districts, there is conflicting policy regarding the role of the sheriff's department for the transportation of juveniles to detention.
- < **Judicial District policies- prosecutors and judges:** Each judicial district operates juvenile court according to local court rules and juvenile procedures. In some districts, prosecutors do not negotiate pleas, other districts do routinely. Some district court judges refuse to hear "undisciplined" cases, while others do consistently. A few districts provide first appearances and arraignments usually within two weeks of the offense, most districts do not. Some Juvenile Services offices provide discovery only to district attorneys, others to defense counsel as well. The court counselors in many districts present the court with dispositional recommendations, while in other districts the prosecutor performs this function by presenting the "State's recommendation." Individual district policies can result in pronounced statewide disparity in the handling of juvenile cases.

Many of the issues expressed above are a result of restrictions on the sharing of agency information. (See Section C) However, other issues are a result of: 1) conflicting agency policies; 2) differing judicial district procedures; and 3) the disparity in community based resources from county to county.

SENATE BILL 1260: JUVENILE JUSTICE REFORM ACT
Juvenile Code Changes

Recommendation	Statute	Page
1) Separate abuse/neglect/dependent from delinquent/undisciplined provisions in Juvenile Code.	7B-100 (A/N/D) 7B-1500 (DQT/UND)	53 105
4) Raise original age of jurisdiction to 18.	7B-1501(28) 7B-1600(b)	107 108
2) Raise age of delinquent jurisdiction to 19. (Note: this reflects a change from the original recommendation to extend jurisdiction to age 21.)	7B-1602 7B-2513	108 147 148
10) File petition within 15 days from receipt of complaint.	7B-1703(b)	110
7) Use diversion contracts.	7B-1706(a) and (b)	111 112
6) Juvenile Court Counselors track diversion cases.	7B-1706(d)	112
8) Statutory criteria for Teen Court.	7B-1706(c)	112
5) Diversion cases open until juvenile substantially complies; petition filed if not.	7B-1706(e)	113
9) Parents to attend all court hearings.	[7B-1805(a)] [7B-1807(b)(4)] 7B-2700(a)	115 116 149
11) First appearances for juvenile felony offenders.	7B-1807	116
14) 5 days notice before probable cause hearing.	[7B-1806.1] 7B-2202(e)	116 127
12) Detention hearings by 2-way camera.	7B-1906(h)	121 122
3) Contempt power over undisciplined juveniles.	[7B-2000(a)] 7B-2503	122 137

Recommendation	Statute	Page
15) Police authority to fingerprint and photograph felony offenders. Information destroyed if no petition/probable cause, or adjudication.	7B-2102	123 124
13) Probable cause transfer hearings within 15 days of first appearance.	7B-2202(a)	126
20) Direct-file of 15-year-olds for A-E felony offense.	7B-2200(b)	127
18) Factors to consider at transfer.	7B-2203(b)	128
16) Juvenile Court hearings open to public.	7B-2402	131
17) Police, school, and service providers may access but not photocopy court records.	7B-3000(b) 7B-3001 7B-3100	166 167- 168 168
19) Blended Sentencing	15A-1340.16B	181 182

VISITOR REGISTRATION SHEET

Judiciary 6/2/98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Jeanne Bonds	AOC
Ed Taylor	JSD/AOC
Richard Gaudin	Gov. Office
Amy Pincus	NC Senate
Debra Ross	AOC
Martha Livegood	XERO/DPA
Matt Osborne	AOC
Shabean Bandukwala	Sen. Bob Shaw
April Demert	Sen Odom's Office
Douglas Holbrook	NC DOC
John Madler	Sentencing Commission
Robert C. Watson / James H. ...	Office of the Gov.
Zack Sexton	Speaker's Office
Lisa ...	CHRC
Jennifer ...	NOAA
Bill ...	NCBA
Jim Ritzel	TIA
...	...

MINUTES
SENATE JUDICIARY COMMITTEE
June 3, 1998

The Senate Judiciary Committee met on Wednesday, June 3, 1998 at 11:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and reminded the Committee that the discussion of Senate Bill 1260 - Juvenile Justice Reform Act would continue.

Richard Moore, Secretary of Crime Control and Public Safety was recognized to continue his explanation of the bill with the discussion of the use of diversion contracts and juvenile court counselors tracking of diversion cases. (Pages 111 and 112 in attached 2nd edition of the bill.)

Diversion Contracts:

When a juvenile commits an act and the item is presented to a juvenile intake counselor, the counselor currently has the discretion, under the law, to file a petition to continue the court action or divert that juvenile to another service in the community (i.e. mental health, Teen Court, etc.). This is a wonderful use of resources and should be continued.

Unfortunately, there is little uniformity in what is diverted and what is not. Most importantly, the juvenile court counselor has no authority to go behind that diversion contract and solve a situation. The Governor's Juvenile Crime Commission has tried to both standardize the diversion process by encouraging the use of the diversion contract, but most importantly, to give the juvenile court counselor a structured environment. They are to go back and check to see that the juvenile took advantage of the opportunities they were given.

Teen Court:

The Juvenile Crime Commission talked a great deal about Teen Court. Senate Bill 1260 contains statutory criteria for who can be diverted to Teen Court and who cannot.

Parental Involvement:

Pages 115, 116 and 149 of the bill contain the language where the Commission specifically set out the ability of the court, when appropriate, to get a parent's attention and make them responsible for what is happening with the juvenile.

Time Limits:

Page 116 sets out specifically when the juvenile is to have his first appearance in court and also that he receive a five day notice of the intention to transfer before the probable cause hearing.

Use of Jails:

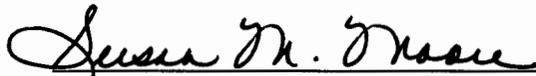
Page 120 contains the language dealing with the use of jails for serious violent offenders when the judge determines no detention space is available. Page 145 also specifies that while pending placement of a juvenile with the Department, the court may house the juvenile in an adult facility for up to 72 hours.

The discussion of the bill will continue at the meeting scheduled for June 4, 1998 at 10:00 a.m.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

TODAY!!

The Senate **Judiciary** Committee will meet at the following time:

Date: Wednesday, June 3, 1998
Time: **11:00 a.m.**
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 06/02/98 3:41 PM

SENATE BILL 1260: JUVENILE JUSTICE REFORM ACT

Governor's Commission on Juvenile Crime and Justice Recommendation/Appearance in Draft

Recommendation	Statute	Page
CODE RECOMMENDATIONS:		
1) Separate A/N/D from DQT/UND provisions in Code.	7B-100 (A/N/D) 7B-1500 (DQT/UND)	53 105
2) Raise dispo age of DQT jurisdiction to 19. (<u>Note</u> : this reflects a change from the original recommendation to extend jurisdiction to age 21.)	7B-1602 7B-2513	108 147-148
3) Contempt power over UNDs.	[7B-2000(a)] 7B-2503	122 137
4) Raise original age of UND jurisdiction to 18.	7B-1501(28) 7B-1600(b)	107 108
5) Diversion cases open until juvenile substantially complies; and petition filed if not	7B-1706(e)	113
6) JCCs track diversion cases.	7B-1706(d)	112
7) Use diversion contracts.	7B-1706(a) and (b)	111-112
8) Statutory criteria for Teen Court.	7B-1706(c)	112
9) Parents to attend all court hearings.	[7B-1805(a)] [7B-1807(b)(4)] 7B-2700(a)	115 116 149
10) File petition w/in 15 days from receipt of complaint.	7B-1703(b)	110

11) 1st appearances for juvenile felony offenders.	7B-1807	116
12) Detention hearings by 2-way camera.	7B-1906(h)	121-122
13) PC/transfer hrgs. W/in 15 days of 1st appearance.	7B-2202(a)	126
14) 5 days notice b/4 PC hearing.	[7B-1806.1] 7B-2202(e)	116 127
15) Police authority to fingerprint and photograph felony offenders. Destroy if no petition, PC, or adj.	7B-2102	123-124
16) Juv. Ct. Hrgs. open to public	7B-2402	131
17) Police, school, and service providers may access but not photocopy ct records.	7B-3000(b) 7B-3001 7B-3100	166 167-168 168
18) Factors to consider at transfer.	7B-2203(b)	128
19) Crim-Inclusive Blended Sentencing	15A-1340.16B	181-182
20) Direct-file of 15 yr-old A-E felony offenders.	7B-2200(b)	127
DISPOSITION RECOMMENDATIONS:		
21) Protection of the public and no least restrictive = purpose of dispositions.	7B-2500	133
22) Parents may be required to provide all transportation	7B-2703	151
23) Fund parental responsibility classes which parents may be required to attend.	7B-2701	150

24) JCCs may initiate contempt against parents.	7B-2705	151
25) Parent may be required to pay fees for detention, probation supervision, atty's fees; assign insurance for med needs in dt or t/s.	7B-2704	151
26) Additional dispo options (house arrest, training program, victim-offender mediation).	7B-2504	137-139
27) Additional conditions of probation.	7B-2506(a)	142-143
28) Chief JCC authority to add to probation reqs (20 hrs. CSW, SA tx, elec. monitor, intensive probation, life or educ. skills).	7B-2506(b)	143
29) Local continuum of dispo options (day tx. ctrs, home based cnsling, after school progs, in/out pt. SA tx, in/out pt. SO tx, group homes).	Section 19 (uncodified)	201
30) Graduated sanctions approach.	7B-2504.1 7B-2505	139-141 141-143
31) 3 categories of offenses (violent, serious, minor).	7B-2505	141-143
32) 3 levels of DQT history.	7B-2504.1(c)	140
33) 3 dispo levels (community, intermediate, commitment).	7B-2505(c)-(e)	141-142
34) Dispo levels based on offense and DQT hx level.	7B-2505(f)	142
35) Departure from Level 3 dispo (t/s) for extraordinary reasons.	7B-2505(e)	142
36) J's cooperation w/police = mitigating factor at dispo.	7B-2505(g)	142

37) Maximum 14 days detention for Level 2 disposition.	7B-2504(19) 7B-2505(d)	139 141
38) Track diversion agreements. (See Rec. #6)	Section 17 (uncodified)	201
39) Notify DMV re: driving restriction while on probation.	7B-2504(9)	139
40) Options for probation violations, including 2x detention period; but no t/s for misds.	7B-2506(d)	143
41) Repeal "equal to adult" limitation on t/s time.	7B-2509	144-145
42) 6 mos. mandatory min. t/s commitment.	7B-2509(a)	144
43) Mandatory 90 day post release supervision.	7B-2510(d)	146
44) Use jails for serious violent offenders when no detention space.	7B-1905(c) 7B-2509(h)	120 145
AGENCY RECOMMENDATIONS:		
45) Create DJJ incl DYS and JSD (GAL, SROs and Ctr. For Prev. Sch. Viol.?)	143B-511 Section 22 (uncodified)	1 204
46) Create local juvenile councils in partnership with state.	143B-550	12-16
47) Establish JJ policy oversight bd.	143B-560	17-18
48) Allow reasonable transition time line.	Section 24 (uncodified)	204
49) Develop JJ info system.	Section 18	201

	(uncodified)	
50) Authorize local adm. orders for sharing of JJ info. among agencies.	7B-3100	168
51) Adopt "Juvenile Contact Report."	Section 14 (uncodified)	199
52) Acknowledge minority over-rep problem in GCJCJ report.	done	
53) Mandatory minority sensitivity training for JJ professionals and police.	Section 15 (uncodified)	199
PREVENTION RECOMMENDATIONS:		
54) Establish state-local partnership to address DQT prevention. (See Rec # 46)	143B-550	12-16
55) Periodic risk assessments to identify at-risk youth.	Section 21 (uncodified)	202-203
56) Develop comprehensive DQT and SA prevention plan.	143B-540	11-12
57) Appropriate and effective responses to educating students expelled or suspended long term from school.	115C-12(24) 115C-105.47(b)	187-188 188-189
OTHER RECOMMENDATIONS:		
58) Mandate Family Court pilot programs in select urban areas.	Section 20 (uncodified)	202
59) Recommend NCGA review Ct. Improvement Project report.	Section 16 (uncodified)	200
60) NCGA evaluate any implemented reform	Section 23	204

measures.	(uncodified)	
61) Authorize State Bd. of Educ. to study delay of start of school day.	Section 17 (uncodified)	200

SENATE BILL 1260: JUVENILE JUSTICE REFORM ACT

Details in addition to the changes proposed by the Governor's Commission on Juvenile Crime and Justice

Detail	Statute	Page
Purpose	7B-1500	105
Superior court has jurisdiction over persons who committed offenses as juveniles but not charged before his/her 18th birthday.	7B-1601(c)	108
Jurisdiction over juveniles in the (physical) custody of DYS - clarification of statute.	7B-1601(e)	116
Summons to include notice to parents that failure to attend may result in contempt proceedings (contains specific language for the summons).	7B-1805(c)	116
Clerk to provide all parties 5 days written notice of all scheduled hearings unless party was notified in open court or the court orders otherwise.	7B-1806.1	116
First appearance hearing for juveniles charged with felonies in secure custody to be held at first secure custody hearing (i.e, within 5 days, not 10); otherwise, first appearance within 10 days.	7B-1807(a)	116
First appearance may be continued to a time certain for good cause if juvenile is not in secure or non-secure custody.	7B-1807(a)	116
Secure custody hearings to be held at intervals of no more than 10 calendar days.	7B-1906(b)	121
Law enforcement may fingerprint or photograph	7B-2102(a)	123

juveniles <u>in custody</u> alleged to have committed felonies.		
Fingerprints and photographs of a juvenile 10 years old or older adjudicated for a felony offense must be taken if not taken before adjudication.	7B-2102(b)	123
Fingerprints transferred to SBI. Fingerprints of juveniles alleged to have committed A-E felony offenses transferred to FBI.	7B-2102(c)	124
Fingerprints and photographs must be destroyed if no petition is filed, the court does not find probable cause, or the juvenile is not adjudicated delinquent.	7B-2102(e)	124
Nontestimonial for <u>blood sample</u> requires sworn affidavit and probable cause.	7B-2105(b)	125
Transfer hearing may be conducted upon a court's own motion.	7B-2202(e)	127
Transfer hearing <u>shall</u> be continued if the juvenile has not received 5 days notice of intent to seek transfer prior to the probable cause hearing.	7B-2202(e)	127
Structure for contempt of court sanctions for undisciplined juveniles: up to 24 hours in detention for first time in contempt; up to 3 days detention for the second time; up to 5 days for the third and subsequent time.	7B-2503	137
Timing of five 24-hour periods of intermittent detention in the court's discretion.	7B-2504(13)	139
Delinquency history levels: point system devised by Sentencing Commission.	7B-2504.1	139-141

Order of probation to remain in force for 2 years with up to 1 year extension (change from 12 months).	7B-2506(c)	143
The Department of Juvenile Justice, including the court counselor who has or will supervise the juvenile on post release and the staff of the releasing facility, shall develop a post-release supervision plan.	7B-2510	145
Allows extended jurisdiction to 19 years of age only by order of the court. (Note: House members agreed on court approval for extension until age 21.)	7B-2513(a) 7B-1501(16)	147-148 106
Requires motion for extended jurisdiction hearing filed at least 180 days prior to a juvenile's 18th birthday, and the hearing to be held within 30 days of filing of the motion.	7B-2513(b)	147
Court may excuse one or both parents from appearing in court.	7B-2700(a)	150
Employers may not use a parent's appearance in court as basis for demotion or dismissal.	7B-2700(b)	150
Only parent (as opposed to "parent, guardian, or custodian" as in other sections of the proposed bill) may be held responsible for financial coverage of a juvenile's care/treatment. (Note: "Parent, guardian or custodian" may be required to appear in court, participate in treatment of juvenile, or seek treatment for issue resulting or contributing to delinquent behavior of the juvenile, held in contempt for failure to comply with court orders.)	7B-2704	151
Allows criminal or civil contempt proceedings against parents.	7B-2705	151

Record of adjudication for felony offense may be used by law enforcement, magistrate, and prosecutor for pretrial release and plea bargain decisions.	7B-3000	166-167
No divisions created. Roles and responsibilities defined and proscribed for Department of Juvenile Justice and Secretary of Department.	143B-511	1
Community based alternatives to be called "juvenile court services."	143B-512	2
Youth Service Advisory Committees to be called "Juvenile Crime Prevention Councils" with specific membership.	143B-512(4) 143B-550	2 12

Jurisdiction over Delinquents and Undisciplined Juveniles

7B-1602 (page 108, line 1)
7B-2513 (page 147, line 20)

- **By order of the court, juvenile court jurisdiction may be extended past the age of 18 until the age 19. [7B-1602, 7B-2513(a)]**
- **The juvenile court counselor shall file a motion for review at least 180 days prior to the eighteenth birthday if the juvenile court counselor or the Department of Juvenile Justice (if the juvenile is committed to the Department) determines that the juvenile should remain under the jurisdiction of the court beyond the juvenile's eighteenth birthday. [7B-2513(b)]**
- **The court shall conduct a hearing within 30 days after the motion for review is filed to determine whether the juvenile shall remain within the jurisdiction of the court. [7B-2513(c)]**
- **The court shall consider the following factors in determining whether the juvenile should remain within the jurisdiction of the juvenile court:**
 - 1) **The recommendation of the chief court counselor or the Secretary of the Department of Juvenile Justice based on the juvenile's progress;**
 - 2) **The likelihood that continued jurisdiction will lead to further rehabilitation;**
 - 3) **The safety and protection of the facility's juvenile population, if applicable;**
 - 4) **The protection of the public.**

[7B-2513(d)]
- **If the juvenile remains within the jurisdiction of the juvenile court and is committed to training school, the term of commitment shall not exceed the juvenile's nineteenth birthday. [7B-2513(e)]**

7B-1501(28) (page 107, line 33)

7B-1600(b) (page 108, line 10)

- **The original age of jurisdiction over undisciplined juveniles is extended from age 16 to age 18. [7B-1600(b)]**
- **Juveniles who are 16 and 17 may be undisciplined juveniles if they are runaways, regularly found in places where it is unlawful for a juvenile to be, or regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian. [7B-1501(28)]**

7B-2000(a) (page 122, line 14)

7B-2503 (page 137, line 7)

- **Upon motion of the juvenile court counselor or the court's own motion, an undisciplined juvenile who is alleged to have violated the orders of the court may be held in contempt of court. [7B-2503]**
- **An undisciplined juvenile is entitled to legal representation when alleged to be in contempt of court. [7B-2000(a)]**
- **The first time a juvenile is held in contempt court may detain the juvenile for up to 24 hours in a detention facility.**

The second time a juvenile is held in contempt the court may detain the juvenile for up to 3 days in a detention facility.

**The third and subsequent times a juvenile is held in contempt the court may detain the juvenile for up to 5 days in a detention facility.
[7B-2503]**

Time Limits

7B-1703(b) (page 110, line 34)

- **The juvenile intake counselor shall determine whether a complaint shall be filed as a petition, and if so, file the petition, within 15 days of receipt of the complaint with an additional 15 days at the discretion of the chief court counselor.**

7B-1807 (page 116, line 24)

- **Juveniles alleged in a petition to have committed a felony offense shall have a first appearance within 10 days of the filing of the petition. [7B-1807(a)]**
- **Juveniles alleged to have committed a felony who are in secure custody shall have their first appearance at the initial secure custody hearing (within 5 days of being detained). [7B-1807(a)]**
- **The judge may continue the first appearance to a time certain if the juvenile is not in custody. [7B-1807(a)]**
- **The purpose of the first appearance is to:**
 - 1) **inform the juvenile of the allegations of the petition;**
 - 2) **determine whether the juvenile has retained counsel, and if not appoint counsel;**
 - 3) **inform the juvenile of the date of the probable cause hearing, if applicable;**
 - 4) **inform the parent, guardian, or custodian that s/he is required to attend all hearings and may be in contempt for failure to attend all hearings.**

[7B-1807(b)]

7B-2202(a) (page 127, line 9)

- **The probable cause hearing shall be held within 15 days of the first appearance hearing.**

7B-2202(e) (page 127, line 38)

- **If probable cause is found, the court may proceed to a transfer hearing or set a date for a transfer hearing, but the court shall continue the transfer**

hearing if the juvenile has not received at least 5 days notice of the intention to transfer.

Diversion: Diversion Contracts

7B-1706 (page 111, line 25)

- **As part of the diversion plan, the intake counselor may enter into a diversion contract with a juvenile and the juvenile's parent, guardian, or custodian, provided that these parties consent to the contract. [7B-1706(a) and (b)]**

- **The diversion contract shall:**
 - 1) **State the conditions by which the juvenile and the juvenile's parent(s), guardian(s), or custodian(s) agree to abide;**
 - 2) **State the actions the juvenile and the juvenile's parent(s), guardian(s), or custodian(s) agree to take;**
 - 3) **Describe the role of the court counselor in relation to the juvenile and the juvenile's parent, guardian, or custodian;**
 - 4) **Specify the length of the contract which shall not exceed 6 months;**
 - 5) **Indicate that all parties agree and understand that the juvenile's violation of the contract may result in the filing of a petition, and that the juvenile's successful completion of the contract shall preclude the filing of the petition.**

[7B-1706(b)]

- **The intake court counselor shall provide a copy of the contract to the juvenile and the juvenile's parent(s), guardian(s), or custodian(s). [7B-1706(b)]**

- **The court counselor may file a petition if at any time during the term of the contract the court counselor determines that the juvenile has failed to substantially comply with the terms of the contract. [7B-1706(b)]**

Diversion: Tracking Diversion Cases

7B-1706 (page 112, line 39)

- **The intake counselor shall maintain and follow-up on diversion plans and contracts. [7B-1706(d)]**
- **The intake counselor must determine within 60 days of the diversion whether the juvenile and the juvenile's parent(s), guardian(s), or custodian(s) have substantially complied with the terms of the diversion contract or plan. [7B-1706(e)]**
- **In determining whether the juvenile has followed-up on the diversion plan or contract, the intake counselor shall contact any referral resource to determine whether the juvenile has complied with the terms of the diversion plan or contract. [7B-1706(e)]**
- **If the intake counselor determines that the juvenile and the juvenile's parent(s), guardian(s), or custodian(s) has not complied with the terms of the diversion, the intake counselor may file a petition within 10 days after making the determination. [7B-1706(e)]**
- **If the intake counselor does not file a petition, the intake counselor may continue to monitor the case for up to 6 months from the date of the diversion plan or contract. If at any time during that period the juvenile and the juvenile's parent(s), guardian(s), or custodian(s) fail to comply, the intake counselor may authorize the filing of a petition. [7B-1706(e)]**

Diversion: Statutory Criteria for Teen Court

7B-1706(c) (page 112, line 25)

7B-1501(27) (page 107, line 27)

- **A teen court program is defined as a community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses not involving violence or personal injury for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures. [7B-1501(28)]**
 - **The intake counselor may refer a diverted case to a teen court program if such a program exists in the district. [7B-1706(c)]**
 - **Limitations:**
 - **Only cases involving infractions or misdemeanors may be referred to teen court;**
 - **A case may not be referred to teen court if the juvenile is alleged to have committed any of the following offenses:**
 - 1) **Driving while impaired or any other motor vehicle violation;**
 - 2) **a Class A1 misdemeanor;**
 - 3) **An assault in which a weapon is used;**
 - 4) **A controlled substance offense, other than simple possession of a Schedule VI drug or alcohol.**
 - **A case may not be referred to teen court if the juvenile has been referred to a teen court program previously.**
- [7B-1706(c)]

Parental Accountability: Appearance in Court

7B-2700 (page 149, line 38)

7B-1805(a) (page 115, line 1)

7B-1806.1 (page 116, line 20)

7B-1807(b)(4) (page 116, line 38)

- **Parent(s), guardian(s), or custodian(s) are required to attend all hearings of which they receive notice. [7B-2700(a)]**
- **The judge may excuse the appearance of either or both parent(s) or guardian(s), or custodian(s) at subsequent hearings. [7B-2700(a)]**
- **Parent(s), guardian(s), or custodian(s) may be held in contempt for failure to appear unless excused. [7B-2700(a)]**
- **No employer may discharge or demote any employee because the employee is required to appear before the court. Any employer who violates this provision shall be liable in a civil action for reasonable damages suffered by an employee as a result of the violation, and an employee demoted or discharged shall be entitled to reinstatement to the employee's former position. The burden of proof is on the employee. A statute of limitation for such actions shall be one year. [7B-2700(b)]**
- **When a petition is filed, the juvenile's parent(s), guardian(s) or custodian(s) shall be summoned to appear in juvenile court.**

The summons shall advise the parent(s), guardian(s), or custodian(s) that the parent(s), guardian, or custodian(s) shall be responsible for bringing the juvenile who is the subject of the petition to court.

The summons shall advise the parent that failure to appear in court or bring the juvenile to court may subject the parent to contempt of court proceedings.

The summons shall contain the following language in bold type: 'TO THE PARENT, GUARDIAN, OR CUSTODIAN: YOUR FAILURE TO APPEAR IN COURT FOR A SCHEDULED HEARING OR TO COMPLY WITH AN ORDER OF THE COURT MAY RESULT IN A FINDING OF CONTEMPT.'

[7B-1805(c)]

- **At the first appearance, the parent(s), guardian(s), or custodian(s) shall be advised that their appearance is required at all hearings scheduled in the matter and that failure to appear may result in a finding of contempt. [7B-1807(b)(4)]**
- **The clerk of court shall give to all parties 5 days written notice of the date and time of al scheduled hearings unless the party is notified in open court or the court orders otherwise. [7B-1806.1]**

Parental Accountability: Dispositions

7B-2701 (page 150, line 9)

- **Parents of juveniles adjudicated delinquent or undisciplined may be ordered to attend parental responsibility classes if those classes are available in the district in which the parent resides.**

7B-2704 (page 151, line 10)

- **If the court finds the parents able to do so, parents may be required to:**
 - 1) **pay a reasonable sum to cover in whole or in part support of the juvenile;**
 - 2) **pay a fee for probation services or residential facility costs;**
 - 3) **pay court appointed attorneys' fees;**
 - 4) **and assign private insurance coverage to cover medical costs while the juvenile is in secure detention, training school, or other out-of-home placement.**

Parental Accountability: Contempt of Court

7B-2705 (page 151, line 28)

- **Upon motion of the court counselor or prosecutor or upon the court's own motion, the court may issue an order directing the parent(s), guardian(s), or custodian(s) to appear and show cause why the parent(s), guardian(s), or custodian(s) should not be found or held in civil or criminal contempt for willfully failing to comply with an order of the court.**

Use of jail facilities

7B-1905(c) (page 120, line 31)

- **A juvenile who has allegedly committed an A-E felony offense may be detained in a jail facility with sight and sound barriers and approved by the Department of Health and Human Services for a period not to exceed 72 hours, if the court, based on information provided by the juvenile court counselor finds that no acceptable alternative placement is available and the protection of the public requires that the juvenile be detained.**

7B-2509(h) (page 145, line 17)

- **Pending placement of a juvenile with the Department of Juvenile Justice, a juvenile who has been adjudicated delinquent for an A-E felony may be held in a jail facility with sight and sound barriers and approved by the Department of Health and Human Services for a period not to exceed 72 hours, if the court, based on information provided by the juvenile court counselor finds that no acceptable alternative placement is available and the protection of the public requires that the juvenile be detained.**

VISITOR REGISTRATION SHEET

Judiciary

12/3/98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Amy Hodge	Dept. of Crime Control & Public Safety
Pash DeBardoff	4A10 DDA
Amy Orniak	NC Senate
Jean Hedgepeth	Office of the Gov.
Holly Wilson	ACLU
MIKE WATERS	N.C. Recreation & PK. Society
Shaheen Bandukwala	Senator Bob Shaw
Joe Stewart	CEPS
Richard Moore	CEPS

MINUTES
SENATE JUDICIARY COMMITTEE
June 4, 1998

The Senate Judiciary Committee met on Thursday, June 4, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Richard Moore, Secretary of Crime Control and Public Safety to continue the discussion of Senate Bill 1260 - Juvenile Justice Reform Act.

Use of 2-Way Camera:

With the approval of the Administrative Office of the Courts, it is allowed under the law to have a remote 2-way hearing to determine the need to continue custody of the juvenile. (Page 121-122).

Fingerprint and Photograph Authority:

Page 123-124 contains the language giving the police the authority to fingerprint and photograph felony offenders. Currently, this can only be done at the time of adjudication.

Probable Cause Hearing:

The bill specifies (Page 127) that the court shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was 13 years of age or older at the time of the offense. Page 128 contains factors to be considered by the court in transfer hearings. The prosecutor may file charges (Page 127, Line 1) in superior court against a juvenile who was 15 at the time that an A-E felony was allegedly committed.

Open Court Hearings:

The bill specifies that all authorized or required hearings shall be open to the public unless the judge, for good cause, chooses not to open them.

Discussion of Senate Bill 1260 will continue at the meeting scheduled for Tuesday, June 9, 1998.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, June 4, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 06/02/98 3:41 PM

SENATE BILL 1260: JUVENILE JUSTICE REFORM ACT

Details in addition to the changes proposed by the Governor's Commission on Juvenile Crime and Justice

Detail	Statute	Page
Purpose	7B-1500	105
Superior court has jurisdiction over persons who committed offenses as juveniles but not charged before his/her 18th birthday.	7B-1601(c)	108
Jurisdiction over juveniles in the (physical) custody of DYS - clarification of statute.	7B-1601(e)	116
Summons to include notice to parents that failure to attend may result in contempt proceedings (contains specific language for the summons).	7B-1805(c)	116
Clerk to provide all parties 5 days written notice of all scheduled hearings unless party was notified in open court or the court orders otherwise.	7B-1806.1	116
First appearance hearing for juveniles charged with felonies in secure custody to be held at first secure custody hearing (i.e, within 5 days, not 10); otherwise, first appearance within 10 days.	7B-1807(a)	116
First appearance may be continued to a time certain for good cause if juvenile is not in secure or non-secure custody.	7B-1807(a)	116
Secure custody hearings to be held at intervals of no more than 10 calendar days.	7B-1906(b)	121
Law enforcement may fingerprint or photograph	7B-2102(a)	123

juveniles <u>in custody</u> alleged to have committed felonies.		
Fingerprints and photographs of a juvenile 10 years old or older adjudicated for a felony offense must be taken if not taken before adjudication.	7B-2102(b)	123
Fingerprints transferred to SBI. Fingerprints of juveniles alleged to have committed A-E felony offenses transferred to FBI.	7B-2102(c)	124
Fingerprints and photographs must be destroyed if no petition is filed, the court does not find probable cause, or the juvenile is not adjudicated delinquent.	7B-2102(e)	124
Nontestimonial for <u>blood sample</u> requires sworn affidavit and probable cause.	7B-2105(b)	125
Transfer hearing may be conducted upon a court's own motion.	7B-2202(e)	127
Transfer hearing <u>shall</u> be continued if the juvenile has not received 5 days notice of intent to seek transfer prior to the probable cause hearing.	7B-2202(e)	127
Structure for contempt of court sanctions for undisciplined juveniles: up to 24 hours in detention for first time in contempt; up to 3 days detention for the second time; up to 5 days for the third and subsequent time.	7B-2503	137
Timing of five 24-hour periods of intermittent detention in the court's discretion.	7B-2504(13)	139
Delinquency history levels: point system devised by Sentencing Commission.	7B-2504.1	139-141

Record of adjudication for felony offense may be used by law enforcement, magistrate, and prosecutor for pretrial release and plea bargain decisions.	7B-3000	166-167
No divisions created. Roles and responsibilities defined and proscribed for Department of Juvenile Justice and Secretary of Department.	143B-511	1
Community based alternatives to be called "juvenile court services."	143B-512	2
Youth Service Advisory Committees to be called "Juvenile Crime Prevention Councils" with specific membership.	143B-512(4) 143B-550	2 12

Use of two-way cameras for detention hearings

7B-1906 (p. 121, line 41):

- **Authorizes detention hearings by interactive audiovisual transmission.**
- **Permits the juvenile and defense counsel to communicate fully and confidentially during the hearing.**
- **Requires that the Administrative Office of the Courts approve the type of equipment used for audio and visual transmission.**

Fingerprinting and photographing of juveniles

7B-2102 (p. 123, line 40)

- **Authorizes law enforcement to fingerprint and photograph a juvenile alleged to have committed a felony offense and taken into custody.** [7B-2102(a)]
- **Requires law enforcement to fingerprint and photograph a juvenile if the juvenile was adjudicated delinquent of a felony offense and was 10 years of age or older at the time of the offense.** [7B-2102(b)]
- **Requires fingerprints to be forwarded to the FBI if the juvenile was adjudicated delinquent for an A-E felony offense and was 10 years of age or older at the time of the offense for investigative and comparison purposes.** [7B-2102(c)]
- **Requires fingerprints to be forwarded to the SBI if the juvenile was adjudicated delinquent for a felony offense and the juvenile was 10 years of age or older at the time of the offense for investigative and comparison purposes.** [7B-2102(c)]
- **Authorizes the use of photographs for all investigative and comparison purposes.** [7B-2102(c)]
- **Fingerprints and photographs taken pursuant to this section are not public records, shall be withheld from public inspection, are not eligible for expunction, and shall be maintained separately from any juvenile record, except the SBI electronic record.** [7B-2102(d)]
- **Fingerprint and photograph records shall be destroyed by the custodian of the records if:**
 - the intake counselor or prosecutor does not file a petition against the juvenile; or
 - the court does not find probable cause; or
 - the juvenile is not adjudicated delinquent

The chief court counselor is responsible for notifying the local custodian of records who is responsible for notifying the other record-holding agencies. [7B-2102(e)]

Probable Cause/Transfer Hearings

7B-2202(a) (p. 127, line 10)

- **Requires that the probable cause/transfer hearing be held within 15 days of the juvenile's first appearance.**

7B-2202(e) (p. 127, line 38)

- **Authorizes the judge to motion for transfer of a juvenile to superior court.**
- **Requires that the juvenile have at least 5 days notice prior to the probable cause hearing of intention to transfer.**

7B-2203(b) (P. 128, line 11)

- **Requires the judge to consider the following factors when determining whether to transfer a juvenile to superior court:**
 - (1) **the age of the juvenile;**
 - (2) **the maturity of the juvenile;**
 - (3) **the intellectual functioning of the juvenile;**
 - (4) **the prior record of the juvenile;**
 - (5) **prior attempts to rehabilitate the juvenile;**
 - (6) **facilities or programs available to the juvenile court before the juvenile reaches the age of 18 or 19 and the likelihood that the juvenile would benefit from the treatment;**
 - (7) **whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and**
 - (8) **the seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.**

7B-2200(b) (p. 127, line 1)

- **Authorizes the prosecutor to directly file charges in superior court against a juvenile 15 years of age or older who is alleged to have committed an A-E felony offense.**

Open hearings

7B-2402 (p. 131, line 14)

- **Opens juvenile hearings to the public unless the court closes the hearing or part of the hearing for good cause upon motion by a party or its own motion.**

Dispositions: Purpose

7B-2500 (p. 133, line 25)

- **Requires the court to design a disposition that considers the protection of the public; “least restrictive” language eliminated.**
- **Also emphasizes accountability of the juvenile and the parent, guardian or custodian.**
- **Emphasizes appropriate consequences, treatment, training, and rehabilitation.**

Dispositions: Graduated Sanctions

7B-2504.1 (p. 140, line 1)

7B-2505 (p. 141, line 20)

- **A graduated sanctions approach is used to determine dispositions. [7B-2504.1, 7B-2505]**
- **Three levels of “risk” or delinquency history are defined, including:**
 - **high**
 - **medium**
 - **low**

NOTE: The Sentencing Commission devised a point system to determine the delinquency history level. [7B-2504.1]

- **Three levels of offenses are defined, including:**
 - **violent - adjudication of a Class A-E felony offense**
 - **serious - adjudication of a Class F-I felony offense or a Class A1 misdemeanor**
 - **minor - adjudication of a Class 1, 2, or 3 misdemeanor**
- [7B-2505]

- Three dispositional levels are established as follows: [7B-2505(c)-(e)]

LEVEL 1 COMMUNITY	LEVEL 2 INTERMEDIATE (may also include Level 1 dispositions)	LEVEL 3 COMMITMENT
Continue for Disposition	Intensive Supervision Probation	Commitment to Training School
Community-Based Program	House Arrest with or without Electronic Monitoring	
Fine	Structured Day Program	
Community Service	Regimented Training Program	
Counseling	Suspension of a More Severe Disposition	
Restitution	Multi-purpose Group Home	
Regular Probation	Eckerd Wilderness Camp	
Curfew	Short-Term Secure Confinement (up to 14 days during probation period)	
Residential placement with a relative, or in foster care, a group home, an Eckerd Wilderness Camp, or in a treatment facility		
Vocational or Educational Program		
Intermittent Confinement for 5 days during probation period		

- Disposition levels are prescribed based on a combination of the offense seriousness and delinquency history level as follows: [7B- 2505(f)]

	RISK		
OFFENSE	LOW	MEDIUM	HIGH
Violent	Level 2 or 3	Level 3	Level 3
Serious	Level 1 or 2	Level 2	Level 2 or 3
Minor	Level 1	Level 1 or 2	Level 2

- **Judges are authorized to depart from a Level 3 disposition (training school) for extraordinary reasons. [7B-2505(e)]**
- **Judges are allowed to consider evidence of a juvenile's cooperation with police as a mitigating factor in disposition. [7B-2505(g)]**

Dispositions: Dispositional Alternatives and Terms of Probation

7B-2506(a) (p. 143, line 1)

- The following (underlined) conditions of probation are added to the current conditions of probation authorized by the Code:
 - (1) that the juvenile shall remain on good behavior and not violate any laws;
 - (2) that the juvenile attend school regularly;
 - (3) that the juvenile maintain passing grades in up to four courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades;
 - (4) that the juvenile not associate with specified persons or be in specified places;
 - (5) that the juvenile remain free of any controlled substances of any type unless prescribed by a physician and submit to random drug testing;
 - (6) that the juvenile abide by a curfew;
 - (7) that the juvenile submit to a warrantless search at reasonable times;
 - (8) that the juvenile possess no firearm, explosive device, or other deadly weapon;
 - (9) that the juvenile report to a court counselor as often as required by the court counselor;
 - (10) that the juvenile make specified financial restitution or pay a fine;
 - (11) that the juvenile be employed regularly if not attending school;
 - (12) that the juvenile satisfy any other conditions determined appropriate by the court.

7B-2506© (p. 143, line 35)

- The order of probation shall remain in force for 2 years from the date entered with up to a 1 year extension by the judge.

7B-2506(b) (p. 143, line 26)

- The court may order the juvenile to comply, if directed to comply by the court counselor, with one or more of the following conditions of probation (in addition to the regular conditions of probation):
 - (1) perform up to 20 hours of community service;
 - (2) submit to substance abuse monitoring and treatment;
 - (3) cooperate with electronic monitoring;

- (4) cooperate with intensive supervision; and
- (5) participate in a life skills or an educational skills program

7B-2506(d) (p. 143, line 40)

- **Judges may order twice the authorized detention period for a violation of probation; however a judge may not commit a juvenile who has been adjudicated only for minor offenses to training school. [Note: 2506(e) prohibiting minor offenders from going to training school was inadvertently omitted from the bill and should be reinserted.]**

7B-2504 (p. 139, line 1)

- **Additional dispositional options are included in the dispositions article of the Code:**
 - **house arrest (with or without electronic monitoring) [7B-2504(17)]**
 - **regimented training program [7B-2504(16)]**
 - **victim-offender reconciliation program [7B-2504(7)]**

7B-2504(9) (p. 139, line 7)

- **The Department of Motor Vehicles is to be notified of any order restricting a juvenile's driving or licensing privileges.**

7B-2504(19) (p. 139, line 35) and 7B-2505(d) (p. 139, line 37)

- **Judges may impose a maximum term of confinement in a secure detention facility not to exceed 14 days for a Level 2 Intermediate disposition.**

Section 19 (uncodified) (p. 201, line 23)

- **The Department of Juvenile Justice shall develop a cost-effective plan to establish statewide community-based alternatives for juveniles who are adjudicated delinquent. The plan shall include a funding strategy to encourage communities to provide local resources, services, and treatment options, including, home-based family counseling, day treatment centers, after school programs, in- and out- patient substance abuse treatment, in- and out- patient sex offender treatment, group homes with psychological treatment and programs.**

Dispositions: Training School and Post-Release Supervision

7B-2509 (p. 144)

- **The statute which limits the amount of time a juvenile may serve in training school to the time an adult might be incarcerated is repealed.**

7B-2509(a) (p. 144, line 23)

- **A juvenile committed to training school must serve a mandatory minimum term of 6 months.**

7B-2510(b) (p. 146, line 3)

- **Every juvenile released from training school must complete at least 90 days of post-release supervision.**

Blended Sentencing

15A-1340.16B (p. 181, line 42)

- **If a juvenile was under the age of 16 at the time the juvenile committed a felony offense and has been convicted of the offense, the superior court judge may suspend the adult sentence on the condition that the juvenile successfully complete any of the dispositional alternatives provided in the Juvenile Code.**
- **The juvenile shall not be confined within a juvenile facility beyond the juvenile's nineteenth birthday.**
- **The court shall consider the following factors in determining whether to suspend the sentence:**
 - **the age of the juvenile**
 - **the physical, mental, and emotional needs of the juvenile**
 - **the resources available to the juvenile within the juvenile system and the applicability of the resources to the needs of the juvenile**
- **If the court suspends the adult sentence, the court shall order that a probation officer and a juvenile court counselor be assigned to supervise and monitor the progress of the juvenile.**
- **The superior court judge may alter or revoke the suspension.**

Juvenile Court Records

7B-3000 (p. 166, line 23)

- **All juvenile records shall be withheld from public inspection and may be examined only by order of the court, except that law enforcement may examine the juvenile's record without an order of the court, but not photocopy the juvenile's record.**

7B-3100 (p. 168, line 9)

- **The chief district court judge in each district shall designate by standing order certain agencies in the district as "agencies authorized to share information" and such designated agencies shall share with one another upon request information regarding a juvenile in which a petition alleging undisciplined or delinquent behavior has been filed. Such agencies that may be so designated include:**
 - **local mental health facilities**
 - **local health departments**
 - **local departments of social services**
 - **local law enforcement agencies**
 - **local school administrative units**
 - **the district attorney's office**
 - **the Guardian Ad Litem office**

7B-3000(e) (p. 167, line 4)

- **The juvenile's record of an adjudication of delinquency for a felony offense may be used by law enforcement, the magistrate, and the prosecutor for pretrial release and plea bargaining negotiating decisions.**

VISITOR REGISTRATION SHEET

Judiciary 6/4/98 State
Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

Patricia A. Yancy	SCSL/APCENC
Pam Alaridoff	YA10 - DOA
Joe Stewart	CERS
Gelby Wilson	ACLU
Yam Madapatu	Office of the Gov.
Matt Osborne	AOC
Ed Taylor	AOC
Ken Foster	DYS
Mike Thatcher	GOSAP
John Madler	Sentencing Commission
Luke Barber	CSPC

MINUTES
SENATE JUDICIARY COMMITTEE
June 9, 1998

The Senate Judiciary Committee met on Tuesday, June 9, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Richard Moore, Secretary of Crime Control and Public Safety to continue the explanation of Senate Bill 1260 - Juvenile Justice Reform.

Disposition Recommendations:

The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the state in exercising jurisdiction, including the protection of the public. (See Attachment #1 beginning on Page 5 or Page 133 of Senate Bill 1260.)

Jesse Moore and Doug Holbrook, with the Department of Correction, were recognized to respond to questions from the Committee.

Secretary Moore discussed the application of disposition grid to juvenile case scenarios. (See Attachment #2.)

Discussion of Senate Bill 1260 will continue at the meeting scheduled for June 10, 1998.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, June 9, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 06/05/98 9:37 AM

Use of two-way cameras for detention hearings

7B-1906 (p. 121, line 41):

- **Authorizes detention hearings by interactive audiovisual transmission.**
- **Permits the juvenile and defense counsel to communicate fully and confidentially during the hearing.**
- **Requires that the Administrative Office of the Courts approve the type of equipment used for audio and visual transmission.**

Fingerprinting and photographing of juveniles

7B-2102 (p. 123, line 40)

- **Authorizes** law enforcement to fingerprint and photograph a juvenile alleged to have committed a **felony** offense and taken into **custody**. [7B-2102(a)]
- **Requires** law enforcement to fingerprint and photograph a juvenile if the juvenile was **adjudicated** delinquent of a **felony** offense and was **10 years of age or older** at the time of the offense. [7B-2102(b)]
- **Requires** fingerprints to be forwarded to the **FBI** if the juvenile was **adjudicated** delinquent for an **A-E felony** offense and was **10 years of age or older** at the time of the offense for investigative and comparison purposes. [7B-2102(c)]
- **Requires** fingerprints to be forwarded to the **SBI** if the juvenile was **adjudicated** delinquent for a **felony** offense and the juvenile was **10 years of age or older** at the time of the offense for investigative and comparison purposes. [7B-2102(c)]
- **Authorizes** the use of **photographs** for all investigative and comparison purposes. [7B-2102(c)]
- Fingerprints and photographs taken pursuant to this section are **not** public records, shall be **withheld** from public inspection, are **not** eligible for expunction, and shall be maintained separately from any juvenile record, except the SBI electronic record. [7B-2102(d)]
- Fingerprint and photograph records shall be **destroyed** by the custodian of the records if:
 - the intake counselor or prosecutor does not file a petition against the juvenile; or
 - the court does not find probable cause; or
 - the juvenile is not adjudicated delinquent

The chief court counselor is responsible for notifying the local custodian of records who is responsible for notifying the other record-holding agencies. [7B-2102(e)]

Probable Cause/Transfer Hearings

7B-2202(a) (p. 127, line 10)

- **Requires that the probable cause/transfer hearing be held within 15 days of the juvenile's first appearance.**

7B-2202(e) (p. 127, line 38)

- **Authorizes the judge to motion for transfer of a juvenile to superior court.**
- **Requires that the juvenile have at least 5 days notice prior to the probable cause hearing of intention to transfer.**

7B-2203(b) (P. 128, line 11)

- **Requires the judge to consider the following factors when determining whether to transfer a juvenile to superior court:**
 - (1) **the age of the juvenile;**
 - (2) **the maturity of the juvenile;**
 - (3) **the intellectual functioning of the juvenile;**
 - (4) **the prior record of the juvenile;**
 - (5) **prior attempts to rehabilitate the juvenile;**
 - (6) **facilities or programs available to the juvenile court before the juvenile reaches the age of 18 or 19 and the likelihood that the juvenile would benefit from the treatment;**
 - (7) **whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and**
 - (8) **the seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.**

7B-2200(b) (p. 127, line 1)

- **Authorizes the prosecutor to directly file charges in superior court against a juvenile 15 years of age or older who is alleged to have committed an A-E felony offense.**

Open hearings

7B-2402 (p. 131, line 14)

- **Opens juvenile hearings to the public unless the court closes the hearing or part of the hearing for good cause upon motion by a party or its own motion.**

Dispositions: Purpose

7B-2500 (p. 133, line 25)

- **Requires the court to design a disposition that considers the protection of the public; “least restrictive” language eliminated.**
- **Also emphasizes accountability of the juvenile and the parent, guardian or custodian.**
- **Emphasizes appropriate consequences, treatment, training, and rehabilitation.**

Dispositions: Graduated Sanctions

7B-2504.1 (p. 140, line 1)

7B-2505 (p. 141, line 20)

- **A graduated sanctions approach is used to determine dispositions. [7B-2504.1, 7B-2505]**
- **Three levels of “risk” or delinquency history are defined, including:**
 - **high**
 - **medium**
 - **low**

NOTE: The Sentencing Commission devised a point system to determine the delinquency history level. [7B-2504.1]

- **Three levels of offenses are defined, including:**
 - **violent** - adjudication of a Class A-E felony offense
 - **serious** - adjudication of a Class F-I felony offense or a Class A1 misdemeanor
 - **minor** - adjudication of a Class 1, 2, or 3 misdemeanor
- [7B-2505]

- Three dispositional levels are established as follows: [7B-2505(c)-(e)]

LEVEL 1 COMMUNITY	LEVEL 2 INTERMEDIATE (may also include Level 1 dispositions)	LEVEL 3 COMMITMENT
Continue for Disposition	Intensive Supervision Probation	Commitment to Training School
Community-Based Program	House Arrest with or without Electronic Monitoring	
Fine	Structured Day Program	
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Counseling	Suspension of a More Severe Disposition	
Restitution	Multi-purpose Group Home	
Regular Probation	Eckerd Wilderness Camp	
Curfew	Short-Term Secure Confinement (up to 14 days during probation period)	
Residential placement with a relative, or in foster care, a group home, an Eckerd Wilderness Camp, or in a treatment facility		
Vocational or Educational Program		
Intermittent Confinement for 5 days during probation period		

- Disposition levels are prescribed based on a combination of the offense seriousness and delinquency history level as follows: [7B- 2505(f)]

	RISK		
OFFENSE	LOW	MEDIUM	HIGH
Violent	Level 2 or 3	Level 3	Level 3
Serious	Level 1 or 2	Level 2	Level 2 or 3
Minor	Level 1	Level 1 or 2	Level 2

- **Judges are authorized to depart from a Level 3 disposition (training school) for extraordinary reasons. [7B-2505(e)]**
- **Judges are allowed to consider evidence of a juvenile's cooperation with police as a mitigating factor in disposition. [7B-2505(g)]**

Dispositions: Dispositional Alternatives and Terms of Probation

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- The following (underlined) conditions of probation are added to the current conditions of probation authorized by the Code:
 - (1) that the juvenile shall remain on good behavior and not violate any laws;
 - (2) that the juvenile attend school regularly;
 - (3) that the juvenile maintain passing grades in up to four courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades;
 - (4) that the juvenile not associate with specified persons or be in specified places;
 - (5) that the juvenile remain free of any controlled substances of any type unless prescribed by a physician and submit to random drug testing;
 - (6) that the juvenile abide by a curfew;
 - (7) that the juvenile submit to a warrantless search at reasonable times;
 - (8) that the juvenile possess no firearm, explosive device, or other deadly weapon;
 - (9) that the juvenile report to a court counselor as often as required by the court counselor;
 - (10) that the juvenile make specified financial restitution or pay a fine;
 - (11) that the juvenile be employed regularly if not attending school;
 - (12) that the juvenile satisfy any other conditions determined appropriate by the court.

7B-2506© (p. 143, line 35)

- The order of probation shall remain in force for 2 years from the date entered with up to a 1 year extension by the judge.

7B-2506(b) (p. 143, line 26)

- The court may order the juvenile to comply, if directed to comply by the court counselor, with one or more of the following conditions of probation (in addition to the regular conditions of probation):
 - (1) perform up to 20 hours of community service;
 - (2) submit to substance abuse monitoring and treatment;
 - (3) cooperate with electronic monitoring;

- (4) cooperate with intensive supervision; and
- (5) participate in a life skills or an educational skills program

7B-2506(d) (p. 143, line 40)

- **Judges may order twice the authorized detention period for a violation of probation; however a judge may not commit a juvenile who has been adjudicated only for minor offenses to training school. [Note: 2506(e) prohibiting minor offenders from going to training school was inadvertently omitted from the bill and should be reinserted.]**

7B-2504 (p. 139, line 1)

- **Additional dispositional options are included in the dispositions article of the Code:**
 - **house arrest (with or without electronic monitoring) [7B-2504(17)]**
 - **regimented training program [7B-2504(16)]**
 - **victim-offender reconciliation program [7B-2504(7)]**

7B-2504(9) (p. 139, line 7)

- **The Department of Motor Vehicles is to be notified of any order restricting a juvenile's driving or licensing privileges.**

7B-2504(19) (p. 139, line 35) and 7B-2505(d) (p. 139, line 37)

- **Judges may impose a maximum term of confinement in a secure detention facility not to exceed 14 days for a Level 2 Intermediate disposition.**

Section 19 (uncodified) (p. 201, line 23)

- **The Department of Juvenile Justice shall develop a cost-effective plan to establish statewide community-based alternatives for juveniles who are adjudicated delinquent. The plan shall include a funding strategy to encourage communities to provide local resources, services, and treatment options, including, home-based family counseling, day treatment centers, after school programs, in- and out- patient substance abuse treatment, in- and out- patient sex offender treatment, group homes with psychological treatment and programs.**

Dispositions: Training School and Post-Release Supervision

7B-2509 (p. 144)

- **The statute which limits the amount of time a juvenile may serve in training school to the time an adult might be incarcerated is repealed.**

7B-2509(a) (p. 144, line 23)

- **A juvenile committed to training school must serve a mandatory minimum term of 6 months.**

7B-2510(b) (p. 146, line 3)

- **Every juvenile released from training school must complete at least 90 days of post-release supervision.**

Blended Sentencing

15A-1340.16B (p. 181, line 42)

- **If a juvenile was under the age of 16 at the time the juvenile committed a felony offense and has been convicted of the offense, the superior court judge may suspend the adult sentence on the condition that the juvenile successfully complete any of the dispositional alternatives provided in the Juvenile Code.**
- **The juvenile shall not be confined within a juvenile facility beyond the juvenile's nineteenth birthday.**
- **The court shall consider the following factors in determining whether to suspend the sentence:**
 - **the age of the juvenile**
 - **the physical, mental, and emotional needs of the juvenile**
 - **the resources available to the juvenile within the juvenile system and the applicability of the resources to the needs of the juvenile**
- **If the court suspends the adult sentence, the court shall order that a probation officer and a juvenile court counselor be assigned to supervise and monitor the progress of the juvenile.**
- **The superior court judge may alter or revoke the suspension.**

Juvenile Court Records

7B-3000 (p. 166, line 23)

- **All juvenile records shall be withheld from public inspection and may be examined only by order of the court, except that law enforcement may examine the juvenile's record without an order of the court, but not photocopy the juvenile's record.**

7B-3100 (p. 168, line 9)

- **The chief district court judge in each district shall designate by standing order certain agencies in the district as "agencies authorized to share information" and such designated agencies shall share with one another upon request information regarding a juvenile in which a petition alleging undisciplined or delinquent behavior has been filed. Such agencies that may be so designated include:**
 - **local mental health facilities**
 - **local health departments**
 - **local departments of social services**
 - **local law enforcement agencies**
 - **local school administrative units**
 - **the district attorney's office**
 - **the Guardian Ad Litem office**

7B-3000(e) (p. 167, line 4)

- **The juvenile's record of an adjudication of delinquency for a felony offense may be used by law enforcement, the magistrate, and the prosecutor for pretrial release and plea bargaining negotiating decisions.**

APPLICATION OF DISPOSITION GRID TO JUVENILE CASE SCENARIOS

I. DETERMINING GRID CELL CATEGORY

DELINQUENCY HISTORY LEVEL

	Low	Medium	High
OFFENSE			
Violent	Level 2 or 3	Level 3	Level 3
Serious	Level 1 or 2	Level 2	Level 2 or 3
Minor	Level 1	Level 1 or 2	Level 2

To determine grid level:

- 1) Determine seriousness of offense:
 - Minor** = Class 1, 2, 3, misdemeanors
 - Serious** = F-I class felonies; A1 misdemeanors
 - Violent** = A-E class felonies
- 2) Determine delinquency history level:
 - a) Determine number of prior adjudications, if any.
 - b) For each prior adjudication, assign **points**:
 - Each prior A-E felony offense = 4 points
 - Each prior F-I felony offense = 2 points
 - Each prior A1 misdemeanor offense = 2 points
 - Each prior Class 1, 2, or 3 misdemeanor = 1 point
 - Offense committed while on probation = 2 points
 - c) Use total number of points to determine delinquency history level:
 - Low** = 0 points
 - Medium** = 1-3 points
 - High** = 4 or more points

II. CASE SCENARIOS

Joe

10 year old who has been repeatedly disciplined at school for hitting other students punches a classmate in the arm causing a bruise.

Minor offense: Simple assault = Class 2 misdemeanor

Low delinquency history: No prior adjudications.....0 points

Disposition:

- 3 months probation under the supervision of a court counselor
- letter of apology to the classmate within 2 weeks
- 15 hours community service work

Mike

14 year old who has never appeared in court but is described by teachers as "mean and violent" and suspected of delivering drugs for dealers in his neighborhood fires a handgun at another teen following an argument and wounds him in the stomach.

Violent offense: Assault with a deadly weapon with intent to kill = Class E felony

Low delinquency history: No prior adjudications

Disposition: Commitment to training school.

Marcia

15 year old takes a gold bracelet valued at \$100 from a friend's mother's dresser which she subsequently sells to a stranger for \$25. Three months earlier she had stolen a \$45 designer t-shirt from a department store. Since she had never before appeared in juvenile court, formal sentencing had been deferred 60 days by the court on the condition that she pay the store for the shirt and perform 25 hours community service work. Within the 60 days she had paid for the shirt and completed her community service work.

Minor offenses: Misdemeanor larceny = Class 1 misdemeanor

Medium delinquency history: Prior misdemeanor larceny..... 1 point

Disposition:

- Supervised probation for 6 months
- restitution to the owner of the bracelet for value of the bracelet
- letter of apology to the owner
- 24 hours detention suspended on the condition that the juvenile cooperate with the terms of her probation for the first three months.

While on probation Marcia is found sitting in the driver's seat of a parked car reported stolen from a mall parking lot. She is brought back to juvenile court.

Serious offense: Felony possession of stolen goods = Class H felony

Medium delinquency history:

- Prior misdemeanor larceny..... 1 point
- *Prior misdemeanor larceny..... 1 point
- On probation when current offense occurred..... 2 points

4 points

Disposition:

- Probation period extended one year and upgraded to intensive supervised probation
- report to day reporting center
- victim-offender mediation
- counseling at local mental health
- 14 days detention
- regimented training program
- parents to transport to counseling, mediation, and regimented training program

Frank

14 year old who had previously appeared in court on four separate occasions for possession of a knife, possession of 1 oz. of marijuana, simple assault (pushing a classmate into a locker at school), and stealing a lighter from a convenience store. Had been placed on supervised probation for one year with substance abuse screening and drug education, counseling at mental health, 50 hours community service work. One month after appearing in juvenile court for stealing the lighter he returns to the same store and is charged with trespassing.

Minor offense: First degree trespassing..... 1 point

High delinquency history: Prior possession of a weapon..... 1 point
Prior misdemeanor possession of marijuana..... 1 point
Prior simple assault..... 1 point
Prior misdemeanor larceny..... 1 point
On probation at time of offense..... 2 points
6 points

Disposition: •Current probation extended for one year
•14 days detention
•house arrest when not in detention until placed in a wilderness camp program

VISITOR REGISTRATION SHEET

North Judiciary 6/9/98
 Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

Arnell Edwards	Christies News Committee Publications NC
Joe Stewart	Dept of Crime Control & Pub Safety
Susan Whitten	OHNS DYS
Douglas Wolcott	NC DOC
Debrah Ross	ACLU
Thad Daise	NCAE
Ed Taylor	AOL / J.S. Dir.
Jack Sexton	Speaks Office
Shakeen Bandukwala	Sen Bob Shaw's Office
MIKE WATERS	N.C. RECREATION + PARK Society
David Simmons	ZDA PD
Suzanne Dancet	Gov. Office
Devon Armstrong	Student
Pam Heardorff	VAIO-DOA
John Madler	Sentencing Commission
A McMillan	ZHHS

MINUTES
SENATE JUDICIARY COMMITTEE
June 10, 1998

The Senate Judiciary Committee met on Wednesday, June 10, 1998 at 4:00 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and informed the Committee that due to the absence of Secretary Richard Moore, Marcia Morey, Executive Director of the Governor's Commission on Juvenile Crime, would continue the explanation of Senate Bill 1260 - Juvenile Justice Reform Act.

Senator Cooper introduced Susan Katzenelson, Executive Director of the N. C. Sentencing and Policy Advisory Commission, to discuss the impact of changes to the juvenile justice system. (See Attachment #1.)

Senator Cooper noted that the Commission is trying to put in place a system that would indicate how many training school beds that would be needed. The grid tries to put the most violent offenders into training schools and keep them there for at least a six-month period. The goal was to set up a research system like in the adult system to show the number of training school beds which would be needed. That assignment fell to the N. C. Sentencing and Policy Advisory Commission.

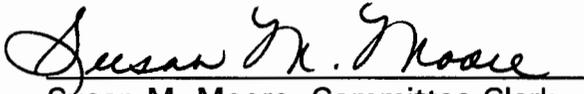
Ken Foster, with the Division of Youth Services, and Sandy Pierce, with the Department of Correction, were recognized to respond to questions from the Committee.

Senator Cooper announced that the Committee would meet on June 11, 1998 to continue the discussion of this bill.

(Other pertinent information regarding the discussion can be found in Attachment #2.)

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: **Wednesday, June 10, 1998**
Time: **3:00 p.m. (or 15 minutes after session adjourns)**
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Information from the Sentencing Commission

Sen. Roy Cooper, III, Chairman

Posted: 06/09/98 12:21 PM

**PROPOSED CHANGES TO THE NORTH CAROLINA
JUVENILE JUSTICE SYSTEM**

AN IMPACT ANALYSIS

Prepared by the

N.C. SENTENCING AND POLICY ADVISORY COMMISSION

The Honorable Thomas W. Ross
Chairman

Susan Katzenelson
Executive Director

Funded by a Grant from
The Governor's Crime Commission

May 1998

N.C. SENTENCING AND POLICY ADVISORY COMMISSION

Thomas W. Ross, Chairman
Superior Court Judge

Frank W. Ballance
State Senator

Joanne W. Bowie
State Representative

Locke T. Clifford
NC Bar Association Representative

James J. Coman
Attorney General's Designee

Roy A. Cooper, III
State Senator

William A. Dudley
Dept. of Crime Control & Public Safety Designee

Darrell Frye
County Commissioner

Pat Gill-Galbert
Commission Chairman's Appointee

Rodney R. Goodman
District Court Judge

Wib Gulley
State Senator

Thomas D. Haigwood
NC Conference of District Attorneys

Michael H. Harvell
Pender County Sheriff

Mary Y. "Larry" Hines
Private Citizen, Governor's Appointee

E. Lynn Johnson
Superior Court Judge

Larry T. Justus
State Representative

Joe L. Kiser
State Representative

Tracy Little
NC Post-Release Supervision & Parole Commission

Luther T. Moore
Lt. Governor's Appointee

Fred G. Morrison, Jr.
Justice Fellowship Representative

Julia Nile
Victim Assistance Network Representative

Joseph J. Puett
 Mooresville Police Chief

Lao E. Rubert
NC Community Sentencing Association
Representative

Gregg C Stahl
Department of Correction Designee

Patricia Timmons-Goodson
NC Court of Appeals Designee

George P. Wilson
Professor, NC Central University

Lyle J. Yurko
NC Academy of Trial Lawyers' Representative

<Vacant>
NC Retail Merchants' Assoc. Representative

corresponding to the offense seriousness and delinquent history level of the juvenile being adjudicated. Four of the nine grid cells offer two possible disposition levels, and the court can also depart in cases of documented "extraordinary need." (A detailed list of all pertinent recommendations is presented in Appendix A.) The disposition grid is constructed along the following two axes:

1. The level of the most serious adjudicated offense:
 - Violent = felony classes A-E;
 - Serious = felony classes F-I and A1 misdemeanors; and
 - Minor = misdemeanors 1, 2 and 3.

2. The level of risk as measured by delinquent history, *i.e.*, the number and type of prior adjudications, and probation status at the time of the instant offense.

DISPOSITION LEVELS

LEVEL 1 COMMUNITY	LEVEL 2 INTERMEDIATE (may also include Level 1 dispositions)	LEVEL 3 COMMITMENT
Continue for Disposition	Intensive Supervision Probation	Commitment to Training School
Community-Based Program	House Arrest with or without Electronic Monitoring	
Fine	Structured Day Program	
Community Service	Regimented Training Program	
Counseling	Suspension of a More Severe Disposition	
Restitution	Multi-purpose Group Home	
Regular Probation	Eckerd Wilderness Camp	
Curfew	Short-Term Secure Confinement (up to 14 days during probation period.	
Residential placement with a relative, or in foster care, a group home, an Eckerd Wilderness Camp, or in a treatment facility		
Vocational or Educational Program		
Intermittent Confinement for 5 days during probation period		

DISPOSITION GRID

OFFENSE	RISK		
	LOW	MEDIUM	HIGH
Violent	Level 2 or 3	Level 3	Level 3
Serious	Level 1 or 2	Level 2	Level 2 or 3
Minor	Level 1	Level 1 or 2	Level 2

III. Research Methodology

Sampling

One of the practical problems in studying North Carolina's juvenile justice system is the lack of any aggregate, computerized data base for filings, adjudications and dispositions. Consequently, this study utilized case reviews of a random sample of 1,500 cases representing all 100 counties. Cases were identified with the help of the Juvenile Services Division of the Administrative Office of the Courts.

Two sampling frames were created, one for cases filed as felonies, one for cases filed as misdemeanors. *The unit of analysis was the most recent adjudication/disposition of a juvenile within the sampling frame of cases adjudicated between January 1 and June 30, 1997.* Over-sampling felonies, the original sample was comprised of 1,000 felony and 500 misdemeanor juvenile adjudications, with a final sample of 1,313 complete usable cases.³

Data Collection

The primary data collection instrument, a juvenile adjudication survey, was developed in consultation with practitioners in the field, and pretested in one district juvenile court. The survey instrument was developed to collect information from the legal files of all sampled juvenile delinquents. The variables corresponded to the factors included in the new disposition recommendations, *i.e.*, the offense(s) of adjudication; the number of prior adjudications by most serious offense; probation status at the time of the instant offense; and disposition for the instant offense. A set of demographic variables and a seven-dimension social history scale completed the data collection for each case.⁴ To provide a more meaningful context for interpreting the survey results, research staff have also conducted site visits to five juvenile courts varying in caseload, size, and region.

³ Adjustments needed to be made to the sampling frame, based on differences between the most serious charge filed versus most serious charge adjudicated. Specifically, some of the charges filed as felonies were reduced to misdemeanors, and some cases resulted in probation revocations rather than a new adjudication. The sample was weighted based on these adjustments.

⁴ See Appendix B for the Juvenile Adjudication Survey instrument.

Files for the sample adjudications were pulled and analyzed by court counselors, and the completed survey instruments were coded and edited by Sentencing Commission staff. The computerized data base of 1,313 complete and usable sample cases forms the main source of information for the analyses and impact simulations in this report.⁵

Simulation

The Structured Sentencing Simulation (SSS) model, utilized to track legislation impact and produce correctional population projections for the adult criminal justice system, was adapted for use with the juvenile delinquency data. Simulation, in concept, allows modeling "what if" scenarios based on two givens: a set of empirical data on the phenomenon to be modeled (in this case, juvenile adjudications), and the parameters of change to be simulated (in this case, revised dispositional policies). The accuracy of simulation should not be expected to be 100 percent, and it will vary with the reliability of the empirical data and the specificity of the policies modeled.

Technically SSS, a computer based micro-simulation model, can provide a two-phase look at policy impacts: first, it can "resentence" the current sample/population under the parameters of the new policy, followed by a projection of future population distributions for the next 5-10 year period. The model displays projections that can be used to assess both the immediate and the long-term shift in resources (*e.g.*, training school and detention beds, supervision needed for probationers, etc.).

To assist in adapting the SSS, a Technical Advisory Group was convened.⁶ The group, in two meetings, provided invaluable input into describing juvenile justice field practices, estimating dispositional and outcome probabilities, and discussing population and juvenile delinquency trends -- all components necessary for simulating policy impacts.

IV. Findings: Juveniles Adjudicated Delinquent in 1997

This section paints an aggregate profile of juveniles adjudicated delinquent in 1997. To appreciate the systemic context for this population, Appendix E presents a process chart of the juvenile court case management system, and the flow of cases in the system.⁷

⁵ The attrition from 1,500 to 1,313 cases is the result of cases not found and returned; cases transferred between counties and not located; cases with probation revocations rather than new adjudications; and cases missing information on key variables. The final sample size, weighted and used to infer parameters in the population of individuals adjudicated once (or more) in FY1997, provides for a 3% sampling error at the 95% confidence level.

⁶ For a list of Technical Advisory Group members, *see* Appendix C.

⁷ The charts in Appendix D were provided by the Juvenile Services Division of the AOC.

Who are they?

An estimated 9,579 juveniles were adjudicated delinquent (once or more) in FY 1997 in North Carolina's juvenile courts.⁸ As presented in Table 1, 80.6% of these juveniles were male; more than half were Black (51.4%), and over a third (34.8%) were 15 years of age at the time they committed their instant act of delinquency. Table 2 provides a summary of all the juveniles by age, gender, and race.

Based on the court counselor's evaluation, 46.5% of these juveniles had serious problems and 13% had major problems at their school or work, with parental supervision, substance abuse, peer relationships and, when applicable, in their response to court supervision.⁹ (See Table 1.)

What were they adjudicated for?

Based on definitions in the North Carolina General Statutes, 401 of the juveniles (or 4.2%) were adjudicated for a crime of violence as their most serious instant offense.¹⁰ These felonies (Classes A through E) included 134 rapes, 82 assaults with a deadly weapon, 13 kidnappings, 39 first degree burglaries, and 86 armed robberies. (See Table 3 for a distribution of all cases by offense class and offense level.)

An additional 3,595 of the juveniles (or 37.5%) were adjudicated for serious crimes: Class F-I felonies and A1 misdemeanors. This group included felony drug offenses (n=350), common law robbery (n=73), breaking and entering and burglary of dwellings and motor vehicles (n=1,165), and felony larceny (n=645). The serious offenses also included approximately 672 A1 misdemeanor assaults inflicting serious injury, involving a deadly weapon, or a victim under 12.

⁸ This is an estimate based on the weighted Juvenile Adjudication Sample. On average, all the population estimates have a possible error rate of 3%, at the 95% confidence level. The initial population size, estimated at 9,579 adjudicated juveniles, was also discussed with and validated by a variety of field practitioners and compared to the CY 1997 figure of 9,724 "cases added, supervision/probation," provided by the Administrative Office of the Courts. Additional support for this number is offered in an article by Donn Hargrove and Janet Mason. In "North Carolina's Juvenile Court Counselors," (Popular Government, Winter 1998), they write: "In 1996, of the 30,347 juveniles that court counselors evaluated in the intake process, the counselors referred only 18,580 for court action; the others they diverted from court. Of those who went to court, judges placed 9,380 on active supervision or probation."

⁹ The study survey collected information on seven factors of the juvenile's social history, as scored by the court counselor (see Appendix B). For summary purposes, we scored the responses from 1 - "no problems" to 4 - "major problems," and arrived at an average "social history score" for each juvenile.

¹⁰ Juvenile violence, a major concern to citizens and policy makers, is already addressed in North Carolina by two existing legislative provisions: (1) defining everyone 16 years old and older as an adult transfers young people in their more violence-prone years into the adult system; and (2) allowing to bind over serious and violent felons under the age of 16 to the adult criminal justice system, to be prosecuted and sentenced as adults.

Finally, the majority of the juveniles (5,583 or 58.3%) were adjudicated for minor offenses. These misdemeanors included simple assault (n=1,048), drug possession (n=445), breaking and entering (n=581), larceny (n=911), property destruction (n=616), shoplifting (n=239), unauthorized use of a vehicle (n=205), weapon possession (n=365), and disorderly conduct (n=330).

What were their delinquent histories?

Sixty-nine percent of all juveniles had no known prior adjudications, 19.5% had one, 7.5% had two, and less than 4% had three or more prior adjudications for delinquency (see Table 4). Three factors need to be kept in mind when interpreting these findings: the 16-year old age "cap" on defining who is a juvenile (allowing less time to accumulate a record); a possible under-representation of delinquent history by often not including out-of-county and out-of-state adjudications in the juvenile's files; and a philosophy in the juvenile justice system to divert juveniles, whenever possible, short of formal court proceedings.

Delinquent history showed no significant variation by the level of instant offense. However, when correlating the most serious prior offense with the instant offense (see Table 5), violent delinquents appeared to have proportionately more prior serious and violent offenses (48%) than did serious and minor delinquents (41% and 39.9% respectively). Finally, as presented in Table 6, one-fifth of the juveniles (n=1,925) were under court supervision at the time of their instant offense, a proportion that did not vary by the type of offense.

What were their dispositions?

Seventy-seven percent of the juveniles adjudicated were placed under some form of community supervision, including probation and additional participation in a number of other programs. Thirteen percent were placed in intermediate programs, and 10% were committed to training schools. Table 7 shows a clear relationship between the type of instant offense and the form of disposition: while all delinquents were most likely to be placed in the community and least likely to be committed, the probability of commitment increased considerably from 7.4% for minor delinquents to 11.9% for serious delinquents and to 26.8% for violent delinquents.

Most dispositions involved multiple placement, with the 9,579 juveniles accounting for approximately 31,000 program assignments. Twenty six percent (n=8,129) of these assignments involved a variety of counseling programs; 22.3% (n=6,908) involved being on probation; 21.1% (n=3,766) specified curfew conditions; 11.9% (n=3,696) were community service orders; and 7.6% (n=2,366) were restitution orders.

What were their social histories?

The case files analyzed included information on seven dimensions of each juvenile's social history. As reported by juvenile court counselors, approximately 4.8% of the adjudicated juveniles were not in school or work. Of all the juveniles, 76.4% had moderate or serious behavioral problems,

78.2% had moderate or serious performance problems, and 62.6% had moderate or serious attendance problems at school/work.

Reportedly, only 27.7% had effective parental supervision and control, 66.3% had inconsistent or no supervision, and the remaining 6% had situations contributing to delinquency. Twenty-three percent of the juveniles experimented with drugs, 21.5% used it recreationally, and 6.6% were reported to have disruptive substance abuse and addiction. The majority of the juveniles, 53%, had some delinquent peers, and a disturbing 28.5% socialized mostly with delinquent peers. Finally, while 21% were not under court supervision, 24.5% had moderate compliance problems and 25.9% had major compliance problems under court supervision, including new instances of delinquency.

Table 8 summarizes the relationship between a juvenile's social history and disposition, controlling for the level of instant offense. Overall, 98.3% of the juveniles with non-problematic social histories and 90.9% with moderate problems were placed in the community, compared to community dispositions for only 70.5% with serious problems and 52.4% with major problems. Conversely, only between one and two percent of the juveniles with moderate or no problems were committed, compared to commitment for 12.6% of the juveniles with serious problems and 28.9% of those with major problems. These general findings, which held true independent of the type and level of the most serious adjudicated offense, also have implications for any risk assessments to be performed by court counselors (*re: recommendation no. 32*).

V. Findings: Juveniles Adjudicated in Adult Court

No picture of the juvenile justice system would be complete without a brief profile of juveniles bound over and convicted in the adult system. An analysis of the Administrative Office of the Courts' data files revealed that 207 juveniles were bound over, convicted and sentenced in Superior Court in FY 1997. The majority of these juveniles (n=173) committed their offenses at age 15; 95% of them were male; and 68% were Black (*see Table 9*).

The most serious offense of conviction, as shown in Table 10, ranged from felony Classes A to I, with Class H being the most common (76, or 41.1% of the cases). The majority of the juveniles, 90.8%, were in Prior Record Level I.

Table 11 displays the sentences imposed on these juveniles. Twenty eight percent received community punishment, 42.5% were given intermediate sanctions, and 29.5% were sentenced to prison. Those with active prison terms were sentenced to serve a minimum of 56.8 months on the average (the average time serve does not include the two life terms). These minimums varied greatly by offense class, ranging from a life sentence in Class A to 10.7 months in Class G.

As summarized in Table 12, crimes against the person comprised 43% of these convictions, crimes against property were 35.7%, drug offenses (non-trafficking) were 19.3%, with other felonies accounting for 2%. Active sentences were imposed most often for offenses against the person, intermediate sanctions were given most often for property offenses, and community sanctions were

ordered most often for drug offenses. Mean prison terms ranged from a low of just over one year to a high of slightly over five years.

VI. Findings: Dispositional Shifts in "Readjudicating" 1997 Cases

The next step of analysis was designed to locate the FY 1997 cases, and their actual dispositions, on the proposed disposition grid. For that purpose, each case was characterized by three variables:

1. Offense Level -- the level of the most serious instant offense, classified as violent, serious or minor (*re*: recommendation no. 31);
2. Delinquent History Level -- a revised version of the risk level, this variable was not fully specified by the recommendations (*re*: recommendation no. 32). Following lengthy deliberations, the Technical Advisory Group reached the following consensus measuring this factor:
 - Assign four points for each prior violent adjudication; two points for each prior serious adjudication, and one point for each prior minor adjudication.
 - Assign two points for being on probation at the time of the instant offense. (Two alternative proposals were also included: to assign only one point for probation status; and to assign two points for probation status if the instant offense is serious or violent but only one point for probation status if the instant offense is minor.)
 - The total of all these points comprises a juvenile's "delinquent history score."
 - Delinquent history scores are to be grouped as follows:
 - Low delinquent history level: 0-1 points;
 - Medium delinquent history level: 2-3 points;
 - High delinquent history level: 4 or more points.
3. Dispositional Level -- three levels of disposition were determined: level 1, community; level 2, intermediate; and level 3, commitment; and specific programs were grouped under each level (*re*: recommendation no. 33). While most juveniles were placed in more than one program, their disposition level was determined by the most restrictive program ordered.

Table 13 presents the actual distribution of all juveniles by their level of offense and delinquent history, and Table 14 displays their dispositions on the proposed grid.¹¹ Reviewing these two tables, 4.2% of the juveniles were adjudicated for a violent offense, 37.5% for a serious offense, and 58.3% for a minor offense. The great majority (72.9%) placed in the low delinquent history level, 13.3% in the medium level, and 13.8% in the high level. More than three-fourth of the juveniles (76.9%) received a community disposition, 13% were given intermediate sanctions, and 10.1% were committed to training school.

The grid, as constructed, allows for a review of each grid cell in view of the proposed policies. Shaded portions of the cell denote dispositions not usually provided for under the new policy for that level of offense and delinquent history. Summing up the number of juveniles in the shaded areas would give a rough indication of the *shifts* required in moving from the existing to the recommended policy. In Table 14, it would involve 1,936 cases, or 20.7% of the juvenile delinquent population.¹²

The next step is an attempt to estimate the new dispositions that would be ordered for these 1,936 juveniles under the new policy. Table 15 is based on the simplistic assumption that the court would impose the level of disposition available nearest to the disposition originally imposed. For example, grid cell one under the proposed policy provides only intermediate and commitment options. We assumed that the 194 juveniles originally sent to community dispositions would shift now to intermediate (but not commitment) type dispositions. Following this line of reasoning for each cell, it becomes apparent that while there would be a relatively small change in the number of juveniles ordered into community programs ($n = -507$, or a 7% decrease), the major shift would occur in the other two categories: intermediate dispositions would increase by 87% over their current number, while commitments to training school would decrease by 58.6% over the current number.

Two important caveats should be mentioned at this point. First, judicial decisions interact with information on the availability, quality, and accessibility of programs; with an increase in intermediate options judges' dispositional choices will most likely change over time. Second, these figures deal with initial assignments to programs, not with length of stay, population and capacity. The greatest drop, that in training school assignments, results from the diversion of misdemeanants to other dispositions, a population capped by law to be committed for no longer than the adult sentence for comparable misdemeanors. The net policy effect, therefore, may or may not lead to reduced training school capacity needs.

¹¹ Numbers in this table may vary slightly from those in the previous section, due to the exclusion of cases with missing information for offense level, delinquent history, or disposition.

¹² Table 14, and this entire section, examines only the basic delinquent history level scenario calculated counting 2 points for probation status at the time of the instant offense. Appendix E presents the other two scenarios: Table E-1 assigns 2 points for probation status of violent/serious delinquents and 1 point for probation status of minor delinquents; Table E-2 assigns 1 point for probation status.

VII. Findings: Projected Future Impact

The next step of the analysis focused on the five year projected impact of the proposed policy changes. Separate projections are presented for training school, intermediate, and community dispositions, based on the following scenarios:

Scenario 1: "Low impact"

- Delinquent history level includes 2 points for probation status;
- In the two discretionary disposition cells with Levels 2/3, the probability used for training school (L3) is similar to the percentage of training school dispositions in 1997, under the current "least restrictive" policy; and
- The growth rate in juvenile delinquency is assumed to be 3% annually for the next five years.

Scenario 2: "High impact"

- Delinquent history level includes 2 points for probation status;
- In the two discretionary disposition cells with Levels 2/3, the probability used for training school (L3) is 100%; and
- The growth rate in juvenile delinquency is assumed to be 3% annually for the next five years.

Scenario 3: "Medium impact"

- Delinquent history level includes 2 points for probation status;
- In the two discretionary disposition cells with Levels 2/3, the probability used for training school (L3) is between the probabilities for the "low" and "high" scenarios; and
- The growth rate in juvenile delinquency is assumed to be 3% annually for the next five years.

Table 16 presents the *baseline* growth in the three disposition types from FY 1998/99 to 2002/03, assuming no policy revisions. The change is reflective of the growth in the state's population and an increase in the number of its juvenile delinquents.

Table 17 summarizes the projected range of policy *impacts* (i.e., the net increase or decrease) on the various forms of disposition. As expected, the impact is most significant for intermediate sanctions, experiencing the greatest proportionate growth under low, medium or high impact assumptions. These projections (particularly the "medium" impact option) reflect the general direction of the proposed changes: a more selective process in utilizing training schools, and a heavier reliance on graduated sanctions and the intermediate level of treatment and supervision.

Table 18 combines the base figures with the projected "medium" impact, to arrive at net *resource* needs estimated for the next five years in each disposition category. Based on this analysis, the need for training school space will increase approximately 75% by the year 2003 (an increase from a base of 828 to 1,459)¹³; intermediate dispositions will grow threefold (from a current base of 1,215 to 4,042), while community resources will decline by approximately 8% (from 7,187 to 6,631 assignments).¹⁴

An initial look at the shifting in dispositions over time is a primary component in the cost-assessment of the proposed policies, but there are also a variety of related issues to be considered. Additional community resources will also be required to provide the mandatory minimum three months aftercare for juveniles released from training school. The shift toward more intermediate programs will have implications for counseling resources, and an increased need for more juvenile court counselors.¹⁵ Judicial decisions to order juveniles into multiple programs will impact ultimate resource needs both on the state and county level. And, finally, the proposed model of criminal-inclusive blended sentencing will impact the plea bargaining process, and the number and type of juvenile felons retained in the juvenile justice system compared to those bound over to adult court (*re*: recommendation no. 19).

While specific program needs within each level of disposition are difficult to assess, Table 19 provides estimates for three specific programs: intensive supervision and electronic house arrest (both intermediate-level dispositions); and detention as a post-adjudication sanction of intermittent confinement. It should be noted that the final figures for additional detention slots do not represent any of the pre-adjudication needs for secured confinement of juveniles and bind-overs. In addition, to fully accommodate the system's secured facility needs, the problems of cyclical demand (weekends, seasonal variations); geographic location; and special population demands (the distribution of juvenile delinquents by gender and age) would need to be addressed as well. (For an illuminating look at the current utilization of detention, *see* the Division of Youth Services' Sourcebook:1997 tables, "Facilities and Regional Offices," and "Detention Client Tracking System, Summary for FY1996-97," reproduced in Appendix F).

Due to the significant impact proposed policies will have on the use of detention facilities,

¹³ The growth pattern in training school populations is the result of a variety of changes: lower admission rates; longer stay for juveniles admitted; and extended juvenile jurisdiction to age 21, predicted to affect significantly the stay of a small number of violent and serious delinquents.

¹⁴ Increases/decreases are computed in relation to the FY 1997 (base year) dispositional assignments, as reported in Table 15. Assuming an average 12-month stay in the intermediate and community disposition categories, the respective population figures are 1,215 and 7,187. The population figure used for training school is 828, taking into account the average length of stay for the 938 juveniles assigned to training school.

¹⁵ Based on figures provided by the Administrative Office of the Courts' Juvenile Services Division, community supervision and training school caseloads are at a 1:30 ratio, intermediate supervision caseloads are at a ratio of 1:10.

both prior to adjudication and as a disposition, the study also aimed to gather information directly from judges as to the perceived need in this area. A second survey, designed to explore district practice in juvenile courts, was mailed to Chief District Court Judges, and concentrated on the current and projected use of detention and training school beds. Appendix G offers a summary and tabulation of the survey results, and a copy of the Secured Detention Facilities Survey.¹⁶ The mail-out survey instrument was sent to all 39 Chief District Court Judges. Thirty one surveys were returned, for a response rate of 80%.

The districts which responded indicated that they currently send almost three times as many juveniles to pre- adjudication as they send for disposition (359-367 prior to adjudication, 129-144 as a disposition, on a monthly basis). They also indicated that they rarely, if ever, refrain from sending a juvenile to a detention facility due to a lack of bed space (41- 43 juveniles per month pre-adjudication, and 64-70 juveniles per month as a disposition, with over one-half of the districts estimating that they have not refrained from sending juveniles to secured detention due to a lack of bed space).

Assuming the recommendations of the Governor's Commission on Juvenile Crime and Justice were enacted and the General Assembly provided additional funding for secured detention beds, the districts responding estimated that they would send, monthly, approximately 110 more juveniles to pre-adjudication detention and approximately 233 more as a disposition (104-116 additional juveniles per month prior to adjudication, 216-250 additional juveniles in a month as a disposition, with approximately one-fourth of the districts estimating they would not send any additional juveniles to secured detention).

Each district was also asked to provide information on the location and use of secured detention facilities. The Fayetteville unit in Cumberland County is used the most by the other districts. Seven districts reported that Fayetteville is the facility nearest to them and six districts reported that Fayetteville is the next available facility nearest to them. Three facilities, including Raleigh, North Wilkesboro and Butner, are each cited by eight districts as being the next available unit. Most districts send juveniles to facilities nearest to their district, with a few exceptions. Clearly, the availability, location, and accessibility of detention beds is a vital component in the judicial decision to utilize secured detention to hold juveniles pre-adjudication, and to consider intermittent confinement as a disposition.

VIII. Summary

This report, utilizing a sample of juveniles adjudicated delinquent in FY 1997, provides information on two levels. First, it presents a profile of the juvenile delinquent population -- demographic characteristics, offenses of adjudication, prior delinquency, and disposition. Second,

¹⁶ The survey was based on the earlier work of Chief District Court Judge Kenneth Titus.

based on the empirical data and with the application of a simulation model, it presents an impact analysis of proposed policy changes on the disposition of juvenile delinquents over a five-year span.

The policy recommendations, resulting in a realignment of dispositional resources, have their most significant impact in two areas:

- ▶ a more selective commitment of juveniles to training schools (excluding misdemeanants), resulting in lower admissions but a longer projected average stay; and
- ▶ a greater reliance on intermediate sanctions, with clear resource implications due to an enhanced supervisory role of court counselors; the need for more secured detention space not only as a pre-adjudication alternative but as a disposition and probation revocation option; and an enhancement of the type and number of intermediate programs available locally and statewide.

Figure A summarizes this realignment of resources, by presenting a comparison of projected needs under current versus proposed policy for FY 1998/99 and FY 2002/03.

On a final note, some caveats should be mentioned. These findings are based on a "snapshot" look at a sample of juvenile delinquents with a variety of possible biases. The policies studied were not fully detailed yet, and simulation modeling required a series of assumptions to be made. And, finally, assumptions about future probabilities were made using empirical knowledge of current decision making and probabilities -- the very components that may change, over time, as court practitioners and other players in the system adjust to the new policies and possibly alter their deliberation and practices.

Our final, and emphatic, recommendation is to improve the data collection capabilities of the system, conduct a more in-depth analysis of juvenile delinquents and, ultimately, build an evaluation component into the new proposed system from its inception.

TABLE 2

JUVENILES ADJUDICATED DELINQUENT
 SUMMARY OF DEMOGRAPHIC VARIABLES:
 GENDER, RACE, AND AGE

JULY 1, 1996-JUNE 30, 1997

		AGE					TOTAL
		11 & Under	12	13	14	15	
		N	N	N	N	N	
GENDER	RACE						
Male	White	256	289	499	860	1,124	3,028
	Black	209	350	648	1,158	1,203	3,568
	Hispanic	4	0	67	36	53	140
	American Indian	29	27	27	33	62	185
	Asian	0	0	0	16	4	20
Female	White	86	50	128	268	288	800
	Black	34	136	156	312	258	896
	Hispanic	0	0	0	4	0	4
	American Indian	0	0	4	12	0	16
TOTAL		618	852	1,509	2,699	3,006	8,664

Of the 9,579 cases, 915 cases were excluded due to missing age, gender, or race.

SOURCE: 1997 N.C. Juvenile Delinquent Sample.

TABLE 3

JUVENILES ADJUDICATED DELINQUENT
INSTANT OFFENSE CLASS AND LEVEL

JULY 1, 1996-JUNE 30, 1997

OFFENSE CLASS	N	%
A	0	0.0
B1	78	0.8
B2	0	0.0
C	91	0.9
D	129	1.4
E	103	1.1
SUBTOTAL: VIOLENT	401	4.2
F	116	1.2
G	138	1.4
H	1,970	20.6
I	699	7.3
A1(Misdemeanor)	672	7.0
SUBTOTAL: SERIOUS	3,595	37.5
Misdemeanor 1	2,894	30.2
Misdemeanor 2	2,051	21.4
Misdemeanor 3	638	6.7
SUBTOTAL: MINOR	5,583	58.3
TOTAL	9,579	100.0

SOURCE: 1997 N.C. Juvenile Delinquent Sample

TABLE 4

**JUVENILES ADJUDICATED DELIQUENT
INSTANT OFFENSE BY PRIOR ADJUDICATIONS**

JULY 1, 1996-JUNE 30, 1997

INSTANT OFFENSE	NUMBER OF PRIOR ADJUDICATIONS										TOTAL	
	0		1		2		3		4+			
	N	%	N	%	N	%	N	%	N	%	N	%
VIOLENT	285	71.0	65	16.1	34	8.6	13	3.2	4	1.1	401	4.2
SERIOUS	2,459	68.4	686	19.1	273	7.6	135	3.7	43	1.2	3,596	37.5
MINOR	3,896	69.8	1,117	20.0	410	7.4	125	2.2	34	0.6	5,582	58.3
TOTAL	6,640	69.3	1,868	19.5	717	7.5	273	2.9	81	0.8	9,579	100.0

SOURCE: 1997 N.C. Juvenile Delinquent Sample

TABLE 5

**JUVENILES ADJUDICATED DELINQUENT
INSTANT OFFENSE BY MOST SERIOUS PRIOR OFFENSE**

JULY 1, 1996-JUNE 30, 1997

INSTANT OFFENSE	MOST SERIOUS PRIOR OFFENSE						TOTAL	
	MINOR		SERIOUS		VIOLENT			
	N	%	N	%	N	%	N	%
VIOLENT	56	52.0	43	40.0	9	8.0	108	3.8
SERIOUS	636	59.0	402	37.4	39	3.6	1,077	38.3
MINOR	980	60.1	581	35.7	68	4.2	1,629	57.9
TOTAL	1,672	59.4	1,026	36.5	116	4.1	2,814	100.0

Of the 9,579 cases, 6,765 were excluded for having no prior delinquent record.

SOURCE: 1997 N.C. Juvenile Delinquent Sample.

TABLE 6

**JUVENILES ADJUDICATED DELINQUENT
INSTANT OFFENSE BY PROBATION AT THE TIME OF OFFENSE**

JULY 1, 1996-JUNE 30, 1997

INSTANT OFFENSE	PROBATION AT THE TIME OF OFFENSE				TOTAL	
	NO		YES			
	N	%	N	%	N	%
VIOLENT	285	73.6	73	20.4	358	3.8
SERIOUS	2,611	78.4	720	21.6	3,331	35.8
MINOR	4,497	80.0	1,132	20.0	5,629	60.4
TOTAL	7,393	79.3	1,925	20.7	9,318	100.0

Of the 9,579 cases, 261 were excluded due to missing probation status.

SOURCE: 1997 N.C. Juvenile Delinquent Sample

TABLE 7

JUVENILES ADJUDICATED DELINQUENT
INSTANT OFFENSE BY DISPOSITION

JULY 1, 1996-JUNE 30, 1997

INSTANT OFFENSE	DISPOSITION						TOTAL	
	COMMUNITY		INTERMEDIATE		TRAINING SCHOOL			
	N	%	N	%	N	%	N	%
VIOLENT	194	57.7	52	15.5	90	26.8	336	3.6
SERIOUS	2,393	72.3	490	14.8	428	11.9	3,311	35.5
MINOR	4,600	80.8	674	11.8	419	7.4	5,693	60.9
TOTAL	7,187	77.0	1,216	13.0	937	10.0	9,340	100.0

Of the 9,579 cases, 239 were excluded due to missing disposition.

SOURCE: 1997 N.C. Juvenile Delinquent Sample.

TABLE 8
JUVENILES ADJUDICATED DELINQUENT
DISPOSITION BY INSTANT OFFENSE AND SOCIAL HISTORY

JULY 1, 1996-JUNE 30, 1997

DISPOSITION	INSTANT OFFENSE AND SOCIAL HISTORY *															
	VIOLENT (%)				SERIOUS (%)				MINOR (%)				TOTAL (%)			
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
COMMUNITY	75.0	70.0	47.2	28.6	100.0	89.8	65.3	49.0	100.0	93.1	75.7	56.1	98.3	90.9	70.5	52.4
INTERMEDIATE	0.0	20.0	8.3	42.9	0.0	9.4	16.9	21.0	0.0	6.9	17.5	15.8	0.0	8.3	16.9	18.6
COMMITMENT	25.0	10.0	44.4	28.5	0.0	0.8	17.8	30.0	0.0	0.0	6.8	28.1	1.7	0.8	12.6	28.9
TOTAL	100.0 (17)	100.0 (173)	100.0 (155)	100.0 (30)	100.0 (72)	100.0 (1,089)	100.0 (1,714)	100.0 (487)	100.0 (171)	100.0 (2,153)	100.0 (2,347)	100.0 (649)	100.0 (260)	100.0 (3,415)	100.0 (4,216)	100.0 (1,166)

* Social History Key

- 1-Non-problematic
- 2-Moderate Problem
- 3-Serious Problem
- 4-Major Problem

Of the 9,579 cases, 522 were excluded due to missing disposition or social history.

SOURCE: 1997 N.C. Juvenile Delinquent Sample

TABLE 9

JUVENILES BOUND OVER TO ADULT COURT
CONVICTIONS BY GENDER, RACE AND AGE

JULY 1, 1996 - JUNE 30, 1997

GENDER AND RACE		AGE			TOTAL	
		13	14	15		
		N	N	N	N	%
GENDER	RACE					
Male	Asian	.	1	2	3	1.5
	Black	7	17	110	134	64.7
	Hispanic	.	.	1	1	0.5
	American Indian	.	.	3	3	1.5
	Unknown	.	1	.	1	0.5
	White	.	6	48	54	26.0
	SUB-TOTAL		7	25	164	196	94.7
Female	RACE					
	Black	.	2	4	6	2.9
	White	.	.	5	5	2.4
	SUB-TOTAL		2	9	11	5.3
TOTAL		7	27	173	207	100.0

SOURCE: Administrative Office of the Courts Criminal Information System Database

TABLE 10

**JUVENILES BOUND OVER TO ADULT COURT
CONVICTIONS BY OFFENSE CLASS AND PRIOR RECORD LEVEL**

JULY 1, 1996 - JUNE 30, 1997

OFFENSE CLASS	PRIOR RECORD LEVEL			TOTAL	
	I	II	III	N	%
	N	N	N		
A	2	.	.	2	1.0
B1	1	.	.	1	0.5
B2	7	.	.	7	3.4
C	8	.	.	8	3.8
D	18	4	.	22	10.6
E	22	1	1	24	11.6
F	12	.	.	12	5.8
G	19	1	.	20	9.6
H	76	8	1	85	41.1
I	23	3	.	26	12.6
TOTAL	188	17	2	207	100.0

SOURCE: Administrative Office of the Courts Criminal Information System Database

TABLE 11

JUVENILES BOUND OVER TO ADULT COURT
SENTENCE BY OFFENSE CLASS

JULY 1, 1996 - JUNE 30, 1997

OFFENSE CLASS	TYPE OF SENTENCE						MINIMUM ACTIVE SENTENCE (MONTHS)	MAXIMUM ACTIVE SENTENCE (MONTHS)	TOTAL
	ACTIVE		INTER-MEDIATE		COMMUNITY				
	N	%	N	%	N	%	MEAN	MEAN	N
A	2	100.0	.	.	.	.	.	.	2
B1	1	100.0	.	.	.	.	240.0	297.0	1
B2	6	85.7	1	14.3	.	.	148.8	187.8	7
C	8	100.0	.	.	.	.	62.6	84.4	8
D	21	95.5	1	4.5	.	.	56.4	77.1	22
E	9	37.5	14	58.3	1	4.2	23.8	37.8	24
F	4	33.3	8	66.7	.	.	20.8	25.5	12
G	3	15.0	12	60.0	5	25.0	8.7	10.7	20
H	3	4.7	51	60.0	30	35.3	10.3	12.5	85
I	.	.	1	3.8	25	96.2	.	.	26
TOTAL	58	28.0	88	42.5	61	29.5	56.8	75.8	207

SOURCE: Administrative Office of the Courts Criminal Information System Database

TABLE 13

JUVENILES ADJUDICATED DELINQUENT
DISTRIBUTION BY PROPOSED DISPOSITION GRID

JULY 1, 1996-JUNE 30, 1997

OFFENSE LEVEL	DELINQUENT HISTORY LEVEL*						TOTAL	
	LOW		MEDIUM		HIGH			
	N	%	N	%	N	%	N	%
VIOLENT	298	74.2	43	10.8	60	15.0	401	4.2
SERIOUS	2,502	69.6	527	14.6	567	15.8	3,596	37.5
MINOR	4,181	74.9	706	12.7	695	12.4	5,582	58.3
TOTAL	6,981	72.9	1,276	13.3	1,322	13.8	9,579	100.0

*Reflects the basic scenario in which delinquent history level is calculated as follows:

- Prior adjudication for a violent offense = 4 points; for a serious offense = 2 points; for a minor offense = 1 point.
- Probation status at the time of the instant offense = 2 points.
- Low Level = 0 - 1 total points
- Medium Level = 2 - 3 total points
- High Level = 4 or more total points

SOURCE: 1997 N.C. Juvenile Delinquent Sample

TABLE 14

**JUVENILES ADJUDICATED DELINQUENT
DISTRIBUTION OF DISPOSITIONS BY THE GRID***

JULY 1, 1996-JUNE 30, 1997

OFFENSE	DISPOSITION	DELINQUENT HISTORY LEVEL						TOTAL	
		LOW		MEDIUM		HIGH		N	%
		N	%	N	%	N	%		
VIOLENT	Community	194	69.3	17	39.5	9	16.1	220	2.4
	Intermediate	47	16.8	0	0	13	23.2	60	0.6
	Training School	39	13.9	26	60.5	34	60.7	99	1.1
SERIOUS	Community	2,088	85.8	249	49.1	164	29.7	2,501	26.8
	Intermediate	275	11.3	98	19.3	121	21.9	494	5.3
	Training School	70	2.9	160	31.6	267	48.4	497	5.3
MINOR	Community	3,657	88.9	479	71.2	330	48.3	4,466	47.8
	Intermediate	388	9.4	125	18.6	148	21.7	661	7.0
	Training School	68	1.7	69	10.2	205	30.0	342	3.7
TOTAL		6,826	73.5	1,223	13.0	1,291	13.5	9,340	100%

* Probation status at time of offense = 2 points.

Of the 9,579 cases, 239 were excluded due to missing disposition.

SOURCE: 1997 N. C. Juvenile Delinquent Sample

TABLE 15

JUVENILES ADJUDICATED DELINQUENT

DISPOSITIONAL SHIFTS
UNDER THE PROPOSED POLICY RECOMMENDATIONS

POLICY	DISPOSITION LEVEL			
	COMMUNITY	INTERMEDIATE	COMMITMENT	TOTAL
PROPOSED	6,680	2,722	388	9,340
CURRENT	7,187	1,215	938	9,340
TOTAL SHIFT	-507 -7%	1,057 87.0%	-550 -58.6%	0

Of the 9,579 cases, 239 were excluded due to missing disposition.

SOURCE: 1997 N.C. Juvenile Delinquent Sample

SECTION III: SOCIAL HISTORY

Protective Supervision:___ Probation:___ Suspended Commitment:___ Training ___School:___

IF SUBSEQUENTLY COMMITTED TO TRAINING SCHOOL,

DATE OF COMMITMENT:___/___/___
(Month) (Day) (Year)

Please circle one response for each social indicator below. Consider the juvenile's behavior over the year leading up to the adjudication date recorded in Section II.

SCHOOL/EMPLOYMENT (Behavior):

- a. No Problems
- b. Moderate Behavioral Problems
- c. Serious Behavioral Problems
- d. Not Enrolled or Not Employed

SCHOOL/EMPLOYMENT (Academic Achievement/Work Performance):

- a. No Problems
- b. Moderate Achievement/Performance Problems
- c. Serious Achievement/Performance Problems
- d. Not Enrolled or Not Employed

SCHOOL/EMPLOYMENT (Attendance):

- a. No Problems
- b. Moderate Attendance Problems
- c. Serious Attendance Problems
- d. Not Enrolled or Not Employed

PARENTAL/GUARDIAN SUPERVISION/CONTROL OF JUVENILE:

- a. Effective
- b. Inconsistent or Ineffective
- c. No Supervision
- d. Contributes to Delinquency

HISTORY OF SUBSTANCE ABUSE:

- a. No Known Use
- b. Experimental Use
- c. Some Disruption/Recreational Use
- d. Serious Disruption/Addicted

PEER RELATIONSHIPS:

- a. No Problems/No Delinquent Peers
- b. Some Delinquent Peers
- c. Mostly Delinquent Peers

RESPONSE TO COURT SUPERVISION:

- a. Is Not Under Court Supervision
- b. No Significant Problems

the Court Counselor's office should be required to prepare a release plan and present it to the court. The juvenile, the juvenile's attorney, the court counselor, and the prosecutor should be required to appear before the court when the juvenile is released pursuant to the release plan. If the juvenile fails to comply with the conditions of release, s/he should return to court and the judge should continue the current disposition, modify the current disposition, or recommit the juvenile to training school for an indefinite period of time.

Recommendation No. 44:

In the event that the nearest local detention facility is unable to accept a juvenile who has been charged or adjudicated with a serious or violent offense and the juvenile poses a significant risk to the community safety, the Code should allow for the detention of that juvenile in an adult facility with sight and sound barriers, as a last resort for detention purposes. The juvenile shall be detained for a period of time not to exceed 72 hours. All appropriate services to protect the safety of the juvenile as promulgated by the Department of Health and Human Services shall be implemented.

- a) violent: adjudication of a Class A-E felony offense;
- b) serious: adjudication of a Class F-I felony offense or a Class A1 misdemeanor;
- c) minor: adjudication of a Class 1, 2, or 3 misdemeanor.

Recommendation No. 32:

Three levels of risk of continued delinquent behavior should be defined, including high, medium, and low, based on a risk assessment performed by an Intake Court counselor prior to the disposition hearing.

Recommendation No. 33:

Three dispositional levels should be established as follows:

LEVEL 1 COMMUNITY	LEVEL 2 INTERMEDIATE (may also include Level 1 dispositions)	LEVEL 3 COMMITMENT
Continue for Disposition	Intensive Supervision Probation	Commitment to Training School
Community-Based Program	House Arrest with or without Electronic Monitoring	
Fine	Structured Day Program	
Community Service	Regimented Training Program	
Counseling	Suspension of a More Severe Disposition	
Restitution	Multi-purpose Group Home	
Regular Probation	Eckerd Wilderness Camp	
Curfew	Short-Term Secure Confinement (up to 14 days during probation period.	
Residential placement with a relative, or in foster care, a group home, an Eckerd Wilderness Camp, or in a treatment facility		
Vocational or Educational Program		
Intermittent Confinement for 5 days during probation period		

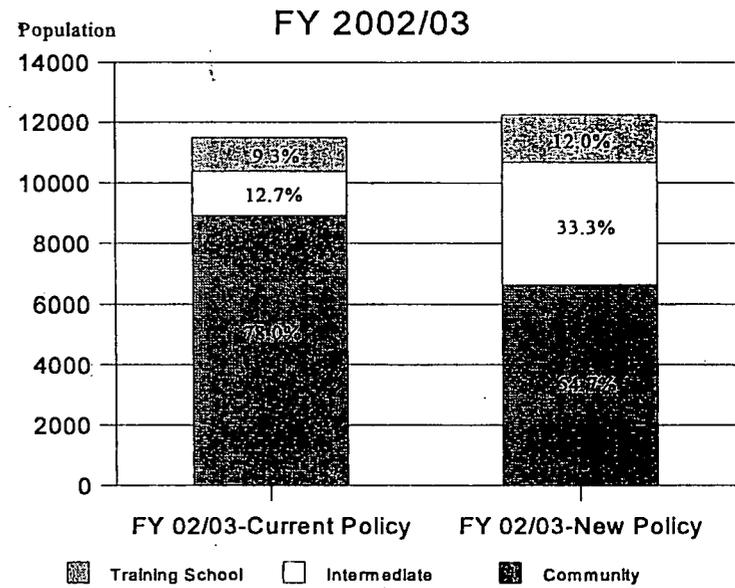
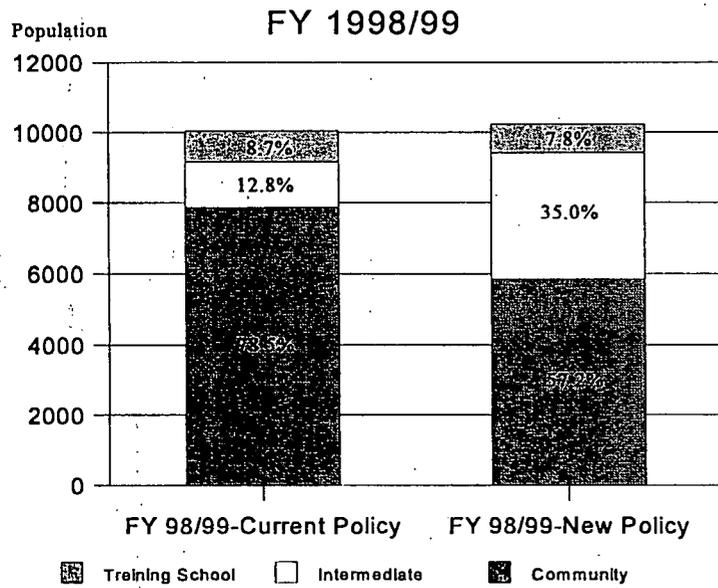
Recommendation No. 34:

Dispositional levels should be prescribed based on a combination of the offense seriousness and the risk level as follows:

APPENDICES

FIGURE A

**JUVENILES ADJUDICATED DELINQUENT
PROJECTED DISPOSITION RESOURCES
Current Policy vs. Proposed Policy**



SOURCE: 1997 N.C. Juvenile Delinquent Sample

TABLE 17/A
JUVENILES ADJUDICATED DELINQUENT
PROJECTED DISPOSITIONAL RESOURCE IMPACT*

FISCAL YEAR ENDING	TRAINING SCHOOL			INTERMEDIATE			COMMUNITY		
	LOW	MEDIUM	HIGH	LOW	MEDIUM	HIGH	LOW	MEDIUM	HIGH
1999	-348	-80	189	1,170	2,289	7,102	-612	-2,027	-3,441
2000	-275	120	516	1,218	2,379	7,346	-637	-2,105	-3,573
2001	-254	200	640	1,239	2,432	7,609	-643	-2,153	-3,662
2002	-232	205	655	1,280	2,517	7,832	-666	-2,228	-3,790
2003	-230	217	666	1,314	2,584	8,053	-683	-2,286	-3,890

* Policy as recommended in the Juvenile Justice Reform Act, with age of jurisdiction extended to 19 for violent juvenile delinquents.

SOURCE: 1997 N.C. Juvenile Delinquent Sample

Expense June 17

TABLE 17

JUVENILES ADJUDICATED DELINQUENT

PROJECTED DISPOSITIONAL RESOURCE IMPACT*

FISCAL YEAR ENDING	TRAINING SCHOOL			INTERMEDIATE			COMMUNITY		
	LOW	MEDIUM	HIGH	LOW	MEDIUM	HIGH	LOW	MEDIUM	HIGH
1999	-348	-80	189	1,170	2,289	7,102	-612	-2,027	-3,441
2000	-275	-120	516	1,218	2,379	7,346	-637	-2,105	-3,573
2001	-210	-237	686	1,239	2,432	7,609	-643	-2,153	-3,662
2002	-151	-344	841	1,280	2,517	7,832	-666	-2,228	-3,790
2003	-128	-399	928	1,314	2,584	8,053	-683	-2,286	-3,890

* Policy as recommended by the Governor's Commission on Juvenile Crime and Justice.

SOURCE: 1997 N.C. Juvenile Delinquent Sample

SECTION IV: INFORMATION FROM PRIOR ADJUDICATION DATES

- c. Moderate Compliance Problems
- d. Major Compliance Problems/
Commits New Delinquent Acts

TOTAL NUMBER OF PRIOR COURT DATES WHERE ADJUDICATIONS OCCURRED: _____

For each adjudication date, please record the *most serious offense* for which the juvenile was adjudicated delinquent. Order them from the first adjudication date to the most recent (not including the most recent offense(s) from Section II on Page 1). Make as many copies of page 4 of this form as are necessary to capture information from all of the juvenile's prior adjudication dates. See Attachment A for offense, G.S. number, offense type, and offense class information.

1. DATE OF THE FIRST ADJUDICATION: ____/____/____
(Month) (Day) (Year)

OFFENSE: _____ **G.S. NUMBER:** _____ **OFFENSE CLASS:** _____

NUMBER OF ADDITIONAL FELONIES: _____ **NUMBER OF ADDITIONAL MISDEMEANORS:** _____

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
P	Q	R	S	T	U	V	W	X	Y	Z	AA	BB		

Other: _____

DISPOSITION DATE: ____/____/____
(Month) (Day) (Year)

DISPOSITION: (Circle all that apply. See Attachment B for a list of dispositions.)

2. DATE OF THE SECOND ADJUDICATION: ____/____/____

OFFENSE: _____ **G.S. NUMBER:** _____ **OFFENSE CLASS:** _____

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
P	Q	R	S	T	U	V	W	X	Y	Z	AA	BB		

Other: _____

NUMBER OF ADDITIONAL FELONIES: _____ **NUMBER OF ADDITIONAL MISDEMEANORS:** _____

DISPOSITION DATE: ____/____/____

DISPOSITION:

3. DATE OF THE THIRD ADJUDICATION: ____/____/____

OFFENSE: _____ **G.S. NUMBER:** _____ **OFFENSE CLASS:** _____

NUMBER OF ADDITIONAL FELONIES: _____ **NUMBER OF ADDITIONAL MISDEMEANORS:** _____

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
P	Q	R	S	T	U	V	W	X	Y	Z	AA	BB		

Other: _____

LIST OF DISPOSITIONAL ALTERNATIVES FOR JUVENILES

Grouping by Level of Disposition

LEVEL 1 - COMMUNITY

- A Deferred disposition
- B Continued for disposition
- C Restitution
- D Fine
- E Community service
- F-N Counseling
- O Vocational/educational program
- P Victim/offender mediation
- Q Probation
- R Other supervision
- S No motor vehicle license
- T Curfew
- V Residential placement
- X Placement in the custody of the Department of Social Services
- Y Intermittent confinement of up to 5 days

LEVEL 2 - INTERMEDIATE

- U Structured day program
- W Eckerd Wilderness Camp
- Z House arrest
- AA Suspended commitment

LEVEL 3 - TRAINING SCHOOL

- BB Commitment to training school

APPENDIX C

NC SENTENCING AND POLICY ADVISORY COMMISSION JUVENILE JUSTICE TECHNICAL ADVISORY GROUP

W. Robert Atkinson

*Deputy Director, Programs
Administrative Office of the Courts*

James Bowden

*Assistant Director for Institutional Services
Youth Services-DHHS*

Stevens Clarke

Institute of Government

Stan Clarkson

*Project Manager, Division of Juvenile Services
Administrative Office of the Courts*

Dr. Laura Donnelly

*Research Associate, Research Services
Administrative Office of the Courts*

Ken Foster

*Assistant Director for Community Services
Youth Services-DHHS*

Honorable Rodney Goodman

*District Court Judge, 8th Judicial District
Sentencing Commission Member*

Donald Hargrove

*Area Administrator, Div. of Juvenile Services
Administrative Office of the Courts*

Sheriff Michael Harvell

*NC Sheriffs' Association
Sentencing Commission Member*

Juli Kim

*Governor's Commission on Juvenile Crime and
Justice*

Robin Lubitz

Director of the Governor's Crime Commission

Marcia Morey

*Director of the Governor's Commission on
Juvenile Crime and Justice*

Don Overby

Attorney at Law

Captain Larry Payne

Greensboro Police Department

Sandy Pearce

*Manager, Research and Planning
NC Department of Correction*

Richard Rideout

*Deputy Director
Youth Services--DHHS*

Joel Rosch

*Corrections Planner
Governor's Crime Commission*

Honorable Thomas W. Ross

*Superior Court Judge, 18th Judicial District
Chairman, NC Sentencing Commission*

Honorable Albert Thomas

Chief District Court Judge, 7th Judicial District

Honorable Kenneth Titus

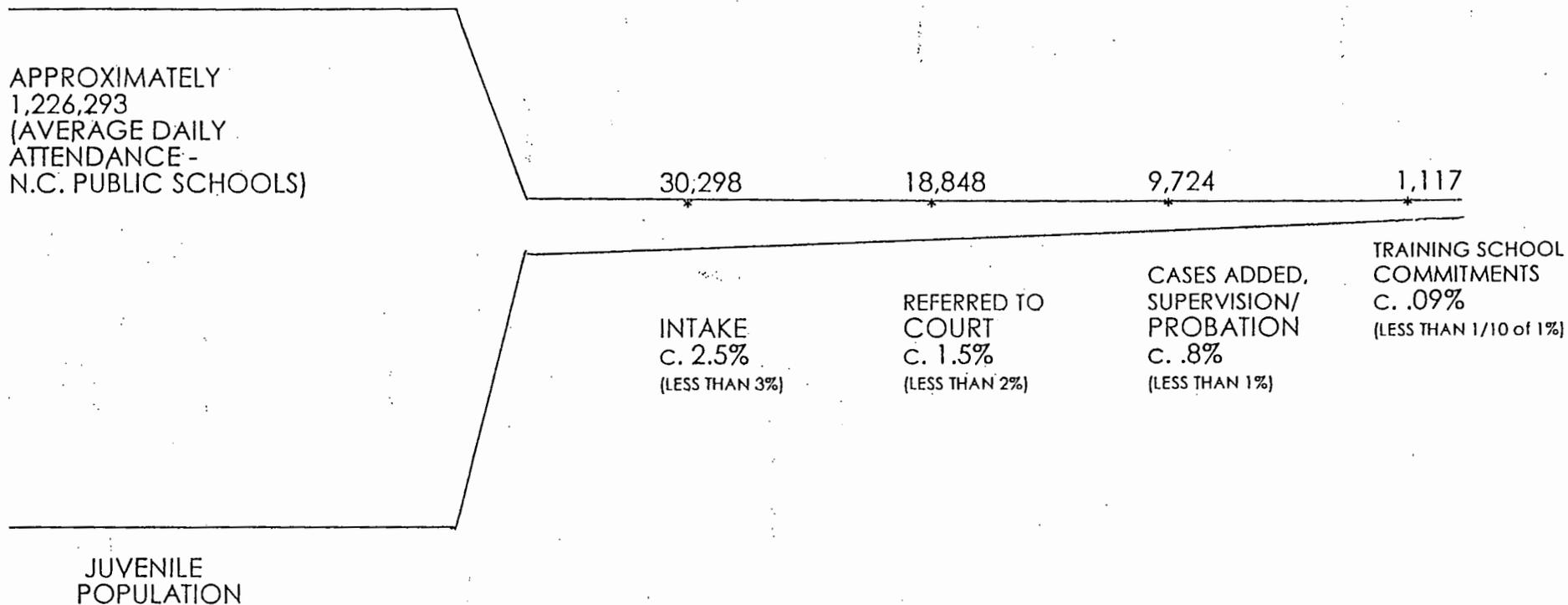
*Chief District Court Judge, 14th Judicial
District*

Dr. LeAnn Wallace

*Special Projects Administrator
Administrative Office of the Courts*

Appendix D

CHART D-1



JUVENILES AND THE JUSTICE SYSTEM IN NORTH CAROLINA

YEAR: 1997

TABLE E-1
JUVENILES ADJUDICATED DELINQUENT
DISTRIBUTION OF DISPOSITIONS BY THE GRID*

January 1, 1997 - June 30, 1997

OFFENSE	DISPOSITION	DELINQUENT HISTORY LEVEL						TOTAL	
		LOW		MEDIUM		HIGH		N	%
		N	%	N	%	N	%		
VIOLENT	Community	199	69.8	17	30.9	4	10.2	220	2.3
	Intermediate	47	16.5	4	7.3	9	23.1	60	0.6
	Training School	39	13.7	34	61.8	26	66.7	99	1.1
SERIOUS	Community	2,157	84.9	275	40.6	69	25.3	2,501	26.8
	Intermediate	288	11.3	154	22.7	52	19.0	494	5.3
	Training School	96	3.8	249	36.7	152	55.7	497	5.3
MINOR	Community	3,702	88.8	604	61.6	160	50.2	4,466	47.8
	Intermediate	399	9.6	194	19.8	68	21.3	661	7.1
	Training School	69	1.6	182	18.6	91	28.5	342	3.7
TOTAL		6,996	74.9	1,713	18.3	631	6.8	9,340	100.0

* Probation Status at Time of Offense = 1 Point

Of the 9,579 cases, 257 were excluded due to missing disposition.

SOURCE: 1997 N.C. Juvenile Delinquent Sample

Appendix F

CHART F-2

DETENTION CLIENT TRACKING SYSTEM, SUMMARY FOR FY1996-97

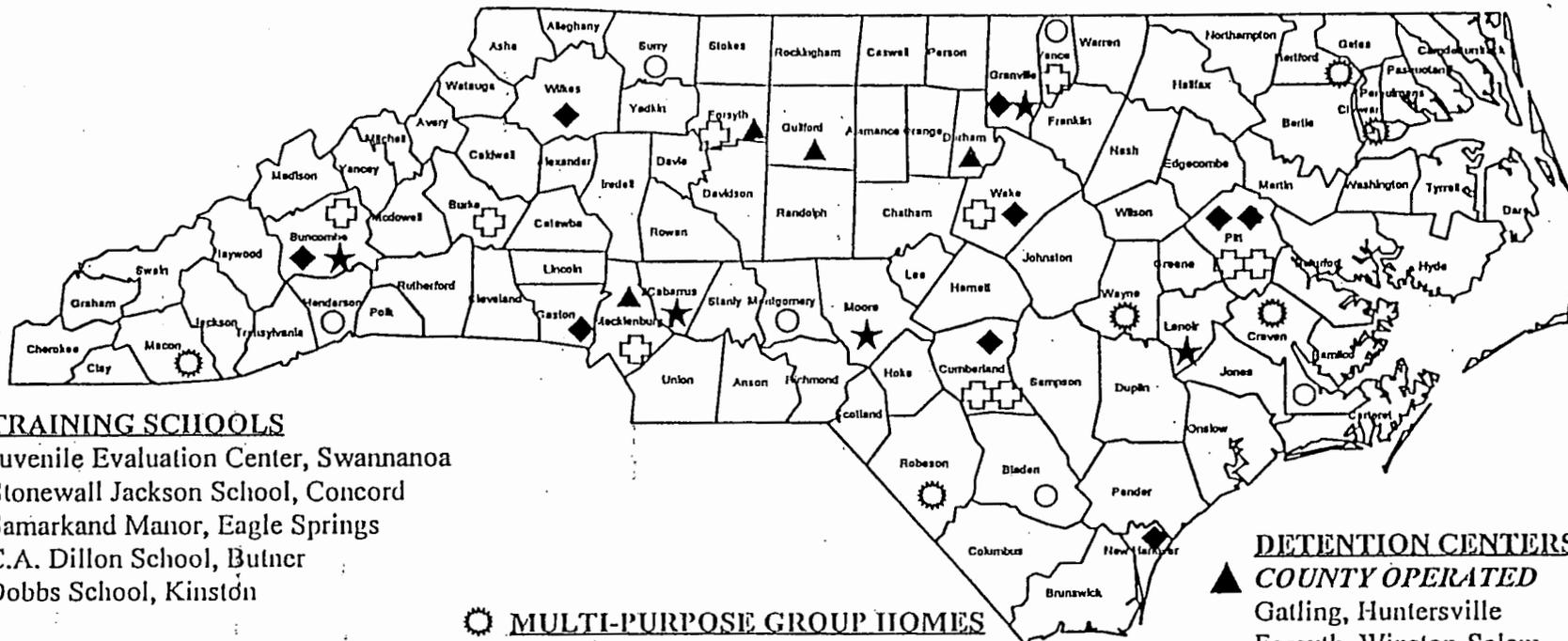
DATA ITEMS	BUNCOMBE	DURHAM	FORSYTH	GUILFORD	GATLING	NEW HAN	WAKE	CUMBERL	GASTON	PITT	WILKES	LEONARD	UMSTEAD	STATEWIDE
TOTAL ADMISSIONS	501	250	202	722	580	376	399	556	443	350	534	37	596	5546

SEX/RACE	BUNCOMBE	DURHAM	FORSYTH	GUILFORD	GATLING	NEW HAN	WAKE	CUMBERL	GASTON	PITT	WILKES	LEONARD	UMSTEAD	STATEWIDE
MALES WHITE	191	24	43	163	110	124	81	120	134	73	244	3	151	1461
MALES BLACK	105	168	122	368	446	139	194	236	141	185	102	31	332	2569
MALES INDIAN	14	1	1	4	4	9	3	50	1	0	1	3	3	94
MALES OTHER	8	0	8	16	20	4	3	12	7	4	16	0	12	110
TOTAL	318	193	174	551	580	276	281	418	283	262	363	37	498	4234
FEMALES WHITE	107	8	12	74	0	49	37	55	67	32	120	0	40	601
FEMALES BLACK	55	46	15	90	0	45	76	72	90	52	40	0	55	636
FEMALES INDIAN	18	0	0	0	0	1	0	4	1	1	2	0	0	27
FEMALES OTHER	3	3	1	7	0	5	5	7	2	3	9	0	3	48
TOTAL	183	57	28	171	0	100	118	138	160	88	171	0	98	1312
TOTAL WHITES	298	32	55	237	110	173	118	175	201	105	364	3	191	2062
TOTAL BLACKS	160	214	137	458	446	184	270	308	231	237	142	31	387	3205
TOTAL INDIANS	32	1	1	4	4	10	3	54	2	1	3	3	3	121
TOTAL OTHER	11	3	9	23	20	9	8	19	9	7	25	0	15	158
TOTAL	501	250	202	722	580	376	399	556	443	350	534	37	596	5546

REASON FOR DETENTION	BUNCOMBE	DURHAM	FORSYTH	GUILFORD	GATLING	NEW HAN	WAKE	CUMBERL	GASTON	PITT	WILKES	LEONARD	UMSTEAD	STATEWIDE
STATUS OFFENDER	61	10	2	26	16	6	7	6	60	6	64	0	14	278
DELINQUENT (BEFORE DISP)	369	205	187	610	440	301	355	432	341	307	354	36	532	4469
DISP INTERM (WK ENDS)	40	31	11	29	120	42	4	86	35	17	95	1	15	526
DISP 30 DAYS/LESS	11	1	0	34	0	7	21	2	2	6	0	0	14	98
RETURN FROM RUN	3	0	0	3	0	0	2	2	0	0	3	0	2	15
OUT OF STATE RUNAWAY	16	3	2	9	4	18	10	27	5	14	18	0	19	145
TRAINING SCHOOL COMMITMENT	1	0	0	11	0	2	0	1	0	0	0	0	0	15
OTHER	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	501	250	202	722	580	376	399	556	443	350	534	37	596	5546

CHART F-1

FACILITIES AND REGIONAL OFFICES



- ★ **TRAINING SCHOOLS**
 Juvenile Evaluation Center, Swannanoa
 Stonewall Jackson School, Concord
 Samarkand Manor, Eagle Springs
 C.A. Dillon School, Butner
 Dobbs School, Kinston

- ✚ **CBA REGIONAL OFFICES**
 Region 1, Black Mountain
 Region 2, Charlotte
 Region 3, Winston-Salem
 Region 4, Henderson
 Region 5, Fayetteville
 Region 6, Fayetteville
 Region 7, Greenville
 Region 8, Greenville
 Region 9, Morganton
 Region 10, Raleigh

- ☼ **MULTI-PURPOSE GROUP HOMES**
 Macon County, Franklin
 Robeson County, Lumberton
 Wayne County, Goldsboro
 Craven County, New Bern
 Hertford County, Winton
 Chowan County, Edenton

- **ECKERD THERAPEUTIC CAMPS**
 E-TOH-KALU, Hendersonville
 E-KU-SUMEE, Candor
 E-MA-HENWU, Newport
 E-MUN-TALEE, Lowgap
 E-TIK-ETU, Elizabethtown
 E-TEN-ETU, Manson

- ▲ **DETENTION CENTERS COUNTY OPERATED**
 Gattling, Huntersville
 Forsyth, Winston-Salem
 Guilford, Greensboro
 Durham, Durham
- ◆ **STATE OPERATED**
 Wilkes, North Wilkesboro
 Gaston, Dallas
 Wake, Raleigh
 Cumberland, Fayetteville
 Pitt, Greenville
 New Hanover, Castle Hayne
 Buncombe, Asheville
 Leonard, Greenville
 Umstead, Butner (temporary facility)

APPENDIX G

SECURE DETENTION SURVEY
SUMMARY SURVEY RESULTS

Surveys were sent to all 39 chief district court judges, with responses received from 31 districts for a response rate of 80%.¹ The districts which responded varied in size and represented both urban and rural counties. (See attached tables G-1 through G-3 for tabulated results of the survey responses.)

The frequency with which juvenile court is held during one month varied among the districts. Nine districts reported holding juvenile court four times or less in a month. Districts 22 and 26 reported the highest numbers, with District 22 holding juvenile court 20 to 24 times in a month and District 26 holding two sessions of juvenile court daily.

Secured Detention - Current Practice

The judges were asked to respond to two questions related to their current use of secured detention facilities. First, they were asked to estimate how many juveniles they and the other judges in their district order to a secured detention facility in one month, both prior to adjudication and as a disposition. The judges who responded to the survey estimated that they send from 359 to 367 juveniles per month to secured detention prior to adjudication, and from 129 to 144 juveniles per month as a disposition.

Individual district estimates for pre-adjudication detention ranged from one or two juveniles in four districts to 29 in Districts 10 and 12 and more than 100 in District 26. As a disposition, thirteen districts estimated sending from zero to two juveniles per month, while District 26 estimated 15 juveniles and District 18 estimated 25 juveniles.

Second, the judges were asked to estimate how many times they and the other judges in their district refrain from ordering a juvenile to a detention facility in one month due to a lack of bed space. The judges who responded to the survey estimated that they refrain from detaining 41 to 43 juveniles per month prior to adjudication, and 64 to 70 juveniles per month as a disposition.

Sixteen districts estimated that they have not refrained from sending juveniles to detention prior to adjudication due to a lack of bed space. District 5 estimated sending the highest number of juveniles at 12. Seventeen districts estimated that they have not refrained from sending a juvenile to detention as part of their disposition due to a lack of bed space. District 17B estimated sending the highest number of juveniles at 20.

The judges were also asked about their use and projected use of training school beds. They were asked to estimate how many juveniles they and the other judges in their district commit to training school in one month. The judges responding to the survey estimated that they commit from

¹ The data collection instrument, Secured Detention Facilities Survey, is attached to this appendix.

86 to 98 juveniles in one month. Eighteen districts estimated that they commit from one to three juveniles per month to training school. One district, District 26, estimated that it committed up to 10 juveniles per month to training school.

Then the judges were asked to estimate how many times they and the other judges in their district refrain from committing a juvenile to training school in one month due to a lack of bed space. Only four districts, 13, 17B, 19A, and 19B, estimated that they have refrained from committing juveniles due to a lack of bed space. They estimated a total of 17 juveniles per month.

Secured Detention - Future Practice

The judges were also given an overview of the recommendations of the Governor's Commission on Juvenile Crime and Justice which related to the use of secured detention facilities. They were asked three questions relating to their future practice if the recommendations were enacted and the General Assembly provided additional funding for secured detention beds. First, the judges were asked how many additional juveniles they estimated they and the other judges in their district would order to a secured detention facility in one month. The judges who responded to the survey estimated that they would order from 104 to 116 additional juveniles per month prior to adjudication. As a disposition, the judges estimated they would send from 216 to 250 additional juveniles in a month.

Eleven districts estimated they would not send any additional juveniles to secured detention prior to adjudication. Two districts estimated they would send more than 10 additional juveniles in a month, 12 in District 5 and 30 in District 27A. As a disposition, seven districts estimated they would not send any additional juveniles to secured detention. Four districts estimated they would send more than 20 additional juveniles in a month, 20 in District 27A, 20 to 25 in District 7, 20 to 30 in District 18, and 30 in District 17B.

Second, the judges were asked for how many additional juveniles did they estimate they and the other judges in their district would order intermittent confinement of up to five twenty-four hour periods. The judges who responded to the survey estimated they would order up to five periods of intermittent confinement as an initial disposition for 168 to 186 additional juveniles. For probation violations, the judges estimated they would order up to five periods of intermittent confinement for 201 to 226 additional juveniles per month.

Five districts estimated they would not order intermittent confinement as a disposition for any additional juveniles, while ten districts estimated they would order intermittent confinement for 10 or more additional juveniles. Seven districts estimated they would order intermittent confinement for probation violations for zero to two additional juveniles, while twelve districts estimated they would order intermittent confinement for 10 or more additional juveniles.

Third, the judges were asked for how many additional juveniles did they estimate they and the other judges in their district would order intermittent confinement of up to 14 twenty-four hour periods. The judges estimated they would order up to 14 periods of intermittent confinement as an initial disposition for 132 to 145 additional juveniles. For probation violations, the judges estimated

they would order up to 14 periods of intermittent confinement for 171 to 181 additional juveniles per month.

Eleven districts estimated they would order intermittent confinement as a disposition for zero to two additional juveniles, while four district estimated they would order intermittent confinement for 10 or more additional juveniles. Nine districts estimated they would order intermittent confinement for probation violations for one or two additional juveniles, while eight districts estimated they would order intermittent confinement for 10 or more additional juveniles.

The judges were asked, if the General Assembly repealed the requirement for the judge to use the "least restrictive disposition" and provided additional funding, how many additional juveniles did they estimate they and the other judges in their district would commit to training school in one month. The judges estimated they would commit from 81 to 96 additional juveniles in one month. Eighteen districts estimated they would commit from zero to three additional juveniles, while two districts estimated they would commit up to 10 additional juveniles per month.

Secured detention facilities: sites, capacity, use

Each district was also asked to provide information on the location and use of secured detention facilities. The questions included the location of the nearest facility and the number of beds in that facility, the location of the next available facility, and how often the next available facility is used (*see* Table G-4). For example, the Asheville unit is located in District 28, has a design capacity of 14, is listed as the nearest facility for districts 24, 29 and 30, and is listed as the next available facility for districts 19A, 23, 27A and 27B.

There are currently twelve secured detention facilities in North Carolina. Eight units (Asheville, Butner, Dallas, Fayetteville, Greenville, North Wilkesboro, Raleigh and Wilmington) are state operated, while four units (Durham, Greensboro, Huntersville and Winston-Salem) are county operated. The Butner unit is a temporary facility with no permanent staff. The number of beds available in each facility ranges from eight beds to thirty-two beds at maximum capacity allowed by law.

Each unit houses juveniles from several districts. The Fayetteville unit in Cumberland County is used the most by the other districts. Seven districts reported that Fayetteville is the facility nearest to them and six districts reported that Fayetteville is the next available facility nearest to them. Three facilities, including Raleigh, North Wilkesboro and Butner, are each cited by eight districts as being the next available unit. Most districts send juveniles to facilities nearest to their district, with a few exceptions.² The Butner unit receives juveniles from as far away as Wilkes County and Gaston County. The Wilkes County unit receives mostly juveniles from other western counties but also houses juveniles from Pender and New Hanover counties in District 5.

² Note that the "nearest" facility tally is skewed as a result of districts not responding to the survey.

Response varied to the question of how often the next available facility is used. Twenty-four districts responded that 25% or less of the time they send juveniles to the next available facility. Ten districts responded that more than 25% but less than 50% of the time juveniles must be housed in the next available facility. Seven districts responded that 50% or more of the time juveniles must be housed in the next available facility.

APPENDIX G

SECURED DETENTION FACILITIES SURVEY

The Governor's Commission on Juvenile Crime and Justice is developing a set of recommendations to improve the juvenile justice system. Several of the proposed recommendations involve the use of detention beds.

- Judges should have the authority to hold undisciplined juveniles in contempt, if they are found to be in willful violation of the court's dispositional order over the undisciplined youth.
- Judges may impose up to five twenty-four hour periods of confinement (intermittent confinement) for certain offenses. Confinement shall be completed by the end of the period of probation.
- Judges should have the authority to impose up to fourteen twenty-four hour periods of confinement (short-term confinement) for more serious offenses. Confinement shall be completed by the end of the period of probation.
- Judges should have the authority to impose up to twice the period authorized for secure confinement when an offender violates the conditions of probation.

The requirement for the judge to use the "least restrictive disposition" or alternative should be eliminated.

Please answer the following questions concerning secured detention facilities and training school.

Name:	
District:	County (ies):
Frequency of Juvenile Court in this District during one month:	
SECURED DETENTION FACILITIES	
1. In your estimation, how many juveniles do you and the other judges in your district order to a secured detention facility in one month?	
Prior to adjudication:	As a disposition:
2. In your estimation, how many juveniles do you and the other judges in your district refrain from ordering to a detention facility in one month due to a lack of bed space?	
Prior to adjudication:	As a disposition:

3. If the General Assembly enacted the Governor's Commission's proposed recommendations listed above and provided additional funding, how many additional juveniles do you estimate you and the other judges in your district would order to a secured detention facility in one month?

Prior to adjudication:

As a disposition:

4. If the General Assembly enacted the Governor's Commission's proposed recommendations listed above and provided additional funding, for how many additional juveniles do you estimate you and the other judges in your district would order up to five twenty-four hour periods of confinement?

As a disposition:

For a probation violation:

5. If the General Assembly enacted the Governor's Commission's proposed recommendations listed above and provided additional funding, for how many additional juveniles do you estimate you and the other judges in your district would order up to fourteen twenty-four hour periods of confinement?

As a disposition:

For a probation violation:

TRAINING SCHOOL

1. In your estimation, how many juveniles do you and the other judges in your district commit to training school in one month?

2. In your estimation, how many juveniles do you and the other judges in your district refrain from committing to training school in one month due to a lack of bed space?

3. If the General Assembly repealed the requirement for the judge to use the "least restrictive disposition" and provided additional funding, how many additional juveniles do you estimate you and the other judges in your district would commit to training school in one month?

Please consult with your chief court counselor to answer the following questions.

SECURED DETENTION FACILITIES

1. How many detention beds are in the nearest secured detention facility?

Prior to Adjudication:

As a Disposition:

2. In which city and county are those beds located?

Prior to Adjudication:

As a Disposition:

3. When the above beds are full, what are the locations of the next available secured detention facilities?

Prior to Adjudication:

As a Disposition:

4. In your opinion, how often during one year do you send juveniles to the alternate facilities in #3?

Prior to Adjudication:

As a Disposition:

APPENDIX G

TABLE G1: SECURED DETENTION - CURRENT PRACTICE AND PROJECTIONS UNDER PROPOSALS

SECURED DETENTION	DISTRICT COURT DISTRICTS												
	1	2	4	5	6A	6B	7	8	9	10	11	12	13
COURT FREQUENCY (MONTH)	6	7	4	5	2	3	N/A	9	7	16	6	8-10	6
CURRENTLY ORDERED -PRIOR TO ADJUDICATION	5	4	2	4	2	3-4	18	7-8	10	29	8	29	6-7
CURRENTLY ORDERED -AS A DISPOSITION	2	3	1	0	0	2-3	2	2-3	4	4	1-2	5	6-7
NOT ORDERED/LACK OF BEDS -PRIOR TO ADJUDICATION	1	1	0	12	0	0	0	0	0	0	0	0	0
NOT ORDERED/LACK OF BEDS -AS A DISPOSITION	2	0	0	12	0	0	0	0	0	0	0	0	0
ADDITIONAL JUVENILES -PRIOR TO ADJUDICATION	0	1	0	12	0	0	0	0	5	7	0	8-10	N/A
ADDITIONAL JUVENILES -AS A DISPOSITION	8	2	0	15	0	0	20-25	0	2	15	2	8-10	12-14
ADDITIONAL JUVENILES 5/24 HOUR CONFINEMENT PERIODS -AS A DISPOSITION	4	4	0	15	0	0	0	2	12	11	5	6-8	N/A
ADDITIONAL JUVENILES 5/24 HOUR CONFINEMENT PERIODS -PROBATION VIOLATION	10	4	1	12	3	0	4-5	2	10	7	10	4-6	N/A
ADDITIONAL JUVENILES 14/24 HOUR CONFINEMENT PERIODS -AS A DISPOSITION	4	2	1	10	0	2-3	4-5	1-2	6	9	5	1-3	N/A
ADDITIONAL JUVENILES 14/24 HOUR CONFINEMENT PERIODS -PROBATION VIOLATION	10	2	1	15	3	3-4	20	3	8	6	2	1-3	N/A

SECURED DETENTION	DISTRICT COURT DISTRICTS											
	16A	16B	17A	17B	18	19A	19B	19C	20	21	22	23
COURT FREQUENCY (MONTH)	5-6	4	2	6	30	4	3	4.3	4	6	20-24	14
CURRENTLY ORDERED -PRIOR TO ADJUDICATION	5-6	4	1.5	5	45	3.5	10	7	4	10	10	3-4
CURRENTLY ORDERED -AS A DISPOSITION	1-3	3	.5	5	25	2	4	5	4	4	3-4	10-12
NOT ORDERED/LACK OF BEDS -PRIOR TO ADJUDICATION	0	0	.75	5	0	2	2	1	3.5	0	0	3-4
NOT ORDERED/LACK OF BEDS -AS A DISPOSITION	0	0	1	20	0	2	5	2	4.5	2	0	6-8
ADDITIONAL JUVENILES -PRIOR TO ADJUDICATION	0	4	1	5	0	4	5	0	7-10	N/A	1-2	5-10
ADDITIONAL JUVENILES -AS A DISPOSITION	0	10	2	30	20-30	2	9	10	7-10	N/A	1-2	10-15
ADDITIONAL JUVENILES 5/24 HOUR CONFINEMENT PERIODS -AS A DISPOSITION	4	5	.5	20	5-10	2	6	5	10	N/A	10	10-15
ADDITIONAL JUVENILES 5/24 HOUR CONFINEMENT PERIODS -PROBATION VIOLATION	4	5	1	10	10-20	2	8	2	17	N/A	10	10-15
ADDITIONAL JUVENILES 14/24 HOUR CONFINEMENT PERIODS -AS A DISPOSITION	4	10	.5	5	1-5	3	5	2	12	5	5	5-8
ADDITIONAL JUVENILES 14/24 HOUR CONFINEMENT PERIODS -PROBATION VIOLATION	4	5	1	5	5-10	2	7	6	16	2	5	10-12

SECURED DETENTION	DISTRICT COURT DISTRICTS						
	24	26	27A	27B	29	30	TOTAL
COURT FREQUENCY (MONTH)	8-9	60	12	8	5	7	281.3-289.3
CURRENTLY ORDERED -PRIOR TO ADJUDICATION	4-6	100+	15	1-2	N/A	4	359-367
CURRENTLY ORDERED -AS A DISPOSITION	4-6	12-15	10	2-3	N/A	2	128.5-143.5
NOT ORDERED/LACK OF BEDS -PRIOR TO ADJUDICATION	3-4	0	5	N/A	N/A	2	41.25-43.25
NOT ORDERED/LACK OF BEDS -AS A DISPOSITION	1-2	1-4	5	N/A	0	0	63.5-69.5
ADDITIONAL JUVENILES -PRIOR TO ADJUDICATION	4-5	0	30	3	N/A	2	104-116
ADDITIONAL JUVENILES -AS A DISPOSITION	1-2	5-10	20	5	0	0	216-250
ADDITIONAL JUVENILES 5/24 HOUR CONFINEMENT PERIODS -AS A DISPOSITION	8-9	5-10	15	3	N/A	0	167.5-185.5
ADDITIONAL JUVENILES 5/24 HOUR CONFINEMENT PERIODS -PROBATION VIOLATION	10-12	5-10	35	3	N/A	2	201-226
ADDITIONAL JUVENILES 14/24 HOUR CONFINEMENT PERIODS -AS A DISPOSITION	8-9	8	10	1	N/A	2	131.5-144.5
ADDITIONAL JUVENILES 14/24 HOUR CONFINEMENT PERIODS -PROBATION VIOLATION	N/A	12	15	1	N/A	1	171-181

TABLE G2: TRAINING SCHOOLS - CURRENT PRACTICE AND PROJECTIONS UNDER PROPOS.

TRAINING SCHOOLS	DISTRICT COURT DISTRICTS															
	1	2	4	5	6A	6B	7	8	9	10	11	12	13	16A	16B	17A
COURT FREQUENCY (MONTH)	6	7	4	5	2	3	N/A	9	7	16	6	8-10	6	5-6	4	2
CURRENTLY ORDERED	3	4	2	5	2.5	1-2	5-6	4.6	1	5	1-2	6-7	6-8	1	1	1
NOT ORDERED/LACK OF BEDS	0	0	0	0	0	0	0	0	0	0	0	0	10	0	0	0
ADDITIONAL JUVENILES/ "LEAST RESTRICTIVE" REMOVED	4	1	0	0	1	1-2	0	2-4	2	1	3-4	2-4	10	5-10	2	.16

TRAINING SCHOOLS	DISTRICT COURT DISTRICTS (continued)															
	17B	18	19A	19B	19C	20	21	22	23	24	26	27A	27B	29	30	TOTAL
COURT FREQUENCY (MONTH)	6	30	4	3	4.3	4	6	20-24	14	8-9	60	12	8	5	7	281.3- 289.3
CURRENTLY ORDERED	2	5	1	4	1.5	2	2.2	3-4	1	N/A	5-10	3	1	N/A	6	85.8- 97.8
NOT ORDERED/LACK OF BEDS	5	0	1	1	0	0	0	0	0	N/A	0	0	0	N/A	0	17
ADDITIONAL JUVENILES/ "LEAST RESTRICTIVE" REMOVED	10	0	3	4	2	4-6	N/A	5-6	3	N/A	4-5	7	5	N/A	0	81.16- 96.16

TABLE G3: SECURED DETENTION FACILITIES - LOCATION, CAPACITY, USE

SECURED DETENTION FACILITIES	DISTRICT COURT DISTRICTS												
	1	4	5	6A	6B	7	8	9	10	11	12	16A	16B
COURT FREQUENCY (MONTH)	6	4	5	2	3	N/A	9	7	16	6	8-10	5-6	4
NUMBER OF BEDS IN NEAREST FACILITY	18	18 18	0-21	18	18	18	18	14	14	18	18	18	18
LOCATION OF NEAREST FACILITY	D3A	D5 D12	D5	D3A	D3A	D3A	D3A	D14	D10	D12	D12	D12	D12
LOCATION OF NEXT AVAILABLE FACILITY	D5	D3A	D12 to D23	D9 D10	D10	D10	D5	D9 D10	D9 D12 D3A	D10	D5 D10 D3A	D5	D5
NEXT AVAILABLE FACILITY: HOW OFTEN USED -PRIOR TO ADJUDICATION	20%	8%	50%	25%	N/A	6%	75%	8%	24%	N/A	24%	N/A	17%
NEXT AVAILABLE FACILITY: HOW OFTEN USED -AS A DISPOSITION		17%	0	25%	N/A	50%	75%	31%	31%	N/A	N/A	N/A	8%

STATE-OPERATED FACILITIES

- D3A = Greenville, Pitt County
- D5 = Wilmington, New Hanover County
- D9 = Butner, Granville County
- D10 = Raleigh, Wake County
- D12 = Fayetteville, Cumberland County
- D23 = North Wilkesboro, Wilkes County
- D27A = Dallas, Gaston County
- D28 = Asheville, Buncombe County

COUNTY-OPERATED FACILITIES

- D14 = Durham, Durham County
- D18 = Greensboro, Guilford County
- D21 = Winston-Salem, Forsyth County
- D26 = Huntersville, Mecklenburg County



APPENDIX G

**TABLE G4: SECURED DETENTION FACILITIES:
SITES, CAPACITY, USE**

LOCATION (city, county, district)	DESIGN CAPACITY	DISTRICT	
		NEAREST	NEXT AVAILABLE
STATE-OPERATED FACILITIES			
Asheville, Buncombe, D.28	14	24, 29, 30	19A, 23, 27A (prior to adjudication), 27B
Butner, Granville, D.9 (temporary site)	unknown		6A, 7, 9, 10, 17A, 19B, 23, 27A (disposition)
Dallas, Gaston, D.27A	12	19A, 20, 27A, 27B	17B, 19C, 20, 22, 23, 24
Fayetteville, Cumberland, D.12	18	4, 11, 12, 16A (prior to adjudication), 16B, 19B, 20	5, 8, 10, 19A, 19B, 27A (disposition)
Greenville, Pitt, D.3A	14	1, 6A, 6B, 7, 8	4, 10, 12, 19B
N. Wilkesboro, Wilkes, D.23	8	17B, 22, 23, 24	5, 19A, 20, 21, 22, 27A (prior to adjudication), 27B, 30
Raleigh, Wake, D.10	14	10	6A, 6B, 7, 8, 9, 11, 12, 19B
Wilmington, New Hanover, D.5	18	4, 5	1, 8, 12, 16A (prior to adjudication), 16B, 19B
COUNTY-OPERATED FACILITIES			
Durham, Durham, D.14	14	9	
Greensboro, Guilford, D.18	28	17A, 19B	22
Huntersville, Mecklenburg, D.26	unknown		
Winston-Salem, Forsyth, D.21	16	19C, 21, 22	22, 27A (disposition)

*Note: the tally for "nearest" facility is skewed as a result of districts not responding to the survey.

SECURED DETENTION FACILITIES	DISTRICT COURT DISTRICTS									
	22 Alexander	22 Davidson	22 Davie	22 Iredell	23	24	27A	27B	29	30
COURT FREQUENCY (MONTH)	20-24	20-24	20-24	20-24	14	8-9	12	8	N/A	7
NUMBER OF BEDS IN NEAREST FACILITY	8	16	16	8	8	13 14	25	2	N/A	14
LOCATION OF NEAREST FACILITY	D23	D21	D21	D23	D23	D28 D23	D27A	D27A	D28	D28
LOCATION OF NEXT AVAILABLE FACILITY	D27A	D18	D23	D21	D27A D28 D9	D27A	D28 D23	D28 D23	N/A	D23
NEXT AVAILABLE FACILITY: HOW OFTEN USED -PRIOR TO ADJUDICATION	8%	8%	8%	8%	3%	3%	33%	8%	N/A	13%
NEXT AVAILABLE FACILITY: HOW OFTEN USED -AS A DISPOSITION	19%	19%	19%	19%	6%	N/A	50%	28%	N/A	8%

STATE-OPERATED FACILITIES

- D3A = Greenville, Pitt County
- D5 = Wilmington, New Hanover County
- D9 = Butner, Granville County
- D10 = Raleigh, Wake County
- D12 = Fayetteville, Cumberland County
- D23 = North Wilkesboro, Wilkes County
- D27A = Dallas, Gaston County
- D28 = Asheville, Buncombe County

COUNTY-OPERATED FACILITIES

- D14 = Durham, Durham County
- D18 = Greensboro, Guilford County
- D21 = Winston-Salem, Forsyth County
- D26 = Huntersville, Mecklenburg County

SECURED DETENTION FACILITIES	DISTRICT COURT DISTRICTS								
	17A	17B	19A	19B Randolph	19B Montgomery/ Moore	19C	20 Stanly/ Anson	20 Richmond	21
COURT FREQUENCY (MONTH)	2	6	4	N/A	3	4.3	2	2	6
NUMBER OF BEDS IN NEAREST FACILITY	28	8	24	3	18	16	24	18	16
LOCATION OF NEAREST FACILITY	D18	D23	D27A	D18	D12	D21	D27A	D12	D21
LOCATION OF NEXT AVAILABLE FACILITY	D9	D27A D28	D23 D28 D12	D9 D12 D10	D10 D3A D5	D27A	D23	D27A	D23
NEXT AVAILABLE FACILITY: HOW OFTEN USED -PRIOR TO ADJUDICATION	11%	13%	31%	30%	50%	69%	N/A	33%	18%
NEXT AVAILABLE FACILITY: HOW OFTEN USED -AS A DISPOSITION	17%	0	N/A	30%	50%	70%	N/A	33%	44%

STATE-OPERATED FACILITIES

D3A = Greenville, Pitt County
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D9 = Butner, Granville County
D10 = Raleigh, Wake County
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6-10-98

The Herald-Sun

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Editorial page editor

EDITORIALS

SCHOOL TRUANCY

Crime's early signal

For most juveniles who commit a crime, an initial visit to juvenile court is enough to scare them back to a more productive path. But it's that estimated 10 percent of youths who become habitual offenders that frustrate North Carolina's juvenile justice system.

Our eight-part series "Juvenile Injustice" offers a detailed look at the frustration the system faces as it tries, and usually fails, to cope with this group of offenders. Court officials and other experts who spoke to The Herald-Sun's Christopher Kirkpatrick paint a picture of a creaking system unable to cope with today's young criminals.

Laws that require judges to give juveniles the least punishment, the law enforcement practice of "diverting" offenders from the legal system and the lack of swift consequences teach habitual offenders how to beat the system.

When the system does respond — after the commission of a violent crime — it's often too late to save the offender.

Getting juveniles to break this cycle of behavior must seem like an intractable problem for court officials. The old-fashioned problem of truancy from school offers a telling example of what the courts are up against.

Yes, there are laws that require parents to send their children to school. But the most that a parent who disobeys the state's compulsory attendance law will get is a \$50 fine and a misdemeanor rap. Other factors compound the frustration: School officials do not have the time to go to court to testify and help prosecute neglectful parents. In some cases, such as single-parent families, prosecution would leave the child without a guardian and in worse circumstances.

Others say that schools do not follow the procedures that have been devised to help catch truants. School principals are supposed to notify the district attorney's office when a student reaches a 10th unexcused absence. But Marcia Morey, the Durham juvenile prosecutor who is director of the commission that recommended changes in the state's juvenile code, said that procedure is seldom followed.

The roots of truancy are in the home and thus beyond the reach of government. But in its final report, the Governor's Commission on Juvenile Crime and Justice made thoughtful recommendations concerning "undisciplined youths" (also known as "status offenders"), a class that includes truants, runaways and juveniles beyond their parents' control.

Recognizing that such behavior "is frequently the first step to delinquency," the commission urged that courts be allowed to hold these offenders in contempt when found to be in willful violation of a court order concerning their case. To keep track of these youths and provide help for their families, the commission urged that the court's jurisdiction over status offenders be extended from age 16 to 18.

That recommendation is among many the panel made for tightening the juvenile code. It will not mend broken families, but it would be a first step toward preventing chronic truancy, all too often the first signal of a life of crime.

SPECIAL REPORT



THE ROAD TO PRISON: Ann McDaniel agonizes over the way the juvenile justice system allowed her son, Frank, to escape punishment for minor infractions during his early teen years, despite her pleadings for prosecution. In the end, she feels that level of tolerance paved the road to the kidnapping and armed robbery that landed him at age 18 an 11-year sentence — in an adult prison.

Mother couldn't save her son, and that's her greatest shame

By CHRISTOPHER KIRKPATRICK

The Herald-Sun

Sunlight pushes through drawn curtains into Ann McDaniel's living room, splashing precious color onto a pale, tiled floor.

A sign on the white cinder block wall tells anyone who looks for it: "Smile, God Loves You." In another room, a washing machine churns, casting the smell of bleach. Toys on well-scrubbed linoleum tell of happy children once at play.

Ann lives in public housing and collects disability, but doesn't fall prey to clichés about welfare and the "projects."



UNFAIRLY INJUSTICE

Carolina lets its vomit-crime the system

Her world is a mixture of poverty, common sense and optimism, and she's spent much of her life helping other people. But she seems lost in a grief few mothers know or would

F. McDANIEL

PART FOUR

She couldn't save her oldest son, Frank. And it's her greatest shame.

please see **SHAME/A13**

6. Order the parent to pay for treatment that is ordered for the juvenile or the parent.

7. Impose any of the dispositional options set out in G.S. 7A-647, -648, or -649.

Date Of Hearing _____

Time AM PM

Place _____

DURHAM COUNTY JUDICIAL BUILDING, 2nd FLOOR

NOTICE: A parent, guardian, or custodian who fails without reasonable cause to appear at a hearing and to bring the juvenile before the Court may be held in contempt of court. In addition, upon service of this Summons on a parent, jurisdiction over the parent is obtained and the failure of the parent to comply with any order of the Court pursuant to G.S. 7A-650 may cause the Court to issue a show cause order for contempt.

SUMMONS TO HEARING ON RESPONSIBILITY FOR FEE

■ A Durham juvenile court summons warns parents that they must show up with their child for court or possibly face contempt of court charges. But the judicial threat is rarely carried out.

SHAME FROM A1

Can't calm her guilt

All five of Ann's foster children have grown up and moved out. Her 21-year-old daughter lives in an upstairs bedroom. A grandmother at only 41, Ann babysits her neighbor's little girl during the work day — for free, she explains, because she enjoys it.

But she can't calm her guilt about Frank.

She rocks slightly in her chair as she thinks about him, just starting an 11-year state prison sentence for kidnapping and armed robbery. With new sentencing laws, he has no chance of getting out sooner.

Ann says she couldn't stop Frank from sliding into a world of drugs. She is ashamed and blames herself for what happened to him.

But she also condemns a juvenile-justice system that wouldn't prosecute her son for two breaking-and-entering crimes and a shoplifting incident when he was 14 and 15 — when, she says, he might have learned something.

"I remember hearing him say to his friend once, 'Hey man, I'm 14, I can do whatever I want,'" she said, trying not to cry. "He did small things, but we could have nipped it in the bud. He would have thought he couldn't get away with it, but he kept getting away with it."

Frank never saw the inside of a courtroom — not until last year, when he was sentenced to adult prison for kidnapping a woman and robbing her of \$1,000. That time, the judicial system took the crime seriously.

Petty crimes are different. It can be hard just getting a youth into court. Many victims don't want to take the time over a broken window or even a shoplifted item.

But a timely trip to court might spell the difference between a teen who goes straight and one like Frank McDaniel who turned to larger crimes — stealing a woman's car and locking her in the trunk — to feed his drug habit.

Crime and punishment

Usually, police "divert" 65 percent to 70 percent of juvenile cases simply by calling parents. The child never goes to court. Sometimes the parents don't care about the brush with the law. And nowhere does the child see a link between his crimes and any punishment.

But with each of Frank's crimes, Ann pleaded for someone, anyone, to press charges and prosecute — for someone to teach her son a lesson while he was still just a child. She begged them not to make her constant message — that you have to pay for your crimes — ring false for her child.

Now Frank, at 18, is beginning an 11-year jail sentence.

Ann begged the court system to prosecute her son after he broke into a gas station in Forest Hills. He was caught with a hammer in his hand and broken glass at his feet, but the police just took him home — another "diverted" case.

She said she made a similar plea after a shoplifting incident at J.C. Penney's. And the Durham Housing Authority wouldn't prosecute when Frank and some friends broke into a recreation center, she said.

"It wasn't worth [Penney's] time. If it was me, an adult, they would prosecute me. Until he does something terribly wrong, there's nothing they can do," Ann said.

Even when a youth is ordered to court, it takes an average of six to eight weeks to get him before a judge.

"Virtually every juvenile-justice professional has stressed the need for quicker processing of juvenile

cases so that juvenile offenders will realize the consequences of their actions and will be held accountable," Marcia Morey, a Durham juvenile prosecutor, wrote in a report for a state commission looking to reform the juvenile justice system.

And, though prosecuted, many youths leave juvenile court feeling they've escaped consequences. Morey and other critics complain. Frank believed he couldn't be touched for any crime, Ann said.

Too many 2nd chances?

"Diverting" cases is common in a system that has few places to lock up juveniles and allows teens lots of "second chances" before getting serious about hauling them into court.

Now state lawmakers are talking about keeping records of diverted cases and increasing penalties for those first few minor crimes.

"At 3 a.m., a kid is driving a car and he crashes into, hopefully, a flower bed. I don't want him or her sent home to parents who don't care where he is at 3 a.m.," said Morey, now on a leave to run the Governor's Commission on Juvenile Crime and Justice.

When police divert cases, an officer delivers the child into the hands of a parent or grandparent.

"Some of these kids are driving on probation in a stolen car. Put them in detention immediately," Morey said.

Ann McDaniel said she would have approved detention for Frank to teach him a lesson.

"He son his way to prison now

if only I had gotten the help years, it really has me tore up inside," she said.

She struggles with feeling that maybe she could have done more, maybe she could have yelled louder for the authorities to prosecute when Frank was younger.

"I feel like something should have been done," Ann said. "I don't expect someone to knock on the door and say, 'Here's your help.' But if you go and ask for it, I went to everyone I could think of."

Nowhere left to turn

She pleaded with a magistrate to arrest her son, the county Department of Social Services for treatment, the school system and some drug-treatment centers. But no one could help her, she said.

She wonders today if she could have persuaded someone to make her son pay — the way she always preached he would if he did something wrong.

"I had a couple of brothers who got into trouble and my father would say, 'I'll come visit you [in jail], but I'm not going to get you out of it,'" she remembered.

Now, Ann can't move to Texas to be with her ill father; to take care of him while he dies. She must stay close to Frank, she said.

Wherever the state decides to send him, she must visit regularly.

"My children have to come first," she said.

Frank was the son who helped with the laundry while she recovered from pneumonia.

He was the son who stopped going to school, but who would

leave every morning in a destructive charade — only to roam the streets looking for drugs and eventually to steal money for the fix.

He was the son who, on many afternoons, asked if his ailing mother needed his help.

And he was the son who kidnapped and robbed a woman to get \$1,000 for drugs.

Frank ordered the woman to drive to automatic teller machines and withdraw cash. He dropped her off in the country on Stage Coach Road, far from the authorities, he believed. But he returned, afraid she would tell, and forced her into the trunk at gun point.

A haunting image

That troubles his mother the most, the image of a frightened woman forced into a trunk. Frank drove the woman to the far east side of Raleigh, more than a hour in a trunk imagining what might happen, so she could not easily call police, he thought. He fled to South Carolina in her car, with her cellular phone and with her money.

He called an ex-girlfriend on the phone, and police tracked it back to him. He was caught, and this time his crime was taken seriously.

"I just feel like when I went to talk to the juvenile authorities, that they were saying until he goes before a judge they can't do anything," Ann McDaniel said.

"All you're telling me to do is sit down and watch my son screw up his life. What he did to that woman could have been avoided. Something needs to be changed."

'Diversion' lets young lawbreakers escape punishment

Legal detour means no punishment for juveniles' crimes

By CHRISTOPHER KIRKPATRICK
The News-Sun

Young people who break the law never go to court, let alone jail. They go home to mom or dad. They use their joyride in a stolen car to smash windows or shoplift. The courts' forgive-and-forgette system of juvenile justice sends them back into their parents' or grandparents' arms.

It's called "diversion," detouring young lawbreakers around the legal system toward virtually voluntary mental health treatment and drug counseling.

"How could [a kid] take that seriously?" asked Marcie Morey, a Durham juvenile prosecutor on a blue-ribbon commission charged with reforming the state's juvenile

laws that provide diversion. "The laws lack muscle to make anything happen. And police and court officials don't track the recouped children."

The situation outrages many people calling for changes in juvenile laws as the state grapples with rising youth crime.

Curtis Barnett is no reformer, but he knows diversion inside and out.

Curtis, 20, is serving a life term in state prison for a murder he committed at 15.

"I was walking to my aunt's

house one night, pretty late, probably about one o'clock in the morning, and this guy I knew stopped," he said. "I wouldn't say he was my friend, but I knew him. No sooner do I get into the car than we're in a high-speed chase with police. The car crashed at Duke, and we end up hitting a pole at the hospital."

Curtis was only 12 then, roaming the streets while his mother worked nights. A police officer took him home after the crash, and that was the end of it. Today, some wonder whether diversion is really the end of anything. They worry that a too-soft approach to juvenile justice may be hatching a caste of children: without fear of police or punishment. "There are some things that are so awful that people wouldn't be able to stand it, like being handcuffed," said John Schwade, a staff psychologist at C.A. Dillor Training School in Burnet. "But when you have a kid who's been handcuffed 30 to 40 times, it doesn't really matter. It has no effect on them because they're used to it, and that's a tragedy."

No punishment

Young people don't have to commit murder or other serious crimes to run around. Those who continually get away with petty offenses risk their schooling and future, too, because they see early on that punishment, especially tough punishment, is unlikely.

On the streets, police often simply scold juveniles and cart them home even after crimes as

serious as car theft and assault. Some estimate that police officers "divert" 70 percent of all juvenile crimes.

Susan Gay can divert cases, too, into treatment programs or curfews. Or she can send them on to court.

As Durham County's juvenile-intake officer, Gay follows vague state guidelines that declare some felonies, such as murder, as too serious to divert.

Does it work? "What's your definition of work?" Gay asked. "Every once in a while, I'll make a referral and think, 'I've done a great job,' and the next week, I'll get another report on that kid."

Very little contact

The weak link in the state's diversion law is the "contact" rule. It allows a youth following a "diversion agreement" Gay set up to only make contact, literally, with a mental health counselor.

In one juvenile's case, "contact" meant simply writing his name on a sign-in sheet at the county Mental Health Department, where he had agreed to go for counseling. He didn't actually attend therapy sessions, only signed in and left. But he fulfilled his part of diversion under the law.

"The way the statute is written now, if the child makes any contact at all [with a treatment program or counselor], then they've met their obligation," Gay said. "We have to expand the definition of what compliance should be."

One step, she said, could be requiring parents to attend

Lack of space in juvenile detention centers makes the situation worse.

Durham County has just 15 detention beds. That means a police officer who wants to put a young lawbreaker behind bars may have to sit all night while officials seek space somewhere.

At times, it's in a neighboring or even distant county, where a sheriff's deputy will have to carry the youth. It also means officers spend that much less time on the street.

Frustrated sheriff's departments have refused to shuttle juveniles from county to county because of time and added expense. So in some counties the task falls to unarmed court counselors. And sometimes teens have kicked out windows to try to escape from the cars, never intended to hold prisoners.

In Gay's tiny office on the second floor of the Judicial Building are a stack of white forms, filled out in pen. Most describe minor crimes — a student steals money, a boy takes a bike.

In a room down the hall two young men — really children, but taller and stronger than anyone else in the bank of offices — stand annoyed in a sealed detention room with a tiny window. They are waiting to see a judge. Court counselors and police officers walk by without looking. For them, locked-up children are an ordinary sight.

Another child was in the room earlier. He had tried to rob a bank, the first juvenile to do so in the annals of Durham County. That struck Gay as odd. Juveniles

have raped, assaulted and murdered in Durham County said, but they had never hurt — not until that day.

Many of the cases described in the white forms will be diverted to community services, a local minister, review the life and meditate on assorted other variables about the child.

"You try to come up with alternatives," Gay said. "If I have been in a fight, then my anger management. If some property was damaged, the repair it or do community service."

Teen Court is another up Young lawbreakers stand in a court of their peers — adult guidance. The offender the stung of a public court proceeding but avoid a juv record.

The days may be numbing diversion as it exists now. lawmakers, looking for a reform: North Carolina's juvenile-justice system, are considering ways to keep cases diverted by police.

Now, the cases all but disappear. Follow-up is rare: the young criminals, virtually unpunished, often head back the streets.

Police are frustrated. They up, release, pick up and try the same young criminals and over. But reality offers simple solutions for police parents or juvenile courts.

"Sometimes it's madder the police," Schwade said will have arrested someone numerous times for auto. But they have to take the

CARLOS MOYA DEFEATS
LOW SPANIARD TO TAKE
FRENCH OPEN TITLE/C1

**SPORTS
MONDAY**

▶ JORDAN, BULLS
JAZZ 96-54 TO LEAD
FINALS SERIES 2-1

The Herald-Sun

Established 1889

MONDAY, JUNE 8, 1998

DURHAM, NORTH CAROLINA

SPECIAL REPORT



HOME FOR LIFE: Curtis Barnett, 20, has finally found the boundaries that tailed him in his early teens. But these are in the form of walls surrounding

him at Foothills Correctional Institution in Morganton, where he's serving a life term for second-degree murder.

High times at 13 now hard time for murder

Durham youth's joy ride reflected trouble at home, no rescue net in system

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

Curtis had never driven a stick shift, and the Durham police car idling across the intersection made him nervous.

That night, when most other 15-year-olds were home in bed, Curtis cruised the streets in a "rented" car with two friends — a 17-year-old carrying a gun and a 19-year-old with some "rock" cocaine.

Curtis was short for his age, and not much more than 100 pounds. But he wanted to stand tall in the eyes of his pals by drinking more than they did and smoking more "grass," he said. He burned to drive the "rented" car, too, to impress them even more.

Nothing, however, could change reality. Curtis was a skinny little boy who could

**JUVENILE
INJUSTICE**

PAROLE

■ "Wrist-stop" rules get out of hand/A6
■ Judges call for leeway over punishment/A7

turns of a child's trek through the juvenile-justice system.

Curtis Barnett got probation for the

please see CURTIS/A6

hardly see above the steering wheel — let alone shift gears smoothly.

The police officer watched closely as Curtis screeched forward at Fayetteville and Main streets.

"The one dude in the back seat had a little pistol. He was the one telling me to go," Curtis said. "Another threw the drugs out of the window, and he told me to pull over. I got frustrated, and so I just took off."

The officer caught the car, then chased down the fleeing Curtis. So began the twists and turns of a child's trek through the juvenile-justice system.

JUVENILE INJUSTICE

Sunday: Do young criminals get too many second chances? A look inside a juvenile-justice system overwhelmed by youth crime.

Today: A child's first crime. A joyride at 13 launches a criminal career.

Tuesday: Experts say truancy is the gateway to youth crime.

Wednesday: Laws wrist-stop parents who ignore their lawbreaking child.

Thursday: What led a 15-year-old to murder?

Friday: No more bets. Youth detention centers run out of space.

Saturday: A teen murderer looks back with regrets.

Sunday: A Boston program was acclaimed a national model of controlling youth crime.

TRAGEDY

'Kip Is Out of Control'

BY JOSHUA HANMER
 IN THE LAST TELEPHONE call he made before he died, Bill Kinkel seemed to sense an approaching catastrophe. Hours earlier, on the morning of Wednesday, May 20, Kinkel's brother, Eric, had been suspended from high school and invited into a juvenile-detention center after police discovered a stolen car parked in his locker; it was fully loaded with a nine-round clip. Bill Kinkel had struggled for nearly a decade to keep the boy in line, and this latest transgression was a distraction. "Bill said he was so worried as I was that Kip would do that," says Kinkel's father, Bill Kinkel. "I don't know what he was thinking. I tried to convince myself that Kip was a kid who was at his room, and he was working for his wish. I think he came home from his teaching high school. Something would have to be done, he said, because 'Kip is out of control.'"



The aftermath: Kip Kinkel, 15, in custody (left) for an alleged killing spree that began in his Springfield, Ore., home with the slaying of his parents and ended at his school; his sister, Kristin, 21, and their aunt at a memorial service for the elder Kinkels.

Kinkel's comments were tragically prescient. Police sources believe that shortly after that 3 p.m. phone call, Kip murdered his father by putting a bullet into Bill's back, and that he then killed his mother with multiple shots when she returned home from school. The next morning, Kinkel walked into the Tennessee High School cafeteria in Springfield, Ore., and allegedly opened fire, killing two students and injuring dozens more. A reconstruction of the events leading up to the rampage indicates that to some outside the family, Eric and Bill Kinkel were warning parents and teachers opposed to firearms—out, according to some friends, they were helpless to control their son's behavior. When Kinkel allegedly exploded, he let out only a trail of bullets but also a sense that even the best of parental interventions can go awry. "Bill and Eric loved themselves to their last," says Ernest Sperry, Bill's closest friend for 15 years. "I'm

not sure what happened to the Kinkels, but it can happen to anybody. Kip, who has been charged with murder and is expected to enter a plea on June 16, has never told his story. Kinkel's attorney, who is under a gag order, did not return calls for comment. But to friends and neighbors, the Kinkels could hardly have been a more wholesome family. They lived in a prosperously-framed, A-frame house set in a wooded subdivision of Springfield, a blue-collar town on the western Oregon coast. Bill, a vigorous 40-year-old, turned from his job as a high-school Spanish instructor four years ago to teach elementary school at the local elementary school. Eric, a nature lover, was the avid

hiker with a passion for Latin America, was a popular Spanish teacher at Springfield High School. Daughter Kristin, 21, excelled at gymnastics and won a cheerleading scholarship three years ago to Everall Pacific University. Kip could be socially winning. "He was shy and quiet," says Sperry. "And he had this big, beautiful smile." But at the Eugene Swim & Tennis Club, where Bill Kinkel played tennis twice a week for years, partner Betty Kinsinger first saw signs of Kip's rebelliousness a decade ago. "When he was four or five, Bill would tell him, 'Come on Kip, time to get out of school,' and Kip would say, 'I'm not coming,'" Kinsinger told a local paper. "Bill would have to go into the pool and get him out."

At Thurston Elementary School, Kip's grades were poor; he brought frequently with his classmates. The Kinkels spent endless hours huddling with teachers and considered as a frustrating search for what was wrong. They suspected dyslexia and tutored him after school to no avail. According to family friends, a therapist said he suffered from attention deficit disorder and put him on Ritalin; another prescribed Prozac to treat his depression. Kip was even fitted with rose-tinted glasses, on the theory that his poor academic performance was the result of visual impairment. Nothing worked. Finally, in desperation, the Kinkels withdrew Kip from the seventh grade and moved him at home for the entire year. "Bill cut back his [college] teaching schedule to stay home with Kip," says Sperry. "He never complained."

Then, with the onset of adolescence, the boy began spending hours a day reading gun magazines and cruising bomb-making Web sites; his conversation revolved around weaponry, and he begged Bill constantly to buy him a rifle. In the summer of 1995, Kinkel took Sperry aside during a break on the doubles court. "Kip's got a fascination with guns and bombs, and I'm worried about it," he said. He asked Sperry, a former school administrator, to help get Kip's mind off weapons. Sperry parted with Kip and joined the faculty at University of Oregon basketball and soccer

coach. One weekend Sperry took Kip and Bill sailing on Fern Ridge Reservoir outside Springfield. It proved to be another failure. "I tried to connect with him, but he was unresponsive," Sperry recalls. "At the end of the sail I said, 'I'm not the man for this.' And Bill said, 'I can see that.'"

His father knew things were going terribly wrong—but what to do? The family story behind young Kip Kinkel's alleged rampage in Oregon.

bill games. One weekend Sperry took Kip and Bill sailing on Fern Ridge Reservoir outside Springfield. It proved to be another failure. "I tried to connect with him, but he was unresponsive," Sperry recalls. "At the end of the sail I said, 'I'm not the man for this.' And Bill said, 'I can see that.'"

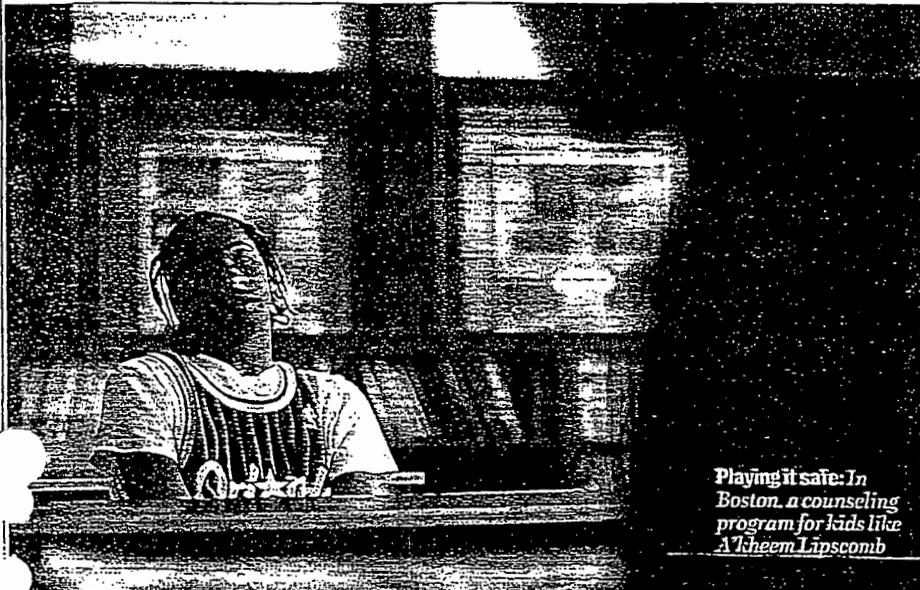
Kinkel, meanwhile, was arriving at a critical decision. Backed by Kip for a gun, Kinkel told Sperry that he was considering trying it. "I'm desperate," he wearily conceded a year ago. "I've tried everything else." Sperry reluctantly approved Kinkel's plan. "It's like forbidden fruit," he told Bill. "I will keep it from him that there is power to grow and grow." He advised Kinkel to buy his son a small-caliber, bolt-action rifle—not a semi-automatic—and urged him to take Kip to a firing range where they could learn to shoot together and receive safety instructions. "Then I said, 'Whatever you do don't let him panic. Too many things can happen.'"

Soon afterward, Kinkel purchased a .22-caliber Remington-Union Model 740, and bringing his friend's advice—and presented it to Kip. Kinkel moved the rifle to a locked metal cabinet in his parents' house, to be used under adult supervision. He told friends he kept the key on his neck for fear and alert with a pocket knife. Kip took to his new weapon with gusto. One weekend last year he joined his friend Aaron Hawser and Aaron's father, Scott, on a shooting weekend in the remote eastern desert of Oregon. The 14-year-olds dug trenches and fired a rainless barrage of bullets at tin cans and targets. "They had shooting competitions to see who was better," Scott recalls. "Kip was good. He'd shoot that gun enough to where he knew how to shoot." But the hunter didn't satisfy Kip for long. He begged his father for more firearms, and Kinkel relented. A new magazine gun, Kinsinger recalls, Kip and his father pulled into his driveway in the family's Ford Explorer. Kip stepped out and proudly opened up a cardboard box. Inside was a shiny, new Remington-Union semiautomatic, a high-caliber handgun used mainly by police. "Kip was knowing a lot like you would a new car," Kinsinger recalls. "He had mood there while Kip showed. 'Hey, look what I got, Aaron!'"

willed. Kinkel allegedly told Close, but recently his aggression had escalated. He became uncontrollably angry when told "no." He threw tantrums and threatened violence until he got what he wanted. His most recent obsessions were cars and driving, and Kinkel feared what might happen to his neighbors if Kip got behind the wheel of a car. He had run out of op-

tions. Kinkel said: he had nowhere to turn. "The man was terrified," recalled Close. Two Sundays before the massacre, Sperry and Kinkel played tennis for the last time. "I asked him about Kip and he said, 'I've seen some positive things. It's looking up,'" Sperry recalls. "Then he looked at me and said, 'Of course, we've still got problems.'" It proved to be a tragic understatement. Ten days later Kinkel brought Kip home from the Skipworth Juvenile Detention Center in Springfield, where he had been booked for possession of a deadly weapon. "Knowing Bill, I'm sure he laid down the law at that point," Sperry says. "No driving, no guns, no privileges." And the kid just felt, 'My world is over.' Sometime that afternoon, Kip apparently found his way into his father's gun cabinet. Then, police say, he took aim and fired, putting to lethal use the gifts Bill Kinkel had once believed would bring father and son together.

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Playing it safe: In Boston, a counseling program for kids like A'kheem Lipscomb

SHAWN G. HEINZ

Lessons From the Front

How to prevent school shootings? Crack down at the hint of a threat—and then follow up, one kid at a time.

BY DEBRA ROSENBERG

KIP KINKEL WASN'T THE first. Though school-related killings have statistically fallen over the past five years, there have been a half-dozen major school-shooting incidents in the last 16 months—and now educators and policymakers are once more trying to figure out how to keep guns out of the classroom. One Georgia lawmaker has proposed arming teachers, but most experts say the last thing schools need is more weapons. The National School Safety Center found that 70 percent of the young killers had previously brought

a weapon to school. (Kinkel, who has not yet pleaded on the Springfield shootings, had been suspended for having a gun at school the day before the shootings.) "These aren't kids who do something out of the blue," says NSSC director Ronald Stephens.

Most schools already have "zero tolerance" policies for guns. But few have effective programs for handling the kids who break the rules. Too often, students who cross the line are suspended and sent home—usually home alone. But for the past decade, Boston has boasted an innovative program, one experts consider

a model for students suspended for carrying weapons. Kids are required to attend the Counseling and Intervention Center, an intensive, short-term-treatment program that offers group counseling and lessons in conflict resolution.

It sounds like a liberal, do-gooder idea, but the cops love it, too. At the center, which is housed in a dilapidated former city school, social workers meet with parents and determine whether students need psychological evaluation, one-on-one counseling or follow-up social services. By government standards, it's cheap to run, just \$500,000 a year. For

some kids it's the first time in years they feel someone is actually listening. "You get to tell the teacher about your problems," says A'kheem Lipscomb, 14, a lanky high-schooler who was caught with a six-inch folding knife. The program includes kids caught with drugs and those who engage in "assaultive behavior," a category that gives schools broad latitude for referrals. Last year 23 students were sent there for verbal threats. "We need to take everything into account," says director Philip Jackson.

Most students in Boston stay just five to 10 days, but the center has a low 9 percent recidivism rate. Another brief program with long-term results is the Safe Alternative and Violence Education program in San Jose, Calif. Any kid caught totting a weapon to school in Santa Clara County must attend a six-hour life-skills course taught by cops. Since 1993, fewer than a quarter of the grads have been nabbed on another weapons offense.

Even the best programs will overlook some troubled students. But now some schools are at least looking harder. Last week one suburban Boston student was held for psychiatric evaluation after he reportedly threatened to pull "an Oregon." And two New Hampshire girls were arrested after threatening to get a gun and attack their teacher. The lesson of a bloody season: better safe than sorry.

With PAT WINGE

Foibles of life in West End take their toll

June 10,
1998

Durham

Sun

A mother blames urban, family ills for son's eventual downfall as killer

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

Bertha Barnette remembers the hard work and love she shared with her 13 brothers and sisters on their Virginia farm. They took care of each other, despite family squabbles that were legendary.

"We all played together. We all worked together. We all ate together," she says with a smile. "To me, we didn't have a lot, but we had love. We were together and we weren't separated."

The memories fill her head as she thinks of her son Curtis and how she raised him in Durham's rough-and-tumble West End community.

"I wish my kids had not been so connected to the violence," Bertha says. "We never had violence when we were kids. If you broke a window, that was a major thing for me."

Curtis, 20, is in jail for a murder he committed at 15: the fatal shooting of Eric Donell Brown in an argument about drugs. Curtis is eligible for parole in 2004.

Onset of urban ills

Drugs, crime and the pressures of inner-city life are far away from a simple, self-sufficient existence in rural southern Virginia. But Curtis' grandfather had a stroke, and the family headed south to Durham's West End. Urban ills began to take root in Curtis' mother's life.

Since the murder, she has moved from the West End to a new apartment in a fenced-in complex in another high-crime neighborhood. She regrets choosing the West End in the early

1990s, where she ended up living with Curtis' father.

They eventually split and Curtis began to change, she said. His grades faltered as the loving, caring son gradually turned to drugs and crime.

"He wanted his Mommy and his Daddy," Bertha says. "[But] I'm not making excuses. There were a lot of things missing."

Like Curtis, most children who end up in serious trouble have crumbling home lives, little supervision and a single mother.

In 1997, North Carolina courts committed 1,117 juveniles to training school — the modern term for reform school. That's about 6 percent of all children who appeared before a judge during those two years.

And about half of those children have little or no contact with their fathers, state figures show. More than 75 percent come from single-parent homes, (not counting unmarried couples who live together). And 45 percent of all children in training school say at least one parent has served time in training school or prison.

More than three-quarters of single parents in North Carolina, mostly mothers, work. Almost half of those are below the poverty line, according to the Raleigh-based Child Advocacy Institute, which lobbies on family issues.

Home life lacking

National research says the home life of most young lawbreakers lacks key elements: a positive atmosphere and two parents who love each other.

Curtis agrees.

"I don't like to say that, because I feel like I'm placing the blame," he said. "But I feel like there needs to be a tighter bond between family."

The court system has had spotty success being the social glue.

It has difficulty holding parents accountable even for simple things, such as just showing up in court with their child, or making sure the child gets to a probation meeting or attends mental health



MOREY

Laws are not addressing the problems of parents who don't take responsibility," said Marcia Morey, a Durham juvenile prosecutor who now leads a governor's commission studying the juvenile justice system.

"We need to make sure that parents are subpoenaed and made to show up in court, that the parent cooperates and gives their best effort to make sure their child follows a curfew, shows up for counseling and doesn't use drugs," she said.

Neglect and abuse laws hold parents accountable for cruelty. But what about the parent who stands silently by while his or her child skips school or misses a court date or a probation appointment?

Whatever blame can be heaped onto juveniles themselves for their crimes, adults are the ones hurting the most children, says an Advocacy Institute report.

Crimes against children far outweigh the number of children who are criminals, according to institute. And some of those child victims — usually the targets of abuse and neglect — become criminals and abusers themselves. More than 30,000 children were reported as abused or neglected in 1996. North Carolina law enforcement arrested 1,177 for violent crimes that year. The figure doesn't reflect more common property crimes, such as car thefts and break-ins.

Some just don't care

Durham court counselors estimate that 10 to 20 percent of

their clients have parents who blatantly skip appointments with probation officers, called court counselors in juvenile court. And a recent statewide survey conducted by the Governor's Commission on Juvenile Crime and Justice says 33 percent of parents offer no help to the courts with their children's probations.

"Those are the ones that stand out like a sore thumb because you have to reschedule," said Susan Gay, Durham County's juvenile intake officer. Her job is to direct children either to court or into treatment programs.

Parents technically are responsible for making sure juvenile offenders obey court orders, Gay said. Failure could lead to a contempt of court charge. But the rules rarely are enforced, said Gay, who has worked in juvenile court for 18 years.

On Durham County's juvenile court summons sheet, delivered to the parents of juveniles who are called into court, a section warns that a parent "may be held in contempt of court" if he or she does not come to court with the child.

In her nearly two decades in juvenile court, Gay said she can remember only four or five cases in which a parent was held in contempt of court for failing to get involved or show up to court.

And if the child misses court, a pick-up order — the youth version of a criminal warrant — is issued. But it is only for the child, Gay said, even though the parent has missed court, too.

"There are some really good programs, but the parents have to make sure that the child gets there," she said.

After a juvenile's first court appearance, a judge must subpoena a parent to ensure he or she comes to court. Through the subpoena, a judge usually is trying to force the parent to get involved with the child's case. The judge writes the parent's responsibilities into the court order and probation agreement.

But if the parent ignores the

"I wish my kids had not been so connected to the violence. We never had violence when we were kids. If you broke a window, that was a major thing for me."

**BERTHA BARNETT
MOTHER OF INMATE**

judge's warnings, the court typically does nothing, Morey and Gay said.

Overwhelmed urban court counselors, with about 40 to 50 cases each at any one time, need the parent's help, too.

"The real weakness is the breakdown in the family,"



SCHWADE

Gay said. Getting a child treatment is like trying to nail Jello to a tree — you don't have anything to work with when you don't have a good parent.

But some youths are so big and strong, so deep into drugs or so tangled in teen pregnancy that blatantly skip appointments with probation officers, called court counselors in juvenile court. And a recent statewide survey conducted by the Governor's Commission on Juvenile Crime and Justice says 33 percent of parents offer no help to the courts with their children's probation.

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Parents don't pay

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The script from Curtis' home life includes domestic violence and alcohol abuse. And, in the end, comes the scene of a single mother who had to work nights and now struggles with guilt that she couldn't be around to keep her son at home when he was 12 and 13.

But, she tells herself, she had to make a living.

"Somebody had to pay the bills or we'd be outside," she said. Things were even tougher, she said, because Curtis' missing father didn't pay child support or spend time with his children.

Most parents fail or continue to fail their children after the youths are locked up. At C.A. Dillon Training School in Butner, only one in every five inmates has at least one parent with him in sessions with psychologists or in other treatment, says John Schwade, a staff psychologist.

Even at 13 or 14 — sometimes as young as 11 or 12 — about 80 percent of the inmates are alone in charge of their own rehabilitation, he said. Many of their parents just don't show up or don't care. And no law says

parents must participate in the training school treatment of their child, Schwade said.

"We release that child into the parent's home, and the parent has no idea what they're supposed to do," he said.

In some of the busiest juvenile courts in the country, parents are not required to take part.

In New York City, which runs five juvenile or "family" courts, parents or guardians are contacted but are not required to show up.

"There's no law that says they have to be there," said Sarina Rosée, director of communications for juvenile detention in New York City.

In Washington, parents are encouraged to attend court with their child, but there is no requirement on the books, said a District of Columbia juvenile prosecutor.

In North Carolina, a juvenile alone in court sometimes is assumed to be "indigent" — poor — when he may have a parent who just didn't show up.

"When they're there by themselves with no family to stand up for them, they give in to peer pressure and they say bad things to the judge to impress their friends," Schwade said.

He sees the children at nearly all stages of the juvenile-justice process, whether at training school where he treats them or in court, where he watches.

Defendants show court no respect

Some juveniles show up in court with their pants hanging almost to their knees and underwear showing — a popular fashion statement among some juvenile offenders. Some haven't showered for days, Schwade said, and they don't have anyone to teach them how to show respect to adults.

The bearded Schwade speaks quickly and emotionally about the subject. He says he feels like the lone character in a horror movie who tries to warn everyone of impending danger, only to be laughed off.

"It feels good to talk about it," he said.

Some parents don't care about what happens to their children, and others don't have the time. Curtis' mother said she attended every court hearing but had to work nights to support herself and her three children. She couldn't watch Curtis at every moment, and he started to do whatever he wanted, she said.

"Don't go out and don't let anybody in my house. Don't bring no girls in my house," she would warn as she left. "When I'm at work I don't know what they were doing."

Morey, the prosecutor, has a solution: Make parents pick up the tab.

There have been recommendations to make parents pay court costs, detention fees and training school fees, she said.

"A lot of times you hit parents in the pocketbook and you see changes," she said.

But Schwade says it's not that easy. Some children can't be controlled, he said.

Bertha at times kicked Curtis out of the house because of his drug use and disobedience.



MOORE

Kannapolis.

Bertha's struggle to keep her bills paid and brood fed meant fewer minutes spent with her children. Studies show her situation is like that of many other families and only getting worse across the country. Modern life pitches more demands at all single- and two-parent households, and children tend to feel the loss.

"In the 1970s, there were studies that showed parents spent about 20 minutes a day interacting with their children," said Cynthia Howard, a state school psychologist. "Several years ago, the data suggested that the 20 minutes was down now to about eight minutes."

Shift's timing unfortunate

The shift is occurring as drugs and guns become more available.

Had Curtis talked to Howard or Schwade, he might have been shocked about his chances for the future. Then again, maybe nothing could have sobered him to his real prospects.

After he murdered the professionals started the official tally of reasons why Curtis fell. A poor home life topped the

list.

"The parent reports a great deal of family difficulty in his early years. He reports that he was physically abused by his father and often witnessed his father physically abusing his mother. He describes multiple episodes of killing and torturing animals," a mental health report in his court file reads.

In prison, Curtis thinks back and ponders what went wrong.

He doesn't want to talk about the violence. But the papers that trace his life and crimes are full of images of brutality and a broken home with little supervision.

"I don't know what caused the change," Curtis says. "I was pretty good in elementary school and then I started slipping. I remember one time I had all flags [failing marks] on my report card."

He now accepts responsibility for what he did, but still looks

back and sees family problems as a major ingredient.

The downward spiral began after his parents split, when he was 8. He lost interest in school, stayed out late, tried to outdrink the older boys. He sought male attention, a replacement for his father.

"Really, acceptance is what I was after," Curtis says. "You want to prove yourself. You're the smallest guy. Not only that, but I was the youngest. You got to prove yourself."

Failing marks and a broken home nosedived into truancy, which collapsed into drugs, alcohol, violence — and murder.

Curtis' mother is one of the architects of a still-struggling West End renewal, a project to revive the old neighborhood and drive out criminals. Despite progress, guns, drugs and despair still threaten to mold teens into violent criminals on the West End's streets.

Bertha chose to be a single parent. Even though she and her partner had been together for 12 years and had two children, she never would marry him. She just couldn't say yes, she said. One day he hit her and she hit him back — and kicked him out for good, she said.

"He drank and I drank — two drinking parents is no way to raise a child," Bertha said. "We got along in the beginning but in the end it was pure hell."

Curtis' father could not be reached for this article.

Money problems stressed the marriage and the drinking intensified, she said. The violence increased and the father would hit Curtis, too, she said. And Curtis would watch him beat her.

"That's about all I can remember about the two of them together," Curtis says.

Finally, a father figure

But Curtis did have another father figure of sorts, more than many children in similar situations: a teacher who cared and volunteered his own time.

Moore would take Curtis and other students out for pizza and would let Curtis sleep at his house when his mother kicked him out. But it came too late, when Curtis was 15 and starting high school.

Moore helped out in other ways, too, once retrieving a gun from Curtis' home after Bertha called for help. She didn't call his father; she called Moore. Moore turned the gun over to the police.

There was a modicum of structure and some people who really cared. But it was not enough to save Curtis.

A few months later, Curtis would find another firearm, a sawed-off, 22-caliber Daisy rifle. In an argument over drugs, he shot a man dead in a very public intersection in the middle of a January day.

"He didn't have anywhere to go," Moore said. "He didn't have anywhere else to be. He committed that crime during the Christmas holiday. He used to say to me, 'You got to go home to Kannapolis, but I didn't have anywhere positive to be.'"

"He can't use that as an excuse, but we have to look at that. If he had a safe, positive place to be, could we have prevented it? The answer has to be yes."

Tomorrow: What led Curtis to murder at 15?



The Herald-Sun/CATHY SEIB

LONG LIFE SENTENCE: Curtis Barnette, 20, is serving a life sentence for the 1994 murder of Eric Donnel Brown in Durham. Many see Curtis as one of the state's juvenile-justice system failures; he had ample

experience with the juvenile-justice system — breaking curfews, using drugs, failing required drug tests, refusing to go to school — and learned that he didn't have to change or pay a price for his wrongdoing.

Justice system's failures teach juveniles the wrong lessons

Youths receive light sentences until it's too late

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

Fourteen years ago, Curtis Barnette laughed as a photographer captured his playful innocence in an Easter Day portrait.

Today at 20, a more subdued Curtis sits in a state prison cell — eating, sleeping, reading, spending

JUVENILE INJUSTICE
How North Carolina lets its youngest criminals beat the system

PART ONE

every moment wired into a routine that crawls past with the cynical cadence of a ticking clock.

At his mother's modest Durham apartment, the portrait hangs above an old television set that flickers on and off

at will and without warning.

The 6-year-old, tuxedo-clad boy who beams from the photograph became a killer at 15. He shot a man three times in a fit of broad-daylight rage.

How Curtis grew from that innocent child to convicted murderer is a portrait, too, of a juvenile-justice system that he quickly learned was more a kid-gloved bother than a serious exercise in crime and punishment.

Curtis repeatedly wound up in court from age 12 to 15. But juvenile authorities, hands tied by



The Herald-Sun/CATHY SEIB

TIME TO THINK: Curtis Barnette, 20, while away time in jail where he is serving a life sentence for murdering a man in Durham when he was 15.

timeworn state laws, always responded with probation and "treatment." When Curtis ignored both little happened. Only after he murdered someone did the system sit up, take notice and send him to prison.

The tragedy is bigger than the untimely death of one man: North Carolina has thousands of potential Curtises adrift in its antiquated juvenile-justice system.

JUVENILE INJUSTICE

Today: Do young criminals get too many "second chances"? A look inside a juvenile-justice system overwhelmed by youth crime.

Monday: A child's first crime. A joyride at 12 launches a criminal career.

Tuesday: Experts say truancy is the gateway to youth crime.

Wednesday: Laws wrist-slap parents who ignore their lawbreaking child.

Thursday: What led a 15-year-old to murder?

Friday: No more beds. Youth detention centers run out of space.

Saturday: A teen murderer looks back with regrets.

Sunday: A Boston program wins acclaim as a national model of controlling youth crime.

In an eight-day series starting today, The Herald-Sun will examine that system, which critics say has made crucial mistakes in battling a startling rise in violent youth crime — 172 percent from 1987 to 1996.

A four-month Herald-Sun investigation revealed symptom after symptom of why the system

please see **JUVENILES/A12**

June 7,
1998
Durham
Sun

He prepared to manage youths like Curtis.

Overhauled juvenile laws, last year, gave judges little sentencing flexibility and force them toward extremes: too little punishment or too much.

Exasperated teachers, confronted by increasing school violence and growing lack of respect from students.

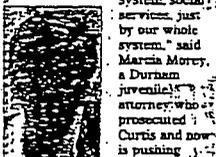
Overworked, underpaid juvenile probation officers (called court counselors) who can't keep pace with the increase in cases they handle.

Frustrated police officers, who repeatedly arrest the same teens and who say their investigations suffer because the law cloaks young offenders' criminal past in too much confidentiality.

Disillusioned judges, who have few options for sentencing the young lawbreakers who stand before them day after day — at times in open defiance and disrespect.

The wrong lessons
All hall's tale of an embattled system failing the very community it is supposed to protect. But worst, it is a system teaching young lawbreakers that there's less bite than bark in a process that gives them numerous "last chances."

They're examples of failure by the schools, juvenile-justice system, social services, just by our whole system," said Marcia Morrey, a Durham juvenile attorney who prosecuted Curtis and now is pushing reforms in the Legislature to juvenile regulations.



MOREY

The system can work, of course. In fact, it works more often than it fails. Statistics show most juveniles who come to juvenile court once never return again.

The problem lies with repeat lawbreakers who commit middle-of-the-road crimes, such as assault or joyriding. Though a minority, they monopolize youth crime and manipulate what enemies of the juvenile-justice system usually throws their way.

The state recently analyzed 1,500 juvenile-court records from 1997, chosen at random. It found that:

- 69 percent of the youths went in court for the first time.
- 19.5 percent had one previous conviction in juvenile court.
- 7.5 percent had two convictions.
- Almost 4 percent had more than three.

"That's considerable, considering these kids aren't even 16 years old yet," Morrey said.

In effect, about 10 percent of these youths repeatedly get into trouble, she said. But they sap far more than their share of vital resources — such as court counselors' time — in an already overburdened system.

Worse, today's youth who know he can beat the system may grow into tomorrow's rapist or murderer — lawbreakers that people like Morrey and Gov. Jim Hunt say could be foiled and helped with badly needed juvenile-justice reforms.

Morrey and Hunt mean Curtis and others like him, who as juveniles blatantly ignored laws and judges' warnings and

repeatedly violated probation, skipped school and bounced into juvenile court.

The budding criminals often leave the courtroom more puffed than apologetic, minus any sense of consequence — until they commit a serious crime. And then it usually is too late, as adult court and adult rules kick in for teens as young as 13.

Statistics sketching the increase in juvenile crime are sobering.

The state's population of 30- to 15-year-olds fell 4 percent over the last 20 years, but fighting and other "simple" assaults soared 508 percent. Weapons arrests skyrocketed, up 777 percent.

Juvenile laws, last overhauled in 1979, wither in the face of today's brand of violent youth crime laced with drug-driven ferocity, and stoked by the growing problem of illegitimacy.

"The kids we have from 10- to 16-years-old are only 2 percent of the (juvenile) population, so 98 percent of the kids are doing great," said Archie Snipes, Durham County's head juvenile court counselor. "But if we only have 2 percent, then why can't we do better?"

Breaking the rules

Curtis, despite his escalating criminal record from age 12 to 15, got lots of "last chances" to avoid training school — today's term for reform school. He didn't want to go, so he happily accepted the judges' offers of probation and drug-treatment programs.

But he rarely obeyed those rules, and the system let him get away with it — until the day Curtis, as a 15-year-old, killed Eric Daniel Brown.

They made a dubious footnote in history on Jan. 4, 1994, in Durham's beleaguered West End community: the first murderer and victim of the new year.

Most teen criminals are not murderers. In fact, Curtis was one of only 15 North Carolina juveniles, under age 16, who were charged with murder or manslaughter in 1994.

But his ample experience with the juvenile-justice system — breaking curfews, using drugs, failing required drug tests, refusing to go to school — had taught him a clear lesson: He didn't have to change or pay a price for his wrongdoing.

Curtis could continue to skip school, drink and smoke marijuana nearly every day and ignore his probation — and no one really would do anything about it.

His mother tried, ultimately kicking him out of the house. So did a good Samaritan school teacher, who volunteered in Curtis' neighborhood and took a special interest in the boy. But still, no one could reach or change him.

The system taught Curtis all the wrong things, and he learned them well.

By age 12, he knew he could wander the streets at will while his mother worked nights. No father was around — the mother had booted him out for drinking all day and beating her, she said. He rarely visited his family and has never been to see Curtis in prison, the mother said.

Curtis, with a swagger, he says, people mistake as cockiness, takes the blame for his own actions. He faults his poor family life, but doesn't feel comfortable stacking the burden of his own actions, he said.

"I think families need to have a tighter bond," he said.

His mother said Curtis was out of control, so much that she eventually kicked him out for not obeying her.

And like the parents of many other troubled children, she said the juvenile-justice system could have been tougher on him at the very start — when he rode his stolen car, failed drug tests and broke probation.

But it's clear other forces also molded Curtis. He was abused by his father, who still owes 11 years' worth of child support, his mother said.

Curtis also had trouble dealing with his parents' separation. From an early age, he abused alcohol and drugs until he blacked out, his court record shows. And as a young child, Curtis said, he saw his father beat his mother.

A mental health report describes him as a "solitary, aggressive type" with a "conduct disorder."

But his mother remembers another Curtis, the son who "needed lots of hugs as a youngster and who, at 6, tried desperately to keep his parents together as their relationship crumbled."

"It's really looking through the wrong end of the telescope to say that the juvenile-justice system is completely at fault," said Susan Gay, who has worked in Durham juvenile court for 18 years. "It's schools, neighborhoods, unemployment, housing, the whole schmeer."

Making system work

Many say the system, in theory, would work better if more resources were available, such as more people to monitor youths on probation.

And parts of the system do work well, such as intensive services for the most troubled youths or electronic house arrest, Gay said.

As Durham's juvenile-intake officer, she directs the youths either to treatment programs or to court for their offenses.

"[But] I think there are some major gaps," Gay said. "The court counselors in this office are real dedicated folks. But with these huge case loads, what are they supposed to do with the 300 undisciplined children (the ones who commit truancy or other lesser crimes)?"

Others point the finger at state statutes, especially confidentiality rules that police say hamper their investigations and regulations that require judges to give juvenile offenders the least punishment possible, such as probation, before locking them up.

Training school, the only lock-up option, is not the answer, either, some juvenile-justice officials say. A recent UNC Charlotte study casts doubt on the effectiveness of what used to be called reform school.

Four out of every five juveniles sent to training school commit another crime after they are released, the study found.

But Darryl Person, a Durham juvenile probation officer (officially, a "court counselor"), and other critics say training school sentences come too late. An early, quick sentence also could be viewed as a treatment, Person said, designed to scare a child straight, protect him from the streets or shield him from abusive or drug-abusing parents.

"I think some kids need to go to training school right from the street, so they can know someone is in control," said Person, who is in charge of the hardest cases. "I think just placing every kid on probation is wrong. It needs to be on a case-by-case basis."

A 15-year-old — who legally can be charged as an adult for violent felonies — should spend at least one night in a jail of some sort, rather than be sent home after

stealing a car or shoplifting. Person and others say. But others wonder if that approach would do little more than teach children how to be criminal.

Still others blame prevention and education programs that get too little money to stand a chance to succeed.

Snipes, Durham's head court counselor, sees the least-restrictive-punishment rule as most ominous. He calls probation for early transgressions "a pat on the back" for young lawbreakers that makes the next crime easier to commit. Curtis, his reality blurred by alcohol and drugs, got a lot of pats on the back.

Sociologists, psychologists and juvenile-justice officials can argue about who or what caused Curtis and other children to turn to crime. But most agree there is a need to mend a system seemingly designed to offer a succession of "second chances."

It may be too late for Curtis. But the real issue, juvenile-justice professionals like Person and Snipes say, is saving the potential Curuses of the future.

Tomorrow: A judge launches Car criminal career. Limited options for sentencing young lawbreakers trust judges.

JUVENILE JUSTICE

Probation officers face indifference, guns doing job

Juvenile offenders often brazen in refusal to cooperate

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

Darryl Person spotted his young fugitive and moved in. The two locked eyes.

"You don't like me, but I'm not on your side," the boy said.

The impeccably groomed, his pride in appearance gleaming like his spotless white shirt.

At his determination — no probation violation was going to put him back in the Durham Youth Home — was as cold and hard as the pistol he flashed from under his shirt.

"You don't have to go," Person replied firmly.

After 10 years as a juvenile probation officer — officially called a court counselor — Person says he has survived because teen-agers know him as someone just trying to help.

They like him, he says. But sometimes they're armed and adamant about staying out of trouble.

Person was just determined he wasn't going to be locked up anymore. He just got fed up with it," Person said of his rush with the well-dressed teen.

Two months later, police picked him up on another charge, Person said.

Most court counselors are pseudo-social workers, who keep track of lawbreaking youths after they leave court to make sure they follow a judge's instructions about counseling or a curfew.

They usually don't take to the streets to track down juveniles, as Person does, and they're not allowed to carry guns.

"I have guns pulled on me," he said. "It's respect — that's what has kept me alive. It's about working smart and not just working."

City youths

Person works with the hardest cases and has fewer children than most counselors.

But he can speak for all of his colleagues about frustration with the juvenile-justice system: stress over low pay, germanian case loads and dismay at the lack of attention the youths end up getting.

Durham court counselors average 45 cases each at any one time. The state prefers no more than 30.

"It doesn't take a rocket scientist to figure out that if they work 24 hours a day, they would not complete the job," an impassioned Durham District Court Judge Elaine O'Neal told Gov. Jim Hunt and his bipartisan panel looking into reforming the juvenile-justice system.

Person, a court counselor in an urban area such as Cherokee-Raleigh or Durham handles between 25 and 50 youths at a time.

"We're trying to shoot for 30 right now," said Ed Taylor, an assistant

administrator with the state Division of Juvenile Services.

Too many youths end up getting too few services, said Archie Snipes, head court counselor for Durham County. And they may keep on breaking the law, he said.

A counselor must visit a youth's home at least once every 90 days and make "contact" once a month. Often counselors will go to schools, so they can see more than one client in an afternoon and satisfy several "contact" requirements.

"I think that's where some of the breakdown comes from," said Susan Gay, Durham's juvenile-intake officer, who reviews juvenile cases to see if they should go before a judge. "Children need more than once-a-month contact, but it's just physically impossible."

At any one time in Durham County, about 300 children are on probation. It usually lasts a year, with an option for a judge to assign another year.

The county employs six full-time counselors and several special-needs counselors, such as Person.

According to the court counselors' office, two-thirds of all children put on probation successfully fulfill the terms of their agreements, which might include staying off drugs and obeying a curfew.

In 1996, 659 children went to juvenile court and got probation. That same year, 252 children — 38 percent — were called back into court for breaking probation.

"Usually it'd be for things like truancy from school or breaking a curfew," Gay said.

Person said "intensive services" are the best approach. As Durham's only "intensive-services" counselor, he sees at most 10 children at any one time.

"These kids need special attention," he said.

Person is a physical presence, broad-shouldered and standing well over 6 feet tall. But his manner is soft, and his caring obvious. His techniques have been honed by years of nabbing juveniles who break probation.

In high-crime neighborhoods, he'll go to a house early in the morning while everyone's asleep to pick up a youth.

"You have to use your mind to make amends for what you don't have," he said.

What he doesn't have is a gun or an armed escort.

Counselors' complaints

Person and other court counselors say they see a system that doesn't work partly because their own tasks are so impossible to fulfill and partly because the laws that guide judges and the system are too weak.

"The court does not have any teeth in its actions," Snipes said. "Juveniles don't seem to be a high priority."

Even when a court counselor does take a child to court for violating probation, the youth often gets probation again. It takes three to five "motions for review for training school" before a child is sentenced to a little hard time, Person said.

Just getting a child into court for an initial probation-violation hearing can take up to five months, said Marcia Morrey, a Durham juvenile prosecutor on leave to run Hunt's Commission on Juvenile Crime and Justice.

Snipes calls court action against most



MAN ON THE STREET: Court counselor Darryl Person talks with David Sautters about his two sons. Counselors keep track of lawbreaking youths who follow a judge's

instructions — that is, probation — a "pat on the back, and then we send them on their way."

Few juveniles are hauled back into court because they haven't followed judicial instructions. The counselors first will talk to them or warn them about missing an appointment or skipping school before the violations go to a judge. Counselors also complain that police "divert" too many cases — handling them on the street and never sending them to court, where they can be tracked. And even when youths finally do end up in court, counselors say, judges must use the "least restrictive punishment" available, usually probation.

"These kids know they can go out and steal three or four cars and they'll be out on probation," Person said. "They need to know they can go away just for that."

With chronic offenders aware there is little price to pay, Person's job becomes more difficult, he said — and the youths more apt to pull a gun from under their shirt.

Sometimes, on a day off at the mall, he sees adolescents who have skipped probation meetings. Recently it happened at a concert at N.C. Central University.

"I was there listening to music hanging out, having a good time, and I pretended I

didn't see them," Person said.

But he quietly spoke to a police officer and they set a trap.

"I turned my body so they wouldn't see away and later they walked right into our arms, into a squad car and then off to the Durham Youth Home," Person said.

Children in the middle

In many ways, he said, youths who commit more serious crimes earlier can be luckier because they get hard-core treatment and attention quicker.

The child who shoplifts and skips school, but doesn't immediately commit felony, may just get lost in the system, Snipes and Person said.

And with minor crimes outpacing juveniles, it's the children in the middle who need the attention early on, Snipes said.

From 1979 to 1997, reported juvenile felonies in North Carolina increased 77 percent, from 4,994 to 8,770. But misdemeanors shot up 163 percent, from 6,746 to 17,742. Most of those cases were either diverted or put on probation for court counselors to handle.

The number of court counselors has kept pace. In urban areas of North Carolina, court counselors now are handling more than 40 cases each.

Durham County had just three

JUVENILE JUSTICE



The Herald-Sun/RANDALL L. HILL

ON THE JOB: Court counselor Daryl Person talks with one of his clients at Hillside High School. A counselor must visit a youth's home at least once every 90 days and make "contact" once a month. Often counselors will go to schools, so they can see more than one client in an afternoon and satisfy

several "contact" requirements. "I think that's where some of the breakdown comes from," said Susan Gay, Durham's juvenile-intake officer, who reviews juvenile cases to see if they should go before a judge. "Children need more than once-a-month contact, but it's just physically impossible."

COUNSELORS

FROM A13

children, Snipes and Person agree, it's often too late. They share a common feeling of doom about a system they think is failing.

"I think of the lack of education. I don't think you can do right when you don't know how to do right. We have to have parents living right," Snipes said. "These things weigh so heavy in my mind, it starts so early before we get the kids."

Making improvements

Snipes and other counselors have their own ideas about what needs to change, but they aren't in a position to make policy.

He wants more intervention for younger children. And he said the children need more than midnight basketball programs set up in many inner-cities.

What about the smaller children who don't play as well, he said, or others who just don't like the game?

And then there are the girls. What is out there for them? he

asked.

"Not all of the kids are big and 6-foot and play basketball," he said. "I think economics plays a role in that. If you don't have the resources, there are very limited things you can get involved in. Poverty itself doesn't make you steal, but if you don't have something to occupy yourself ..."

Person has his own ideas.

He would like to see sentences to training school (the modern term for reform school) imposed earlier in a child's petty-crime career. He sees it in their eyes, he said — the lawbreaking youths who know they will just get probation.

Snipes said he struggles with a lack of resources and services. He has turned mothers away from the courthouse doors as they beg him to have their children locked up.

He remembers a mother who banged on his door at 7 a.m., imploring him to have her 14-year-old son thrown into jail.

Some juveniles had broken into her home at 3 a.m. and were

looking to shoot her son over money he owed. He wasn't home, and she wanted him protected and the shooting in her neighborhood to stop.

Snipes said he felt foolish trying to comfort her.

"The only thing I could say was for her to go back home and hope that nobody kills him," he said.

About a decade ago, before the crack cocaine drug trade, the woman's son probably would not have owed money he couldn't pay.

Back in 1988, with fewer juvenile crimes, a court counselor's job was easier, Snipes said. Mothers didn't bang on the door, the crimes were less vicious and the criminals not so young.

But all that changed when crack cocaine hit Durham's streets, he said. Juvenile crime shifted from truancy and shoplifting to gangs, violence and bloodshed.

"We have a lot of crack cocaine and with that came the territories. They don't call themselves gangs, but if you have this group shooting at this group over here ...," Snipes said.

VISITOR REGISTRATION SHEET

Senate Judiciary 6/10/98

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kimberly Join	Fight Crime: Incest In Kids NC
Paula A. Hoef.	Covenant w/NC's Children
Julie Stewart	CCPS
Elaine Demmy	Div. Youth Services
James Bowden	DYS
Gary Keating	DYS
Ken Foster	DYS
Patrice Reuler	NAACC
Susan Whitten	DYS
Robnae Ross	ALLU
Martha L. Swegool	YAI/DCA

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ed Taylor	AOC/JS Div.
LARRY DIX	JSD/AOC
Kitty Herrin	NC Sentencing + Policy Advisory Commission
John Madler	Sentencing Commission
ANGIE McMINN	DHHS
Shaheen Bandukwala	Senator Bob Shaw's Office

MINUTES
SENATE JUDICIARY COMMITTEE
JUNE 16, 1998

The Senate Judiciary Committee met on Tuesday, June 16, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Odom to explain Senate Bill 1336 - AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES AND CHILD CARE VEHICLES, AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER 21 YEARS OF AGE; AND TO ELIMINATE THE INFRACTION TREATMENT OF PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES BY A 19 OR 20 YEAR OLD AND TO MAKE CONFORMING CHANGES.

Senator Winner moved to adopt a Proposed Committee Substitute for Senate Bill 1336 for discussion. The motion carried by a majority voice vote.

Senator Odom asked Walker Reagan, Staff Counsel, to explain the Proposed Committee Substitute.

After the explanation and a brief discussion, Senator Cooper asked that the bill be brought back to the Committee at a future date.

Representative Starnes was recognized to continue the discussion of the Proposed Committee Substitute to House Bill 594 - AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A PREGNANT WOMAN IN THE COMMISSION OF A FELONY, ACT OF DOMESTIC VIOLENCE, OR UNLAWFUL OPERATION OF A VEHICLE CAUSING A MISCARRIAGE FOR STILLBIRTH.

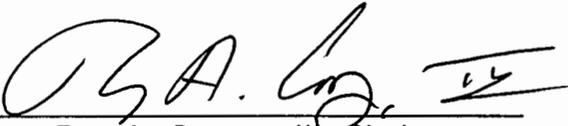
Senator Horton moved to amend the Proposed Committee Substitute on Page 1, Lines 2-5 and on Page 2, Line 22 through Page 3, Line 7. The amendment was adopted by a majority voice vote. (Copy of amendment is attached.)

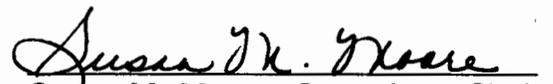
Senator Allran moved to amend the Proposed Committee Substitute on Page 2, Line 20 by changing "the" to "that". The amendment was adopted by a majority voice vote.

John Medlin, with the N. C. Sentencing Commission, was recognized to answer questions from the Committee.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report as amended and re-refer it to the Appropriations Committee. The motion carried by a majority voice vote.

There being no further business, the meeting was adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

REVISED AGENDA

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, June 16, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1336	1998 Gov. DWI Amendments	Odom
HB 594	Injury to Pregnant Woman	Starnes

Sen. Roy Cooper, III, Chairman

Posted: 06/15/98 2:44 PM

AGENDA
SENATE JUDICIARY COMMITTEE
June 16, 1998

HB 594 Injury to Pregnant Woman Rep. Starnes

SB 1336 Gov. DWI Amendments Sen. Odom

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1336*

Short Title: 1998 Gov. DWI Amendments.

(Public)

Sponsors: Senators Odom, Forrester; Blust, Jenkins, McDaniel, and Phillips.

Referred to: Judiciary.

May 27, 1998

- 1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S
3 DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME
4 CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE
5 LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-
6 TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL
7 BUSES, SCHOOL ACTIVITY BUSES AND CHILD CARE VEHICLES, AND
8 TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE
9 REVOCATIONS FOR ALL PERSONS UNDER 21 YEARS OF AGE; AND TO
10 ELIMINATE THE INFRACTION TREATMENT OF PURCHASE OR
11 POSSESSION OF ALCOHOLIC BEVERAGES BY A 19 OR 20 YEAR OLD
12 AND TO MAKE CONFORMING CHANGES.
13 The General Assembly of North Carolina enacts:
14 PART I. DWI FORFEITURE REVISIONS.
15 Section 1. G.S. 20-4.01(24a) reads as rewritten:
16 "(24a) Offense Involving Impaired Driving. -- Any of the following
17 offenses:
18 a. Impaired driving under G.S. 20-138.1.
19 b. Death by vehicle under G.S. 20-141.4 when conviction is
20 based upon impaired driving or a substantially equivalent
21 offense under previous law.
22 c. ~~Second~~ First or second degree murder under G.S. 14-17 or
23 involuntary manslaughter under G.S. 14-18 when conviction

1 is based upon impaired driving or a substantially equivalent
2 offense under previous law.

3 d. An offense committed in another jurisdiction substantially
4 equivalent to the offenses in subparagraphs a through c.

5 e. A repealed or superseded offense substantially equivalent to
6 impaired driving, including offenses under former G.S. 20-
7 138 or G.S. 20-139.

8 f. Impaired driving in a commercial motor vehicle under G.S.
9 20-138.2, except that convictions of impaired driving under
10 G.S. 20-138.1 and G.S. 20-138.2 arising out of the same
11 transaction shall be considered a single conviction of an
12 offense involving impaired driving for any purpose under
13 this Chapter.

14 g. Habitual impaired driving under G.S. 20-138.5.

15 A conviction under former G.S. 20-140(c) is not an offense
16 involving impaired driving."

17 Section 2. G.S. 20-28.2 reads as rewritten:

18 "§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving
19 license revocation.

20 (a) Meaning of "Impaired Driving License Revocation". -- The revocation of a
21 person's ~~driver's~~ drivers license is an impaired driving license revocation if the
22 revocation is pursuant to:

23 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-
24 17(a)(12), ~~or 20-17.2, 20-17.2, or 20-138.5;~~ or

25 (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-17(a)(9), or 20-
26 17(a)(11), if the offense involves impaired driving.

27 (a1) ~~[Definitions.]~~ Definitions. -- As used in this section and in G.S. 20-28.3, 20-
28 28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

29 (1) Acknowledgment. -- A written document acknowledging that:

30 a. The motor vehicle was operated by a person charged with
31 an offense involving impaired driving while that person's
32 drivers license was revoked as a result of a prior impaired
33 drivers license revocation;

34 b. If the motor vehicle is again operated by this particular
35 person, at any time while that person's drivers license is
36 revoked, and the person is charged with an offense involving
37 impaired driving, the motor vehicle is subject to
38 impoundment and forfeiture; and

39 c. A lack of knowledge or consent to the operation will not be
40 a defense in the future, unless the motor vehicle owner has
41 taken all reasonable precautions to prevent the use of the
42 motor vehicle by this particular person and immediately
43 reports, upon discovery, any unauthorized use to the
44 appropriate law enforcement agency.

- 1 (1a) Fair market value. -- The value of the seized motor vehicle, as
2 determined in accordance with the schedule of values adopted by
3 the Commissioner pursuant to G.S. 105-187.3.
- 4 (2) Innocent Party owner. -- A motor vehicle owner who:
5 a. ~~Did not~~ Who did not know and had no reason to know that
6 the defendant's drivers license was revoked;
7 b. Knew that the defendant's drivers license was revoked, but
8 the defendant drove the vehicle without the person's
9 expressed or implied permission;
10 c. Whose vehicle was stolen;
11 d. Who files a police report for unauthorized use of the motor
12 vehicle and agrees to prosecute the unauthorized operator of
13 the motor vehicle; or
14 e. Who is in the business of renting vehicles, the driver is not
15 listed as an authorized driver on the rental contract and the
16 owner agrees to prosecute for unauthorized use of the motor
17 vehicle.
- 18 (2a) Insurance company. -- Any insurance company that has coverage
19 on or is otherwise liable for repairs or damages to the motor
20 vehicle at the time of the seizure.
- 21 (2b) Insurance proceeds. -- Proceeds paid under an insurance policy for
22 damage to a seized motor vehicle less any payments actually paid
23 to valid lienholders and for towing and storage costs incurred for
24 the motor vehicle after the time the motor vehicle became subject
25 to seizure.
- 26 (3) Lienholder. -- A person who holds a perfected security interest in a
27 motor vehicle at the time of seizure.
- 28 (3a) Motor vehicle owner. -- A person in whose name a registration
29 card or certificate of title for a motor vehicle is issued at the time
30 of seizure.
- 31 (4) Order of Forfeiture. -- An order by the court which terminates the
32 rights and ownership interest of a motor vehicle owner in a motor
33 vehicle and any insurance proceeds or proceeds of sale in
34 accordance with G.S. 20-28.2.
- 35 (5) ~~Possessory Lien.~~ -- ~~A lien for all costs and fees associated with the~~
36 ~~towing, storage, or sale of a vehicle pursuant to this section. This~~
37 ~~lien shall have priority over perfected and unperfected security~~
38 ~~interests. Storage fees subject to this lien shall not exceed five~~
39 ~~dollars (\$5.00) per day.~~
- 40 (6) Registered Owner. -- A person in whose name a registration card
41 for a motor vehicle is issued: issued at the time of seizure.
- 42 (7) ~~Vehicle Owner.~~ -- ~~A person in whose name a registration card or~~
43 ~~certificate of title for a motor vehicle is issued.~~

1 (b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. -- If at
2 a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5~~ the judge
3 ~~determines that the grossly aggravating factor described in G.S. 20-179(e)(2) applies,~~
4 for the underlying offense involving impaired driving, at a separate hearing after
5 conviction of the defendant, or at a forfeiture hearing held at least 60 days after the
6 defendant failed to appear at the scheduled trial for the underlying offense and the
7 defendant's trial has not been rescheduled, the judge determines by the greater
8 weight of the evidence that the defendant is guilty of an offense involving impaired
9 driving and that the defendant's license was revoked pursuant to an impaired driving
10 license revocation as defined in subsection (a) of this section, the motor vehicle that
11 was driven by the defendant at the time the defendant committed the offense of
12 ~~impaired driving~~ becomes property subject to an order of forfeiture.

13 (c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which
14 a prosecutor determines that a motor vehicle driven by a defendant may be subject to
15 forfeiture under this ~~section;~~ section and the motor vehicle has not been permanently
16 released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant
17 owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the
18 prosecutor shall determine the identity of every vehicle owner. The prosecutor shall
19 also determine if there are any lienholders noted on the vehicle's certificate of title.
20 ~~The State shall~~ notify the defendant, each motor vehicle owner, and each lienholder
21 that the motor vehicle may be subject to forfeiture and that the defendant, motor
22 vehicle owner, or the lienholder may intervene to protect that person's interest. The
23 notice may be served by any means reasonably likely to provide actual notice, and
24 shall be served at least ~~fourteen~~ 10 days before the hearing at which an order of
25 forfeiture may be entered.

26 (c1) Motor Vehicles Involved in Accidents. -- If a motor vehicle subject to
27 forfeiture was damaged while the defendant operator was committing the underlying
28 offense involving impaired driving, or was damaged incident to the seizure of the
29 motor vehicle, the Division shall determine the name of any insurance companies
30 that are the insurers of record with the Division for the motor vehicle at the time of
31 the seizure or that may otherwise be liable for repair to the motor vehicle. In any
32 case where a seized motor vehicle was involved in an accident, the Division shall
33 notify the insurance companies that the claim for insurance proceeds for damage to
34 the seized motor vehicle shall be paid to the clerk of superior court of the county
35 where the motor vehicle was seized to be held and disbursed pursuant to the further
36 orders of the court. Any insurance company that receives written or other actual
37 notice of seizure pursuant to this section shall not be relieved of any legal obligation
38 under any contract of insurance unless the claim for property damage to the seized
39 motor vehicle minus the policy owner's deductible is paid directly to the clerk of
40 court. The insurance company paying insurance proceeds to the clerk of court
41 pursuant to this section shall be immune from suit by the motor vehicle owner for
42 any damages alleged to have occurred as a result of the motor vehicle seizure. The
43 proceeds shall be held by the clerk. If the motor vehicle is ordered forfeited, the
44 clerk shall pay the insurance proceeds to the county school fund.

1 (d) ~~Duty of Judge. Forfeiture Hearing.~~ -- ~~The trial judge~~ Unless a motor vehicle
2 that has been seized pursuant to G.S. 20-28.3 has been permanently released to an
3 innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-
4 28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a
5 hearing on the forfeiture of the motor vehicle. The hearing may be held at the
6 sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S.
7 20-138.5 shall determine if the vehicle is subject to forfeiture under this section.
8 underlying offense involving impaired driving, at a separate hearing after conviction
9 of the defendant, or at a separate forfeiture hearing held not less than 60 days after
10 the defendant failed to appear at the scheduled trial for the underlying offense and
11 the defendant's trial has not been rescheduled. If at the ~~sentencing hearing, or at a~~
12 ~~subsequent forfeiture hearing,~~ the judge determines that the ~~requirements of~~
13 ~~subsections (a) through (e) of this section exist and the defendant was the only motor~~
14 ~~vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture
15 pursuant to this section and proper notice of the hearing has been given, the judge
16 shall order the motor vehicle forfeited. If at the sentencing hearing or at a ~~subsequent~~
17 ~~forfeiture hearing,~~ the judge determines that the ~~requirements of subsections (a)~~
18 ~~through (e) of this section exist and the defendant was not the only vehicle owner at~~
19 ~~the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section
20 and proper notice of the hearing has been given, the judge shall order the motor
21 vehicle forfeited unless another motor vehicle owner establishes, by the greater
22 weight of the evidence, that such motor vehicle owner is an innocent ~~party~~ owner as
23 ~~defined by subdivision (a1)(2) of in~~ this section, in which case the trial judge shall
24 order the motor vehicle released to the innocent ~~party~~ vehicle owner pursuant to the
25 provisions of subsection (e) of this section. In any case where the motor vehicle is
26 ordered forfeited, the judge shall either:

- 27 (1) ~~Authorize the school~~ county board of education to sell the motor
28 vehicle at public sale or retain the motor vehicle for its own use
29 pursuant to G.S. 20-28.5; ~~or~~
30 (2) Release Order the motor vehicle released to an intervening
31 lienholder pursuant to the provisions of subsection ~~(g)~~ (f) of this
32 ~~section.~~ section;
33 (3) Order the proceeds of sale or insurance proceeds be disbursed to
34 the county board of education; or
35 (4) Order the insurance claim to be assigned to the county board of
36 education in the event the motor vehicle has been damaged in an
37 accident incident to the seizure of the motor vehicle.

38 If the judge determines that the ~~requirements of subsection (a) and (b) of this section~~
39 ~~exist~~ motor vehicle is subject to forfeiture pursuant to this section, but that notice as
40 required by subsection (c) has not been given, the judge shall continue the forfeiture
41 proceeding until adequate notice has been given. In no circumstance shall the
42 sentencing of the defendant be delayed as a result of the failure of the prosecutor to
43 give adequate notice.

1 (e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner. -- If a
2 nondefendant vehicle owner establishes by the greater weight of the evidence that: (i)
3 the motor vehicle was being driven by a person who was not the only motor vehicle
4 owner at the time of the underlying offense and (ii) ~~that the petitioner~~ is an
5 "innocent party", "innocent owner", as defined by this section, a judge shall order the
6 motor vehicle returned released to the that owner. owner, conditioned upon payment
7 of all towing and storage charges incurred as a result of the seizure and impoundment
8 of the motor vehicle.

9 ~~This release~~ Release to a nondefendant vehicle owner shall only be ordered upon
10 satisfactory proof of:

- 11 (1) The identity of the person as a motor vehicle owner;
- 12 (2) The existence of financial responsibility to the extent required by
13 Article 13 of this Chapter; and
- 14 (3) ~~The payment of towing and storage fees; fees, except in the ease of~~
15 ~~release to an innocent vehicle owner; and~~
- 16 (4) The execution of an acknowledgment as defined in subdivision
17 (a1)(1) of this section.

18 No motor vehicle subject to forfeiture under this section shall be released to a
19 nondefendant motor vehicle owner if the records of the Division indicate the motor
20 vehicle owner had previously signed an acknowledgment, as required by this section,
21 and the same person was operating the motor vehicle while that person's license was
22 revoked unless the ~~innocent~~ nondefendant motor vehicle owner shows by the greater
23 weight of the evidence that the motor vehicle owner has taken all reasonable
24 precautions to prevent the use of the motor vehicle by this particular person and
25 immediately reports, upon discovery, any unauthorized use to the appropriate law
26 enforcement agency. A determination by the court at the forfeiture hearing held
27 pursuant to subsection (d) of this section that the petitioner is not an innocent owner
28 is a final judgment and is immediately appealable to the Court of Appeals.

29 (f) Release to Lienholder. -- The trial judge shall order a forfeited motor vehicle
30 released to the lienholder upon payment of all towing and storage charges incurred as
31 a result of the seizure of the motor vehicle if the judge determines, by the greater
32 weight of the evidence, that:

- 33 (1) The lienholder's interest is equal to or greater than the fair market
34 value of the ~~vehicle;~~ motor vehicle, less any accumulated towing
35 and storage costs;
- 36 (2) The lienholder agrees not to sell, give, or otherwise transfer
37 possession of the forfeited motor vehicle to the defendant or to the
38 motor vehicle owner who owned the motor vehicle immediately
39 prior to forfeiture, or any person acting on the defendant's or
40 motor vehicle owner's behalf; and
- 41 (3) The forfeited motor vehicle had not previously been released to
42 the lienholder; and lienholder.
- 43 (4) ~~The lienholder pays, in full, any towing and storage costs incurred~~
44 ~~as a result of the seizure of the vehicle.~~

1 A lienholder who refuses to sell, give, or transfer possession of a forfeited motor
2 vehicle to the defendant, the vehicle owner who owned the motor vehicle
3 immediately prior to forfeiture, or any person acting on the behalf of the defendant
4 or motor vehicle owner shall not be liable for damages arising out of such refusal.

5 ~~(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than~~
6 ~~the county school board, shall be entitled to a possessory lien as defined in G.S.~~
7 ~~28.2(a1)(5)."~~

8 Section 3. G.S. 20-28.3 reads as rewritten:

9 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving**
10 **impaired driving while license revoked.**

11 (a) ~~[Vehicles Subject to Seizure.]~~ Motor Vehicles Subject to Seizure. -- A motor
12 vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 who
13 is charged with an offense involving impaired driving is subject to seizure if at the
14 time of the violation the drivers license of the person driving the motor vehicle was
15 revoked as a result of a prior impaired driving license revocation as defined in G.S.
16 20-28.2(a).

17 (b) Duty of Officer. -- If the charging officer has probable cause to believe that a
18 motor vehicle driven by the defendant may be subject to forfeiture under this section,
19 the officer shall seize the motor vehicle and have it impounded. If the officer
20 determines prior to seizure that the motor vehicle had been reported stolen or that
21 the motor vehicle was a rental vehicle driven by a person not listed as an authorized
22 driver on the rental contract, the officer shall not seize the motor vehicle. Probable
23 cause may be based on the officer's personal knowledge, reliable information
24 conveyed by another officer, records of the Division, or other reliable source. ~~The~~
25 ~~officer shall cause to be issued written notification of impoundment to any vehicle~~
26 ~~owner who was not operating or present in the vehicle at the time of the offense.~~
27 ~~This notice shall be sent by first-class mail to the most recent address contained in the~~
28 ~~Division records. This written notification shall inform the vehicle owner(s) that the~~
29 ~~vehicle has been impounded, shall state the reason for the impoundment and the~~
30 ~~procedure for requesting release of the vehicle. The seizing officer shall notify the~~
31 ~~Division and the agency designated under subsection (b1) of this section of the~~
32 ~~seizure in accordance with procedures established by the Division.~~ Division and the
33 agency designated under subsection (b1) of this section. ~~Within~~ In any case in which
34 the officer seizes the motor vehicle, the officer shall, within 72 hours of the seizure of
35 the vehicle the officer shall also cause notice of the impoundment and intent to
36 forfeit the vehicle to be given to any lienholder of record with the Division. motor
37 vehicle, give notice to the clerk of superior court who shall provide copies to the
38 district attorney and the attorney for the county board of education.

39 (b1) Notification of Impoundment. -- Within 48 hours of receipt of the notice of
40 seizure, an agency designated by the Governor shall issue written notification of
41 impoundment to any lienholder of record and to any motor vehicle owner who was
42 not operating the motor vehicle at the time of the offense. This notice shall be sent
43 by first-class mail to the most recent address contained in the Division's records. If
44 the motor vehicle is registered in another state, notice shall be sent to the address

1 shown on the records of the state where the motor vehicle is registered. This written
2 notification shall provide notice that the motor vehicle has been seized, state the
3 reason for the seizure and the procedure for requesting release of the motor vehicle.
4 Additionally, if the motor vehicle was damaged while the defendant operator was
5 committing an offense involving impaired driving or incident to the seizure, the
6 agency shall issue written notification of the seizure to the owner's insurance
7 company of record and to any other insurance companies that may be insuring other
8 motor vehicles involved in the accident. The Division shall prohibit title to a seized
9 motor vehicle from being transferred by a motor vehicle owner unless authorized by
10 court order.

11 (c) Review by Magistrate. -- Upon seizing determining that there is probable cause
12 for seizing a motor vehicle, the seizing officer shall present to a magistrate within the
13 county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment
14 setting forth the basis upon which the motor vehicle has been or will be seized for
15 forfeiture. The magistrate shall review the affidavit of impoundment and if the
16 magistrate determines the requirements of this section have been met, shall order the
17 motor vehicle held. The magistrate may request additional information and may hear
18 from the ~~operator~~ defendant if the ~~operator~~ defendant is present. If the magistrate
19 determines the requirements of this section have not been met, the magistrate shall
20 order the motor vehicle released to a motor vehicle owner upon payment of towing
21 and storage fees. If the motor vehicle has not yet been seized, and the magistrate
22 determines that seizure is appropriate, the magistrate shall issue an order of seizure of
23 the motor vehicle. The magistrate shall provide a copy of the order of seizure to the
24 clerk of court. The clerk shall provide copies of the order of seizure to the district
25 attorney and the attorney for the county board of education.

26 (c1) Effecting an Order of Seizure. -- An order of seizure shall be valid anywhere
27 in the State. Any officer with territorial jurisdiction and who has subject matter
28 jurisdiction for violations of Chapter 20 of the General Statutes, may use such force
29 as may be reasonable to seize the motor vehicle and to enter upon the property of the
30 defendant to accomplish the seizure. An officer who has probable cause to believe
31 the motor vehicle is concealed or stored on private property of a person other than
32 the defendant may obtain a search warrant to enter upon that property for the
33 purpose of seizing the motor vehicle.

34 (d) Custody of Motor Vehicle. -- The Unless a State agency through a statewide
35 or regional contract, or in the absence of a statewide or regional contract, the county
36 board of education, has contractually provided for towing by another procedure, the
37 seized motor vehicle shall be towed by a commercial towing company designated by
38 the law enforcement agency that seized the motor vehicle, to a location designated
39 by the county school board for the county in which the operator of the vehicle is
40 charged and If either a statewide or regional contractor, or the county board of
41 education, in the absence of a statewide or regional contract, chooses to contract for
42 local towing services, all towing companies on the towing list for each law
43 enforcement agency with jurisdiction within the county shall be given written notice
44 and an opportunity to submit proposals prior to a contract for local towing services

1 being awarded. Upon seizure, the motor vehicle is placed under the constructive
2 possession of the ~~school board~~ county board of education for the county in which the
3 operator of the vehicle is charged pending release or sale. Each ~~Absent a statewide or~~
4 regional contract that provides otherwise, each county ~~school board~~ board of
5 education may elect to have seized motor vehicles stored on property owned or
6 leased by the ~~school~~ county board of education and charge ~~no~~ a reasonable fee for
7 storage. storage, not to exceed ten dollars (\$10.00) per day. In the alternative, the
8 county ~~school board~~ board of education may contract with a commercial towing and
9 storage facility or other private entity for the storage towing, storage and disposal of
10 seized motor vehicles, and a storage fee of not more than ~~five ten~~ dollars (\$5.00)
11 (\$10.00) per day may be charged. Except for gross negligence or intentional
12 misconduct, the county board of education, or any of its employees, shall not be
13 liable to the owner or lienholder for damage to or loss of the motor vehicle or its
14 contents during the time the motor vehicle is being towed or stored pursuant to this
15 subsection.

16 (e) Release of Motor Vehicle Pending Trial. -- A motor vehicle owner, or a
17 lienholder of a motor vehicle, other than the driver at the time of the underlying
18 offense resulting in the seizure, may apply to the clerk of superior court in the county
19 where the charges are pending for pretrial release of the motor vehicle.

20 The clerk shall release the motor vehicle to a qualified nondefendant motor
21 vehicle owner or a lienholder conditioned upon payment of all towing and storage
22 charges incurred as a result of seizure and impoundment of the motor vehicle under
23 the following conditions:

- 24 (1) The motor vehicle has been ~~stored~~ seized for not less than 24
25 hours;
- 26 ~~(2) All towing and storage charges have been paid;~~
- 27 (3) Execution of a good and valid property bond, bail bond, or bond
28 with sufficient sureties sureties, in an amount equal to twice the
29 value of the seized vehicle, as determined in accordance with the
30 schedule of values adopted by the Commissioner of Motor
31 Vehicles pursuant to G.S. 105-187.3, the fair market value of the
32 motor vehicle as defined by G.S. 20-28.2, payable to the county
33 school fund and conditioned on return of the motor vehicle, in
34 substantially the same condition as it was at the time of seizure and
35 without any new or additional liens or encumbrances, on the day
36 of ~~trial of the operator;~~ the forfeiture hearing as noticed by the
37 district attorney under G.S. 20-28.2(c);
- 38 (4) If a qualified nondefendant motor vehicle owner, execution of an
39 acknowledgment as described in G.S. 20-28.2(a1); ~~and~~
- 40 (5) A check of the records of the Division indicates that the requesting
41 motor vehicle owner has not previously executed an
42 acknowledgment naming the operator of the seized ~~vehicle.~~ motor
43 vehicle;

1 (6) A bond posted to secure the release of this motor vehicle under
2 this subsection has not been previously ordered forfeited under
3 G.S. 20-28.5.

4 (7) If a lienholder, execution of a written agreement not to sell, give,
5 or otherwise transfer possession of the forfeited motor vehicle to
6 the motor vehicle owner who owned the motor vehicle
7 immediately prior to seizure, or any person acting on the motor
8 vehicle owner's behalf. A lienholder who refuses to sell, give, or
9 transfer possession of a forfeited motor vehicle to the defendant,
10 the motor vehicle owner who owned the motor vehicle
11 immediately prior to forfeiture, or any person acting on the behalf
12 of the defendant or motor vehicle owner shall not be held liable
13 for damages arising out of such refusal.

14 In the event a nondefendant motor vehicle owner or lienholder who obtains
15 temporary possession of a seized motor vehicle pursuant to this subsection does not
16 return the motor vehicle on the day of the forfeiture hearing as noticed by the district
17 attorney under G.S. 20-28.3(c) or otherwise violates a condition of pretrial release of
18 the seized motor vehicle as set forth in this subsection, or the bond posted shall be
19 ordered forfeited and an order of seizure shall be issued by the court. Additionally, a
20 nondefendant motor vehicle owner or lienholder who willfully violates any condition
21 of pretrial release may be held in civil or criminal contempt.

22 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. -- A nondefendant
23 motor vehicle owner may file a petition with the clerk of court seeking a pretrial
24 determination that the petitioner is an innocent owner. The clerk shall schedule a
25 hearing before a judge for a hearing pursuant to G.S. 20-28.2(e), to be held within 10
26 business days or as soon as thereafter may be feasible. Notice of the hearing shall be
27 given to the petitioner, the district attorney, and the attorney for the county board of
28 education. The clerk shall forward a copy of the petition to the district attorney for
29 the district attorney's review. If, based on the available evidence of record, the
30 district attorney determines that the petitioner is an innocent owner and that the
31 motor vehicle is not subject to forfeiture, the district attorney may authorize the clerk
32 of court to issue an order releasing the motor vehicle to the petitioner subject to the
33 conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The
34 clerk shall send a copy of the order of release to the county board of education
35 attorney. At any pretrial hearing conducted pursuant to this subsection, the court is
36 not required to determine the issue of forfeiture, only the issue of whether the
37 petitioner is an innocent owner. Accordingly, the State shall not be required to
38 prove the underlying offense of impaired driving or the existence of a prior drivers
39 license revocation. An order issued under this subsection finding that the petitioner
40 failed to establish that the petitioner is an innocent owner may be reconsidered by
41 the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

42 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. -- A defendant motor
43 vehicle owner may file a petition with the clerk of court seeking a pretrial
44 determination that the defendant's license was not revoked pursuant to an impaired

1 driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a
2 hearing before a judge for a hearing pursuant to G.S. 20-28.4(d)(2), to be held within
3 10 business days or as soon as thereafter as may be feasible. Notice of the hearing
4 shall be given to the defendant, the district attorney, and the attorney for the county
5 board of education. The clerk shall forward a copy of the petition to the district
6 attorney for the district attorney's review. If, based on the available evidence of
7 record, the district attorney determines that the defendant's motor vehicle is not
8 subject to forfeiture, the district attorney may authorize the clerk of court to issue an
9 order releasing the motor vehicle to the defendant upon payment of all towing and
10 storage charges incurred as a result of the seizure and impoundment of the motor
11 vehicle, subject to the satisfactory proof of the identity of the defendant as a motor
12 vehicle owner and the existence of financial responsibility to the extent required by
13 Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy
14 of the order of release to the attorney for the county board of education. At any
15 pretrial hearing conducted pursuant to this subsection, the court is not required to
16 determine the issue of the underlying offense of impaired driving only the existence
17 of a prior drivers license revocation as an impaired driving license revocation.
18 Accordingly, the State shall not be required to prove the underlying offense of
19 impaired driving. An order issued under this subsection finding that the defendant
20 failed to establish that the defendant's license was not revoked pursuant to an
21 impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered
22 by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

23 (e3) Pretrial Release of Motor Vehicle to Lienholder. -- A lienholder may file a
24 petition with the clerk of court requesting the court to order pretrial release of a
25 seized motor vehicle. The lienholder shall serve a copy of the petition on all
26 interested parties which shall include the registered owner, the titled owner, the
27 district attorney and the county board of education attorney. Upon 10 days' prior
28 notice of the date, time, and location of the hearing sent by the lienholder to all
29 interested parties, a judge, after a hearing, shall order a seized motor vehicle released
30 to the lienholder conditioned upon payment of all towing and storage costs incurred
31 as a result of the seizure and impoundment of the motor vehicle if the judge
32 determines, by the greater weight of the evidence, that:

- 33 (1) Default on the obligation secured by the motor vehicle has
34 occurred;
- 35 (2) As a consequence of default, the lienholder is entitled to possession
36 of the motor vehicle;
- 37 (3) The lienholder's interest is equal to or greater than the fair market
38 value of the motor vehicle, less any accumulated towing and
39 storage costs;
- 40 (4) The lienholder agrees not to sell, give, or otherwise transfer
41 possession of the forfeited motor vehicle to the motor vehicle
42 owner; and
- 43 (5) The forfeited motor vehicle had not previously been released to
44 the lienholder.

1 The clerk of superior court may order a seized vehicle released to the lienholder
2 conditioned upon payment of all towing and storage costs incurred as a result of the
3 seizure and impoundment of the motor vehicle at any time when all interested parties
4 have, in writing, waived any rights that they may have to notice and a hearing, and
5 the lienholder has agreed to the provision of subdivision (4) above. A lienholder who
6 refuses to sell, give, or transfer possession of a forfeited motor vehicle to the
7 defendant, the motor vehicle owner who owned the motor vehicle immediately prior
8 to forfeiture, or any person acting on the behalf of the defendant or the motor vehicle
9 owner shall not be liable for damages arising out of such refusal. However, any
10 subsequent violation of the conditions of release by the lienholder shall be punishable
11 by civil or criminal contempt.

12 ~~(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the~~
13 ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the~~
14 ~~vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

15 ~~(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the~~
16 ~~county school board, shall be entitled to a possessory lien as defined in G.S.~~
17 ~~28.2(a1)(5).~~

18 (h) Insurance Proceeds. -- In the event a motor vehicle is damaged incident to the
19 conduct of the defendant which gave rise to the defendant's arrest and seizure of the
20 motor vehicle pursuant to this section, the county board of education, or its
21 authorized designee, is authorized to negotiate the county board of education's
22 interest with the insurance company and to compromise and accept settlement of any
23 claim for damages. Property insurance proceeds accruing to the defendant, or other
24 owner of the seized motor vehicle, shall be paid by the responsible insurance
25 company directly to the clerk of superior court in the county where the motor vehicle
26 was seized. If the motor vehicle is declared a total loss by the insurance company
27 responsible for repairs to the motor vehicle, the clerk of superior court, upon
28 application of the county board of education, shall enter an order that the motor
29 vehicle be released to the insurance company upon payment into the court of all
30 insurance proceeds for damage to the motor vehicle after payment of towing and
31 storage costs and all valid liens. The clerk of superior court shall provide the
32 Division with a certified copy of the order entered pursuant to this subsection, and
33 the Division shall transfer title to the insurance company or to such other person or
34 entity as may be designated by the insurance company. Insurance proceeds paid to
35 the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to
36 G.S. 20-28.5 and, if ordered forfeited by the court, shall be paid to the county school
37 fund. An affected motor vehicle owner or lienholder who objects to any agreed upon
38 settlement under this subsection may file an independent claim with the insurance
39 company for any additional monies believed owed.

40 (i) Expedited Sale of Seized Motor Vehicles in Certain Cases. -- In order to avoid
41 additional liability for towing and storage costs pending resolution of the criminal
42 proceedings of the defendant, the county board of education may, after expiration of
43 90 days from the date of seizure, sell any motor vehicle having a fair market value of
44 one thousand five hundred dollars (\$1,500) or less. The county board of education

1 may also sell a motor vehicle, regardless of the fair market value, any time the towing
2 and storage costs exceed eighty-five percent (85%) of the fair market value of the
3 vehicle, or with the consent of all the motor vehicle owners. Any sale conducted
4 pursuant to this subsection shall take place upon not less than 10 days' prior notice to
5 the motor vehicle owners and lienholders and the proceeds of the sale shall be
6 deposited with the clerk of superior court. If an order of forfeiture is entered by the
7 court, the proceeds held by the clerk shall be distributed as provided in G.S. 20-
8 28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the
9 clerk shall distribute the proceeds held by the clerk first to the county board of
10 education to pay the sale, towing, and storage costs, to pay outstanding liens on the
11 motor vehicle, and the balance to be paid to the motor vehicle owners.

12 (j) Retrieval of Certain Personal Property. -- At reasonable times, the entity
13 charged with storing the motor vehicle may permit owners of personal property not
14 affixed to the motor vehicle to retrieve those items from the motor vehicle, provided
15 satisfactory proof of ownership of the motor vehicle or the items of personal property
16 is presented to the storing entity.

17 (k) County Board of Education Right to Appear and Participate in Proceedings. --
18 The attorney for the county board of education shall be given notice of all
19 proceedings regarding offenses involving impaired driving related to a motor vehicle
20 subject to forfeiture. The attorney for the county board of education shall also have
21 the right to appear and to be heard on all issues relating to the seizure, possession,
22 release, forfeiture, sale, and other matters related to the seized vehicle under this
23 section. With the prior consent of the county board of education, the district attorney
24 may delegate to the attorney for the county board of education any or all of the
25 duties of the district attorney under this section. Magistrates, clerks of superior court,
26 and law enforcement officers are authorized and directed to assist county boards of
27 education in obtaining records, including computerized records, of seized motor
28 vehicles, including but not limited to, a register of motor vehicles seized or forfeited
29 pursuant to this section, the names and addresses of the motor vehicle owners, the
30 vehicle identification numbers, the names of lienholders, and the names and
31 addresses of insurance companies and other motor vehicle owners that may have
32 liability for damages to the seized motor vehicle.

33 (l) Payment of Fees Upon Conviction. -- If the driver of a motor vehicle seized
34 pursuant to this section is convicted of an offense involving impaired driving, the
35 defendant shall be ordered to pay as restitution to the county board of education, the
36 motor vehicle owner, or the lienholder, the cost paid or owing for the towing,
37 storage, and sale of the motor vehicle to the extent the costs were not covered by the
38 proceeds from the forfeiture and sale of the motor vehicle. The order of payment of
39 costs under this subsection, in addition to being a part of the criminal judgment, shall
40 also constitute a civil judgment in favor of the party to whom the restitution is owed,
41 shall be docketed by the clerk of court as any other civil judgment, and may be
42 collected as any other civil judgment.

1 (m) Trial Priority. -- Trials of impaired driving offenses involving forfeitures of
2 motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's
3 next court date or within 30 days of the offense, whichever comes first.

4 Once scheduled, the case shall not be continued unless all of the following
5 conditions are met:

6 (1) A written motion for continuance is filed with notice given to the
7 opposing party prior to the motion being heard.

8 (2) The judge makes a finding of a 'compelling reason' for the
9 continuance.

10 (3) The motion and finding are attached to the court case record.

11 Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the
12 judge immediately, or as soon thereafter as feasible, and the judge shall issue the
13 appropriate orders pursuant to G.S. 20-28.2(d).

14 Should a defendant appeal his conviction to superior court, the appeal shall be set
15 down for trial on the next available trial date and the limitations on continuances and
16 requirement for expedited hearing on the forfeiture of the vehicle, set forth above,
17 shall apply."

18 Section 4. G.S. 20-28.4 reads as rewritten:

19 "§ 20-28.4. Release of impounded motor vehicles by judge.

20 (a) Release to Innocent Vehicle Owner. -- A motor vehicle owner who was not
21 the operator of the motor vehicle at the time of the offense may file a petition in the
22 underlying criminal case with the the court for return of the vehicle clerk of superior
23 court for:

24 (1) Temporary pretrial release of the motor vehicle;

25 (2) Permanent release of the motor vehicle;

26 (3) Payment of any insurance proceeds; or

27 (4) Payment of proceeds of the prior sale of a motor vehicle,

28 pursuant to the provisions of G.S. ~~20-28.2(e)~~, G.S. 20-28.2(e), 20-28.3(e), 20-28.3(h),
29 or 20-28.3(i).

30 (b) Acknowledgment Required. -- The motor vehicle owner seeking release
31 petitioning under this section or pretrial release under G.S. 20-28.3 shall sign an
32 acknowledgment as described in G.S. 20-28.2(a1)(1).

33 (c) Release to Lienholder. -- A Upon petition by the lienholder and after 10 days'
34 prior written notice to the district attorney and the county board of education
35 attorney, a district court judge may order a forfeited motor vehicle released to a
36 lienholder if the judge determines, by the greater weight of the evidence, that the
37 lienholder satisfies the criteria as set out in G.S. 20-28.2(f). Lienholders may also
38 petition the court for possession of a seized motor vehicle prior to forfeiture pursuant
39 to the provisions of G.S. 20-28.3(e3).

40 (d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized
41 pursuant to G.S. 20-28.3:

42 (1) Is subsequently not convicted of either G.S. ~~20-138.1~~ or G.S.
43 ~~20-138.5~~ an offense involving impaired driving due to dismissal or
44 a finding of not guilty; or

1 (2) The judge at the sentencing hearing fails to find the grossly
2 aggravating factor described in G.S. 20-179(c)(2),
3 the seized motor vehicle shall be ~~returned~~ released to the motor vehicle owner.
4 owner conditioned upon payment of towing and storage costs.

5 ~~If the court finds that probable cause did not exist to seize the motor vehicle, the~~
6 ~~court shall order the vehicle released.~~

7 ~~A determination which results in the return or release of the seized vehicle under~~
8 ~~this section authorizes the driver, vehicle owner, or lienholder to recover towing or~~
9 ~~storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or~~
10 ~~storage fees recovered pursuant to this subsection shall be paid by the county school~~
11 ~~board from forfeitures paid into the county school fund."~~

12 Section 5. G.S. 20-28.5 reads as rewritten:

13 "§ 20-28.5. Forfeiture of impounded vehicle. motor vehicle or funds.

14 (a) Sale. -- ~~Unless a judge orders the vehicle returned to an innocent party or a~~
15 ~~lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered~~
16 ~~forfeited and sold or transferred to the school board in the county where the charges~~
17 ~~were filed. The sale of the vehicle shall be a judicial~~ A motor vehicle ordered
18 forfeited and sold shall be sold at a public sale conducted in accordance with the
19 provisions of ~~Parts 1 and 2 of Article 29A of Chapter 1~~ Article 12 of Chapter 160A of
20 the ~~General Statutes~~ Statutes, applicable to sales authorized pursuant to G.S. 160A-
21 266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall
22 be conducted by the county school board board of education or a person acting on its
23 behalf. ~~In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of~~
24 ~~the General Statutes, notice of sale~~ Notice of sale, including the date, time, location,
25 and manner of sale, shall also be given by ~~certified mail, return receipt requested,~~
26 first-class mail, to all motor vehicle owners at the address shown by the ~~Division's~~
27 records of the Division and at any other address of the motor vehicle owner as may
28 be found in the criminal file in which the forfeiture was ordered. ~~Notice~~ Written
29 notice of sale shall also be ~~by certified mail, return receipt requested,~~ given to all
30 lienholders on file with the Division. Notice of sale shall be given to the Division in
31 accordance with the procedures established by the Division. Notices required to be
32 given under this subsection shall be mailed at least 14 days prior to the date of sale.

33 (b) Proceeds of Sale. -- Proceeds of any sale conducted under this section shall
34 first be applied to the cost of sale and then to satisfy towing and storage liens and the
35 ~~cost of sale. costs.~~ The balance of the proceeds of sale, if any, shall be used to satisfy
36 any other existing liens of record that were properly recorded ~~with the Division~~ prior
37 to the date of initial seizure of the vehicle. Any remaining balance shall be paid to
38 the county school fund in the county in which the motor vehicle was ordered
39 forfeited. If there is more than one school board in the county, then the net proceeds
40 of sale shall be distributed in the same manner as fines and other forfeitures. Vehicles
41 ~~sold~~ The sale of a motor vehicle pursuant to this section shall be deemed to
42 extinguish all existing liens on the motor vehicle and the motor vehicle shall be
43 transferred free and clear of any liens.

1 (c) Retention of Motor Vehicle. -- The county board of education may, at its
2 option, retain any forfeited motor vehicle for its ~~use~~ use upon payment of towing and
3 storage costs. If the motor vehicle is retained, any valid lien of record at the time of
4 the initial seizure of the motor vehicle shall be satisfied by the ~~school board~~ county
5 board of education relieving the motor vehicle owner of all liability for the obligation
6 secured by the motor vehicle. If there is more than one school board in the county,
7 and the motor vehicle is retained by the county board of education, then the fair
8 market value of the motor vehicle, less the costs for towing, storage, and liens paid,
9 shall be used to determine and pay the share due each of the school boards in the
10 same manner as fines and other forfeitures.

11 ~~(d) [Counties with Multiple School Boards.] -- If there is more than one school~~
12 ~~board in the county, then the fair market value of the vehicle shall be used to~~
13 ~~determine the share due each of the school boards in the same manner as fines and~~
14 ~~other forfeitures.~~

15 (e) Order of Forfeiture; Appeals. -- An order of forfeiture is stayed pending
16 appeal of a conviction for an offense that is the basis for the order. When the
17 conviction of an offense that is the basis for an order of forfeiture is appealed from
18 district court, the issue of forfeiture shall be heard in superior court de novo. Appeal
19 from a final order of forfeiture shall be to the Court of Appeals."

20 Section 6. G.S. 20-28.6 is repealed.

21 Section 7. G.S. 20-28.7 reads as rewritten:

22 "**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

23 The Division shall establish procedures by rule to provide for the orderly seizure,
24 forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-
25 28.2, 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

26 Section 8. Article 2 of Chapter 20 of the General Statutes is amended by
27 adding two new sections to read:

28 "**§ 20-28.8. Reports to the Division.**

29 The clerk of superior court shall report to the Division all information as may be
30 required by the Division concerning the disposition of all motor vehicles seized
31 pursuant to G.S. 20-28.3 or any other statute, including all orders of seizure under
32 G.S. 20-28.3, orders of release under G.S. 20-28.3 and G.S. 20-28.4, and orders of
33 forfeiture under G.S. 20-28.2.

34 "**§ 20-28.9. Authority for agency to administer a statewide or regional towing,**
35 **storage, and sales program for driving while impaired vehicles forfeited.**

36 An agency designated by the Governor is authorized to enter into a contract for a
37 statewide service or contracts for regional services to tow, store, maintain, and sell
38 motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S.
39 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts
40 shall be let in accordance with the provisions of Article 3 of Chapter 143 of the
41 General Statutes. All contracts shall ensure the safety of the motor vehicles while
42 held and any funds arising from the sale of any seized motor vehicle. The contract
43 shall require the contractor to maintain and make available to the agency a
44 computerized up-to-date inventory of all motor vehicles held under the contract.

1 together with an accounting of all accrued charges, the status of the vehicle, and the
2 county school fund to which the proceeds of sale are to be paid."

3 Section 9. G.S. 20-54 reads as rewritten:

4 "**§ 20-54. Authority for refusing registration or certificate of title.**

5 The Division shall refuse registration or issuance of a certificate of title or any
6 transfer of registration upon any of the following grounds:

- 7 (1) The application contains a false or fraudulent statement, the
8 applicant has failed to furnish required information or reasonable
9 additional information requested by the Division, or the applicant
10 is not entitled to the issuance of a certificate of title or registration
11 of the vehicle under this Article.
- 12 (2) The vehicle is mechanically unfit or unsafe to be operated or
13 moved upon the highways.
- 14 (3) The Division has reasonable ground to believe that the vehicle is a
15 stolen or embezzled vehicle, or that the granting of registration or
16 the issuance of a certificate of title would constitute a fraud against
17 the rightful owner or another person who has a valid lien against
18 the vehicle.
- 19 (4) The registration of the vehicle stands suspended or revoked for any
20 reason as provided in the motor vehicle laws of this State.
- 21 (5) The required fee has not been paid.
- 22 (6) The vehicle is not in compliance with the emissions inspection
23 requirements of Part 2 of Article 3A of this Chapter or a civil
24 penalty assessed as a result of the failure of the vehicle to comply
25 with that Part has not been paid.
- 26 (7) The Division has been notified that the motor vehicle has been
27 seized by a law enforcement officer and is subject to forfeiture
28 pursuant to G.S. 20-28.2, et seq., or any other statute."

29 Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is
30 amended by adding a new section to read:

31 "**§ 20-54.1. Forfeiture of right of registration.**

32 (a) Upon receipt of notice of conviction of a violation of an offense involving
33 impaired driving while the person's license is revoked as a result of a prior impaired
34 driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the
35 registration of all motor vehicles registered in the convicted person's name and shall
36 not register a motor vehicle in the convicted person's name until the convicted
37 person's license is restored. Upon receipt of notice of revocation of registration from
38 the Division, the convicted person shall surrender the registration on all motor
39 vehicles registered in the convicted person's name to the Division within 10 days of
40 the date of the notice.

41 (b) Upon receipt of a notice of conviction under subsection (a) of this section, the
42 Division shall revoke the registration of the motor vehicle seized and the owner shall
43 not be allowed to register the motor vehicle seized until the convicted operator's
44 drivers license has been restored. The Division shall not revoke the registration of

1 the owner of the seized motor vehicle if the owner is determined to be an innocent
2 owner. The Division shall only revoke the owner's registration after the owner is
3 given an opportunity for a hearing to demonstrate that the owner is an innocent
4 owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration
5 from the Division, the owner shall surrender the registration on the motor vehicle
6 seized to the Division within 10 days of the date of the notice."

7 Section 11. G.S. 20-55 reads as rewritten:

8 "**§ 20-55. Examination of registration records and index of seized, stolen and**
9 **recovered vehicles.**

10 The Division, upon receiving application for any transfer of registration or for
11 original registration of a vehicle, other than a new vehicle sold by a North Carolina
12 dealer, shall first check the engine and serial numbers shown in the application with
13 its record of registered motor vehicles, and against the index of seized, stolen and
14 recovered motor vehicles required to be maintained by this Article."

15 Section 12. G.S. 20-114(c) reads as rewritten:

16 "(c) It shall also be the duty of every ~~sheriff of every county of the State and of~~
17 ~~every police or peace officer of the State~~ law enforcement officer to make immediate
18 report to the Commissioner of all motor vehicles reported to ~~him~~ the officer as
19 abandoned or that are seized by ~~him~~ the officer for being used for illegal
20 transportation of alcoholic beverages or other unlawful purposes, or seized and are
21 subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute, and no
22 motor vehicle shall be sold by any sheriff, police or peace officer, or by any person,
23 firm or corporation claiming a mechanic's or storage lien, or under judicial
24 proceedings, until notice on a form approved by the Commissioner shall have been
25 given the Commissioner at least 20 days before the date of such sale."

26 Section 13. Part 8 of Article 3 of Chapter 20 of the General Statutes is
27 amended by adding a new section to read:

28 "**§ 20-106.3. Unauthorized operation of a rental vehicle.**

29 It shall be unlawful for any person to operate a rental vehicle without written
30 authorization by the owner of the rental vehicle. The term rental vehicle as used in
31 this section shall mean and include any motor vehicle which is rented or leased to
32 another person by the vehicle owner for a period of not more than 30 days solely for
33 the transportation of the lessee and authorized passengers or the private hauling of
34 the lessee's personal property. A violation of this section shall be a Class 1
35 misdemeanor."

36 Section 14. G.S. 1-339.4 reads as rewritten:

37 "**§ 1-339.4. Who may hold sale.**

38 An order of sale may authorize the persons designated below to hold the sale:

- 39 (1) In any proceeding, a commissioner specially appointed therefor; or
- 40 (2) In a proceeding to sell property of a decedent, the administrator,
41 executor or collector of such decedent's estate;
- 42 (3) In a proceeding to sell property of a minor, the guardian of such
43 minor's estate;

- 1 (4) In a proceeding to sell property of an incompetent, the guardian or
2 trustee of such incompetent's estate;
- 3 (5) In a proceeding to sell property of an absent or missing person, the
4 administrator, collector, conservator, or guardian of the estate of
5 such absent or missing person;
- 6 (6) In a proceeding to foreclose a deed of trust, the trustee named in
7 the deed of trust;
- 8 (7) In a receivership proceeding, the receiver;
- 9 (8) In a proceeding to sell property of a trust, the trustee;
- 10 (9) ~~In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5,~~
11 ~~the county school board or a person acting on its behalf."~~

12 Section 15. G.S. 44A-2(d) reads as rewritten:

13 "(d) Any person who repairs, services, tows, or stores motor vehicles in the
14 ordinary course of ~~his~~ the person's business pursuant to an express or implied
15 contract with an owner or legal possessor of the motor ~~vehiele~~ vehicle, except for a
16 motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for
17 reasonable charges for such repairs, servicing, towing, storing, or for the rental of one
18 or more substitute vehicles provided during the repair, servicing, or storage. This
19 lien shall have priority over perfected and unperfected security interests. Payment for
20 towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as
21 provided for in G.S. 20-28.2 through G.S. 20-28.5."

22 Section 16. G.S. 44A-4(b)(1) reads as rewritten:

23 "(b) Notice and Hearings. --

24 (1) If the property upon which the lien is claimed is a motor vehicle
25 that is required to be registered, the lienor following the expiration
26 of the relevant time period provided by subsection (a) shall give
27 notice to the Division of Motor Vehicles that a lien is asserted and
28 sale is proposed and shall remit to the Division a fee of ten dollars
29 (\$10.00). The Division of Motor Vehicles shall issue notice by
30 registered or certified mail, return receipt requested, ~~within 15 days~~
31 ~~of receipt of notice from the lienor~~, to the person having legal title
32 to the property, if reasonably ascertainable, to the person with
33 whom the lienor dealt if different, and to each secured party and
34 other person claiming an interest in the property who is actually
35 known to the Division or who can be reasonably ascertained. The
36 notice shall state that a lien has been asserted against specific
37 property and shall identify the lienor, the date that the lien arose,
38 the general nature of the services performed and materials used or
39 sold for which the lien is asserted, the amount of the lien, and that
40 the lienor intends to sell the property in satisfaction of the lien.
41 The notice shall inform the recipient that the recipient has the
42 right to a judicial hearing at which time a determination will be
43 made as to the validity of the lien prior to a sale taking place. The
44 notice shall further state that the recipient has a period of 10 days

1 from the date of receipt in which to notify the Division by
2 registered or certified mail, return receipt requested, that a hearing
3 is desired and that if the recipient wishes to contest the sale of his
4 property pursuant to such lien, the recipient should notify the
5 Division that a hearing is ~~desired and the Division shall notify~~
6 ~~lienor.~~ desired. The notice shall state the required information in
7 simplified terms and shall contain a form whereby the recipient
8 may notify the Division that a hearing is desired by the return of
9 such form to the Division. The Division shall notify the lienor
10 whether such notice is timely received by the Division. In lieu of
11 the notice by the lienor to the Division and the notices issued by
12 the Division described above, the lienor may issue notice on a
13 form approved by the Division pursuant to the notice requirements
14 above. If notice is issued by the lienor, the recipient shall return
15 the form requesting a hearing to the lienor, and not the Division,
16 within 10 days from the date they receive the notice if a judicial
17 hearing is requested. Failure of the recipient to notify the Division
18 or lienor, as specified in the notice, within 10 days of the receipt
19 of such notice that a hearing is desired shall be deemed a waiver of
20 the right to a hearing prior to the sale of the property against
21 which the lien is asserted, ~~the Division shall notify the lienor,~~ and
22 the lienor may proceed to enforce the lien by public or private sale
23 as provided in this section and the Division shall transfer title to
24 the property pursuant to such sale. If the Division or lienor, as
25 specified in the notice, is notified within the 10-day period
26 provided above that a hearing is desired prior to sale, the lien may
27 be enforced by sale as provided in this section and the Division
28 will transfer title only pursuant to the order of a court of
29 competent jurisdiction.

30 If the ~~Division notifies the lienor that the~~ registered or
31 certified mail notice has been returned as undeliverable, or if ~~the~~
32 ~~Division cannot ascertain~~ the name of the person having legal title
33 to the vehicle cannot reasonably be ascertained and the fair market
34 value of the vehicle is less than eight hundred dollars (\$800.00),
35 the lienor may institute a special proceeding in the county where
36 the vehicle is being held, for authorization to sell that vehicle.
37 Market value shall be determined by the schedule of values
38 adopted by the Commissioner under G.S. 105-187.3.

39 In such a proceeding a lienor may include more than one
40 vehicle, but the proceeds of the sale of each shall be subject only
41 to valid claims against that vehicle, and any excess proceeds of the
42 sale shall escheat to the State and be paid immediately to the
43 treasurer for disposition pursuant to Chapter 116B of the General

1 Statutes. A vehicle owner or possessor claiming an interest in such
2 proceeds shall have a right of action under G.S. 116B-38.

3 The application to the clerk in such a special proceeding
4 shall contain the notice of sale information set out in subsection (f)
5 hereof. If the application is in proper form the clerk shall enter an
6 order authorizing the sale on a date not less than 14 days
7 therefrom, and the lienor shall cause the application and order to
8 be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule
9 5, to each person to whom ~~the Division has mailed~~ notice was
10 mailed pursuant to this subsection. Following the authorized sale
11 the lienor shall file with the clerk a report in the form of an
12 affidavit, stating that the lienor has complied with the public or
13 private sale provisions of G.S. 44A-4, the name, address, and bid of
14 the high bidder or person buying at a private sale, and a statement
15 of the disposition of the sale proceeds. The clerk then shall enter
16 an order directing the Division to transfer title accordingly.

17 If prior to the sale the owner or legal possessor contests the
18 sale or lien in a writing filed with the clerk, the proceeding shall
19 be handled in accordance with G.S. 1-399."

20 Section 17. G.S. 58-71-1 reads as rewritten:

21 "§ 58-71-1. Definitions.

22 The following words when used in this Article shall have the following meanings:

23 (1) 'Accommodation bondsman' is a natural person who has reached
24 the age of 18 years and is a bona fide resident of this State and
25 who, aside from love and affection and release of the person
26 concerned, receives no consideration for action as surety and who
27 endorses the bail bond after providing satisfactory evidences of
28 ownership, value and marketability of real or personal property to
29 the extent necessary to reasonably satisfy the official taking bond
30 that such real or personal property will in all respects be sufficient
31 to assure that the full principal sum of the bond will be realized in
32 the event of breach of the conditions thereof. "Consideration" as
33 used in this subdivision does not include the legal rights of a surety
34 against a principal by reason of breach of the conditions of a bail
35 bond nor does it include collateral furnished to and securing the
36 surety so long as the value of the surety's rights in the collateral do
37 not exceed the principal's liability to the surety by reason of a
38 breach in the conditions of said bail bond.

39 (2) 'Bail bond' shall mean an undertaking by the principal to appear
40 in court as required upon penalty of forfeiting bail to the State in a
41 stated amount; and may include an unsecured appearance bond, a
42 premium-secured appearance bond, an appearance bond secured
43 by a cash deposit of the full amount of the bond, an appearance
44 bond secured by a mortgage pursuant to G.S. 58-74-5, and an

1 appearance bond secured by at least one surety. A bail bond may
2 also include a bond securing the return of a motor vehicle subject
3 to forfeiture in accordance with G.S. 20-28.3(e).

4 (3) 'Bail bondsman' shall mean a surety bondsman, professional
5 bondsman or an accommodation bondsman as hereinafter defined.

6 (4) 'Commissioner' shall mean the Commissioner of Insurance.

7 (5) 'Insurer' shall mean any domestic, foreign, or alien surety company
8 which has qualified generally to transact surety business and
9 specifically to transact bail bond business in this State.

10 (6) 'Obligor' shall mean a principal or a surety on a bail bond.

11 (7) 'Principal' shall mean a defendant or witness obligated to appear
12 in court as required upon penalty of forfeiting bail under a bail
13 ~~bond.~~ bond or a person obligated to return a motor vehicle subject
14 to forfeiture in accordance with G.S. 20-28.3(e).

15 (8) 'Professional bondsman' shall mean any person who is approved
16 and licensed by the Commissioner and who pledges cash or
17 approved securities with the Commissioner as security for bail
18 bonds written in connection with a judicial proceeding and
19 receives or is promised money or other things of value therefor.

20 (9) 'Runner' shall mean a person employed by a bail bondsman for
21 the purpose of assisting the bail bondsman in presenting the
22 defendant in court when required, or to assist in apprehension and
23 surrender of defendant to the court, or keeping defendant under
24 necessary surveillance, or to execute bonds on behalf of the
25 licensed bondsman when the power of attorney has been duly
26 recorded. "Runner" does not include, however, a duly licensed
27 attorney-at-law or a law-enforcement officer assisting a bondsman.

28 (10) 'Surety' shall mean one who, with the principal, is liable for the
29 amount of the bail bond upon forfeiture of bail.

30 (11) 'Surety bondsman' means any person who is licensed by the
31 Commissioner as a surety bondsman under this Article, is
32 appointed by an insurer by power of attorney to execute or
33 countersign bail bonds for the insurer in connection with judicial
34 proceedings, and receives or is promised consideration for doing
35 so."

36 Section 18. G.S. 58-71-35(a) reads as rewritten:

37 "(a) ~~The~~ Except for bonds issued to secure the return of a motor vehicle subject to
38 forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall
39 be that provided in Article 26 of Chapter 15A of the General Statutes and all
40 provisions of that Article shall continue in full force and effect."

41 PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

42 Section 19. G.S. 20-16.2(a) reads as rewritten:

43 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
44 Rights. -- Any person who drives a vehicle on a highway or public vehicular area

1 thereby gives consent to a chemical analysis if charged with an implied-consent
2 offense. The charging officer shall designate the type of chemical analysis to be
3 administered, and it may be administered when the officer has reasonable grounds to
4 believe that the person charged has committed the implied-consent offense.

5 Except as provided in this subsection or subsection (b), before any type of
6 chemical analysis is administered the person charged shall be taken before a chemical
7 analyst authorized to administer a test of a person's breath, who shall inform the
8 person orally and also give the person a notice in writing that:

- 9 (1) The person has a right to refuse to be tested.
- 10 (2) Refusal to take any required test or tests will result in an
11 immediate revocation of the person's driving privilege for at least
12 30 days and an additional 12-month revocation by the Division of
13 Motor Vehicles.
- 14 (3) The test results, or the fact of the person's refusal, will be
15 admissible in evidence at trial on the offense charged.
- 16 (4) The person's driving privilege will be revoked immediately for at
17 least 30 days if:
 - 18 a. The test reveals an alcohol concentration of 0.08 or more; or
 - 19 b. The person was driving a commercial motor vehicle and the
20 test reveals ~~an~~ any alcohol concentration ~~of 0.04 or more.~~ in the
21 person's blood.
- 22 (5) The person may choose a qualified person to administer a
23 chemical test or tests in addition to any test administered at the
24 direction of the charging officer.
- 25 (6) The person has the right to call an attorney and select a witness to
26 view for him or her the testing procedures, but the testing may not
27 be delayed for these purposes longer than 30 minutes from the
28 time when the person is notified of his or her rights.

29 If the charging officer or an arresting officer is authorized to administer a chemical
30 analysis of a person's breath, the charging officer or the arresting officer may give the
31 person charged the oral and written notice of rights required by this subsection. This
32 authority applies regardless of the type of chemical analysis designated."

33 Section 20. G.S. 20-16.5(b) reads as rewritten:

34 "(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol~~
35 ~~Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More~~
36 ~~After Driving a Commercial Vehicle. Who Are Charged With Certain Implied~~
37 Consent Offenses. -- A person's driver's license is subject to revocation under this
38 section if:

- 39 (1) A charging officer has reasonable grounds to believe that the
40 person has committed an offense subject to the implied-consent
41 provisions of G.S. 20-16.2;
- 42 (2) The person is charged with that offense as provided in G.S. 20-
43 16.2(a);

1 (3) The charging officer and the chemical analyst comply with the
2 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the
3 person's submission to or procuring a chemical analysis; and

4 (4) The person:

5 a. Willfully refuses to submit to the chemical analysis;

6 b. Has an alcohol concentration of 0.08 or more within a
7 relevant time after the driving; or

8 c. Has ~~an~~ any alcohol concentration ~~of 0.04 or more in the~~
9 person's blood at any relevant time after the driving of a
10 commercial vehicle."

11 Section 21. G.S. 20-16.5(b1) reads as rewritten:

12 "(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the
13 provisions of subsection (b), a person's driver's license is subject to revocation under
14 this section if:

15 (1) ~~He~~ The person requests a precharge chemical analysis pursuant to
16 G.S. 20-16.2(i); and

17 (2) ~~He~~ The person has:

18 a. An alcohol concentration of 0.08 or more at any relevant
19 time after driving; or

20 b. ~~An~~ Any alcohol concentration ~~of 0.04 or more in his blood~~
21 at any relevant time after driving a commercial motor vehicle; and

22 (3) ~~He~~ The person is charged with an implied-consent offense."

23 Section 22. G.S. 20-17(a) reads as rewritten:

24 "(a) The Division shall forthwith revoke the license of any driver upon receiving a
25 record of the driver's conviction for any of the following offenses:

26 (1) Manslaughter (or negligent homicide) resulting from the operation
27 of a motor vehicle.

28 (2) Either of the following impaired driving offenses:

29 a. Impaired driving under G.S. 20-138.1.

30 b. Impaired driving under G.S. ~~20-138.2 when the person~~
31 ~~convicted did not take a chemical test at the time of the offense or~~
32 ~~the person took a chemical test at the time of the offense and the~~
33 ~~test revealed that the person had an alcohol concentration at any~~
34 ~~relevant time after driving of less than 0.04 or of 0.08 or more.~~ 20-
35 138.2.

36 (3) Any felony in the commission of which a motor vehicle is used.

37 (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

38 (5) Perjury or the making of a false affidavit or statement under oath
39 to the Division under this Article or under any other law relating
40 to the ownership of motor vehicles.

41 (6) Conviction upon two charges of reckless driving committed within
42 a period of 12 months.

43 (7) Conviction upon one charge of reckless driving while engaged in
44 the illegal transportation of intoxicants for the purpose of sale.

- 1 (8) Conviction of using a false or fictitious name or giving a false or
2 fictitious address in any application for a drivers license, or
3 learner's permit, or any renewal or duplicate thereof, or knowingly
4 making a false statement or knowingly concealing a material fact
5 or otherwise committing a fraud in any such application or
6 procuring or knowingly permitting or allowing another to commit
7 any of the foregoing acts.
- 8 (9) Death by vehicle as defined in G.S. 20-141.4.
- 9 (10) Repealed by Session Laws 1997-443, s. 19.26(b).
- 10 (11) Conviction of assault with a motor vehicle.
- 11 (12) A second or subsequent conviction of transporting an open
12 container of alcoholic beverage under G.S. 20-138.7."

13 Section 23. G.S. 20-17.4 reads as rewritten:

14 "**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

15 (a) One Year. -- Any of the following disqualifies a person from driving a
16 commercial motor vehicle for one year:

- 17 (1) A first conviction of G.S. 20-138.1, driving while impaired, that
18 occurred while the person was driving a commercial motor vehicle.
- 19 ~~(2) A first conviction of G.S. 20-138.2, driving a commercial motor~~
20 ~~vehicle while impaired.~~
- 21 (3) A first conviction of G.S. 20-166, hit and run, involving a
22 commercial motor vehicle driven by the person.
- 23 (4) A first conviction of a felony in the commission of which a
24 commercial motor vehicle was used.
- 25 (5) Refusal to submit to a chemical test when charged with an implied-
26 consent offense, as defined in G.S. 20-16.2, that occurred while the
27 person was driving a commercial motor vehicle.

28 (b) Modified Life. -- A person who has been disqualified from driving a
29 commercial motor vehicle ~~for~~ for either of the following:

30 (1) a first conviction or refusal described in subsection (a) who, as the
31 result of a separate incident, is subsequently convicted of an offense or commits an
32 act requiring disqualification under subsection (a); or

33 (2) A first conviction of G.S. 20-138.2 is disqualified for life. The
34 Division may adopt guidelines, including conditions, under which a
35 disqualification for life under this subsection may be reduced to 10
36 years.

37 (b1) Life Without Reduction. -- A person is disqualified from driving a commercial
38 motor vehicle for life, without the possibility of reinstatement after 10 years, if that
39 person is convicted of a second or subsequent violation of G.S. 20-138.2 or if the
40 person refuses to submit to a chemical test a second time when charged with an
41 implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person
42 was driving a commercial motor vehicle.

43 (c) Life. -- A person is disqualified from driving a commercial motor vehicle for
44 life if that person uses a commercial motor vehicle in the commission of any felony

1 involving the manufacture, distribution, or dispensing of a controlled substance, or
2 possession with intent to manufacture, distribute, or dispense a controlled substance.

3 (d) Less Than a Year. -- A person is disqualified from driving a commercial motor
4 vehicle for 60 days if that person is convicted of two serious traffic violations, or 120
5 days if convicted of three or more serious traffic violations, committed in a
6 commercial motor vehicle arising from separate incidents occurring within a three-
7 year period.

8 (e) Three Years. -- A person is disqualified from driving a commercial motor
9 vehicle for three years if that person is convicted of an offense or commits an act
10 requiring disqualification under subsection (a) and the offense or act occurred while
11 the person was transporting a hazardous material that required the motor vehicle
12 driven to be placarded.

13 (f) Revocation Period. -- A person is disqualified from driving a commercial
14 motor vehicle for the period during which the person's regular or commercial drivers
15 license is revoked."

16 Section 24. G.S. 20-36 reads as rewritten:

17 "**§ 20-36. Ten-year-old convictions not considered.**

18 ~~No~~ Except for a second or subsequent conviction for violating G.S. 20-138.2 or a
19 second failure to submit to a chemical test when charged with an implied-consent
20 offense, as defined in G.S. 20-16.2, that occurred while the person was driving a
21 commercial motor vehicle, no conviction of any violation of the motor vehicle laws
22 shall be considered by the Division in determining whether any person's driving
23 privilege shall be suspended or revoked or in determining the appropriate period of
24 suspension or revocation after 10 years has elapsed from the date of ~~such~~ that
25 conviction."

26 Section 25. G.S. 20-138.2(a) reads as rewritten:

27 "(a) Offense. -- A person commits the offense of impaired driving in a commercial
28 motor vehicle if ~~he~~ the person drives a commercial motor vehicle upon any highway,
29 any street, or any public vehicular area within the State:

30 (1) While under the influence of an impairing substance; or

31 (2) After having consumed sufficient alcohol that ~~he~~ the person has, at
32 any relevant time after the driving, ~~an~~ any alcohol concentration of
33 ~~0.04 or more~~ in his blood."

34 PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND
35 OPERATORS OF CHILD CARE VEHICLES.

36 Section 26. G.S. 20-4.01(27) reads as rewritten:

37 "(27) Passenger Vehicles. --

38 a. Excursion passenger vehicles. -- Vehicles transporting
39 persons on sight-seeing or travel tours.

40 b. For hire passenger vehicles. -- Vehicles transporting
41 persons for compensation. This classification shall not
42 include vehicles operated as ambulances; vehicles
43 operated by the owner where the costs of operation
44 are shared by the passengers; vehicles operated

- 1 pursuant to a ridesharing arrangement as defined in
2 G.S. 136-44.21; vehicles transporting students for the
3 public school system under contract with the State
4 Board of Education or vehicles leased to the United
5 States of America or any of its agencies on a
6 nonprofit basis; or vehicles used for human service or
7 volunteer transportation.
- 8 c. Common carriers of passengers. -- Vehicles operated
9 under a certificate of authority issued by the Utilities
10 Commission for operation on the highways of this
11 State between fixed termini or over a regular route
12 for the transportation of persons for compensation.
- 13 c1. Child care vehicles. -- Vehicles under the direction
14 and control of a child care facility, as defined in G.S.
15 110-86(3), and operated by an owner or employee of
16 the child care facility for the purpose of transporting
17 children to and from the facility, or to and from a
18 place for participation in an event or activity.
- 19 d. Motorcycles. -- Vehicles having a saddle for the use of
20 the rider and designed to travel on not more than
21 three wheels in contact with the ground, including
22 motor scooters and motor-driven bicycles, but
23 excluding tractors and utility vehicles equipped with
24 an additional form of device designed to transport
25 property, three-wheeled vehicles while being used by
26 law-enforcement agencies and mopeds as defined in
27 subdivision d1 of this subsection.
- 28 d1. Moped. -- A vehicle that has two or three wheels, no
29 external shifting device, and a motor that does not
30 exceed 50 cubic centimeters piston displacement and
31 cannot propel the vehicle at a speed greater than 20
32 miles per hour on a level surface.
- 33 d2. Motor home or house car. -- A vehicular unit,
34 designed to provide temporary living quarters, built
35 into as an integral part, or permanently attached to, a
36 self-propelled motor vehicle chassis or van. The
37 vehicle must provide at least four of the following
38 facilities: cooking, refrigeration or icebox, self-
39 contained toilet, heating or air conditioning, a
40 portable water supply system including a faucet and
41 sink, separate 110-125 volt electrical power supply, or
42 an LP gas supply.
- 43 d3. School activity bus. -- A vehicle, generally painted a
44 different color from a school bus, whose primary

1 purpose is to transport school students and others to
2 or from a place for participation in an event other
3 than regular classroom work. The term includes a
4 public, private, or parochial vehicle that meets this
5 description.

6 d4. School bus. -- A vehicle whose primary purpose is to
7 transport school students over an established route to
8 and from school for the regularly scheduled school
9 day, that is equipped with alternately flashing red
10 lights on the front and rear and a mechanical stop
11 signal, and that bears the words "School Bus" on the
12 front and rear in letters at least 8 inches in height.
13 The term includes a public, private, or parochial
14 vehicle that meets this description.

15 e. U-drive-it passenger vehicles. -- Vehicles rented or
16 leased to be operated by the lessee. This shall not
17 include vehicles of nine-passenger capacity or less
18 which are leased for a term of one year or more to
19 the same person or vehicles leased or rented to public
20 school authorities for driver-training instruction.

21 f. Ambulances. -- Vehicles equipped for transporting
22 wounded, injured, or sick persons.

23 g. Private passenger vehicles. -- All other passenger
24 vehicles not included in the above definitions."

25 Section 27. G.S. 20-16.2(a) reads as rewritten:

26 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
27 Rights. -- Any person who drives a vehicle on a highway or public vehicular area
28 thereby gives consent to a chemical analysis if charged with an implied-consent
29 offense. The charging officer shall designate the type of chemical analysis to be
30 administered, and it may be administered when the officer has reasonable grounds to
31 believe that the person charged has committed the implied-consent offense.

32 Except as provided in this subsection or subsection (b), before any type of
33 chemical analysis is administered the person charged shall be taken before a chemical
34 analyst authorized to administer a test of a person's breath, who shall inform the
35 person orally and also give the person a notice in writing that:

- 36 (1) The person has a right to refuse to be tested.
37 (2) Refusal to take any required test or tests will result in an
38 immediate revocation of the person's driving privilege for at least
39 30 days and an additional 12-month revocation by the Division of
40 Motor Vehicles.
41 (3) The test results, or the fact of the person's refusal, will be
42 admissible in evidence at trial on the offense charged.
43 (4) The person's driving privilege will be revoked immediately for at
44 least 30 days if any of the following occur:

- 1 a. The test reveals an alcohol concentration of 0.08 or ~~more, or~~
 2 more.
 3 b. The person was driving a commercial motor vehicle and the
 4 test reveals an alcohol concentration of 0.04 or more.
 5 c. The person was driving a school bus, a school activity bus,
 6 or a child care vehicle while transporting children and the test
 7 reveals any alcohol concentration.
 8 (5) The person may choose a qualified person to administer a
 9 chemical test or tests in addition to any test administered at the
 10 direction of the charging officer.
 11 (6) The person has the right to call an attorney and select a witness to
 12 view for him or her the testing procedures, but the testing may not
 13 be delayed for these purposes longer than 30 minutes from the
 14 time when the person is notified of his or her rights.

15 If the charging officer or an arresting officer is authorized to administer a chemical
 16 analysis of a person's breath, the charging officer or the arresting officer may give the
 17 person charged the oral and written notice of rights required by this subsection. This
 18 authority applies regardless of the type of chemical analysis designated."

19 Section 28. G.S. 20-16.5(b) reads as rewritten:

20 "(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol~~
 21 ~~Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More~~
 22 ~~After Driving a Commercial Vehicle. Who Are Charged With Certain Implied~~
 23 Consent Offenses. -- A person's driver's license is subject to revocation under this
 24 section if:

- 25 (1) A charging officer has reasonable grounds to believe that the
 26 person has committed an offense subject to the implied-consent
 27 provisions of G.S. 20-16.2;
 28 (2) The person is charged with that offense as provided in G.S. 20-
 29 16.2(a);
 30 (3) The charging officer and the chemical analyst comply with the
 31 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the
 32 person's submission to or procuring a chemical analysis; and
 33 (4) The person:
 34 a. Willfully refuses to submit to the chemical analysis;
 35 b. Has an alcohol concentration of 0.08 or more within a
 36 relevant time after the driving; ~~or~~
 37 c. Has an alcohol concentration of 0.04 or more at any
 38 relevant time after the driving of a commercial ~~vehicle; vehicle; or~~
 39 d. Has any alcohol concentration in the person's blood at any
 40 relevant time after transporting children in a school bus, a school
 41 activity bus, or a child care vehicle."

42 Section 29. G.S. 20-16.5(b1) reads as rewritten:

1 "(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the
2 provisions of subsection (b), a person's driver's license is subject to revocation under
3 this section if:

4 (1) ~~He~~ The person requests a precharge chemical analysis pursuant to
5 G.S. 20-16.2(i); and

6 (2) ~~He~~ The person has:

7 a. An alcohol concentration of 0.08 or more at any relevant
8 time after driving; ~~or~~

9 b. An alcohol concentration of 0.04 or more at any relevant
10 time after driving a commercial motor ~~vehicle; and~~ vehicle; or

11 c. Any alcohol concentration in his blood at any relevant time
12 after transporting children in a school bus, a school activity bus, or
13 a child care vehicle; and

14 (3) ~~He~~ The person is charged with an implied-consent offense."

15 Section 30. G.S. 20-138.1(a) reads as rewritten:

16 "(a) Offense. -- A person commits the offense of impaired driving if ~~he~~ the person
17 drives any vehicle upon any highway, any street, or any public vehicular area within
18 this State:

19 (1) While under the influence of an impairing substance; or

20 (2) After having consumed sufficient alcohol that ~~he~~ the person has, at
21 any relevant time after the driving, an alcohol concentration of
22 0.08 or ~~more;~~ more; or

23 (3) After having consumed sufficient alcohol that the person has, at
24 any relevant time after the driving of a school bus, a school activity
25 bus, or a child care vehicle transporting any children, any alcohol
26 concentration in his blood."

27 PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21
28 YEARS OF AGE.

29 Section 31. G.S. 20-16.2(a) reads as rewritten:

30 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
31 Rights. -- Any person who drives a vehicle on a highway or public vehicular area
32 thereby gives consent to a chemical analysis if charged with an implied-consent
33 offense. The charging officer shall designate the type of chemical analysis to be
34 administered, and it may be administered when the officer has reasonable grounds to
35 believe that the person charged has committed the implied-consent offense.

36 Except as provided in this subsection or subsection (b), before any type of
37 chemical analysis is administered the person charged shall be taken before a chemical
38 analyst authorized to administer a test of a person's breath, who shall inform the
39 person orally and also give the person a notice in writing that:

40 (1) The person has a right to refuse to be tested.

41 (2) Refusal to take any required test or tests will result in an
42 immediate revocation of the person's driving privilege for at least
43 30 days and an additional 12-month revocation by the Division of
44 Motor Vehicles.

- 1 (3) The test results, or the fact of the person's refusal, will be
 2 admissible in evidence at trial on the offense charged.
 3 (4) The person's driving privilege will be revoked immediately for at
 4 least 30 days if:
 5 a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~
 6 b. The person was driving a commercial motor vehicle and the
 7 test reveals an alcohol concentration of 0.04 or ~~more; more; or~~
 8 c. The person is under 21 years of age and the test reveals any
 9 blood alcohol concentration in the person's blood."

10 Section 32. G.S. 20-16.5(b) reads as rewritten:

11 "(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol~~
 12 ~~Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More~~
 13 ~~After Driving a Commercial Vehicle. Who Are Charged With Certain Implied~~
 14 Consent Offenses. -- A person's driver's license is subject to revocation under this
 15 section if:

- 16 (1) A charging officer has reasonable grounds to believe that the
 17 person has committed an offense subject to the implied-consent
 18 provisions of G.S. 20-16.2;
 19 (2) The person is charged with that offense as provided in G.S. 20-
 20 16.2(a);
 21 (3) The charging officer and the chemical analyst comply with the
 22 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the
 23 person's submission to or procuring a chemical analysis; and
 24 (4) The person:
 25 a. Willfully refuses to submit to the chemical analysis;
 26 b. Has an alcohol concentration of 0.08 or more within a
 27 relevant time after the driving; ~~or~~
 28 c. Has an alcohol concentration of 0.04 or more at any
 29 relevant time after the driving of a commercial ~~vehicle; vehicle; or~~
 30 d. Has any alcohol concentration in the person's blood at any
 31 relevant time after the driving and the person is under 21 years of
 32 age."

33 Section 33. G.S. 20-16.5(b1) reads as rewritten:

34 "(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the
 35 provisions of subsection (b), a person's driver's license is subject to revocation under
 36 this section if:

- 37 (1) ~~He~~ The person requests a precharge chemical analysis pursuant to
 38 G.S. 20-16.2(i); and
 39 (2) ~~He~~ The person has:
 40 a. An alcohol concentration of 0.08 or more at any relevant
 41 time after driving; ~~or~~
 42 b. An alcohol concentration of 0.04 or more at any relevant
 43 time after driving a commercial motor vehicle; ~~and~~ or

1 c. Any alcohol concentration in the person's blood at any
2 relevant time after driving and he is under 21 years of age; and

3 (3) ~~He~~ The person is charged with an implied-consent offense."

4 PART V. INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLD PURCHASE
5 OR POSSESSION OF ALCOHOLIC BEVERAGES.

6 Section 34. G.S. 18B-302(i) is repealed.

7 Section 35. G.S. 15A-146(a) reads as rewritten:

8 "(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~
9 was charged with an infraction under ~~G.S. 18B-302(i)~~, G.S. 18B-302(i) prior to
10 December 1, 1998, and the charge is dismissed, or a finding of not guilty or not
11 responsible is entered, that person may apply to the court of the county where the
12 charge was brought for an order to expunge from all official records any entries
13 relating to his apprehension or trial. The court shall hold a hearing on the application
14 and, upon finding that the person had not previously received an expungement and
15 that the person had not previously been convicted of any felony under the laws of the
16 United States, this State, or any other state, the court shall order the expunction. No
17 person as to whom such an order has been entered shall be held thereafter under any
18 provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false
19 statement or response to any inquiry made for any purpose, by reason of his failure to
20 recite or acknowledge any expunged entries concerning apprehension or trial."

21 PART VI. EFFECTIVE DATE.

22 Section 36. Parts I of this act becomes effective October 1, 1998 and
23 applies to offenses committed on or after that date. Parts II, III, IV, and V of this act
24 become effective December 1, 1998 and apply to offenses committed on or after that
25 date. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in
26 Section 3 of the act shall also apply to vehicles held on or after the effective date as a
27 result of seizure that occurred before, on, or after that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 16, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 1336 - 1998
GOVERNOR'S DWI AMENDMENTS - Senator Odom**

Senate Bill 1336 is a recommendation of the Joint Corrections and Crime Control Oversight Committee and the Governor's DWI Task Force. The bill would implement 5 recommendations of these two groups:

- Revise the DWI forfeiture laws and other related laws.
- Provide for expedited hearings of DWI's involving seized vehicles.
- Provide for zero alcohol tolerance for commercial drivers, school bus drivers, and day care vehicle drivers.
- Provide for the immediate 30-day revocation for drivers licenses of persons under 21 violating zero tolerance.
- Increase the penalty for 19 and 20 year old possessing or purchasing alcoholic beverages.

PART I - DWI FORFEITURE AMENDMENTS

Part I of the bill (Sections 1 through 17) amends the DWI forfeiture law to make changes and improvements in the law in seven major ways:

1. Expands coverage of the law.
2. Provides greater protections for innocent owners.
3. Provides more bonding options to obtain pre-trial temporary release of the vehicle to nondefendant owners.
4. Provides greater protections for lienholders.
5. Provides greater protections for school boards.
6. Clarifies the authority of law enforcement officers and magistrates in seizure situations.
7. Expedites the sale of some seized vehicles providing greater protections to all parties to avoid excessive storage costs.

Section 1 expands the definition of offenses involving impaired driving to include first degree murder when based on impaired driving and habitual impaired driving.

Section 2 (20-28.2) expands the definition of "impaired driving revocation" to include revocations for habitual impaired driving, commercial driving while impaired, and all vehicular homicides involving impaired driving.

Subsection (a1) includes in the definition of an "innocent owner" persons whose vehicle was stolen, persons who filed a police report for unauthorized use of the vehicle, and persons who rent cars that are driven by a person not authorized on the contract to drive.

Subsection (b) permits a forfeiture hearing to be held either at sentencing, at a subsequent hearing, or at an expedited hearing after the defendant fails to appear on the DWI charge and the order of arrest for failing to appear has not been set aside within 60 days.

Subsection (c1) provides that insurance proceeds due from a vehicle damaged in conjunction with the offense leading to the seizure are considered part of the value of the vehicle seized and the proceeds are made subject to forfeiture as well.

Subsection (d) is amended to allow the court to order forfeited collected insurance proceeds and the rights to claim unpaid insurance proceeds.

Subsection (e) provides for the vehicle to be returned to an innocent owner upon payment of towing and storage charges.

Section 3 (20-28.3) Subsections (b) does not require the officer to seize a vehicle reported stolen or a rental vehicle driven by a person not authorized on the rental agreement, and together with (b1) removes from arresting officer the duty to notify the relevant parties of the seizure of the vehicle and transfers that responsibility to a state agency designated by the Governor.

Subsection (c1) makes an order of seizure valid statewide and clarifies law enforcement's authority to effect the order of seizure.

Subsection (d) allows custody of seized vehicles to be held either through a state or regional central storage arrangement, or if none is available, by the local county board of education. Storage fees are raised from \$5 per day to \$10 per day, and school boards are allowed to charge for storage if cars are held on school property.

Subsection (e) expands the options for obtaining temporary release of a seized vehicle by a nondefendant owner or lienholder pending trial by allowing property and bail bonds as collateral for the return of the vehicle at the forfeiture hearing.

Subsection (e1) allows a pretrial determination of innocent owner status by petition. Upon the filing of the petition a court hearing will be set within 10 days, during which time the district attorney may authorize the release of the vehicle if the district attorney determines that the vehicle will not be subject to seizure.

Subsection (e2) establishes a way for a defendant owner to have a pretrial hearing on the question of whether the vehicle is subject to forfeiture where the defendant

contends that the defendant's license was not revoked for an impaired driving offense and the seizure was a mistake.

Subsection (e3) allows the lienholder to petition for pretrial release where the owner is in default on the loan and the value of the vehicle less the towing and storage charges is equal to or less than the outstanding loan.

Subsection (h) provides for insurance proceeds to be seized pending forfeiture, allowing the school board attorney to negotiate the claim and allowing a vehicle determined to be a total loss to be released upon payment of the proceeds.

Subsection (i) provides for several circumstances where a seized vehicle may be sold prior to forfeiture in order to mitigate excessive storage charges. Those situations include 1) where the owner consents to the sale, 2) after 90 days if the vehicle is worth \$1,500 or less, and 3) anytime the towing and storage charges equal or exceed 85% of the worth of the vehicle.

Subsection (k) authorizes the school board attorney to take a more active and significant role in the forfeiture process.

Subsection (l) provides that the defendant be taxed with the cost of towing and storage as part of the restitution for the criminal offense.

Subsection (m) makes trials of DWI cases involving seized vehicles a higher priority and restricts grounds on which these cases can be continued to later dates.

Section 4 (20-28.4) makes conforming changes for other changes made in the bill.

Section 5 (20-28.5). Subsection (a) changes the sales process for forfeited vehicles from a judicial sale to a public sale with special notices as permitted for the disposal of surplus property by schools.

Subsection (c) clarifies how much the county school board should pay other school boards in the county if the county school board retains the forfeited vehicle.

Section 6 repeals restrictions on registration of vehicles for persons whose vehicles are forfeited. These provisions have been recodified in other sections of the law in Sections 9 and 10 of the bill.

Section 8 (20-28.9) authorizes the Governor to designate a state agency to administer regional or statewide contracts for the towing, storage, and sale of seized and forfeited vehicles.

Sections 9 and 10 (20-54 and 20-54.1) recodify restrictions on registration of vehicles for persons whose vehicles are forfeited.

Section 14 (44A-2(d)) amends the mechanics lien statute to exempt seized vehicle towed or stored from the mechanics lien statute and provides for payment of towing and storage through the seizure and forfeiture process where these costs are required to be paid when the vehicle is release or paid from the proceeds of sale

Section 15 (44A-4(b)(1)) amends the mechanics lien statute to permit another alternative for notice to be sent to a vehicle owner whose vehicle is subject to sale to satisfy an unpaid mechanics lien. Under this provision in addition to DMV sending the notice, the lienholder may send the notice directly.

Sections 16 and 17 (58-71-1 and 58-71-35) amend the bail bond statutes to allow bail bonds to be used to bond the release of seized vehicles.

PART II - ZERO TOLERANCE FOR COMMERCIAL DRIVERS

Sections 18 through 24 amend the laws for commercial driving while impaired offense by reducing the permissible alcohol level from less than 0.04 to no alcohol at all. These sections also revoke for life a commercial drivers license for a second or subsequent commercial DWI.

PART III - ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES

Sections 25 through 29 make it illegal to drive a school bus or a child care vehicle with any alcohol in the body. Currently, operators of larger vehicles are required to have commercial drivers licenses and are subject to a 0.04 blood alcohol limit. This change would make zero tolerance applicable not to just commercial drivers but also operators of small vehicles for which a commercial drivers license is not required.

PART IV - IMMEDIATE REVOCATION FOR UNDER 21 DRIVERS

Sections 30 through 32 makes the immediate 30-day civil revocation of a drivers license for DWI offenses also applicable for violations of zero tolerance for drivers under age 21.

PART V - INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLDS FOR PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 33 repeals the provision that makes purchase or possession of alcoholic beverages by 19 or 20 year olds an infraction, thereby increasing the punishment to a Class 1 misdemeanor.

Section 34 makes a conforming change to the expunction statute for this offense.

PART VI - EFFECTIVE DATE

The provisions in the bill changing the DWI forfeiture law would become effective October 1, 1998 and would apply to offenses committed on or after that date. The new provisions allowing for increase options to release a seized vehicle through bonding, an innocent owner petition, a defendant owner petition, a lienholder petition, insurance proceeds and expedited pre-trial sales would apply to vehicles currently held on the effective date. The Parts for zero tolerance violations, immediate revocation for under 21 zero tolerance violation, and increasing the penalty for 19 and 20 year old alcoholic beverages purchase or possession are effective December 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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S1336-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1336
THIS IS A DRAFT 15-JUN-98 22:29:06
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 1998 Gov. DWI Amendments.

(Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI
3 TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL
4 OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER
5 RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL
6 DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES AND
7 CHILD CARE VEHICLES, AND TO PROVIDE FOR IMMEDIATE
8 ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER 21
9 YEARS OF AGE; AND TO ELIMINATE THE INFRACTION TREATMENT OF
10 PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES BY A 19 OR 20
11 YEAR OLD AND TO MAKE CONFORMING CHANGES.
12 The General Assembly of North Carolina enacts:
13 PART I. DWI FORFEITURE REVISIONS.
14 Section 1. G.S. 20-4.01(24a) reads as rewritten:
15 "(24a) Offense Involving Impaired Driving. -- Any of
16 the following offenses:
17 a. Impaired driving under G.S. 20-138.1.
18 b. Death by vehicle under G.S. 20-141.4 when
19 conviction is based upon impaired driving or a
20 substantially equivalent offense under
21 previous law.

- 1 c. ~~Second~~ First or second degree murder under
2 G.S. 14-17 or involuntary manslaughter under
3 G.S. 14-18 when conviction is based upon
4 impaired driving or a substantially equivalent
5 offense under previous law.
- 6 d. An offense committed in another jurisdiction
7 substantially equivalent to the offenses in
8 subparagraphs a through c.
- 9 e. A repealed or superseded offense substantially
10 equivalent to impaired driving, including
11 offenses under former G.S. 20-138 or G.S. 20-
12 139.
- 13 f. Impaired driving in a commercial motor vehicle
14 under G.S. 20-138.2, except that convictions
15 of impaired driving under G.S. 20-138.1 and
16 G.S. 20-138.2 arising out of the same
17 transaction shall be considered a single
18 conviction of an offense involving impaired
19 driving for any purpose under this Chapter.
- 20 g. Habitual impaired driving under G.S. 20-138.5.
21 A conviction under former G.S. 20-140(c) is
22 not an offense involving impaired driving."

23 Section 2. G.S. 20-28.2 reads as rewritten:

24 "§ 20-28.2. Forfeiture of motor vehicle for impaired driving
25 after impaired driving license revocation.

26 (a) Meaning of "Impaired Driving License Revocation". -- The
27 revocation of a person's ~~driver's~~ drivers license is an impaired
28 driving license revocation if the revocation is pursuant to:

29 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-
30 17(a)(2), 20-17(a)(12), ~~or 20-17.2;~~ 20-17.2, or 20-
31 138.5; or

32 (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-
33 17(a)(9), or 20-17(a)(11), if the offense involves
34 impaired driving.

35 (a1) ~~{Definitions.}~~ Definitions. -- As used in this section
36 and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-
37 28.8, and 20-28.9, the following terms mean:

38 (1) Acknowledgment. -- A written document acknowledging
39 that:

40 a. The motor vehicle was operated by a person
41 charged with an offense involving impaired
42 driving while that person's drivers license
43 was revoked as a result of a prior impaired
44 drivers license revocation;

- 1 b. If the motor vehicle is again operated by this
2 particular person, at any time while that
3 person's drivers license is revoked, and the
4 person is charged with an offense involving
5 impaired driving, the motor vehicle is subject
6 to impoundment and forfeiture; and
- 7 c. A lack of knowledge or consent to the
8 operation will not be a defense in the future,
9 unless the motor vehicle owner has taken all
10 reasonable precautions to prevent the use of
11 the motor vehicle by this particular person
12 and immediately reports, upon discovery, any
13 unauthorized use to the appropriate law
14 enforcement agency.
- 15 (1a) Fair market value. -- The value of the seized motor
16 vehicle, as determined in accordance with the
17 schedule of values adopted by the Commissioner
18 pursuant to G.S. 105-187.3.
- 19 (2) Innocent Party owner. -- A motor vehicle owner who:
20 owner:
- 21 a. Did not Who did not know and had no reason to
22 know that the defendant's drivers license was
23 revoked;
- 24 b. Knew Who knew that the defendant's drivers
25 license was revoked, but the defendant drove
26 the vehicle without the person's expressed or
27 implied permission;
- 28 c. Whose vehicle was stolen;
- 29 d. Who files a police report for unauthorized use
30 of the motor vehicle and agrees to prosecute
31 the unauthorized operator of the motor
32 vehicle; or
- 33 e. Who is in the business of renting vehicles,
34 the driver is not listed as an authorized
35 driver on the rental contract and the owner
36 agrees to prosecute for unauthorized use of
37 the motor vehicle.
- 38 (2a) Insurance company. -- Any insurance company that
39 has coverage on or is otherwise liable for repairs
40 or damages to the motor vehicle at the time of the
41 seizure.
- 42 (2b) Insurance proceeds. -- Proceeds paid under an
43 insurance policy for damage to a seized motor
44 vehicle less any payments actually paid to valid

- 1 lienholders and for towing and storage costs
2 incurred for the motor vehicle after the time the
3 motor vehicle became subject to seizure.
- 4 (3) Lienholder. -- A person who holds a perfected
5 security interest in a motor vehicle at the time of
6 seizure.
- 7 (3a) Motor vehicle owner. -- A person in whose name a
8 registration card or certificate of title for a
9 motor vehicle is issued at the time of seizure.
- 10 (4) Order of Forfeiture. -- An order by the court which
11 terminates the rights and ownership interest of a
12 motor vehicle owner in a motor vehicle and any
13 insurance proceeds or proceeds of sale in
14 accordance with G.S. 20-28.2.
- 15 ~~(5) Possessory Lien. -- A lien for all costs and fees~~
16 ~~associated with the towing, storage, or sale of a~~
17 ~~vehicle pursuant to this section. This lien shall~~
18 ~~have priority over perfected and unperfected~~
19 ~~security interests. Storage fees subject to this~~
20 ~~lien shall not exceed five dollars (\$5.00) per day.~~
- 21 (6) Registered Owner. -- A person in whose name a
22 registration card for a motor vehicle is issued.
23 issued at the time of seizure.
- 24 ~~(7) Vehicle Owner. -- A person in whose name a~~
25 ~~registration card or certificate of title for a~~
26 ~~motor vehicle is issued.~~
- 27 (b) When Motor Vehicle Becomes Property Subject to Order of
28 Forfeiture. -- If at a sentencing hearing conducted pursuant to
29 G.S. 20-179 or 20-138.5 the judge determines that the grossly
30 aggravating factor described in G.S. 20-179(c)(2) applies, for
31 the underlying offense involving impaired driving, at a separate
32 hearing after conviction of the defendant, or at a forfeiture
33 hearing held at least 60 days after the defendant failed to
34 appear at the scheduled trial for the underlying offense and the
35 defendant's order of arrest for failing to appear has not been
36 set aside, the judge determines by the greater weight of the
37 evidence that the defendant is guilty of an offense involving
38 impaired driving and that the defendant's license was revoked
39 pursuant to an impaired driving license revocation as defined in
40 subsection (a) of this section, the motor vehicle that was
41 driven by the defendant at the time the defendant committed the
42 offense of impaired driving becomes property subject to an order
43 of forfeiture.

1 (c) Duty of Prosecutor to Notify Possible Innocent Parties. --
2 In any case in which a prosecutor determines that a motor vehicle
3 driven by a defendant may be subject to forfeiture under this
4 ~~section,~~ section and the motor vehicle has not been permanently
5 released to a nondefendant vehicle owner pursuant to G.S. 20-
6 28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a
7 lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall
8 determine the identity of every vehicle owner. The prosecutor
9 shall also determine if there are any lienholders noted on the
10 vehicle's certificate of title. The State shall notify the
11 defendant, each motor vehicle owner, and each lienholder that the
12 motor vehicle may be subject to forfeiture and that the
13 defendant, motor vehicle owner, or the lienholder may intervene
14 to protect that person's interest. The notice may be served by
15 any means reasonably likely to provide actual notice, and shall
16 be served at least ~~fourteen~~ 10 days before the hearing at which
17 an order of forfeiture may be entered.

18 (cl) Motor Vehicles Involved in Accidents. -- If a motor
19 vehicle subject to forfeiture was damaged while the defendant
20 operator was committing the underlying offense involving impaired
21 driving, or was damaged incident to the seizure of the motor
22 vehicle, the Division shall determine the name of any insurance
23 companies that are the insurers of record with the Division for
24 the motor vehicle at the time of the seizure or that may
25 otherwise be liable for repair to the motor vehicle. In any case
26 where a seized motor vehicle was involved in an accident, the
27 Division shall notify the insurance companies that the claim for
28 insurance proceeds for damage to the seized motor vehicle shall
29 be paid to the clerk of superior court of the county where the
30 motor vehicle was seized to be held and disbursed pursuant to
31 further orders of the court. Any insurance company that receives
32 written or other actual notice of seizure pursuant to this
33 section shall not be relieved of any legal obligation under any
34 contract of insurance unless the claim for property damage to the
35 seized motor vehicle minus the policy owner's deductible is paid
36 directly to the clerk of court. The insurance company paying
37 insurance proceeds to the clerk of court pursuant to this section
38 shall be immune from suit by the motor vehicle owner for any
39 damages alleged to have occurred as a result of the motor vehicle
40 seizure. The proceeds shall be held by the clerk. If the motor
41 vehicle is ordered forfeited, the clerk shall disburse the
42 insurance proceeds pursuant to further orders of the court.

43 (d) ~~Duty of Judge, Forfeiture Hearing.~~ -- ~~The trial judge~~
44 Unless a motor vehicle that has been seized pursuant to G.S. 20-

1 28.3 has been permanently released to an innocent owner pursuant
2 to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-
3 28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the
4 court shall conduct a hearing on the forfeiture of the motor
5 vehicle. The hearing may be held at the sentencing hearing on the
6 operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5
7 shall determine if the vehicle is subject to forfeiture under
8 this section, underlying offense involving impaired driving, at a
9 separate hearing after conviction of the defendant, or at a
10 separate forfeiture hearing held not less than 60 days after the
11 defendant failed to appear at the scheduled trial for the
12 underlying offense and the defendant's order of arrest for
13 failing to appear has not been set aside. If at the sentencing
14 hearing, or at a subsequent forfeiture hearing, the judge
15 determines that the requirements of subsections (a) through (c)
16 of this section exist and the defendant was the only motor
17 vehicle owner at the time of the offense, motor vehicle is
18 subject to forfeiture pursuant to this section and proper notice
19 of the hearing has been given, the judge shall order the motor
20 vehicle forfeited. If at the sentencing hearing or at a
21 subsequent forfeiture hearing, the judge determines that the
22 requirements of subsections (a) through (c) of this section exist
23 and the defendant was not the only vehicle owner at the time of
24 the offense, motor vehicle is subject to forfeiture pursuant to
25 this section and proper notice of the hearing has been given, the
26 judge shall order the motor vehicle forfeited unless another
27 motor vehicle owner establishes, by the greater weight of the
28 evidence, that such motor vehicle owner is an innocent party
29 owner as defined by subdivision (a1)(2) of in this section, in
30 which case the trial judge shall order the motor vehicle released
31 to the innocent party vehicle owner pursuant to the provisions of
32 subsection (e) of this section. In any case where the motor
33 vehicle is ordered forfeited, the judge shall either: shall:

34 (1) (a) Authorize the school board to sell sale of the
35 motor vehicle at public sale or allow the
36 county board of education to retain the motor
37 vehicle for its own use pursuant to G.S. 20-
38 28.5; or

39 ~~(2)~~ (b) Release Order the motor vehicle released to an
40 intervening lienholder pursuant to the
41 provisions of subsection ~~(g)~~ (f) of this
42 section; and,

43 (2) (a) Order any proceeds of sale or insurance
44 proceeds held by the clerk of court to be

1 disbursed to the county board of education;
2 and
3 (b) Order any outstanding insurance claims be
4 assigned to the county board of education in
5 the event the motor vehicle has been damaged
6 in an accident incident to the seizure of the
7 motor vehicle.

8 If the judge determines that the ~~requirements of subsection (a)~~
9 ~~and (b) of this section exist~~ motor vehicle is subject to
10 forfeiture pursuant to this section, but that notice as required
11 by subsection (c) has not been given, the judge shall continue
12 the forfeiture proceeding until adequate notice has been given.
13 In no circumstance shall the sentencing of the defendant be
14 delayed as a result of the failure of the prosecutor to give
15 adequate notice.

16 (e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner.
17 -- ~~If At a forfeiture hearing, if~~ a nondefendant vehicle owner
18 establishes by the greater weight of the evidence that: (i) the
19 motor vehicle was being driven by a person who was not the only
20 motor vehicle owner at the time of the underlying offense and
21 (ii) ~~that the petitioner~~ is an "~~innocent party~~", "innocent
22 owner", as defined by this section, a judge shall order the motor
23 vehicle returned released to the that owner, owner, conditioned
24 upon payment of all towing and storage charges incurred as a
25 result of the seizure and impoundment of the motor vehicle.

26 ~~This release~~ Release to a nondefendant vehicle owner shall only
27 be ordered upon satisfactory proof of:

- 28 (1) The identity of the person as a motor vehicle
29 owner;
- 30 (2) The existence of financial responsibility to the
31 extent required by Article 13 of this Chapter; and
32 ~~(3) The payment of towing and storage fees; fees,~~
33 ~~except in the case of release to an innocent~~
34 ~~vehicle owner; and~~
- 35 (4) The execution of an acknowledgment as defined in
36 subdivision (a1)(1) of this section.

37 No motor vehicle subject to forfeiture under this section shall
38 be released to a nondefendant motor vehicle owner if the records
39 of the Division indicate the motor vehicle owner had previously
40 signed an acknowledgment, as required by this section, and the
41 same person was operating the motor vehicle while that person's
42 license was revoked unless the ~~innocent nondefendant motor~~
43 vehicle owner shows by the greater weight of the evidence that
44 the motor vehicle owner has taken all reasonable precautions to

1 prevent the use of the motor vehicle by this particular person
2 and immediately reports, upon discovery, any unauthorized use to
3 the appropriate law enforcement agency. A determination by the
4 court at the forfeiture hearing held pursuant to subsection (d)
5 of this section that the petitioner is not an innocent owner is a
6 final judgment and is immediately appealable to the Court of
7 Appeals.

8 (f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the
9 trial judge shall order a forfeited motor vehicle released to the
10 lienholder upon payment of all towing and storage charges
11 incurred as a result of the seizure of the motor vehicle if the
12 judge determines, by the greater weight of the evidence, that:

13 (1) The lienholder's interest is equal to or greater
14 than the fair market value of the ~~vehicle;~~ motor
15 vehicle, less any accumulated towing and storage
16 costs;

17 (2) The lienholder agrees not to sell, give, or
18 otherwise transfer possession of the forfeited
19 motor vehicle to the defendant or to the motor
20 vehicle owner who owned the motor vehicle
21 immediately prior to forfeiture, or any person
22 acting on the defendant's or motor vehicle owner's
23 behalf; and

24 (3) The forfeited motor vehicle had not previously been
25 released to the lienholder; and lienholder.

26 ~~(4) The lienholder pays, in full, any towing and~~
27 ~~storage costs incurred as a result of the seizure~~
28 ~~of the vehicle.~~

29 A lienholder who refuses to sell, give, or transfer possession of
30 a forfeited motor vehicle to the defendant, the vehicle owner who
31 owned the motor vehicle immediately prior to forfeiture, or any
32 person acting on the behalf of the defendant or motor vehicle
33 owner shall not be liable for damages arising out of such
34 refusal.

35 ~~(g) Possessory Lien. -- The entity that tows or stores the~~
36 ~~motor vehicle, other than the county school board, shall be~~
37 ~~entitled to a possessory lien as defined in G.S. 28.2(a1)(5)."~~

38 Section 3. G.S. 20-28.3 reads as rewritten:

39 "§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles
40 for offenses involving impaired driving while license revoked.

41 (a) ~~{Vehicles Subject to Seizure.}~~ Motor Vehicles Subject to
42 Seizure. -- A motor vehicle that is driven by a person ~~in~~
43 ~~violation of G.S. 20-138.1 or G.S. 20-138.5~~ who is charged with
44 an offense involving impaired driving is subject to seizure if at

1 the time of the violation the drivers license of the person
2 driving the motor vehicle was revoked as a result of a prior
3 impaired driving license revocation as defined in G.S. 20-
4 28.2(a).

5 (b) Duty of Officer. -- If the charging officer has probable
6 cause to believe that a motor vehicle driven by the defendant may
7 be subject to forfeiture under this section, the officer shall
8 seize the motor vehicle and have it impounded. If the officer
9 determines prior to seizure that the motor vehicle had been
10 reported stolen or that the motor vehicle was a rental vehicle
11 driven by a person not listed as an authorized driver on the
12 rental contract, the officer shall not seize the motor vehicle.
13 Probable cause may be based on the officer's personal knowledge,
14 reliable information conveyed by another officer, records of the
15 Division, or other reliable source. ~~The officer shall cause to be~~
16 ~~issued written notification of impoundment to any vehicle owner~~
17 ~~who was not operating or present in the vehicle at the time of~~
18 ~~the offense. This notice shall be sent by first class mail to the~~
19 ~~most recent address contained in the Division records. This~~
20 ~~written notification shall inform the vehicle owner(s) that the~~
21 ~~vehicle has been impounded, shall state the reason for the~~
22 ~~impoundment and the procedure for requesting release of the~~
23 ~~vehicle.~~ The seizing officer shall notify the Division and the
24 agency designated under subsection (b1) of this section of the
25 seizure in accordance with procedures established by the
26 Division. Division and the agency designated under subsection
27 (b1) of this section. Within 72 hours of the seizure of the
28 vehicle the officer shall also cause notice of the impoundment
29 and intent to forfeit the vehicle to be given to any lienholder
30 of record with the Division.

31 (b1) Notification of Impoundment. -- Within 48 hours of
32 receipt of the notice of seizure, an agency designated by the
33 Governor shall issue written notification of impoundment to any
34 lienholder of record and to any motor vehicle owner who was not
35 operating the motor vehicle at the time of the offense. This
36 notice shall be sent by first-class mail to the most recent
37 address contained in the Division's records. If the motor
38 vehicle is registered in another state, notice shall be sent to
39 the address shown on the records of the state where the motor
40 vehicle is registered. This written notification shall provide
41 notice that the motor vehicle has been seized, state the reason
42 for the seizure and the procedure for requesting release of the
43 motor vehicle. Additionally, if the motor vehicle was damaged
44 while the defendant operator was committing an offense involving

1 impaired driving or incident to the seizure, the agency shall
2 issue written notification of the seizure to the owner's
3 insurance company of record and to any other insurance companies
4 that may be insuring other motor vehicles involved in the
5 accident. The Division shall prohibit title to a seized motor
6 vehicle from being transferred by a motor vehicle owner unless
7 authorized by court order.

8 (c) Review by Magistrate. -- Upon ~~seizing~~ determining that
9 there is probable cause for seizing a motor vehicle, the seizing
10 officer shall present to a magistrate within the county where the
11 vehicle was seized driver was charged an affidavit of impoundment
12 setting forth the basis upon which the motor vehicle has been or
13 will be seized for forfeiture. The magistrate shall review the
14 affidavit of impoundment and if the magistrate determines the
15 requirements of this section have been met, shall order the motor
16 vehicle held. The magistrate may request additional information
17 and may hear from the ~~operator~~ defendant if the ~~operator~~
18 defendant is present. If the magistrate determines the
19 requirements of this section have not been met, the magistrate
20 shall order the motor vehicle released to a motor vehicle owner
21 upon payment of towing and storage fees. If the motor vehicle
22 has not yet been seized, and the magistrate determines that
23 seizure is appropriate, the magistrate shall issue an order of
24 seizure of the motor vehicle. The magistrate shall provide a
25 copy of the order of seizure to the clerk of court. The clerk
26 shall provide copies of the order of seizure to the district
27 attorney and the attorney for the county board of education.

28 (cl) Effecting an Order of Seizure. -- An order of seizure
29 shall be valid anywhere in the State. Any officer with
30 territorial jurisdiction and who has subject matter jurisdiction
31 for violations of Chapter 20 of the General Statutes, may use
32 such force as may be reasonable to seize the motor vehicle and to
33 enter upon the property of the defendant to accomplish the
34 seizure. An officer who has probable cause to believe the motor
35 vehicle is concealed or stored on private property of a person
36 other than the defendant may obtain a search warrant to enter
37 upon that property for the purpose of seizing the motor vehicle.

38 (d) Custody of Motor Vehicle. -- ~~The~~ Unless a State agency
39 through a statewide or regional contract, or in the absence of a
40 statewide or regional contract, the county board of education,
41 has contractually provided for towing by another procedure, the
42 seized motor vehicle shall be towed by a commercial towing
43 company designated by the law enforcement agency that seized the
44 motor vehicle. ~~to a location designated by the county school~~

1 ~~board for the county in which the operator of the vehicle is~~
2 ~~charged and~~ If either a statewide or regional contractor, or the
3 county board of education, in the absence of a statewide or
4 regional contract, chooses to contract for local towing services,
5 all towing companies on the towing list for each law enforcement
6 agency with jurisdiction within the county shall be given written
7 notice and an opportunity to submit proposals prior to a contract
8 for local towing services being awarded. Upon seizure, the motor
9 vehicle is placed under the constructive possession of the school
10 board county board of education for the county in which the
11 operator of the vehicle is charged pending release or sale. Each
12 Absent a statewide or regional contract that provides otherwise,
13 each county school board board of education may elect to have
14 seized motor vehicles stored on property owned or leased by the
15 school county board of education and charge ~~ne~~ a reasonable fee
16 for ~~storage~~ storage, not to exceed ten dollars (\$10.00) per day.
17 In the alternative, in the absence of a statewide or regional
18 contract, the county school board board of education may contract
19 with a commercial towing and storage facility or other private
20 entity for the ~~storage~~ towing, storage and disposal of seized
21 motor vehicles, and a storage fee of not more than ~~five~~ ten
22 dollars ~~(\$5.00)~~ (\$10.00) per day may be charged. Except for
23 gross negligence or intentional misconduct, the county board of
24 education, or any of its employees, shall not be liable to the
25 owner or lienholder for damage to or loss of the motor vehicle or
26 its contents during the time the motor vehicle is being towed or
27 stored pursuant to this subsection.

28 (e) Release of Motor Vehicle Pending Trial. -- A motor vehicle
29 owner, or a lienholder of a motor vehicle, other than the driver
30 at the time of the underlying offense resulting in the seizure,
31 may apply to the clerk of superior court in the county where the
32 charges are pending for pretrial release of the motor vehicle.

33 The clerk shall release the motor vehicle to a qualified
34 nondefendant motor vehicle owner or a lienholder conditioned upon
35 payment of all towing and storage charges incurred as a result of
36 seizure and impoundment of the motor vehicle under the following
37 conditions:

- 38 (1) The motor vehicle has been ~~stored~~ seized for not
39 less than 24 hours;
- 40 ~~(2) All towing and storage charges have been paid;~~
- 41 (3) ~~Execution of a good and valid bond with sufficient~~
42 ~~sureties in an amount equal to twice the value of~~
43 ~~the seized vehicle, as determined in accordance~~
44 ~~with the schedule of values adopted by the~~

- 1 ~~Commissioner of Motor Vehicles pursuant to G.S.~~
2 ~~105-187.3, A bond in an amount equal to the fair~~
3 ~~market value of the motor vehicle as defined by~~
4 ~~G.S. 20-28.2 has been executed and is secured by a~~
5 ~~cash deposit in the full amount of the bond, by a~~
6 ~~recordable deed of trust to real property in the~~
7 ~~full amount of the bond, or by at least one solvent~~
8 ~~surety, payable to the county school fund and~~
9 ~~conditioned on return of the motor vehicle, in~~
10 ~~substantially the same condition as it was at the~~
11 ~~time of seizure and without any new or additional~~
12 ~~liens or encumbrances, on the day of trial of the~~
13 ~~operator; any hearing scheduled and noticed by the~~
14 ~~district attorney under G.S. 20-28.2(c), unless the~~
15 ~~motor vehicle has been permanently released;~~
- 16 (4) If a qualified nondefendant motor vehicle owner,
17 execution of an acknowledgment as described in G.S.
18 20-28.2(a1); and
- 19 (5) A check of the records of the Division indicates
20 that the requesting motor vehicle owner has not
21 previously executed an acknowledgment naming the
22 operator of the seized vehicle, motor vehicle;
- 23 (6) A bond posted to secure the release of this motor
24 vehicle under this subsection has not been
25 previously ordered forfeited under G.S. 20-28.5;
26 and
- 27 (7) If a lienholder, execution of a written agreement
28 not to sell, give, or otherwise transfer possession
29 of the forfeited motor vehicle to the motor vehicle
30 owner who owned the motor vehicle immediately prior
31 to seizure, or any person acting on the motor
32 vehicle owner's behalf. A lienholder who refuses
33 to sell, give, or transfer possession of a
34 forfeited motor vehicle to the defendant, the motor
35 vehicle owner who owned the motor vehicle
36 immediately prior to forfeiture, or any person
37 acting on the behalf of the defendant or motor
38 vehicle owner shall not be held liable for damages
39 arising out of such refusal.
- 40 In the event a nondefendant motor vehicle owner or lienholder
41 who obtains temporary possession of a seized motor vehicle
42 pursuant to this subsection does not return the motor vehicle on
43 the day of the forfeiture hearing as noticed by the district
44 attorney under G.S. 20-28.3(c) or otherwise violates a condition

1 of pretrial release of the seized motor vehicle as set forth in
2 this subsection, the bond posted shall be ordered forfeited and
3 an order of seizure shall be issued by the court. Additionally,
4 a nondefendant motor vehicle owner or lienholder who willfully
5 violates any condition of pretrial release may be held in civil
6 or criminal contempt.

7 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. --
8 A nondefendant motor vehicle owner may file a petition with the
9 clerk of court seeking a pretrial determination that the
10 petitioner is an innocent owner. The clerk shall schedule a
11 hearing before a judge for a hearing pursuant to G.S. 20-28.2(e),
12 to be held within 10 business days or as soon as thereafter may
13 be feasible. Notice of the hearing shall be given to the
14 petitioner, the district attorney, and the attorney for the
15 county board of education. The clerk shall forward a copy of the
16 petition to the district attorney for the district attorney's
17 review. If, based on the available evidence of record, the
18 district attorney determines that the petitioner is an innocent
19 owner and that the motor vehicle is not subject to forfeiture,
20 the district attorney may authorize the clerk of court to issue
21 an order releasing the motor vehicle to the petitioner subject to
22 the conditions of release as set forth in G.S. 20-28.2(e) and no
23 hearing shall be held. The clerk shall send a copy of the order
24 of release to the county board of education attorney. At any
25 pretrial hearing conducted pursuant to this subsection, the court
26 is not required to determine the issue of forfeiture, only the
27 issue of whether the petitioner is an innocent owner.
28 Accordingly, the State shall not be required to prove the
29 underlying offense of impaired driving or the existence of a
30 prior drivers license revocation. An order issued under this
31 subsection finding that the petitioner failed to establish that
32 the petitioner is an innocent owner may be reconsidered by the
33 court as part of the forfeiture hearing conducted pursuant to
34 G.S. 20-28.2(d).

35 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. --
36 A defendant motor vehicle owner may file a petition with the
37 clerk of court seeking a pretrial determination that the
38 defendant's license was not revoked pursuant to an impaired
39 driving license revocation as defined in G.S. 20-28.2(a). The
40 clerk shall schedule a hearing before a judge of the division in
41 which the underlying criminal charge is pending for a hearing to
42 be held within 10 business days or as soon as thereafter as may
43 be feasible. Notice of the hearing shall be given to the
44 defendant, the district attorney, and the attorney for the county

1 board of education. The clerk shall forward a copy of the
2 petition to the district attorney for the district attorney's
3 review. If, based on the available evidence of record, the
4 district attorney determines that the defendant's motor vehicle
5 is not subject to forfeiture, the district attorney may authorize
6 the clerk of court to issue an order releasing the motor vehicle
7 to the defendant upon payment of all towing and storage charges
8 incurred as a result of the seizure and impoundment of the motor
9 vehicle, subject to the satisfactory proof of the identity of the
10 defendant as a motor vehicle owner and the existence of financial
11 responsibility to the extent required by Article 13 of this
12 Chapter, and no hearing shall be held. The clerk shall send a
13 copy of the order of release to the attorney for the county board
14 of education. At any pretrial hearing conducted pursuant to this
15 subsection, the court is not required to determine the issue of
16 the underlying offense of impaired driving only the existence of
17 a prior drivers license revocation as an impaired driving license
18 revocation. Accordingly, the State shall not be required to
19 prove the underlying offense of impaired driving. An order
20 issued under this subsection finding that the defendant failed to
21 establish that the defendant's license was not revoked pursuant
22 to an impaired driving license revocation as defined in G.S. 20-
23 28.2(a) may be reconsidered by the court as part of the
24 forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

25 (e3) Pretrial Release of Motor Vehicle to Lienholder. -- A
26 lienholder may file a petition with the clerk of court requesting
27 the court to order pretrial release of a seized motor vehicle.
28 The lienholder shall serve a copy of the petition on all
29 interested parties which shall include the registered owner, the
30 titled owner, the district attorney and the county board of
31 education attorney. Upon 10 days' prior notice of the date,
32 time, and location of the hearing sent by the lienholder to all
33 interested parties, a judge, after a hearing, shall order a
34 seized motor vehicle released to the lienholder conditioned upon
35 payment of all towing and storage costs incurred as a result of
36 the seizure and impoundment of the motor vehicle if the judge
37 determines, by the greater weight of the evidence, that:

- 38 (1) Default on the obligation secured by the motor
39 vehicle has occurred;
40 (2) As a consequence of default, the lienholder is
41 entitled to possession of the motor vehicle;
42 (3) The lienholder's interest is equal to or greater
43 than the fair market value of the motor vehicle,
44 less any accumulated towing and storage costs;

1 (4) The lienholder agrees not to sell, give, or
2 otherwise transfer possession of the forfeited
3 motor vehicle to the motor vehicle owner; and

4 (5) The forfeited motor vehicle had not previously been
5 released to the lienholder.

6 The clerk of superior court may order a seized vehicle released
7 to the lienholder conditioned upon payment of all towing and
8 storage costs incurred as a result of the seizure and impoundment
9 of the motor vehicle at any time when all interested parties
10 have, in writing, waived any rights that they may have to notice
11 and a hearing, and the lienholder has agreed to the provision of
12 subdivision (4) above. A lienholder who refuses to sell, give, or
13 transfer possession of a forfeited motor vehicle to:

14 (1) The defendant;

15 (2) The motor vehicle owner who owned the motor vehicle
16 immediately prior to forfeiture; or

17 (3) Any person acting on the behalf of the defendant or
18 the motor vehicle owner,

19 shall not be liable for damages arising out of such refusal.
20 However, any subsequent violation of the conditions of release by
21 the lienholder shall be punishable by civil or criminal contempt.

22 ~~(f) Duty of Trial Judge. -- The trial judge at the sentencing~~
23 ~~hearing on the operator's charge of violating C.S. 20-138.1 or~~
24 ~~C.S. 20-138.5 shall determine if the vehicle is subject to~~
25 ~~forfeiture pursuant to the provisions of C.S. 20-28.2.~~

26 ~~(g) Possessory Lien. -- The entity that tows and stores the~~
27 ~~vehicle; other than the county school board, shall be entitled to~~
28 ~~a possessory lien as defined in C.S. 28.2(a1)(5).~~

29 (h) Insurance Proceeds. -- In the event a motor vehicle is
30 damaged incident to the conduct of the defendant which gave rise
31 to the defendant's arrest and seizure of the motor vehicle
32 pursuant to this section, the county board of education, or its
33 authorized designee, is authorized to negotiate the county board
34 of education's interest with the insurance company and to
35 compromise and accept settlement of any claim for damages.
36 Property insurance proceeds accruing to the defendant, or other
37 owner of the seized motor vehicle, shall be paid by the
38 responsible insurance company directly to the clerk of superior
39 court in the county where the motor vehicle was seized. If the
40 motor vehicle is declared a total loss by the insurance company
41 responsible for repairs to the motor vehicle, the clerk of
42 superior court, upon application of the county board of
43 education, shall enter an order that the motor vehicle be
44 released to the insurance company upon payment into the court of

1 all insurance proceeds for damage to the motor vehicle after
2 payment of towing and storage costs and all valid liens. The
3 clerk of superior court shall provide the Division with a
4 certified copy of the order entered pursuant to this subsection,
5 and the Division shall transfer title to the insurance company or
6 to such other person or entity as may be designated by the
7 insurance company. Insurance proceeds paid to the clerk of court
8 pursuant to this subsection shall be subject to forfeiture
9 pursuant to G.S. 20-28.5 and shall be disbursed pursuant to
10 further orders of the court. An affected motor vehicle owner or
11 lienholder who objects to any agreed upon settlement under this
12 subsection may file an independent claim with the insurance
13 company for any additional monies believed owed.

14 (i) Expedited Sale of Seized Motor Vehicles in Certain Cases.
15 -- In order to avoid additional liability for towing and storage
16 costs pending resolution of the criminal proceedings of the
17 defendant, the county board of education may, after expiration of
18 90 days from the date of seizure, sell any motor vehicle having a
19 fair market value of one thousand five hundred dollars (\$1,500)
20 or less. The county board of education may also sell a motor
21 vehicle, regardless of the fair market value, any time the towing
22 and storage costs exceed eighty-five percent (85%) of the fair
23 market value of the vehicle, or with the consent of all the motor
24 vehicle owners. Any sale conducted pursuant to this subsection
25 shall take place upon not less than 10 days' prior notice to the
26 motor vehicle owners and lienholders and the proceeds of the sale
27 shall be deposited with the clerk of superior court. If an order
28 of forfeiture is entered by the court, the court shall order the
29 proceeds held by the clerk to be disbursed as provided in G.S.
30 20-28.5(b). If the court determines that the motor vehicle is
31 not subject to forfeiture, the court shall order the proceeds
32 held by the clerk to be disbursed first to pay the sale, towing,
33 and storage costs, second to pay outstanding liens on the motor
34 vehicle, and the balance to be paid to the motor vehicle owners.

35 (j) Retrieval of Certain Personal Property. -- At reasonable
36 times, the entity charged with storing the motor vehicle may
37 permit owners of personal property not affixed to the motor
38 vehicle to retrieve those items from the motor vehicle, provided
39 satisfactory proof of ownership of the motor vehicle or the items
40 of personal property is presented to the storing entity.

41 (k) County Board of Education Right to Appear and Participate
42 in Proceedings. -- The attorney for the county board of education
43 shall be given notice of all proceedings regarding offenses
44 involving impaired driving related to a motor vehicle subject to

1 forfeiture. The attorney for the county board of education shall
2 also have the right to appear and to be heard on all issues
3 relating to the seizure, possession, release, forfeiture, sale,
4 and other matters related to the seized vehicle under this
5 section. With the prior consent of the county board of
6 education, the district attorney may delegate to the attorney for
7 the county board of education any or all of the duties of the
8 district attorney under this section. Clerks of superior court,
9 law enforcement agencies, and all other agencies with information
10 relevant to the seizure, impoundment, release or forfeiture of
11 motor vehicles are authorized and directed to provide county
12 boards of education with access to that information and to do so
13 by electronic means when existing technology makes this type of
14 transmission possible.

15 (l) Payment of Fees Upon Conviction. -- If the driver of a
16 motor vehicle seized pursuant to this section is convicted of an
17 offense involving impaired driving, the defendant shall be
18 ordered to pay as restitution to the county board of education,
19 the motor vehicle owner, or the lienholder, the cost paid or
20 owing for the towing, storage, and sale of the motor vehicle to
21 the extent the costs were not covered by the proceeds from the
22 forfeiture and sale of the motor vehicle. The order of payment
23 of costs under this subsection, in addition to being a part of
24 the criminal judgment, shall also constitute a civil judgment in
25 favor of the party to whom the restitution is owed, shall be
26 docketed by the clerk of court as any other civil judgment, and
27 may be collected as any other civil judgment.

28 (m) Trial Priority. -- Trials of impaired driving offenses
29 involving forfeitures of motor vehicles pursuant to G.S. 20-28.2
30 shall be scheduled on the arresting officer's next court date or
31 within 30 days of the offense, whichever comes first.

32 Once scheduled, the case shall not be continued unless all of
33 the following conditions are met:

34 (1) A written motion for continuance is filed with
35 notice given to the opposing party prior to the
36 motion being heard.

37 (2) The judge makes a finding of a 'compelling reason'
38 for the continuance.

39 (3) The motion and finding are attached to the court
40 case record.

41 Upon a determination of guilt, the issue of vehicle forfeiture
42 shall be heard by the judge immediately, or as soon thereafter as
43 feasible, and the judge shall issue the appropriate orders
44 pursuant to G.S. 20-28.2(d).

1 Should a defendant appeal his conviction to superior court, the
2 appeal shall be set down for trial on the next available trial
3 date and the limitations on continuances and requirement for
4 expedited hearing on the forfeiture of the vehicle, set forth
5 above, shall apply."

6 Section 4. G.S. 20-28.4 reads as rewritten:

7 "§ 20-28.4. Release of impounded motor vehicles by judge.

8 (a) Release to Innocent Vehicle Owner. -- A motor vehicle
9 owner who was not the operator of the motor vehicle at the time
10 of the offense may file a petition in the underlying criminal
11 case with the the court for return of the vehicle clerk of
12 superior court for:

- 13 (1) Temporary pretrial release of the motor vehicle;
- 14 (2) Permanent release of the motor vehicle;
- 15 (3) Payment of any insurance proceeds; or
- 16 (4) Payment of proceeds of the prior sale of a motor
17 vehicle,

18 pursuant to the provisions of ~~C.S. 20-28.2(e)~~, G.S. 20-28.2(e),
19 20-28.3(e), 20-28.3(h), or 20-28.3(i).

20 (b) Acknowledgment Required. -- The motor vehicle owner
21 seeking release petitioning under this section ~~or pretrial~~
22 release under ~~C.S. 20-28.3~~ shall sign an acknowledgment as
23 described in G.S. 20-28.2(a1)(1).

24 (c) Release to Lienholder. -- A Upon petition by the
25 lienholder and after 10 days' prior written notice to the
26 district attorney and the county board of education attorney, a
27 district court judge may order a forfeited motor vehicle released
28 to a lienholder if the judge determines, by the greater weight of
29 the evidence, that the lienholder satisfies the criteria as set
30 out in G.S. 20-28.2(f). Lienholders may also petition the court
31 for possession of a seized motor vehicle prior to forfeiture
32 pursuant to the provisions of G.S. 20-28.3(e3).

33 (d) Release Upon Conclusion of Trial. -- If the driver of a
34 motor vehicle seized pursuant to G.S. 20-28.3:

- 35 (1) Is subsequently not convicted of either ~~C.S.~~
36 ~~20-138.1 or C.S. 20-138.5~~ an offense involving
37 impaired driving due to dismissal or a finding of
38 not guilty; or
- 39 (2) The judge at the ~~sentencing hearing fails to find~~
40 ~~the grossly aggravating factor described in C.S.~~
41 ~~20-179(c)(2),~~ a forfeiture hearing conducted
42 pursuant to G.S. 20-28.2(d) fails to find that the
43 driver's license was revoked as a result of a prior

1 impaired driving license revocation as defined in
2 G.S. 20-28.2,

3 the seized motor vehicle shall be returned released to the motor
4 vehicle owner, owner conditioned upon payment of towing and
5 storage costs.

6 ~~If the court finds that probable cause did not exist to seize~~
7 ~~the motor vehicle, the court shall order the vehicle released.~~

8 ~~A determination which results in the return or release of the~~
9 ~~seized vehicle under this section authorizes the driver, vehicle~~
10 ~~owner, or lienholder to recover towing or storage fees paid in~~
11 ~~order to obtain pretrial release of the motor vehicle. Towing or~~
12 ~~storage fees recovered pursuant to this subsection shall be paid~~
13 ~~by the county school board from forfeitures paid into the county~~
14 ~~school fund."~~

15 Section 5. G.S. 20-28.5 reads as rewritten:

16 "§ 20-28.5. Forfeiture of impounded vehicle, motor vehicle or
17 funds.

18 (a) Sale. -- ~~Unless a judge orders the vehicle returned to an~~
19 ~~innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S.~~
20 ~~20-28.4, the vehicle shall be ordered forfeited and sold or~~
21 ~~transferred to the school board in the county where the charges~~
22 ~~were filed. The sale of the vehicle shall be a judicial A motor~~
23 ~~vehicle ordered forfeited and sold shall be sold at a public sale~~
24 ~~conducted in accordance with the provisions of Parts 1 and 2 of~~
25 ~~Article 29A of Chapter 1 Article 12 of Chapter 160A of the~~
26 ~~General Statutes Statutes, applicable to sales authorized~~
27 ~~pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the~~
28 ~~notice requirements of this subsection, and shall be conducted by~~
29 ~~the county school board board of education or a person acting on~~
30 ~~its behalf. In addition to the notice requirements of Part 2 of~~
31 ~~Article 29A of Chapter 1 of the General Statutes, notice of sale~~
32 ~~Notice of sale, including the date, time, location, and manner of~~
33 ~~sale, shall also be given by certified mail, return receipt~~
34 ~~requested, first-class mail, to all motor vehicle owners at the~~
35 ~~address shown by the Division's records of the Division and at~~
36 ~~any other address of the motor vehicle owner as may be found in~~
37 ~~the criminal file in which the forfeiture was ordered. Notice~~
38 ~~Written notice of sale shall also be by certified mail, return~~
39 ~~receipt requested, given to all lienholders on file with the~~
40 ~~Division. Notice of sale shall be given to the Division in~~
41 ~~accordance with the procedures established by the Division.~~
42 ~~Notices required to be given under this subsection shall be~~
43 ~~mailed at least 14 days prior to the date of sale. A lienholder~~
44 ~~shall be permitted to purchase the notor vehicle at any such sale~~

1 by bidding in the amount of its lien, if that should be the
2 highest bid, without being required to tender any additional
3 funds, other than the towing and storage fees.

4 (b) Proceeds of Sale. -- Proceeds of any sale conducted under
5 this section shall first be applied to the cost of sale and then
6 to satisfy towing and storage liens and the cost of sale costs.
7 The balance of the proceeds of sale, if any, shall be used to
8 satisfy any other existing liens of record that were properly
9 recorded ~~with the Division~~ prior to the date of initial seizure
10 of the vehicle. Any remaining balance shall be paid to the county
11 school fund in the county in which the motor vehicle was ordered
12 forfeited. If there is more than one school board in the county,
13 then the net proceeds of sale shall be distributed in the same
14 manner as fines and other forfeitures. ~~Vehicles sold~~ The sale of
15 a motor vehicle pursuant to this section shall be deemed to
16 extinguish all existing liens on the motor vehicle and the motor
17 vehicle shall be transferred free and clear of any liens.

18 (c) Retention of Motor Vehicle. -- The county board of
19 education may, at its option, retain any forfeited motor vehicle
20 for its ~~use~~ use upon payment of towing and storage costs. If the
21 motor vehicle is retained, any valid lien of record at the time
22 of the initial seizure of the motor vehicle shall be satisfied by
23 the ~~school board~~ county board of education relieving the motor
24 vehicle owner of all liability for the obligation secured by the
25 motor vehicle. If there is more than one school board in the
26 county, and the motor vehicle is retained by the county board of
27 education, then the fair market value of the motor vehicle, less
28 the costs for towing, storage, and liens paid, shall be used to
29 determine and pay the share due each of the school boards in the
30 same manner as fines and other forfeitures.

31 ~~(d) [Counties with Multiple School Boards.] -- If there is~~
32 ~~more than one school board in the county, then the fair market~~
33 ~~value of the vehicle shall be used to determine the share due~~
34 ~~each of the school boards in the same manner as fines and other~~
35 ~~forfeitures.~~

36 (e) Order of Forfeiture; Appeals. -- An order of forfeiture is
37 stayed pending appeal of a conviction for an offense that is the
38 basis for the order. When the conviction of an offense that is
39 the basis for an order of forfeiture is appealed from district
40 court, the issue of forfeiture shall be heard in superior court
41 de novo. Appeal from a final order of forfeiture shall be to the
42 Court of Appeals."

43 Section 6. G.S. 20-28.6 is repealed.

44 Section 7. G.S. 20-28.7 reads as rewritten:

1 "§ 20-28.7. Responsibility of Division of Motor Vehicles.

2 The Division shall establish procedures by rule to provide for
3 the orderly seizure, forfeiture, sale, and transfer of motor
4 vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-
5 28.4, ~~20-28.5, and 20-28.6,~~ and 20-28.5."

6 Section 8. Article 2 of Chapter 20 of the General
7 Statutes is amended by adding two new sections to read:

8 "§ 20-28.8. Reports to the Division.

9 The clerk of superior court shall report to the Division all
10 information as may be required by the Division concerning the
11 disposition of all motor vehicles seized pursuant to G.S. 20-28.3
12 or any other statute, including all orders of seizure under G.S.
13 20-28.3, orders of release under G.S. 20-28.3 and G.S. 20-28.4,
14 and orders of forfeiture under G.S. 20-28.2.

15 "§ 20-28.9. Authority for agency to administer a statewide or
16 regional towing, storage, and sales program for driving while
17 impaired vehicles forfeited.

18 An agency designated by the Governor is authorized to enter
19 into a contract for a statewide service or contracts for regional
20 services to tow, store, process, maintain, and sell motor
21 vehicles seized pursuant to G.S. 20-28.3. All motor vehicles
22 seized under G.S. 20-28.3 shall be subject to contracts entered
23 into pursuant to this section. Contracts shall be let in
24 accordance with the provisions of Article 3 of Chapter 143 of the
25 General Statutes. All contracts shall ensure the safety of the
26 motor vehicles while held and any funds arising from the sale of
27 any seized motor vehicle. The contract shall require the
28 contractor to maintain and make available to the agency a
29 computerized up-to-date inventory of all motor vehicles held
30 under the contract, together with an accounting of all accrued
31 charges, the status of the vehicle, and the county school fund to
32 which the proceeds of sale are to be paid."

33 Section 9. G.S. 20-54 reads as rewritten:

34 "§ 20-54. Authority for refusing registration or certificate of
35 title.

36 The Division shall refuse registration or issuance of a
37 certificate of title or any transfer of registration upon any of
38 the following grounds:

39 (1) The application contains a false or fraudulent
40 statement, the applicant has failed to furnish
41 required information or reasonable additional
42 information requested by the Division, or the
43 applicant is not entitled to the issuance of a

- 1 certificate of title or registration of the vehicle
2 under this Article.
- 3 (2) The vehicle is mechanically unfit or unsafe to be
4 operated or moved upon the highways.
- 5 (3) The Division has reasonable ground to believe that
6 the vehicle is a stolen or embezzled vehicle, or
7 that the granting of registration or the issuance
8 of a certificate of title would constitute a fraud
9 against the rightful owner or another person who
10 has a valid lien against the vehicle.
- 11 (4) The registration of the vehicle stands suspended or
12 revoked for any reason as provided in the motor
13 vehicle laws of this State.
- 14 (5) The required fee has not been paid.
- 15 (6) The vehicle is not in compliance with the emissions
16 inspection requirements of Part 2 of Article 3A of
17 this Chapter or a civil penalty assessed as a
18 result of the failure of the vehicle to comply with
19 that Part has not been paid.
- 20 (7) The Division has been notified that the motor
21 vehicle has been seized by a law enforcement
22 officer and is subject to forfeiture pursuant to
23 G.S. 20-28.2, et. seq., or any other statute."

24 Section 10. Part 2 of Article 3 of Chapter 20 of the
25 General Statutes is amended by adding a new section to read:

26 "§ 20-54.1. Forfeiture of right of registration.

27 (a) Upon receipt of notice of conviction of a violation of an
28 offense involving impaired driving while the person's license is
29 revoked as a result of a prior impaired driving license
30 revocation as defined in G.S. 20-28.2, the Division shall revoke
31 the registration of all motor vehicles registered in the
32 convicted person's name and shall not register a motor vehicle in
33 the convicted person's name until the convicted person's license
34 is restored. Upon receipt of notice of revocation of
35 registration from the Division, the convicted person shall
36 surrender the registration on all motor vehicles registered in
37 the convicted person's name to the Division within 10 days of the
38 date of the notice.

39 (b) Upon receipt of a notice of conviction under subsection
40 (a) of this section, the Division shall revoke the registration
41 of the motor vehicle seized and the owner shall not be allowed to
42 register the motor vehicle seized until the convicted operator's
43 drivers license has been restored. The Division shall not revoke
44 the registration of the owner of the seized motor vehicle if the

1 "§ 20-28.7. Responsibility of Division of Motor Vehicles.

2 The Division shall establish procedures by rule to provide for
3 the orderly seizure, forfeiture, sale, and transfer of motor
4 vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-
5 28.4, ~~20-28.5, and 20-28.6,~~ and 20-28.5."

6 Section 8. Article 2 of Chapter 20 of the General
7 Statutes is amended by adding two new sections to read:

8 "§ 20-28.8. Reports to the Division.

9 The clerk of superior court shall report to the Division all
10 information as may be required by the Division concerning the
11 disposition of all motor vehicles seized pursuant to G.S. 20-28.3
12 or any other statute, including all orders of seizure under G.S.
13 20-28.3, orders of release under G.S. 20-28.3 and G.S. 20-28.4,
14 and orders of forfeiture under G.S. 20-28.2.

15 "§ 20-28.9. Authority for agency to administer a statewide or
16 regional towing, storage, and sales program for driving while
17 impaired vehicles forfeited.

18 An agency designated by the Governor is authorized to enter
19 into a contract for a statewide service or contracts for regional
20 services to tow, store, process, maintain, and sell motor
21 vehicles seized pursuant to G.S. 20-28.3. All motor vehicles
22 seized under G.S. 20-28.3 shall be subject to contracts entered
23 into pursuant to this section. Contracts shall be let in
24 accordance with the provisions of Article 3 of Chapter 143 of the
25 General Statutes. All contracts shall ensure the safety of the
26 motor vehicles while held and any funds arising from the sale of
27 any seized motor vehicle. The contract shall require the
28 contractor to maintain and make available to the agency a
29 computerized up-to-date inventory of all motor vehicles held
30 under the contract, together with an accounting of all accrued
31 charges, the status of the vehicle, and the county school fund to
32 which the proceeds of sale are to be paid."

33 Section 9. G.S. 20-54 reads as rewritten:

34 "§ 20-54. Authority for refusing registration or certificate of
35 title.

36 The Division shall refuse registration or issuance of a
37 certificate of title or any transfer of registration upon any of
38 the following grounds:

39 (1) The application contains a false or fraudulent
40 statement, the applicant has failed to furnish
41 required information or reasonable additional
42 information requested by the Division, or the
43 applicant is not entitled to the issuance of a

- 1 certificate of title or registration of the vehicle
2 under this Article.
- 3 (2) The vehicle is mechanically unfit or unsafe to be
4 operated or moved upon the highways.
- 5 (3) The Division has reasonable ground to believe that
6 the vehicle is a stolen or embezzled vehicle, or
7 that the granting of registration or the issuance
8 of a certificate of title would constitute a fraud
9 against the rightful owner or another person who
10 has a valid lien against the vehicle.
- 11 (4) The registration of the vehicle stands suspended or
12 revoked for any reason as provided in the motor
13 vehicle laws of this State.
- 14 (5) The required fee has not been paid.
- 15 (6) The vehicle is not in compliance with the emissions
16 inspection requirements of Part 2 of Article 3A of
17 this Chapter or a civil penalty assessed as a
18 result of the failure of the vehicle to comply with
19 that Part has not been paid.
- 20 (7) The Division has been notified that the motor
21 vehicle has been seized by a law enforcement
22 officer and is subject to forfeiture pursuant to
23 G.S. 20-28.2, et. seq., or any other statute."

24 Section 10. Part 2 of Article 3 of Chapter 20 of the
25 General Statutes is amended by adding a new section to read:

26 "§ 20-54.1. Forfeiture of right of registration.

27 (a) Upon receipt of notice of conviction of a violation of an
28 offense involving impaired driving while the person's license is
29 revoked as a result of a prior impaired driving license
30 revocation as defined in G.S. 20-28.2, the Division shall revoke
31 the registration of all motor vehicles registered in the
32 convicted person's name and shall not register a motor vehicle in
33 the convicted person's name until the convicted person's license
34 is restored. Upon receipt of notice of revocation of
35 registration from the Division, the convicted person shall
36 surrender the registration on all motor vehicles registered in
37 the convicted person's name to the Division within 10 days of the
38 date of the notice.

39 (b) Upon receipt of a notice of conviction under subsection
40 (a) of this section, the Division shall revoke the registration
41 of the motor vehicle seized and the owner shall not be allowed to
42 register the motor vehicle seized until the convicted operator's
43 drivers license has been restored. The Division shall not revoke
44 the registration of the owner of the seized motor vehicle if the

1 owner is determined to be an innocent owner. The Division shall
2 only revoke the owner's registration after the owner is given an
3 opportunity for a hearing to demonstrate that the owner is an
4 innocent owner as defined in G.S. 20-28.2. Upon receipt of
5 notice of revocation of registration from the Division, the owner
6 shall surrender the registration on the motor vehicle seized to
7 the Division within 10 days of the date of the notice."

8 Section 11. G.S. 20-55 reads as rewritten:

9 "§ 20-55. Examination of registration records and index of
10 seized, stolen and recovered vehicles.

11 The Division, upon receiving application for any transfer of
12 registration or for original registration of a vehicle, other
13 than a new vehicle sold by a North Carolina dealer, shall first
14 check the engine and serial numbers shown in the application with
15 its record of registered motor vehicles, and against the index
16 of seized, stolen and recovered motor vehicles required to be
17 maintained by this Article."

18 Section 12. G.S. 20-114(c) reads as rewritten:

19 "(c) It shall also be the duty of every ~~sheriff of every county~~
20 ~~of the State and of every police or peace officer of the State~~
21 law enforcement officer to make immediate report to the
22 Commissioner of all motor vehicles reported to ~~him~~ the officer as
23 abandoned or that are seized by ~~him~~ the officer for being used
24 for illegal transportation of alcoholic beverages or other
25 unlawful purposes, or seized and are subject to forfeiture
26 pursuant to G.S. 20-28.2, et. seq., or any other statute, and no
27 motor vehicle shall be sold by any sheriff, police or peace
28 officer, or by any person, firm or corporation claiming a
29 mechanic's or storage lien, or under judicial proceedings, until
30 notice on a form approved by the Commissioner shall have been
31 given the Commissioner at least 20 days before the date of such
32 sale."

33 Section 13. G.S. 1-339.4 reads as rewritten:

34 "§ 1-339.4. Who may hold sale.

35 An order of sale may authorize the persons designated below to
36 hold the sale:

- 37 (1) In any proceeding, a commissioner specially
38 appointed therefor; or
39 (2) In a proceeding to sell property of a decedent, the
40 administrator, executor or collector of such
41 decedent's estate;
42 (3) In a proceeding to sell property of a minor, the
43 guardian of such minor's estate;

- 1 (4) In a proceeding to sell property of an incompetent,
2 the guardian or trustee of such incompetent's
3 estate;
- 4 (5) In a proceeding to sell property of an absent or
5 missing person, the administrator, collector,
6 conservator, or guardian of the estate of such
7 absent or missing person;
- 8 (6) In a proceeding to foreclose a deed of trust, the
9 trustee named in the deed of trust;
- 10 (7) In a receivership proceeding, the receiver;
- 11 (8) In a proceeding to sell property of a trust, the
12 trustee;

13 ~~(9) In a motor vehicle forfeiture proceeding pursuant~~
14 ~~to G.S. 20-28.5, the county school board or a~~
15 ~~person acting on its behalf."~~

16 Section 14. G.S. 44A-2(d) reads as rewritten:

17 "(d) Any person who repairs, services, tows, or stores motor
18 vehicles in the ordinary course of ~~his~~ the person's business
19 pursuant to an express or implied contract with an owner or legal
20 possessor of the motor vehicle vehicle, except for a motor
21 vehicle seized pursuant to G.S. 20-28.3, has a lien upon the
22 motor vehicle for reasonable charges for such repairs, servicing,
23 towing, storing, or for the rental of one or more substitute
24 vehicles provided during the repair, servicing, or storage. This
25 lien shall have priority over perfected and unperfected security
26 interests. Payment for towing and storing a motor vehicle seized
27 pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2
28 through G.S. 20-28.5."

29 Section 15. G.S. 44A-4(b)(1) reads as rewritten:

30 "(b) Notice and Hearings. --

31 (1) If the property upon which the lien is claimed is a
32 motor vehicle that is required to be registered,
33 the lienor following the expiration of the relevant
34 time period provided by subsection (a) shall give
35 notice to the Division of Motor Vehicles that a
36 lien is asserted and sale is proposed and shall
37 remit to the Division a fee of ten dollars
38 (\$10.00). The Division of Motor Vehicles shall
39 issue notice by registered or certified mail,
40 return receipt requested, ~~within 15 days of receipt~~
41 ~~of notice from the lienor,~~ to the person having
42 legal title to the property, if reasonably
43 ascertainable, to the person with whom the lienor
44 dealt if different, and to each secured party and

1 other person claiming an interest in the property
2 who is actually known to the Division or who can be
3 reasonably ascertained. The notice shall state that
4 a lien has been asserted against specific property
5 and shall identify the lienor, the date that the
6 lien arose, the general nature of the services
7 performed and materials used or sold for which the
8 lien is asserted, the amount of the lien, and that
9 the lienor intends to sell the property in
10 satisfaction of the lien. The notice shall inform
11 the recipient that the recipient has the right to a
12 judicial hearing at which time a determination will
13 be made as to the validity of the lien prior to a
14 sale taking place. The notice shall further state
15 that the recipient has a period of 10 days from the
16 date of receipt in which to notify the Division by
17 registered or certified mail, return receipt
18 requested, that a hearing is desired and that if
19 the recipient wishes to contest the sale of his
20 property pursuant to such lien, the recipient
21 should notify the Division that a hearing is
22 ~~desired and the Division shall notify lienor~~
23 desired. The notice shall state the required
24 information in simplified terms and shall contain a
25 form whereby the recipient may notify the Division
26 that a hearing is desired by the return of such
27 form to the Division. The Division shall notify
28 the lienor whether such notice is timely received
29 by the Division. In lieu of the notice by the
30 lienor to the Division and the notices issued by
31 the Division described above, the lienor may issue
32 notice on a form approved by the Division pursuant
33 to the notice requirements above. If notice is
34 issued by the lienor, the recipient shall return
35 the form requesting a hearing to the lienor, and
36 not the Division, within 10 days from the date they
37 receive the notice if a judicial hearing is
38 requested. Failure of the recipient to notify the
39 Division or lienor, as specified in the notice,
40 within 10 days of the receipt of such notice that a
41 hearing is desired shall be deemed a waiver of the
42 right to a hearing prior to the sale of the
43 property against which the lien is asserted, ~~the~~
44 ~~Division shall notify the lienor,~~ and the lienor

1 may proceed to enforce the lien by public or
2 private sale as provided in this section and the
3 Division shall transfer title to the property
4 pursuant to such sale. If the Division or lienor,
5 as specified in the notice, is notified within the
6 10-day period provided above that a hearing is
7 desired prior to sale, the lien may be enforced by
8 sale as provided in this section and the Division
9 will transfer title only pursuant to the order of a
10 court of competent jurisdiction.

11 If the ~~Division notifies the lienor that the~~
12 registered or certified mail notice has been
13 returned as undeliverable, or if ~~the Division~~
14 ~~cannot ascertain~~ the name of the person having
15 legal title to the vehicle cannot reasonably be
16 ascertained and the fair market value of the
17 vehicle is less than eight hundred dollars
18 (\$800.00), the lienor may institute a special
19 proceeding in the county where the vehicle is being
20 held, for authorization to sell that vehicle.
21 Market value shall be determined by the schedule of
22 values adopted by the Commissioner under G.S. 105-
23 187.3.

24 In such a proceeding a lienor may include more
25 than one vehicle, but the proceeds of the sale of
26 each shall be subject only to valid claims against
27 that vehicle, and any excess proceeds of the sale
28 shall escheat to the State and be paid immediately
29 to the treasurer for disposition pursuant to
30 Chapter 116B of the General Statutes. A vehicle
31 owner or possessor claiming an interest in such
32 proceeds shall have a right of action under G.S.
33 116B-38.

34 The application to the clerk in such a special
35 proceeding shall contain the notice of sale
36 information set out in subsection (f) hereof. If
37 the application is in proper form the clerk shall
38 enter an order authorizing the sale on a date not
39 less than 14 days therefrom, and the lienor shall
40 cause the application and order to be sent
41 immediately by first-class mail pursuant to G.S.
42 1A-1, Rule 5, to each person to whom ~~the Division~~
43 ~~has mailed~~ notice was mailed pursuant to this
44 subsection. Following the authorized sale the

1 lienor shall file with the clerk a report in the
2 form of an affidavit, stating that the lienor has
3 complied with the public or private sale provisions
4 of G.S. 44A-4, the name, address, and bid of the
5 high bidder or person buying at a private sale, and
6 a statement of the disposition of the sale
7 proceeds. The clerk then shall enter an order
8 directing the Division to transfer title
9 accordingly.

10 If prior to the sale the owner or legal
11 possessor contests the sale or lien in a writing
12 filed with the clerk, the proceeding shall be
13 handled in accordance with G.S. 1-399."

14 Section 16. G.S. 58-71-1 reads as rewritten:

15 "§ 58-71-1. Definitions.

16 The following words when used in this Article shall have the
17 following meanings:

18 (1) 'Accommodation bondsman' is a natural person who
19 has reached the age of 18 years and is a bona fide
20 resident of this State and who, aside from love and
21 affection and release of the person concerned,
22 receives no consideration for action as surety and
23 who endorses the bail bond after providing
24 satisfactory evidences of ownership, value and
25 marketability of real or personal property to the
26 extent necessary to reasonably satisfy the official
27 taking bond that such real or personal property
28 will in all respects be sufficient to assure that
29 the full principal sum of the bond will be realized
30 in the event of breach of the conditions thereof.
31 "Consideration" as used in this subdivision does
32 not include the legal rights of a surety against a
33 principal by reason of breach of the conditions of
34 a bail bond nor does it include collateral
35 furnished to and securing the surety so long as the
36 value of the surety's rights in the collateral do
37 not exceed the principal's liability to the surety
38 by reason of a breach in the conditions of said
39 bail bond.

40 (2) 'Bail bond' shall mean an undertaking by the
41 principal to appear in court as required upon
42 penalty of forfeiting bail to the State in a stated
43 amount; and may include an unsecured appearance
44 bond, a premium-secured appearance bond, an

1 appearance bond secured by a cash deposit of the
2 full amount of the bond, an appearance bond secured
3 by a mortgage pursuant to G.S. 58-74-5, and an
4 appearance bond secured by at least one surety. A
5 bail bond may also include a bond securing the
6 return of a motor vehicle subject to forfeiture in
7 accordance with G.S. 20-28.3(e).

- 8 (3) 'Bail bondsman' shall mean a surety bondsman,
9 professional bondsman or an accommodation bondsman
10 as hereinafter defined.
- 11 (4) 'Commissioner' shall mean the Commissioner of
12 Insurance.
- 13 (5) 'Insurer' shall mean any domestic, foreign, or
14 alien surety company which has qualified generally
15 to transact surety business and specifically to
16 transact bail bond business in this State.
- 17 (6) 'Obligor' shall mean a principal or a surety on a
18 bail bond.
- 19 (7) 'Principal' shall mean a defendant or witness
20 obligated to appear in court as required upon
21 penalty of forfeiting bail under a bail bond, bond
22 or a person obligated to return a motor vehicle
23 subject to forfeiture in accordance with G.S. 20-
24 28.3(e).
- 25 (8) 'Professional bondsman' shall mean any person who
26 is approved and licensed by the Commissioner and
27 who pledges cash or approved securities with the
28 Commissioner as security for bail bonds written in
29 connection with a judicial proceeding and receives
30 or is promised money or other things of value
31 therefor.
- 32 (9) 'Runner' shall mean a person employed by a bail
33 bondsman for the purpose of assisting the bail
34 bondsman in presenting the defendant in court when
35 required, or to assist in apprehension and
36 surrender of defendant to the court, or keeping
37 defendant under necessary surveillance, or to
38 execute bonds on behalf of the licensed bondsman
39 when the power of attorney has been duly recorded.
40 "Runner" does not include, however, a duly licensed
41 attorney-at-law or a law-enforcement officer
42 assisting a bondsman.

1 (10) 'Surety' shall mean one who, with the principal, is
2 liable for the amount of the bail bond upon
3 forfeiture of bail.

4 (11) 'Surety bondsman' means any person who is licensed
5 by the Commissioner as a surety bondsman under this
6 Article, is appointed by an insurer by power of
7 attorney to execute or countersign bail bonds for
8 the insurer in connection with judicial
9 proceedings, and receives or is promised
10 consideration for doing so."

11 Section 17. G.S. 58-71-35(a) reads as rewritten:

12 "(a) The Except for bonds issued to secure the return of a
13 motor vehicle subject to forfeiture in accordance with G.S. 20-
14 28.3(e), the procedure for forfeiture of bail shall be that
15 provided in Article 26 of Chapter 15A of the General Statutes and
16 all provisions of that Article shall continue in full force and
17 effect."

18 PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

19 Section 18. G.S. 20-16.2(a) reads as rewritten:

20 "(a) Basis for Charging Officer to Require Chemical Analysis;
21 Notification of Rights. -- Any person who drives a vehicle on a
22 highway or public vehicular area thereby gives consent to a
23 chemical analysis if charged with an implied-consent offense. The
24 charging officer shall designate the type of chemical analysis to
25 be administered, and it may be administered when the officer has
26 reasonable grounds to believe that the person charged has
27 committed the implied-consent offense.

28 Except as provided in this subsection or subsection (b), before
29 any type of chemical analysis is administered the person charged
30 shall be taken before a chemical analyst authorized to administer
31 a test of a person's breath, who shall inform the person orally
32 and also give the person a notice in writing that:

33 (1) The person has a right to refuse to be tested.

34 (2) Refusal to take any required test or tests will
35 result in an immediate revocation of the person's
36 driving privilege for at least 30 days and an
37 additional 12-month revocation by the Division of
38 Motor Vehicles.

39 (3) The test results, or the fact of the person's
40 refusal, will be admissible in evidence at trial on
41 the offense charged.

42 (4) The person's driving privilege will be revoked
43 immediately for at least 30 days if:

1 a. The test reveals an alcohol concentration of
2 0.08 or more; or
3 b. The person was driving a commercial motor
4 vehicle and the test reveals ~~an~~ any alcohol
5 ~~concentration of 0.04 or more.~~ concentration.

6 (5) The person may choose a qualified person to
7 administer a chemical test or tests in addition to
8 any test administered at the direction of the
9 charging officer.

10 (6) The person has the right to call an attorney and
11 select a witness to view for him or her the testing
12 procedures, but the testing may not be delayed for
13 these purposes longer than 30 minutes from the time
14 when the person is notified of his or her rights.

15 If the charging officer or an arresting officer is authorized to
16 administer a chemical analysis of a person's breath, the charging
17 officer or the arresting officer may give the person charged the
18 oral and written notice of rights required by this subsection.
19 This authority applies regardless of the type of chemical
20 analysis designated."

21 Section 19. G.S. 20-16.5(b) reads as rewritten:

22 "(b) Revocations for Persons Who Refuse Chemical Analyses or
23 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~
24 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~
25 Who Are Charged With Certain Implied Consent Offenses. -- A
26 person's driver's license is subject to revocation under this
27 section if:

28 (1) A charging officer has reasonable grounds to
29 believe that the person has committed an offense
30 subject to the implied-consent provisions of G.S.
31 20-16.2;

32 (2) The person is charged with that offense as provided
33 in G.S. 20-16.2(a);

34 (3) The charging officer and the chemical analyst
35 comply with the procedures of G.S. 20-16.2 and G.S.
36 20-139.1 in requiring the person's submission to or
37 procuring a chemical analysis; and

38 (4) The person:

39 a. Willfully refuses to submit to the chemical
40 analysis;

41 b. Has an alcohol concentration of 0.08 or more
42 within a relevant time after the driving; or

1 c. Has ~~an~~ any alcohol concentration ~~of 0.04 or~~
2 ~~more~~ at any relevant time after the driving of a
3 commercial vehicle."

4 Section 20. G.S. 20-16.5(b1) reads as rewritten:

5 "(b1) Precharge Test Results as Basis for Revocation. --
6 Notwithstanding the provisions of subsection (b), a person's
7 driver's license is subject to revocation under this section if:

- 8 (1) ~~He~~ The person requests a precharge chemical
9 analysis pursuant to G.S. 20-16.2(i); and
10 (2) ~~He~~ The person has:
11 a. An alcohol concentration of 0.08 or more at
12 any relevant time after driving; or
13 b. ~~An~~ Any alcohol concentration ~~of 0.04 or more~~
14 at any relevant time after driving a commercial
15 motor vehicle; and
16 (3) ~~He~~ The person is charged with an implied-consent
17 offense."

18 Section 21. G.S. 20-17(a) reads as rewritten:

19 "(a) The Division shall forthwith revoke the license of any
20 driver upon receiving a record of the driver's conviction for any
21 of the following offenses:

- 22 (1) Manslaughter (or negligent homicide) resulting from
23 the operation of a motor vehicle.
24 (2) Either of the following impaired driving offenses:
25 a. Impaired driving under G.S. 20-138.1.
26 b. Impaired driving under G.S. ~~20-138.2~~ when the
27 ~~person convicted did not take a chemical test at~~
28 ~~the time of the offense or the person took a~~
29 ~~chemical test at the time of the offense and the~~
30 ~~test revealed that the person had an alcohol~~
31 ~~concentration at any relevant time after driving of~~
32 ~~less than 0.04 or of 0.08 or more. 20-138.2.~~
33 (3) Any felony in the commission of which a motor
34 vehicle is used.
35 (4) Failure to stop and render aid in violation of G.S.
36 20-166(a) or (b).
37 (5) Perjury or the making of a false affidavit or
38 statement under oath to the Division under this
39 Article or under any other law relating to the
40 ownership of motor vehicles.
41 (6) Conviction upon two charges of reckless driving
42 committed within a period of 12 months.

- 1 (7) Conviction upon one charge of reckless driving
2 while engaged in the illegal transportation of
3 intoxicants for the purpose of sale.
- 4 (8) Conviction of using a false or fictitious name or
5 giving a false or fictitious address in any
6 application for a drivers license, or learner's
7 permit, or any renewal or duplicate thereof, or
8 knowingly making a false statement or knowingly
9 concealing a material fact or otherwise committing
10 a fraud in any such application or procuring or
11 knowingly permitting or allowing another to commit
12 any of the foregoing acts.
- 13 (9) Death by vehicle as defined in G.S. 20-141.4.
- 14 (10) Repealed by Session Laws 1997-443, s. 19.26(b).
- 15 (11) Conviction of assault with a motor vehicle.
- 16 (12) A second or subsequent conviction of transporting
17 an open container of alcoholic beverage under G.S.
18 20-138.7."

19 Section 22. G.S. 20-17.4 reads as rewritten:

20 "§ 20-17.4. Disqualification to drive a commercial motor
21 vehicle.

22 (a) One Year. -- Any of the following disqualifies a person
23 from driving a commercial motor vehicle for one year:

- 24 (1) A first conviction of G.S. 20-138.1, driving while
25 impaired, that occurred while the person was
26 driving a motor vehicle not a commercial motor
27 vehicle.
- 28 ~~(2) A first conviction of G.S. 20-138.2, driving a~~
29 ~~commercial motor vehicle while impaired.~~
- 30 (3) A first conviction of G.S. 20-166, hit and run,
31 involving a commercial motor vehicle driven by the
32 person.
- 33 (4) A first conviction of a felony in the commission of
34 which a commercial motor vehicle was used.
- 35 (5) Refusal to submit to a chemical test when charged
36 with an implied-consent offense, as defined in G.S.
37 20-16.2, that occurred while the person was driving
38 a commercial motor vehicle.

39 (b) Modified Life. -- A person who has been disqualified from
40 driving a commercial motor vehicle ~~for~~ for either of the
41 following:

- 42 (1) a A first conviction or refusal described in
43 subsection (a) who, as the result of a separate
44 incident, is subsequently convicted of an offense

1 or commits an act requiring disqualification under
2 subsection ~~(a)~~ (a); or

3 (2) A first conviction of G.S. 20-138.2 is disqualified
4 for life. The Division may adopt guidelines,
5 including conditions, under which a
6 disqualification for life under this subsection may
7 be reduced to 10 years.

8 (b) Life Without Reduction. -- A person is disqualified from
9 driving a commercial motor vehicle for life, without the
10 possibility of reinstatement after 10 years, if that person is
11 convicted of a second or subsequent violation of G.S. 20-138.2 or
12 if the person refuses to submit to a chemical test a second time
13 when charged with an implied-consent offense, as defined in G.S.
14 20-16.2, that occurred while the person was driving a commercial
15 motor vehicle.

16 (c) Life. -- A person is disqualified from driving a
17 commercial motor vehicle for life if that person uses a
18 commercial motor vehicle in the commission of any felony
19 involving the manufacture, distribution, or dispensing of a
20 controlled substance, or possession with intent to manufacture,
21 distribute, or dispense a controlled substance.

22 (d) Less Than a Year. -- A person is disqualified from driving
23 a commercial motor vehicle for 60 days if that person is
24 convicted of two serious traffic violations, or 120 days if
25 convicted of three or more serious traffic violations, committed
26 in a commercial motor vehicle arising from separate incidents
27 occurring within a three-year period.

28 (e) Three Years. -- A person is disqualified from driving a
29 commercial motor vehicle for three years if that person is
30 convicted of an offense or commits an act requiring
31 disqualification under subsection (a) and the offense or act
32 occurred while the person was transporting a hazardous material
33 that required the motor vehicle driven to be placarded.

34 (f) Revocation Period. -- A person is disqualified from
35 driving a commercial motor vehicle for the period during which
36 the person's regular or commercial drivers license is revoked."

37 Section 23. G.S. 20-36 reads as rewritten:

38 "§ 20-36. Ten-year-old convictions not considered.

39 ~~No~~ Except for a second or subsequent conviction for violating
40 G.S. 20-138.2 or a second failure to submit to a chemical test
41 when charged with an implied-consent offense, as defined in G.S.
42 20-16.2, that occurred while the person was driving a commercial
43 motor vehicle, no conviction of any violation of the motor
44 vehicle laws shall be considered by the Division in determining

1 whether any person's driving privilege shall be suspended or
2 revoked or in determining the appropriate period of suspension or
3 revocation after 10 years has elapsed from the date of ~~such~~ that
4 conviction."

5 Section 24. G.S. 20-138.2(a) reads as rewritten:

6 "(a) Offense. -- A person commits the offense of impaired
7 driving in a commercial motor vehicle if ~~he~~ the person drives a
8 commercial motor vehicle upon any highway, any street, or any
9 public vehicular area within the State:

10 (1) While under the influence of an impairing
11 substance; or

12 (2) After having consumed sufficient alcohol that ~~he~~
13 the person has, at any relevant time after the
14 driving, ~~an any alcohol concentration of 0.04 or~~
15 ~~more~~ concentration."

16 PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS
17 OF CHILD CARE VEHICLES.

18 Section 25. G.S. 20-4.01(27) reads as rewritten:

19 "(27) Passenger Vehicles. --

20 a. Excursion passenger vehicles. -- Vehicles
21 transporting persons on sight-seeing or
22 travel tours.

23 b. For hire passenger vehicles. -- Vehicles
24 transporting persons for compensation.
25 This classification shall not include
26 vehicles operated as ambulances; vehicles
27 operated by the owner where the costs of
28 operation are shared by the passengers;
29 vehicles operated pursuant to a
30 ridesharing arrangement as defined in
31 G.S. 136-44.21; vehicles transporting
32 students for the public school system
33 under contract with the State Board of
34 Education or vehicles leased to the
35 United States of America or any of its
36 agencies on a nonprofit basis; or
37 vehicles used for human service or
38 volunteer transportation.

39 c. Common carriers of passengers. --
40 Vehicles operated under a certificate of
41 authority issued by the Utilities
42 Commission for operation on the highways
43 of this State between fixed termini or
44 over a regular route for the

- 1 transportation of persons for
2 compensation.
- 3 c1. Child care vehicles. -- Vehicles under
4 the direction and control of a child care
5 facility, as defined in G.S. 110-86(3),
6 and operated by an owner or employee of
7 the child care facility for the purpose
8 of transporting children to and from the
9 facility, or to and from a place for
10 participation in an event or activity.
- 11 d. Motorcycles. -- Vehicles having a saddle
12 for the use of the rider and designed to
13 travel on not more than three wheels in
14 contact with the ground, including motor
15 scooters and motor-driven bicycles, but
16 excluding tractors and utility vehicles
17 equipped with an additional form of
18 device designed to transport property,
19 three-wheeled vehicles while being used
20 by law-enforcement agencies and mopeds as
21 defined in subdivision d1 of this
22 subsection.
- 23 d1. Moped. -- A vehicle that has two or three
24 wheels, no external shifting device, and
25 a motor that does not exceed 50 cubic
26 centimeters piston displacement and
27 cannot propel the vehicle at a speed
28 greater than 20 miles per hour on a level
29 surface.
- 30 d2. Motor home or house car. -- A vehicular
31 unit, designed to provide temporary
32 living quarters, built into as an
33 integral part, or permanently attached
34 to, a self-propelled motor vehicle
35 chassis or van. The vehicle must provide
36 at least four of the following
37 facilities: cooking, refrigeration or
38 icebox, self-contained toilet, heating or
39 air conditioning, a portable water supply
40 system including a faucet and sink,
41 separate 110-125 volt electrical power
42 supply, or an LP gas supply.
- 43 d3. School activity bus. -- A vehicle,
44 generally painted a different color from

- 1 a school bus, whose primary purpose is to
2 transport school students and others to
3 or from a place for participation in an
4 event other than regular classroom work.
5 The term includes a public, private, or
6 parochial vehicle that meets this
7 description.
- 8 d4. School bus. -- A vehicle whose primary
9 purpose is to transport school students
10 over an established route to and from
11 school for the regularly scheduled school
12 day, that is equipped with alternately
13 flashing red lights on the front and rear
14 and a mechanical stop signal, and that
15 bears the words "School Bus" on the front
16 and rear in letters at least 8 inches in
17 height. The term includes a public,
18 private, or parochial vehicle that meets
19 this description.
- 20 e. U-drive-it passenger vehicles. --
21 Vehicles rented or leased to be operated
22 by the lessee. This shall not include
23 vehicles of nine-passenger capacity or
24 less which are leased for a term of one
25 year or more to the same person or
26 vehicles leased or rented to public
27 school authorities for driver-training
28 instruction.
- 29 f. Ambulances. -- Vehicles equipped for
30 transporting wounded, injured, or sick
31 persons.
- 32 g. Private passenger vehicles. -- All other
33 passenger vehicles not included in the
34 above definitions."

35 Section 26. G.S. 20-16.2(a) reads as rewritten:

36 "(a) Basis for Charging Officer to Require Chemical Analysis;
37 Notification of Rights. -- Any person who drives a vehicle on a
38 highway or public vehicular area thereby gives consent to a
39 chemical analysis if charged with an implied-consent offense. The
40 charging officer shall designate the type of chemical analysis to
41 be administered, and it may be administered when the officer has
42 reasonable grounds to believe that the person charged has
43 committed the implied-consent offense.

1 Except as provided in this subsection or subsection (b), before
2 any type of chemical analysis is administered the person charged
3 shall be taken before a chemical analyst authorized to administer
4 a test of a person's breath, who shall inform the person orally
5 and also give the person a notice in writing that:

- 6 (1) The person has a right to refuse to be tested.
7 (2) Refusal to take any required test or tests will
8 result in an immediate revocation of the person's
9 driving privilege for at least 30 days and an
10 additional 12-month revocation by the Division of
11 Motor Vehicles.
12 (3) The test results, or the fact of the person's
13 refusal, will be admissible in evidence at trial on
14 the offense charged.
15 (4) The person's driving privilege will be revoked
16 immediately for at least 30 days if any of the
17 following occur:
18 a. The test reveals an alcohol concentration of
19 0.08 or ~~more; or~~ more.
20 b. The person was driving a commercial motor
21 vehicle and the test reveals an alcohol
22 concentration of 0.04 or more.
23 c. The person was driving a school bus, a school
24 activity bus, or a child care vehicle while
25 transporting children and the test reveals any
26 alcohol concentration.
27 (5) The person may choose a qualified person to
28 administer a chemical test or tests in addition to
29 any test administered at the direction of the
30 charging officer.
31 (6) The person has the right to call an attorney and
32 select a witness to view for him or her the testing
33 procedures, but the testing may not be delayed for
34 these purposes longer than 30 minutes from the time
35 when the person is notified of his or her rights.

36 If the charging officer or an arresting officer is authorized to
37 administer a chemical analysis of a person's breath, the charging
38 officer or the arresting officer may give the person charged the
39 oral and written notice of rights required by this subsection.
40 This authority applies regardless of the type of chemical
41 analysis designated."

42 Section 27. G.S. 20-16.5(b) reads as rewritten:

43 "(b) Revocations for Persons Who Refuse Chemical Analyses or
44 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~

1 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle-~~
2 Who Are Charged With Certain Implied Consent Offenses. -- A
3 person's driver's license is subject to revocation under this
4 section if:

- 5 (1) A charging officer has reasonable grounds to
6 believe that the person has committed an offense
7 subject to the implied-consent provisions of G.S.
8 20-16.2;
- 9 (2) The person is charged with that offense as provided
10 in G.S. 20-16.2(a);
- 11 (3) The charging officer and the chemical analyst
12 comply with the procedures of G.S. 20-16.2 and G.S.
13 20-139.1 in requiring the person's submission to or
14 procuring a chemical analysis; and
- 15 (4) The person:
16 a. Willfully refuses to submit to the chemical
17 analysis;
- 18 b. Has an alcohol concentration of 0.08 or more
19 within a relevant time after the driving; ~~or~~
20 c. Has an alcohol concentration of 0.04 or more
21 at any relevant time after the driving of a
22 commercial ~~vehicle-vehicle~~; or
23 d. Has any alcohol concentration at any relevant
24 time after transporting children in a school bus, a
25 school activity bus, or a child care vehicle."

26 Section 28. G.S. 20-16.5(b1) reads as rewritten:

27 "(b1) Precharge Test Results as Basis for Revocation. --
28 Notwithstanding the provisions of subsection (b), a person's
29 driver's license is subject to revocation under this section if:

- 30 (1) ~~He~~ The person requests a precharge chemical
31 analysis pursuant to G.S. 20-16.2(i); and
- 32 (2) ~~He~~ The person has:
33 a. An alcohol concentration of 0.08 or more at
34 any relevant time after driving; ~~or~~
35 b. An alcohol concentration of 0.04 or more at
36 any relevant time after driving a commercial motor
37 ~~vehicle; and vehicle~~; or
38 c. Any alcohol concentration at any relevant time
39 after transporting children in a school bus, a
40 school activity bus, or a child care vehicle; and
41 (3) ~~He~~ The person is charged with an implied-consent
42 offense."

43 Section 29. G.S. 20-138.1(a) reads as rewritten:

1 "(a) Offense. -- A person commits the offense of impaired
2 driving if ~~he~~ the person drives any vehicle upon any highway, any
3 street, or any public vehicular area within this State:

4 (1) While under the influence of an impairing
5 substance; ~~or~~

6 (2) After having consumed sufficient alcohol that ~~he~~
7 the person has, at any relevant time after the
8 driving, an alcohol concentration of 0.08 or ~~more~~
9 more; or

10 (3) After having consumed sufficient alcohol that the
11 person has, at any relevant time after the driving
12 of a school bus, a school activity bus, or a child
13 care vehicle transporting any children, any alcohol
14 concentration."

15 PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS
16 OF AGE.

17 Section 30. G.S. 20-16.2(a) reads as rewritten:

18 "(a) Basis for Charging Officer to Require Chemical Analysis;
19 Notification of Rights. -- Any person who drives a vehicle on a
20 highway or public vehicular area thereby gives consent to a
21 chemical analysis if charged with an implied-consent offense. The
22 charging officer shall designate the type of chemical analysis to
23 be administered, and it may be administered when the officer has
24 reasonable grounds to believe that the person charged has
25 committed the implied-consent offense.

26 Except as provided in this subsection or subsection (b), before
27 any type of chemical analysis is administered the person charged
28 shall be taken before a chemical analyst authorized to administer
29 a test of a person's breath, who shall inform the person orally
30 and also give the person a notice in writing that:

31 (1) The person has a right to refuse to be tested.

32 (2) Refusal to take any required test or tests will
33 result in an immediate revocation of the person's
34 driving privilege for at least 30 days and an
35 additional 12-month revocation by the Division of
36 Motor Vehicles.

37 (3) The test results, or the fact of the person's
38 refusal, will be admissible in evidence at trial on
39 the offense charged.

40 (4) The person's driving privilege will be revoked
41 immediately for at least 30 days if:

42 a. The test reveals an alcohol concentration of
43 0.08 or more; ~~or~~

- 1 b. The person was driving a commercial motor
2 vehicle and the test reveals an alcohol
3 concentration of 0.04 or ~~more~~ more; or
4 c. The person is under 21 years of age and the
5 test reveals any alcohol concentration."

6 Section 31. G.S. 20-16.5(b) reads as rewritten:

7 "(b) Revocations for Persons Who Refuse Chemical Analyses or
8 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~
9 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle~~
10 Who Are Charged With Certain Implied Consent Offenses. -- A
11 person's driver's license is subject to revocation under this
12 section if:

- 13 (1) A charging officer has reasonable grounds to
14 believe that the person has committed an offense
15 subject to the implied-consent provisions of G.S.
16 20-16.2;
17 (2) The person is charged with that offense as provided
18 in G.S. 20-16.2(a);
19 (3) The charging officer and the chemical analyst
20 comply with the procedures of G.S. 20-16.2 and G.S.
21 20-139.1 in requiring the person's submission to or
22 procuring a chemical analysis; and
23 (4) The person:
24 a. Willfully refuses to submit to the chemical
25 analysis;
26 b. ~~Has~~ Has an alcohol concentration of 0.08 or more
27 within a relevant time after the driving; ~~or~~
28 c. Has an alcohol concentration of 0.04 or more
29 at any relevant time after the driving of a
30 commercial ~~vehicle~~ vehicle; or
31 d. Has any alcohol concentration at any relevant
32 time after the driving and the person is under 21
33 years of age."

34 Section 32. G.S. 20-16.5(b1) reads as rewritten:

- 35 "(b1) Precharge Test Results as Basis for Revocation. --
36 Notwithstanding the provisions of subsection (b), a person's
37 driver's license is subject to revocation under this section if:
38 (1) ~~He~~ The person requests a precharge chemical
39 analysis pursuant to G.S. 20-16.2(i); and
40 (2) ~~He~~ The person has:
41 a. An alcohol concentration of 0.08 or more at
42 any relevant time after driving; ~~or~~

- 1 b. An alcohol concentration of 0.04 or more at
2 any relevant time after driving a commercial motor
3 vehicle; ~~and~~ or
4 c. Any alcohol concentration at any relevant
5 time after driving and he is under 21 years of age;
6 and
7 (3) ~~He~~ The person is charged with an implied-consent
8 offense."

9 PART V. INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLD PURCHASE OR
10 POSSESSION OF ALCOHOLIC BEVERAGES.

11 Section 33. G.S. 18B-302(i) is repealed.

12 Section 34. G.S. 15A-146(a) reads as rewritten:

13 "(a) If any person is charged with a crime, either a
14 misdemeanor or a felony, or ~~is~~ was charged with an infraction
15 under ~~G.S. 18B-302(i)~~, G.S. 18B-302(i) prior to December 1, 1998,
16 and the charge is dismissed, or a finding of not guilty or not
17 responsible is entered, that person may apply to the court of the
18 county where the charge was brought for an order to expunge from
19 all official records any entries relating to his apprehension or
20 trial. The court shall hold a hearing on the application and,
21 upon finding that the person had not previously received an
22 expungement and that the person had not previously been convicted
23 of any felony under the laws of the United States, this State, or
24 any other state, the court shall order the expunction. No person
25 as to whom such an order has been entered shall be held
26 thereafter under any provision of any law to be guilty of
27 perjury, or to be guilty of otherwise giving a false statement or
28 response to any inquiry made for any purpose, by reason of his
29 failure to recite or acknowledge any expunged entries concerning
30 apprehension or trial."

31 PART VI. EFFECTIVE DATE.

32 Section 35. Parts I of this act becomes effective
33 October 1, 1998 and applies to offenses committed on or after
34 that date. Parts II, III, IV, and V of this act become effective
35 December 1, 1998 and apply to offenses committed on or after that
36 date. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h),
37 and (i) as set forth in Section 3 of the act shall also apply to
38 vehicles held on or after the effective date as a result of
39 seizure that occurred before, on, or after that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 16, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: HOUSE BILL 594 - INJURY TO PREGNANT WOMAN
Representative Starnes

Subcommittee Recommendation: Favorable.

House Bill 594 would enhance the punishment imposed on a defendant for the commission of a felony or act of domestic violence when the offense involves injury to a pregnant woman and results in a miscarriage or stillbirth by the woman. A proposed committee substitute was adopted at the May 28 meeting of this committee.

House Bill 594 creates a new G.S. 14-18.2 to provide that:

-- Any person who, in the commission of a felony, knowingly causes injury to a pregnant woman which results in miscarriage or stillbirth is guilty of a felony that is one class higher than the felony committed.

-- A person who, in the commission of a misdemeanor that is an act of domestic violence under Chapter 50B, knowingly injures a pregnant woman is guilty of a misdemeanor that is one class higher than the misdemeanor committed. "Domestic violence" includes various acts committed by a person with whom the victim has or has had a personal relationship. A Class A1 misdemeanor (assault on a female, assault inflicting serious injury, assault with a deadly weapon, assault by pointing a gun) becomes a Class I felony under the bill.

House Bill 594 also amends Chapter 20 to provide that any person who, in the unlawful operation of a car, commits a felony which causes a pregnant woman to suffer a miscarriage or stillbirth is guilty of a felony that is one class higher than the felony committed. The law would apply to the following Chapter 20 felony offenses :

Summary - House Bill 594
Injury to Pregnant Women

Felony Death by Vehicle - Class G felony when driver causes the death of another person while engaged in the offense of impaired driving, and commission of the DWI offense is the proximate cause of death.

Speeding to Elude Arrest - Class H felony if 2 or more of the following aggravating factors are present at the time of the violation: speeding in excess of 15 mph over the limit; gross impairment of faculties due to consumption of impairing substance or blood alcohol content of .14 or more; reckless driving; negligent driving leading to accident leading to accident causing personal injury or property damage over \$1,000; driving while license revoked; speeding in school or work zone; passing stopped school bus; driving with child under 12 in vehicle.

Felony Hit and Run - Class H felony if driver fails to stop at scene of accident or collision which resulted in death or injury to any person.

Habitual DWI - Class F felony if person drives while impaired and has been convicted of 3 or more impaired driving offenses within 7 years of current offense.

Smoke Screens - Class I felony if person operates motor vehicle containing a machine or device designed, used or capable of being used for the purpose of discharging, either from itself or from the motor vehicle to which attached, any unusual amount of smoke, gas or other substance not necessary to the actual propulsion, care and keep of said vehicle.

The bill would become effective December 1, 1998 and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

H594-CSR-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
H594
Committee Substitute Favorable 4/29/97

THIS IS A DRAFT 28-MAY-98 09:36:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Injury to Preg. Woman.

(Public)

Sponsors:

Referred to:

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A PREGNANT
3 WOMAN IN THE COMMISSION OF A FELONY, ACT OF DOMESTIC VIOLENCE,
4 OR UNLAWFUL OPERATION OF A VEHICLE CAUSING A MISCARRIAGE OR
5 STILLBIRTH.
6 The General Assembly of North Carolina enacts:
7 Section 1. Article 6 of Chapter 14 of the General
8 Statutes is amended by adding a new section to read:
9 "§ 14-18.2. Injury to pregnant woman.
10 (a) Definitions. -- The following definitions shall apply in
11 this section:
12 (1) Miscarriage. -- The interruption of the normal
13 development of the fetus, other than by a live
14 birth, and which is not an induced abortion
15 permitted under G.S. 14-45.1, resulting in the

- 1 complete expulsion or extraction from a pregnant
2 woman of the fetus.
- 3 (2) Stillbirth. -- The death of a fetus prior to the
4 complete expulsion or extraction from a woman
5 irrespective of the duration of pregnancy and which
6 is not an induced abortion permitted under G.S. 14-
7 45.1.
- 8 (b) A person who in the commission of a felony causes injury
9 to a woman, knowing the woman to be pregnant, which injury
10 results in a miscarriage or stillbirth by the woman is guilty of
11 a felony that is one class higher than the felony committed.
- 12 (c) A person who in the commission of a misdemeanor that is an
13 act of domestic violence as defined in Chapter 50B of the General
14 Statutes causes injury to a woman, knowing the woman to be
15 pregnant, which results in miscarriage or stillbirth by the woman
16 is guilty of a misdemeanor that is one class higher than the
17 misdemeanor committed. If the offense was a Class A1 misdemeanor,
18 the defendant is guilty of a Class I felony.
- 19 (d) This section shall not apply to acts committed by a
20 pregnant woman which result in a miscarriage or stillbirth by the
21 woman."
- 22 Section 2. Article 3 of Chapter 20 of the General
23 Statutes is amended by adding a new section to read:
24 "§ 20-141.5. Injury to pregnant woman by vehicle.
- 25 (a) Definitions. -- The following definitions shall apply in
26 this section:
- 27 (1) Miscarriage. -- The interruption of the normal
28 development of the fetus, other than by a live
29 birth, and which is not an induced abortion
30 permitted under G.S. 14-45.1, resulting in the
31 complete expulsion or extraction from a pregnant
32 woman of the fetus.
- 33 (2) Stillbirth. -- The death of a fetus prior to the
34 complete expulsion or extraction from a woman
35 irrespective of the duration of pregnancy and which
36 is not an induced abortion permitted under G.S. 14-
37 45.1.
- 38 (b) Any person who in the unlawful operation of a motor
39 vehicle commits a felony which causes a pregnant woman to suffer

1 a miscarriage or stillbirth is guilty of a felony that is one
2 class higher than the felony committed.

3 (c) This section shall not apply to acts committed by a
4 pregnant woman which result in a miscarriage or stillbirth by the
5 woman."

6 Section 3. This act becomes effective December 1, 1998,
7 and applies to offenses committed on or after that date.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 594

H594-CSRV-001

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

Date 6-16, 1998

Comm. Sub. [YES]
Amends Title [YES]
H594-CSRV-001

Senator HORTON

- 1 moves to amend the bill on page 1, lines 2-5,
- 2 by rewriting those lines to read:
- 3 "AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A PREGNANT
- 4 WOMAN IN THE COMMISSION OF A FELONY OR ACT OF DOMESTIC VIOLENCE
- 5 CAUSING A MISCARRIAGE OR STILLBIRTH.";
- 6
- 7 and on page 2, line 22 through page 3, line 7,
- 8 by rewriting those lines to read:
- 9 "Section 2. This act becomes effective December 1, 1998, and applies
- 10 to offenses committed on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 594
SHORT TITLE: Fetus Death From Criminal Act
SPONSOR(S): Representative Starnes

FISCAL IMPACT

Yes () No (X) No Estimate Available ()

(in millions)

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

GENERAL FUND

Correction

No Fiscal Impact

Recurring

Nonrecurring

Judicial

No Fiscal Impact

Recurring

Nonrecurring

TOTAL EXPENDITURES

POSITIONS: It is anticipated that approximately 0 positions would be needed to supervise the additional inmates housed under this bill. This is based on inmate to employee ratios, provided by the Division of Prisons, for close, medium, and minimum custody facilities (These position totals include security, program, and administrative personnel.).

Close - 2 to 1
Medium - 3 to 1
Minimum - 4 to 1

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 1997, and applies to offenses committed on or after that date.

BILL SUMMARY:

FETUS DEATH FROM CRIMINAL ACT. TO PROVIDE THAT IT IS A CRIMINAL OFFENSE IF A PERSON COMMITS OR ATTEMPTS TO COMMIT A CRIMINAL ACT AND THE CRIMINAL ACT PROXIMATELY RESULTS IN THE DEATH OF A VIABLE FETUS OR A STILLBORN BIRTH. Adds new GS 14-18.2 to provide if person commits or attempts to commit criminal act that proximately causes death of viable fetus or a stillborn birth, person is guilty of (1) a class F felony if criminal act was felony (unless criminal act was felony death by vehicle, in which case offense is class G felony); or (2) a class A1 misdemeanor if criminal act was misdemeanor. Applies to offenses committed on or after Dec. 1, 1997.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

According to the Judicial Branch, they expect this bill to have little or no substantial fiscal impact on the court system. The Judicial Branch cannot estimate the number of criminal acts resulting in the death of a fetus. However, they expect that there are relatively few such cases. This bill adds additional charges to existing cases, as opposed to creating new, additional cases. Therefore, the Judicial Branch believes they can handle these additional charges and any new cases that may arise within existing court resources.

Department of Correction

Based on information received from the Judicial Branch, the Sentencing Advisory and Policy Commission cannot estimate the number of felony or misdemeanor cases that may result from this bill. However, the Sentencing Commission notes that any additional convictions will probably result in persons already being charged with another criminal act. Therefore, the Department of Correction can absorb the few convictions that may arise within existing resources.

SOURCES OF DATA: Department of Correction, Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION 733-4910 DATE: April 28, 1997

PREPARED BY: Andy Willis

APPROVED BY: Tom L. Covington



**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Wednesday, June 17, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)	594	Injury to Pregnant Woman	
		Draft Number:	PCS 3140
		Sequential Referral:	none
		Recommended Referral:	Appropriations
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Senate Judiciary
Name of Committee

6/16/98
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Stacey Parker	Sen Basnight
Jane P. Gray	DOJ
Roslyn Sawalt	NC Coalition Against Domestic Violence NC-NOW
William Little	NC
Joe Stewart	CAPS
Guy Myers	Attorney
Leanne Kinner	NCSBA
Heard Inge	NC
Jaw Pratts	NCASA
Tom Dubrow	AOC
April Demert	Sen Adom
David Ferrell	Hafen, McNamee, Caldwell, et al

VISITOR REGISTRATION SHEET

Name of Committee

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Eddie Caldwell

HMCCTC

Robert Paschal

Young, Thores

Archer

WSCP

Lura Forcum

GHSP

Suzette Jackson

St. Governor

Ernest Cella

DMV

Harold Smith

DOA - YALC

John Maller

Sentencing Commission

Ann Belam

SBE

Derek Graham

NCDFI

Meredith Morris

Lawrence Bentley & Assoc.

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Zee Lamb	Lt. Gov. Office
PATRICK HANNAH	SEN. BALLANCE
John Jordan	NC ASSN. OF Financial Inst.
Deborah Doo	ACHA
Jelly Wilson	ACHA
BR Pelly	Lt. Gov.'s office
Ang Christian	NCAWA
Roger Bone	Bone & Assoc - CIADA
Crispy Parker	Bone & Assoc - CIADA
John Kester	NCFPC

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Lee Ames	Sen. Jordan Intern
Zeh Allen	First Union
W. H. Hargett	First Citizens Bank
John W. Orr	NC Med Soc
R. J. Waters	SBE
J. J. Jordan	N.C. DMV Enforcement
J. Edwards	DMV ENFORCEMENT
Major Charles Conder	NC DMV Enforcement
Bill Scobbin	NC BAR ASSOC.
Jay Pearson	NC Beer & Wine Wholesaler Assn.

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Date

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Lucia Dell	NC Medical Society
A.A. Adams	Veatin Advocate
Larry Bently	Bently Assoc.
Paul Stock	NC Bankers Assn.
Jim Loh	NC AFI
Wes Parker	GHSP
Amy Jo Bain	Smith Anderson
Emily Howell	Sen. Basnight's office
Tom McCrell	McAICU
John Dent	

MINUTES
SENATE JUDICIARY COMMITTEE
June 18, 1998

The Senate Judiciary Committee met on June 18, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and announced the following subcommittee for Senate Bill 1005 - Health Care Information Privacy Act:

Senator Gulley - Chair
Senator Forrester
Senator Hartsell
Senator Winner
Senator W. Martin

Senator Soles moved to adopt a Proposed Committee Substitute to Senate Bill 1260 - Juvenile Justice Reform Act for discussion. The motion carried by a majority voice vote. (See Attachment #1.)

Senator Cooper explained the changes in the Proposed Committee Substitute. The major change cuts back on the cost without making significant changes in the thrust of the bill. The other changes in the Proposed Committee Substitute are:

1. Extends jurisdiction to age 19 for A-E felonies, which reduces the number of training school beds that will be needed.
2. Keeps the age of undisciplined juvenile at 16. The fiscal note says that raising it to 18 would cost the state \$1.3 million in 1998-99 and \$3.7 million in 1999-2000 and require 89 new positions.
3. Allows juveniles to appeal transfers to Superior Court. This decision then is not immediately appealable.

On the Grid:

1. Allows a judge to send a juvenile to training school on the 4th minor offense.
2. Expands the number of options in intermediate sanctions.
3. Adds prohibition of alcohol during probation.

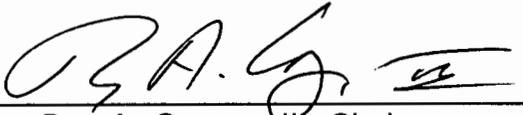
4. Deletes District Attorney direct filing and blended sentencing because of numerous technical problems and puts it in a study commission.

Senator Reeves was recognized to explain the proposal endorsed by Lt. Governor Wicker known as "Lose Control, Lose Your License".

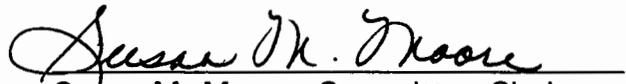
Under this provision, a juvenile who possesses or sells alcohol, brings a gun, or assaults a teacher on school property would lose their driver license or not be allowed to get a driver license. (Fiscal Note for this provision is Attachment #2.)

Walker Reagan, Committee Counsel, and Paula Wolfe, Covenant Lobbyist, were recognized to respond to questions from the Committee.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, June 18, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

To be announced

Sen. Roy Cooper, III, Chairman

Posted: 06/15/98 2:44 PM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1260
Corrected Copy 5/25/98

Short Title: Juvenile Justice Reform Act.

(Public)

Sponsors: Senators Cooper, Lucas, Odom, Hartsell; Albertson, Dalton, Dannelly, Forrester, Garwood, Gulley, Hoyle, Jenkins, Kinnaird, Lee, Martin of Pitt, McDaniel, Miller, Phillips, Plyler, Purcell, Rand, Reeves, Soles, Warren, Weinstein, Wellons, and Allran.

Referred to: Judiciary.

May 21, 1998

1 A BILL TO BE ENTITLED

2 AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO
3 AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO
4 MAKE CONFORMING CHANGES TO THE STATUTES, AND TO
5 APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON
6 JUVENILE CRIME AND JUSTICE.

7 The General Assembly of North Carolina enacts:

8 PART I. ESTABLISHMENT OF THE DEPARTMENT OF JUVENILE JUSTICE
9 AND CONFORMING STATUTORY CHANGES.

10 Section. 1. (a) Articles 24 and 24A of Chapter 7A of the General
11 Statutes, Article 2 of Chapter 110 of the General Statutes, and Chapter 134A of the
12 General Statutes are repealed.

13 (b) Chapter 143B of the General Statutes is amended by adding a new
14 Article to read:

15 "ARTICLE 12.

16 "Department of Juvenile Justice.

17 "Part 1. General Provisions.

18 "§ 143B-511. Department of Juvenile Justice -- creation.

19 There is hereby created and constituted a department to be known as the
20 'Department of Juvenile Justice,' with the organization, powers, and duties defined in
21 Article 1 of this Chapter, except as modified in this Article.

1 "§ 143B-512. Definitions.

2 The following definitions shall apply to this Article, unless the context or subject
3 matter otherwise requires:

- 4 (1) Chief court counselor. -- The person responsible for administration
5 and supervision of juvenile intake, probation, and post-release
6 supervision in each judicial district, operating under the
7 supervision of the Secretary of the Department of Juvenile Justice.
- 8 (2) Community-based program. -- A program providing nonresidential
9 or residential treatment to a juvenile under the jurisdiction of the
10 juvenile court in the community where the juvenile's family lives.
11 A community-based program may include specialized foster care,
12 family counseling, shelter care, and other appropriate treatment.
- 13 (3) Court. -- The district court division of the General Court of
14 Justice.
- 15 (4) Court counselor. -- A person responsible for probation and post-
16 release supervision to juveniles under the supervision of the chief
17 court counselor.
- 18 (5) Custodian. -- The person or agency that has been awarded legal
19 custody of a juvenile by a court.
- 20 (6) Department. -- The North Carolina Department of Juvenile Justice.
- 21 (7) Detention facility. -- A facility authorized to provide secure
22 confinement and care for juveniles. Detention facilities include
23 both State and locally administered detention homes, centers, and
24 facilities.
- 25 (8) District. -- Any district court district as established by G.S. 7A-133.
- 26 (9) Judge. -- Any district court judge.
- 27 (10) Judicial district. -- Any district court district as established by G.S.
28 7A-133.
- 29 (11) Juvenile court. -- Any district court exercising jurisdiction pursuant
30 to this Chapter.
- 31 (12) Juvenile court services. -- Any type of residential or nonresidential
32 program for juveniles who are under the jurisdiction of the
33 juvenile court which provides services to a juvenile in the
34 community where the juvenile's family lives. Juvenile court
35 services may include family counseling, restitution, victim-offender
36 mediation, and other appropriate services.
- 37 (13) Juvenile facilities. -- A State-operated training school, detention
38 facility, multipurpose group home, or other residential institution
39 for committed delinquents previously operated by the Department
40 of Juvenile Justice.
- 41 (14) Juvenile Crime Prevention Councils. -- Councils in each county
42 that are appointed by the boards of county commissioners in the
43 respective counties. The Councils develop plans and administer

- 1 funds for dispositional community service and delinquency
2 prevention and annually evaluate services and programs.
- 3 (15) Post-release supervision. -- The supervision of a juvenile who has
4 been returned to the community after having been committed to
5 the Department of Juvenile Justice.
- 6 (16) Probation. -- The status of a juvenile who has been adjudicated
7 delinquent, is subject to specified conditions under the supervision
8 of a court counselor, and may be returned to the court for
9 violation of those conditions during the period of probation.
- 10 (17) Programs. -- Any type of residential or nonresidential program or
11 service for youth that may be developed by the Secretary as
12 authorized by this Article.
- 13 (18) Prosecutor. -- The district attorney or assistant district attorney
14 assigned by the district attorney to juvenile proceedings.
- 15 (19) Secretary. -- The Secretary of the Department of Juvenile Justice.
- 16 § 143B-513. Department of Juvenile Justice -- duties.
- 17 (a) The Department of Juvenile Justice shall act to:
- 18 (1) Protect the public from acts of juvenile delinquency;
19 (2) Provide services to juveniles to assist them to become productive,
20 responsible citizens;
21 (3) Provide for a statewide and uniform system of juvenile probation
22 and post-release supervision that provides adequate and
23 appropriate services to certain children who are found to be within
24 the juvenile jurisdiction of the district court;
25 (4) Authorize an intake process for diversion of selected juvenile
26 offenders from the juvenile justice system;
27 (5) Plan, develop, and coordinate comprehensive multidisciplinary
28 services and programs statewide for prevention, early intervention,
29 and rehabilitation of juveniles;
30 (6) Implement training school programs that provide appropriate
31 mental health and substance abuse treatment and care according to
32 the needs of the juveniles and provide quality educational
33 programs, including vocational and technical education in
34 coordination with other local and State services and resources for
35 juveniles; and
36 (7) Ensure that personnel responsible for the care, supervision, and
37 treatment of juveniles are appropriately apprised of the
38 requirements of this Article and trained in specialized and cultural
39 diversity areas to comply with standards established by Chapter 7B
40 of the General Statutes.
- 41 (b) In addition to the powers and duties mandated in subsection (a) of this
42 section, the Department may release or transfer a juvenile from a secure custody
43 facility to another secure custody facility when necessary to appropriately administer
44 the juvenile's commitment. The Department shall notify the court that committed

1 the juvenile to the Department, in writing, of its intent to release or transfer the
2 juvenile. If the court does not respond within 10 days after receipt of the notice, the
3 release or transfer shall be deemed granted.

4 (c) The Department may also provide consulting services and technical assistance
5 to courts, law enforcement agencies, and other agencies, local governments, and
6 public and private organizations, and may develop or assist Juvenile Crime
7 Prevention Councils in developing community needs, assessments, and action
8 programs relating to prevention and treatment of delinquent and undisciplined
9 behavior.

10 (d) The Department shall annually collect and report budget expense data for
11 every program operated and contracted by the Department. The budget and expense
12 data shall conform to a format approved by the Department and to any statutory
13 requirements and shall include information and data on all State-operated and
14 contracted programs for the purpose of comparing programs. The Department shall
15 submit an annual budget and expense report to the Office of the Governor no later
16 than February 1 each year.

17 (e) The Department shall develop a cost-benefit model and apply the model to
18 each State-funded program. Program commitment and recidivism rates shall be
19 components of the model. In developing the model, the Department shall consider
20 the recommendations of the State Advisory Board on Juvenile Justice and
21 Delinquency Prevention. The Department shall submit a report ranking the State-
22 funded programs to the Governor and the General Assembly, on or before February
23 1 each year.

24 (f) Each programmatic, residential, and service contract or agreement entered into
25 by the Department shall include a cooperation clause for purposes of complying with
26 the Department's quality assurance requirements, cost-accounting requirements,
27 recidivism rates, and the program outcome evaluation programs.

28 **"§ 143B-514. Department of Juvenile Justice -- functions and organization.**

29 (a) All authority, powers, duties, and functions, including statutory, records,
30 personnel, property, unexpended balances of appropriations, allocations or other
31 funds, including the functions of budgeting and purchasing, of the Division of
32 Juvenile Services of the Administrative Office of the Courts are transferred to and
33 vested in the Department of Juvenile Justice as if by a Type I Transfer as defined in
34 G.S. 143A-6.

35 (b) All authority, powers, duties, and functions, including statutory, records,
36 personnel, property, unexpended balances of appropriations, allocations or other
37 funds, including the functions of budgeting and purchasing, of the Division of Youth
38 Services of the Department of Health and Human Services are transferred to and
39 vested in the Department of Juvenile Justice as if by a Type I Transfer as defined in
40 G.S. 143A-6.

41 (c) All institutions previously operated by the Division of Youth Services of the
42 Department of Health and Human Services and the present central office of the
43 Division of Youth Services, including land, buildings, equipment, supplies, personnel,

1 or other properties rented or controlled for youth development purposes, shall be
2 administered by the Department of Juvenile Justice.

3 (d) All institutions previously operated by the Division of Juvenile Services of the
4 Administrative Office of the Courts and the present central office of the Division of
5 Juvenile Services, including land, buildings, equipment, supplies, personnel, or other
6 properties rented or controlled for youth development purposes, shall be
7 administered by the Department of Juvenile Justice.

8 **"§ 143B-515. Secretary of the Department of Juvenile Justice -- powers and duties.**

9 (a) The head of the Department of Juvenile Justice is the Secretary of the
10 Department of Juvenile Justice. The Secretary shall have the powers and duties
11 conferred by this Chapter, delegated by the Governor, and conferred by the
12 Constitution and laws of this State. The Secretary shall be responsible for effectively
13 and efficiently organizing the Department of Juvenile Justice to promote the policy of
14 the State as set forth in this Article and to promote public safety and to prevent the
15 commission of criminal offenses by juveniles in accord with that policy.

16 (b) The Secretary shall have the following powers and duties:

- 17 (1) To develop a sound admission or intake program to youth services
18 institutions, including the requirement of a careful evaluation of
19 the needs of each child prior to acceptance and placement.
- 20 (2) To assure quality programs in youth services institutions or youth
21 services programs which shall be designed to meet the needs of
22 children in care or receiving services.
- 23 (3) To have all other powers of a secretary in relation to a division of
24 youth services or youth services institutions or youth services
25 programs as provided by the Executive Organization Act of 1973
26 as amended and codified in Chapter 143B of the General Statutes
27 or as provided by any other appropriate State law.
- 28 (4) To adopt rules and regulations to implement the provisions of this
29 Article and the responsibilities of the Secretary and the
30 Department of Juvenile Justice under Chapter 7B of the General
31 Statutes.
- 32 (5) To designate the appropriate unit of the Department of Juvenile
33 Justice to be responsible for coordination of State-level services in
34 relation to delinquency prevention and juvenile court services so
35 that any citizen may go to one place in State government to
36 receive services or access to services.
- 37 (6) To arrange appropriate coordination and planning within the
38 child-serving agencies of the Department of Juvenile Justice and
39 promote interdepartmental coordination.
- 40 (7) To assist local governments and private service agencies in the
41 development of juvenile court services and delinquency
42 prevention, and to provide information on the availability of
43 potential funding sources and whatever assistance may be
44 requested in making application for needed funding.

1 (8) To approve yearly program evaluations and to make
2 recommendations to the General Assembly concerning
3 continuation funding that might be supported by that evaluation.

4 (9) To approve program evaluation standards by which all programs
5 developed under the provisions of this Article may be objectively
6 evaluated.

7 Such standards as may be developed for the purpose of program
8 evaluation shall be in addition to any current standards as may be
9 applicable under the existing authority of the Social Services
10 Commission and the Department of Juvenile Justice.

11 Minimum operating standards, as well as program evaluation
12 standards, as may be needed for new program models designed to
13 fulfill the intent of this Article, may be developed at the discretion
14 of the Secretary either by the Social Services Commission or the
15 Secretary.

16 (10) To develop a formula for funding on a matching basis for juvenile
17 court and delinquency prevention services as provided for in this
18 Article. This formula shall be based upon the county's or counties'
19 relative ability to fund community-based programs for juveniles.

20 Local governments receiving State matching funds for programs
21 under the provisions of this Article must maintain the same overall
22 level of effort that existed at the time of the filing of the county
23 assessment of youth needs with the Department.

24 (11) Assure that the Criminal Justice Information Network Governing
25 Board administer a comprehensive juvenile justice information
26 system to collect data and information about delinquent juveniles
27 for the purpose of developing treatment and intervention plans and
28 allowing reliable assessment and evaluation of the effectiveness of
29 rehabilitative and preventive services provided to delinquent
30 juveniles.

31 (12) Establish substance abuse testing for juveniles adjudicated
32 delinquent for substance abuse offenses.

33 (c) Except as otherwise specifically provided in this Article and in Article 1 of this
34 Chapter, the functions, powers, duties, and obligations of every agency or division in
35 the Department of Juvenile Justice shall be prescribed by the Secretary of the
36 Department of Juvenile Justice.

37 (d) The Secretary may adopt rules and procedures for the implementation of this
38 section. The Secretary may adopt rules applicable to local human services agencies
39 providing juvenile court and delinquency prevention services for the purpose of
40 program evaluation, fiscal audits, and collection of third-party payments.

41 "§ 143B-516. Secretary of the Department of Juvenile Justice requests for grants-in-
42 aid from non-State agencies.

43 It is the intent of this General Assembly that non-State human services agencies
44 providing juvenile court and delinquency prevention programs submit their

1 appropriation requests for grants-in-aid through the Secretary of the Department of
2 Juvenile Justice for recommendations to the Governor, the Advisory Budget
3 Commission, and the General Assembly and that agencies receiving these grants, at
4 the request of the Secretary of the Department of Juvenile Justice, provide a
5 postaudit of their operations that has been done by a certified public accountant.

6 **"§ 143B-517. Department of Juvenile Justice -- authority to contract with other**
7 **entities.**

8 (a) The Department of Juvenile Justice may contract with any governmental
9 agency, person, association, or corporation for the accomplishment of its duties and
10 responsibilities provided that the expenditure of funds pursuant to these contracts
11 shall be for the purposes for which the funds were appropriated and is not otherwise
12 prohibited by law.

13 (b) The Department may enter into contracts with and to act as intermediary
14 between any federal government agency and any county of this State for the purpose
15 of assisting the county to recover monies expended by a county-funded financial
16 assistance program; and, as a condition of assistance, the county shall agree to hold
17 and save harmless the Department against any claims, loss, or expense which the
18 Department might incur under the contracts by reason of any erroneous, unlawful, or
19 tortious act or omission of the county or its officials, agents, or employees.

20 **"§ 143B-518. Department of Juvenile Justice; authority to assist private nonprofit**
21 **foundations.**

22 The Secretary may allow employees of the Department or provide other
23 appropriate services to assist any private nonprofit foundation which works directly
24 with services or programs of the Department and whose sole purpose is to support
25 the services and programs of the Department. A Department employee shall be
26 allowed to work with a foundation no more than 20 hours in any one month. These
27 services are not subject to the provisions of Chapter 150B of the General Statutes.

28 The board of directors of each private, nonprofit foundation shall secure and pay
29 for the services of the State Auditor's Office or employ a certified public accountant
30 to conduct an annual audit of the financial accounts of the foundation. The board of
31 directors shall transmit to the Secretary of the Department of Juvenile Justice a copy
32 of the annual financial audit report of the private nonprofit foundation.

33 "Part 2. Juvenile Facilities.

34 **"§ 143B-520. Juvenile facilities.**

35 The Department of Juvenile Justice shall be responsible for administration of
36 statewide programs to implement the right of any committed juvenile to appropriate
37 treatment according to the juvenile's needs, including the following programs or
38 services: educational, clinical and psychological, psychiatric, social, medical,
39 vocational, recreational, and others as identified as appropriate by the Secretary.

40 **"§ 143B-521. Authority to provide necessary medical or surgical care.**

41 The Department may provide such medical and surgical treatment as is necessary
42 to preserve the life and health of students while in care, provided that no surgical
43 operation may be performed except as authorized in G.S. 148-22.2.

44 **"§ 143B-522. Compensation to children in care.**

1 Juveniles who have been committed to the Department may be compensated for
2 work or participation in training programs at rates approved by the Secretary within
3 available funds. The Department is authorized to accept grants or funds from any
4 source to compensate juveniles as provided under this section.

5 **"§ 143B-523. Criminal offense to aid escapes.**

6 It shall be unlawful for any person to aid, harbor, conceal, or assist any juvenile to
7 escape from an institution or youth services program. Any person who renders said
8 assistance to a juvenile shall be guilty of a Class 1 misdemeanor.

9 **"§ 143B-524. Visits and community activities.**

10 The Department shall encourage visits by parents, guardians, or custodians and
11 responsible relatives of juveniles in care. The Department shall also arrange a suitable
12 program of home visits for juveniles in care.

13 **"§ 143B-525. Regional detention services.**

14 The Department shall be responsible for juvenile detention services, including the
15 development of a statewide plan for regional juvenile detention services that will
16 offer juvenile detention care of sufficient quality to meet State standards to any
17 juvenile requiring juvenile detention care within the State in a detention facility as
18 follows:

19 (1) The Department shall plan with the counties operating a county
20 detention facility to provide regional juvenile detention services to
21 surrounding counties, except that the Department shall have some
22 discretion in defining the geographical boundaries of the regions
23 based on negotiations with affected counties, distances, availability
24 of juvenile detention care that meets State standards, and other
25 appropriate variable factors.

26 (2) The Department shall plan for and administer five or more
27 regional detention homes, including careful planning on location,
28 architectural design, construction, and administration of a program
29 to meet the needs of juveniles in juvenile detention care. Both the
30 physical facility and the program of a regional detention home
31 shall comply with State standards.

32 **"§ 143B-526. State subsidy to county detention facilities.**

33 The Department shall administer a State subsidy program to pay a county
34 detention facility which provides juvenile detention services and meets State
35 standards a certain per diem per juvenile. In general, this per diem should be fifty
36 percent (50%) of the total cost of caring for a juvenile from within the county and
37 100 percent (100%) of the total cost of caring for a juvenile from another county.
38 Any county placing a juvenile in a detention home in another county shall pay fifty
39 percent (50%) of the total cost of caring for the child to the Department. The exact
40 funding formulas may be varied by the Department to operate within existing State
41 appropriations or other funds that may be available to pay for juvenile detention
42 care.

43 **"§ 143B-527. Authority for implementation.**

1 In order to allow for effective implementation of a statewide regional approach to
2 juvenile detention, the Department shall have legal authority to do the following:

- 3 (1) To adopt rules that may be necessary to fulfill its responsibilities
4 under this Article;
- 5 (2) To plan with counties operating county detention homes to
6 provide regional services and to upgrade physical facilities as
7 recommended in said report, to contract with counties for services
8 and care, and to pay State subsidies to counties providing regional
9 juvenile detention services that meet State standards;
- 10 (3) To develop one or more pilot programs to demonstrate quality
11 juvenile detention care on a regional basis that meet State
12 standards;
- 13 (4) To develop a plan whereby law enforcement officers or other
14 appropriate employees of local government shall be reimbursed by
15 the State for the costs of transportation of a juvenile to and from
16 any juvenile detention facility;
- 17 (5) To seek funding for juvenile detention services from federal
18 sources, and to accept gifts of funds from public or private sources;
19 and
- 20 (6) To transfer State funds appropriated for institutions or other youth
21 services programs to develop a pilot program of juvenile detention
22 care, to purchase detention care in a county detention facility that
23 meets State standards, and to operate a detention facility.

24 "Part 3. Juvenile Court Services.

25 "§ 143B-530. Juvenile court services.

26 The Department of Juvenile Justice shall be responsible for administration of a
27 statewide and uniform system of juvenile probation and post-release supervision
28 services in all district court districts of the State. The Secretary shall be responsible
29 for planning, organizing, and administering juvenile probation and post-release
30 supervision services on a statewide basis to the end that juvenile services will be
31 uniform throughout the State and of sufficient quality to meet the needs of the
32 children under supervision.

33 "§ 143B-531. Duties and powers of Secretary.

34 The Secretary shall have the following powers and duties as they relate to juvenile
35 court services:

- 36 (1) To plan for a statewide program of juvenile probation and post-
37 release supervision services.
- 38 (2) To appoint such personnel within the Department of Juvenile
39 Justice as may be necessary to administer a statewide and uniform
40 system of juvenile probation and post-release supervision.
- 41 (3) To appoint the chief court counselor in each district court district
42 with the approval of the chief district judge of that district.
- 43 (4) To study the various issues related to qualifications, salary ranges,
44 appointment of personnel on a merit basis, including chief court

1 counselors, court counselors, secretaries and other appropriate
2 personnel, at the State and district levels in order to adopt
3 appropriate policies and procedures governing personnel.

4 (5) To develop a statewide plan for staff development and training so
5 that chief court counselors, court counselors and other personnel
6 responsible for juvenile services may be appropriately trained and
7 qualified; such plan may include attendance at appropriate
8 professional meetings and opportunities for educational leave for
9 academic study.

10 (6) To develop, promulgate, and enforce such policies, procedures,
11 rules, and regulations as the Secretary may find necessary and
12 appropriate to implement a statewide and uniform program of
13 juvenile probation and post-release supervision services.

14 **"§ 143B-532. Duties and powers of chief court counselors.**

15 The chief court counselor in each district court district appointed as provided by
16 this Article shall have the following powers and duties:

17 (1) To appoint such court counselors, secretaries, and other personnel
18 as may be authorized by the Department in accordance with the
19 personnel policies adopted by the Secretary.

20 (2) To supervise and direct the program of juvenile probation and
21 post-release supervision within the district court district under the
22 supervision of the court and the Secretary according to the
23 statewide practices and procedures promulgated by the Secretary.

24 (3) To provide in-service training for staff as required by the
25 Secretary.

26 (4) To keep any records and make any reports requested by the
27 Secretary in order to provide statewide data and information about
28 juvenile needs and services.

29 **"§ 143B-533. Duties and powers of juvenile court counselors.**

30 All juvenile court counselors providing services to judges hearing juvenile cases
31 shall have the following powers and duties, as the court may require:

32 (1) To secure or arrange for such information concerning a case as the
33 court may require before, during, or after the hearing.

34 (2) To prepare written reports for the use of the court.

35 (3) To appear and testify at court hearings.

36 (4) To assume temporary custody of a juvenile when directed by court
37 order.

38 (5) To furnish each juvenile on probation and the juvenile's parents,
39 guardian, or custodian with a written statement of the juvenile's
40 conditions of probation, and to consult with the parents, guardian,
41 or custodian so that they may help the juvenile comply with the
42 juvenile's probation.

43 (6) To keep informed concerning the conduct and progress of any
44 juvenile on probation or under court supervision through home

- 1 visits or conferences with the parents, guardian, or custodian and
2 in other ways.
- 3 (7) To see that the conditions of probation are complied with by the
4 juvenile, or to bring any juvenile who violates the juvenile's
5 probation to the attention of the court.
- 6 (8) To make periodic reports to the court concerning the adjustment
7 of any juvenile on probation or under court supervision.
- 8 (9) To keep such records of the juvenile's work as the court may
9 require.
- 10 (10) To account for all funds collected from juveniles.
- 11 (11) To have all the powers of a peace officer in the district.
- 12 (12) To provide supervision for a juvenile transferred to the officer's
13 supervision from another court or another state, and to provide
14 supervision for any child released from an institution operated by
15 the Department of Correction when requested by the Department
16 to do so.
- 17 (13) To assist in the development of post-release supervision and the
18 supervision of juveniles.
- 19 (14) To have such other duties as the court may direct.

20 "Part 4. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

21 "§ 143B-540. Comprehensive Juvenile Delinquency and Substance Abuse Prevention
22 Plan.

23 (a) The Department shall develop a comprehensive juvenile delinquency and
24 substance abuse prevention plan that will provide nonduplicative, collaborative,
25 cooperative, public/private, State/local juvenile delinquency and substance abuse
26 prevention programs to youth and their families. These collaborative programs shall
27 be interdisciplinary and multitiered, shall provide a continuum of services, and shall
28 be cooperatively and collaboratively administered at and accessible to community and
29 local levels. In administering the programs, communities and localities shall adhere
30 to proven effective principles. The Department shall ensure that localities are
31 informed about best practices in juvenile delinquency and substance abuse
32 prevention.

33 (b) The Department shall ensure that any program provided through this plan
34 contains at least the following critical elements:

- 35 (1) An addressing of the highest priority problem areas and an
36 identification of the risk and protective factors to which youth in a
37 particular community are exposed;
- 38 (2) The strongest focus on populations exposed to a number of risk
39 factors;
- 40 (3) An addressing of problem areas and an identification of strengths
41 both early in life and at appropriate developmental stages;
- 42 (4) An addressing of multiple risk factors in different settings such as
43 family, school, community, and peer group;

1 (5) An offering of comprehensive interventions across many systems
2 that deal simultaneously with many aspects of a youth's life;

3 (6) An intensive involvement of multiple contacts weekly or even daily
4 with at-risk youth;

5 (7) An operation that is strength-based rather than deficiency-based,
6 that builds on a youth's strengths rather than on deficiencies;

7 (8) A holistic approach to youth within the context of their
8 relationships to and with others rather than focusing solely on the
9 youth; and

10 (9) An incorporation of community participation and ethnic and
11 cultural diversity into the development and evaluation of services.

12 (c) The Department shall ensure that the plan contain at least the following
13 programs, which have proven effective in preventing juvenile delinquency and
14 substance abuse and which should be available as basic services in communities:

15 (1) Early intervention;

16 (2) In-home and community-based family counseling and parent
17 training;

18 (3) Adolescent and family substance abuse prevention services,
19 including alcohol abuse prevention services and including
20 substance abuse education;

21 (4) Nonschool hours activities, both before and after school hours;

22 (5) Law-related education and life/social skills training programs;

23 (6) Conflict resolution, problem solving, and anger management; and

24 (7) Personal advocacy, including mentoring relationships, tutors, or
25 other caring adult programs.

26 (d) Prior to the implementation of any plan and program development prescribed
27 in this section, the Department shall report to the General Assembly in detail on its
28 plan to implement this section, including detailed descriptions of the plan and
29 programs contemplated. The report shall also provide a detailed cost analysis of this
30 section's implementation.

31 (e) The Department shall cooperate with all other affected State agencies and
32 entities in implementing this section.

33 "Part 5. Juvenile Crime Prevention Councils.

34 "§ 143B-550. Juvenile Crime Prevention Councils; legislative intent.

35 (a) It is the intent of the General Assembly both to reduce the number of juveniles
36 committed by the courts for delinquency to institutions operated by the Department
37 of Juvenile Justice or other State agencies and to prevent juveniles who are at risk
38 from becoming delinquent. The primary intent of this Article is to provide an
39 ongoing, comprehensive State/local, public/private, cooperative, collaborative
40 partnership to develop both streamlined and enhanced community-based alternatives
41 to training school and detention commitment and unified, nonduplicative,
42 coordinated, and collaborative community-based prevention strategies and programs.
43 Additionally, it is the intent of the General Assembly to provide noninstitutional
44 dispositional alternatives that will protect the community and the juvenile.

1 (b) The Juvenile Crime Prevention Councils shall prioritize funding for
2 dispositions of court-adjudicated youth pursuant to minimum standards adopted by
3 the Department.

4 (c) The Department shall ensure that juvenile court services and delinquency
5 prevention programs are developed by a State/local, private/public, cooperative and
6 collaborative partnership that avoids overlapping and duplication and that optimizes
7 and evaluates all programs and services on an ongoing basis. The programs
8 developed under this partnership shall fulfill the following organizational and
9 objective requirements:

10 (1) These programs shall be planned and organized at the community
11 level, and developed in partnership with the State. These planning
12 efforts shall include appropriate representation from local
13 government, local public and private agencies serving families and
14 children, local business leaders, citizens with an interest in youth
15 problems, youth representatives, and others as may be appropriate
16 in a particular community. The planning bodies at the local level
17 shall be the Juvenile Crime Prevention Councils.

18 (2) At the State level, the Department shall:

19 a. Serve the community level as a clearinghouse for
20 information on delinquency prevention strategies and on
21 alternatives to commitment. The Department shall research,
22 collect, and distribute information to local agencies about
23 best practices, what works, what is promising, and what does
24 not work;

25 b. Provide technical assistance to Juvenile Crime Prevention
26 Councils;

27 c. Make recommendations to State and local governments on
28 changes to laws, rules, or policies that will reduce the
29 incidence of delinquency and the incidence of inappropriate
30 commitment;

31 d. Develop a comprehensive structure for follow-up and
32 delivery of program and treatment services to ensure
33 juvenile, adult, and system accountability;

34 e. Coordinate statewide media campaigns that accurately
35 inform people about the development of strategies to
36 prevent delinquency; and

37 f. Channel existing delinquency prevention funding streams to
38 the community level until a permanent funding stream for
39 delinquency prevention is established.

40 (3) At the local level, as a prerequisite for receiving funding for
41 juvenile court service and delinquency prevention programs, the
42 board of county commissioners of each county shall appoint a
43 Juvenile Crime Prevention Council. The Juvenile Crime

1 Prevention Council shall consist of not more than 25 members and
2 should include, if possible, the following:

- 3 a. The local school superintendent, or that person's designee;
4 b. A chief of police in the county;
5 c. The local sheriff, or that person's designee;
6 d. The district attorney, or that person's designee;
7 e. The chief court counselor, or that person's designee;
8 f. The Director of the Area Mental Health Authority, or that
9 person's designee;
10 g. The director of the local department of social services, or
11 that person's designee;
12 h. The county manager, or that person's designee;
13 i. A substance abuse professional;
14 j. A member of the faith community;
15 k. A county commissioner;
16 l. A youth representative;
17 m. A juvenile defense attorney;
18 n. A district court judge;
19 o. A member of the business community;
20 p. A public health professional;
21 q. A representative from the United Way or other nonprofit
22 agency; and
23 r. Up to six members of the public to be appointed by the
24 county board of commissioners.

25 The county shall modify the Council's membership as necessary to
26 ensure that current Council members reflect the racial and
27 socioeconomic diversity of the community and to minimize
28 potential conflicts of interest by members.

- 29 (4) The Council shall annually review the needs of troubled juveniles,
30 both those at risk of delinquency and those adjudicated delinquent,
31 within the county and the assets and resources that are available to
32 address the needs of those juveniles. The Council shall use a
33 public/private, nonduplicative, collaborative, coordinated,
34 multifaceted, and multidisciplinary approach to this review, and to
35 the utilization of any existing programs as well as to the
36 development of any new programs and services. In particular, the
37 Council shall review the existing resources that can be expanded to
38 provide prevention programs and services. The Council shall
39 include the faith-based community as a vital part of this approach.
40 The Council shall develop and advertise a Request for Proposal
41 process, and submit a written Plan of Action for the expenditure of
42 juvenile sanction and prevention funds to the county for its
43 approval. Upon the county's authorization, the Plan shall be

1 submitted to the Department for final approval and subsequent
2 implementation.

3 In addition to its annual review, the Council shall perform the
4 following functions on an ongoing basis:

5 a. Conduct an ongoing updated community needs assessment
6 in order to identify resources and needs and develop
7 appropriate solutions to meet these needs;

8 b. Perform rigorous and ongoing performance evaluations of
9 prevention and alternatives programs and services. The
10 Council shall require each prevention initiative and each
11 alternatives initiative to have a strong evaluation component
12 and the Council shall make this accountability responsibility
13 a condition of each initiative's continued funding;

14 c. Increase public awareness of the causes of delinquency and
15 of strategies to reduce the problem;

16 d. Develop strategies to intervene and appropriately respond to
17 and treat the needs of juveniles at risk of delinquency or of
18 juveniles requiring alternatives to commitment as these
19 needs are identified through appropriate risk assessment
20 instruments;

21 e. Provide services to juveniles who are in need of treatment,
22 counseling, or rehabilitation and to the families of those
23 juveniles, including court-ordered parenting responsibility
24 classes; and

25 f. Plan for the establishment of a permanent funding stream
26 for delinquency prevention.

27 (5) To meet the programming needs of delinquent and at-risk youth in
28 smaller, rural counties, Juvenile Crime Prevention Councils shall
29 examine the benefits of joint program development between
30 counties within the same judicial district. If two or more counties
31 determine that a multicounty initiative would be beneficial, they
32 may establish a multicounty Juvenile Crime Prevention Council,
33 with the membership consisting of the members from each county
34 represented.

35 (6) The Secretary shall develop a funding mechanism for programs
36 that meet the standards as developed under the provisions of this
37 Part. The Secretary shall ensure that the guidelines for the
38 State/local partnership's funding process include the following
39 requirements:

40 a. Fund what works. -- Programs and projects that demonstrate
41 progress, that have been proven to be effective, or that show
42 promise, based on valid research should be supported. The
43 partnership shall fund projects based on a 'menu' of types of
44 services. In addition, new innovative projects shall be

1 rigorously evaluated to determine their effectiveness in
2 preventing delinquency and recidivism and their proximal
3 risk factors and may be funded on a discretionary basis.
4 The merits of a program shall be determined on the basis of
5 known or reasonably projected outcomes. Bad practices,
6 poor outcomes, and programs that have proven to be
7 ineffective shall not be funded;

8 b. The money should follow the juvenile. -- The funding
9 process shall be designed in such a way that, whenever a
10 juvenile is being served by a program, funds are allocated to
11 that program for that juvenile and will follow that juvenile.
12 For example, if a juvenile is receiving delinquency
13 prevention services and is subsequently adjudicated
14 delinquent and committed to training school, the county
15 shall continue to fund the services for the juvenile, if still
16 appropriate to reduce the recidivism risk, and shall send the
17 program dollars to the training school;

18 c. Use a formula for the distribution of funds. -- A funding
19 formula shall be developed that ensures that even the
20 smallest counties will be able to provide the basic
21 prevention and alternatives services to juveniles in their
22 communities;

23 d. Allow and encourage local flexibility. -- A vital component
24 of the State/local partnership established by this section is
25 local flexibility to determine how best to allocate prevention
26 and alternatives funds; and

27 e. Combine resources. -- Counties shall be allowed and
28 encouraged to combine resources and services.

29 The Secretary shall adopt rules to implement the policy and intent summarized in
30 this section.

31 **"§ 143B-551. Purchase of care or services from programs meeting State standards.**

32 The Department of Juvenile Justice and any other appropriate State or local
33 agency may purchase care or services from public or private agencies providing
34 delinquency prevention programs or juvenile court services, including parenting
35 responsibility classes. The programs shall meet the State standards as authorized by
36 G.S. 143B-550. As institutional populations are reduced, the Department of Juvenile
37 Justice may divert State funds appropriated for institutional programs to purchase the
38 services pursuant to the provisions of the Executive Budget Act.

39 The Secretary of Juvenile Justice shall prepare an annual report on the
40 effectiveness and cost-benefit of the Department's programs, which shall include the
41 most current institutional populations of juveniles being served by the various
42 departments of State government which shall include comparative costs of all child-
43 serving agencies. Such report shall be submitted to the Governor, the General
44 Assembly, and the various State departments providing services to juveniles.

1 (e) Chair. -- The Governor and Chief Justice of the Supreme Court shall serve as
2 cochairs of the Council.

3 (f) Vacancies. -- A vacancy on the Council resulting from the resignation of a
4 member or otherwise shall be filled in the same manner in which the original
5 appointment was made and the term shall be for the balance of the unexpired term.

6 (g) Compensation. -- The Council members shall receive no salary as a result of
7 -serving on the Council but shall receive per diem, subsistence, and travel expenses in
8 accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

9 (h) Removal. -- Members may be removed in accordance with G.S. 143B-13 as if
10 that section applied to this Article.

11 (i) Meetings. -- The chair shall convene the Council. Meetings shall be held as
12 often as necessary, but not less than four times a year.

13 (j) Quorum. -- A majority of the members of the Council shall constitute a
14 quorum for the transaction of business. The affirmative vote of a majority of the
15 members present at meetings of the Council shall be necessary for action to be taken
16 by the Council.

17 **"§ 143B-562. Powers and duties of the Council.**

18 The Council shall have the following powers and duties:

- 19 (1) Advise the Department of Juvenile Justice in the review of the
20 State's juvenile justice planning, the development of the
21 community juvenile justice councils, and the development of a
22 formula for the distribution of funds to community juvenile service
23 boards.
- 24 (2) Advise all State agencies serving juveniles for the purpose of
25 developing a consistent philosophy with regard to providing
26 services to youth and promoting collaboration and the efficient and
27 effective delivery of services to youth and families through State,
28 local, and district programs and fully address problems of
29 collaboration across State agencies with the goal of serving youth.
- 30 (3) Review and comment on juvenile justice, delinquency prevention,
31 and juvenile services grant applications prepared for submission
32 under any federal grant program by any governmental entity of the
33 State.
- 34 (4) Review the juvenile justice system's operation and prioritization of
35 funding needs.
- 36 (5) Review the progress and accomplishment of State and local
37 juvenile justice, delinquency prevention, and juvenile services
38 projects.
- 39 (6) Develop recommendations concerning the establishment of
40 priorities and needed improvements with respect to juvenile
41 justice, delinquency prevention, and juvenile services and report its
42 recommendations to the General Assembly on or before March 1
43 each year.

1 (7) Review and comment on the proposed budget for the Department
2 of Juvenile Justice."

3 Section 2. (a) G.S. 7A-343.1 reads as rewritten:

4 "**§ 7A-343.1. Distribution of copies of the appellate division reports.**

5 The Administrative Officer of the Courts shall, at the State's expense distribute
6 such number of copies of the appellate division reports to federal, State departments
7 and agencies, and to educational institutions of instruction, as follows:

8		
9	Governor, Office of the	1
10	Lieutenant Governor, Office of the	1
11	Secretary of State, Department of the	2
12	State Auditor, Department of the	1
13	Treasurer, Department of the State	1
14	Superintendent of Public Instruction	1
15	Office of the Attorney General	11
16	State Bureau of Investigation	1
17	Agriculture and Consumer Services, Department of	1
18	Labor, Department of	1
19	Insurance, Department of	1
20	Budget Bureau, Department of Administration	1
21	Property Control, Department of Administration	1
22	State Planning, Department of Administration	1
23	Environment and Natural Resources, Department of	1
24	Revenue, Department of	1
25	Health and Human Services, Department of	1
26	<u>Juvenile Justice, Department of</u>	<u>1</u>
27	Commission for the Blind	1
28	Transportation, Department of	1
29	Motor Vehicles, Division of	1
30	Utilities Commission	8
31	Industrial Commission	11
32	State Personnel Commission	1
33	Office of State Personnel	1
34	Office of Administrative Hearings	2
35	Community Colleges, Department of	38
36	Employment Security Commission	1
37	Commission of Correction	1
38	Parole Commission	1
39	Archives and History, Division of	1
40	Crime Control and Public Safety, Department of	2
41	Cultural Resources, Department of	3
42	Legislative Building Library	2
43	Justices of the Supreme Court	1 ea.
44	Judges of the Court of Appeals	1 ea.

1	Judges of the Superior Court	1 ea.
2	Clerks of the Superior Court	1 ea.
3	District Attorneys	1 ea.
4	Emergency and Special Judges of the Superior Court	1 ea.
5	Supreme Court Library	AS MANY AS REQUESTED
6	Appellate Division Reporter	1
7	University of North Carolina, Chapel Hill	71
8	University of North Carolina, Charlotte	1
9	University of North Carolina, Greensboro	1
10	University of North Carolina, Asheville	1
11	North Carolina State University, Raleigh	1
12	Appalachian State University	1
13	East Carolina University	1
14	Fayetteville State University	1
15	North Carolina Central University	17
16	Western Carolina University	1
17	Duke University	17
18	Davidson College	2
19	Wake Forest University	25
20	Lenoir Rhyne College	1
21	Elon College	1
22	Campbell University	25
23	Federal, Out-of-State and Foreign Secretary of State	1
24	Secretary of Defense	1
25	Secretary of Health, Education and Welfare	1
26	Secretary of Housing and Urban Development	1
27	Secretary of Transportation	1
28	Attorney General	1
29	Department of Justice	1
30	Internal Revenue Service	1
31	Veterans' Administration	1
32	Library of Congress	5
33	Federal Judges resident in North Carolina	1 ea.
34	Marshal of the United States Supreme Court	1
35	Federal District Attorneys resident in North Carolina	1 ea.
36	Federal Clerks of Court resident in North Carolina	1 ea.
37	Supreme Court Library exchange list	1

38
 39 Each justice of the Supreme Court and judge of the Court of Appeals shall receive
 40 for his private use, one complete and up-to-date set of the appellate division reports.
 41 The copies of reports furnished each justice or judge as set out in the table above
 42 may be retained by ~~him~~ personally to enable ~~him~~ the justice or judge to keep up-to-
 43 date ~~his~~ the personal set of reports."

44 (b) G.S. 14-316.1 reads as rewritten:

1 **"§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

2 Any person who is at least 16 years old who knowingly or willfully causes,
3 encourages, or aids any juvenile within the jurisdiction of the court to be in a place
4 or condition, or to commit an act whereby the juvenile could be adjudicated
5 delinquent, undisciplined, abused, or neglected as defined by ~~G.S. 7A-517~~ G.S. 7B-
6 101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

7 It is not necessary for the district court exercising juvenile jurisdiction to make an
8 adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in
9 order to prosecute a parent or any person, including an employee of the Department
10 of ~~Health and Human Services~~ Juvenile Justice under this section. An adjudication
11 that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a
12 subsequent prosecution of a parent or any other person including an employee of the
13 ~~Division of Youth Services~~ Department of Juvenile Justice, who contributes to the
14 delinquent, undisciplined, abused, or neglected condition of any juvenile."

15 (c) G.S. 17C-3 reads as rewritten:

16 **"§ 17C-3. North Carolina Criminal Justice Education and Training Standards**
17 **Commission established; members; terms; vacancies.**

18 (a) There is established the North Carolina Criminal Justice Education and
19 Training Standards Commission, hereinafter called "the Commission," in the
20 Department of Justice. The Commission shall be composed of 26 members as follows:

- 21 (1) Police Chiefs. -- Three police chiefs selected by the North Carolina
22 Association of Chiefs of Police and one police chief appointed by
23 the Governor.
- 24 (2) Police Officers. -- Three police officials appointed by the North
25 Carolina Police Executives Association and two criminal justice
26 officers certified by the Commission as selected by the North
27 Carolina Law-Enforcement Officers' Association.
- 28 (3) Departments. -- The Attorney General of the State of North
29 Carolina; the Secretary of the Department of Crime Control and
30 Public Safety; the Secretary of the Department of ~~Health and~~
31 ~~Human Services~~; Juvenile Justice; the Secretary of the Department
32 of Correction; the President of the Department of Community
33 Colleges.
- 34 (4) At-large Groups. -- One individual representing and appointed by
35 each of the following organizations: one mayor selected by the
36 League of Municipalities; one law-enforcement training officer
37 selected by the North Carolina Law-Enforcement Training
38 Officers' Association; one criminal justice professional selected by
39 the North Carolina Criminal Justice Association; one sworn law-
40 enforcement officer selected by the North State Law-Enforcement
41 Officers' Association; one member selected by the North Carolina
42 Law-Enforcement Women's Association; and one District Attorney
43 selected by the North Carolina Association of District Attorneys.

1 (5) Citizens and Others. -- The President of The University of North
2 Carolina; the Director of the Institute of Government; and two
3 citizens, one of whom shall be selected by the Governor and one
4 of whom shall be selected by the Attorney General. The General
5 Assembly shall appoint two persons, one upon the
6 recommendation of the Speaker of the House of Representatives
7 and one upon the recommendation of the President Pro Tempore
8 of the Senate. Appointments by the General Assembly shall be
9 made in accordance with G.S. 120-122. Appointments by the
10 General Assembly shall serve two-year terms to conclude on June
11 30th in odd-numbered years.

12 (b) The members shall be appointed for staggered terms. The initial appointments
13 shall be made prior to September 1, 1983, and the appointees shall hold office until
14 July 1 of the year in which their respective terms expire and until their successors are
15 appointed and qualified as provided hereafter:

16 For the terms of one year: one member from subdivision (1) of subsection (a),
17 serving as a police chief; three members from subdivision (2) of subsection (a), one
18 serving as a police official, and two criminal justice officers; one member from
19 subdivision (4) of subsection (a), appointed by the North Carolina Law-Enforcement
20 Training Officers' Association; and two members from subdivision (5) of subsection
21 (a), one appointed by the Governor and one appointed by the Attorney General.

22 For the terms of two years: one member from subdivision (1) of subsection (a),
23 serving as a police chief; one member from subdivision (2) of subsection (a), serving
24 as a police official; and two members from subdivision (4) of subsection (a), one
25 appointed by the League of Municipalities and one appointed by the North Carolina
26 Association of District Attorneys.

27 For the terms of three years: two members from subdivision (1) of subsection (a),
28 one police chief appointed by the North Carolina Association of Chiefs of Police and
29 one police chief appointed by the Governor; one member from subdivision (2) of
30 subsection (a), serving as a police official; and three members from subdivision (4) of
31 subsection (a), one appointed by the North Carolina Law-Enforcement Women's
32 Association, one appointed by the North Carolina Criminal Justice Association, and
33 one appointed by the North State Law-Enforcement Officers' Association.

34 Thereafter, as the term of each member expires, his successor shall be appointed
35 for a term of three years. Notwithstanding the appointments for a term of years, each
36 member shall serve at the will of the appointing authority.

37 The Attorney General, the Secretary of the Department of Crime Control and
38 Public Safety, the Secretary of the Department of ~~Health and Human Services~~,
39 Juvenile Justice, the Secretary of the Department of Correction, the President of The
40 University of North Carolina, the Director of the Institute of Government, and the
41 President of the Department of Community Colleges shall be continuing members of
42 the Commission during their tenure. These members of the Commission shall serve
43 ex officio and shall perform their duties on the Commission in addition to the other
44 duties of their offices. The ex officio members may elect to serve personally at any or

1 all meetings of the Commission or may designate, in writing, one member of their
 2 respective office, department, university or agency to represent and vote for them on
 3 the Commission at all meetings the ex officio members are unable to attend.

4 Vacancies in the Commission occurring for any reason shall be filled, for the
 5 unexpired term, by the authority making the original appointment of the person
 6 causing the vacancy. A vacancy may be created by removal of a Commission member
 7 by majority vote of the Commission for misconduct, incompetence, or neglect of duty.
 8 A Commission member may be removed only pursuant to a hearing, after notice, at
 9 which the member subject to removal has an opportunity to be heard."

10 (d) G.S. 20-79.5(a) reads as rewritten:

11 "(a) Plates. -- The State government officials listed in this section are eligible for a
 12 special registration plate under G.S. 20-79.4. The plate shall bear the number
 13 designated in the following table for the position held by the official.

14	15	16
	Position	Number on Plate
16	Governor	1
17	Lieutenant Governor	2
18	Speaker of the House of Representative	3
19	President Pro Tempore of the Senate	4
20	Secretary of State	5
21	State Auditor	6
22	State Treasurer	7
23	Superintendent of Public Instruction	8
24	Attorney General	9
25	Commissioner of Agriculture	10
26	Commissioner of Labor	11
27	Commissioner of Insurance	12
28	Speaker Pro Tempore of the House	13
29	Legislative Services Officer	14
30	Secretary of Administration	15
31	Secretary of Environment and Natural Resources	16
32	Secretary of Revenue	17
33	Secretary of Health and Human Services	18
34	Secretary of Commerce	19
35	Secretary of Correction	20
36	Secretary of Cultural Resources	21
37	Secretary of Crime Control and Public Safety	22
38	<u>Secretary of Juvenile Justice</u>	<u>23</u>
39	Governor's Staff	23-29 <u>24-29</u>
40	State Budget Officer	30
41	State Personnel Director	31
42	Advisory Budget Commission Nonlegislative Member	32-41
43	Chair of the State Board of Education	42
44	President of the U.N.C. System	43

1	Alcoholic Beverage Control Commission	44-46
2	Assistant Commissioners of Agriculture	47-48
3	Deputy Secretary of State	49
4	Deputy State Treasurer	50
5	Assistant State Treasurer	51
6	Deputy Commissioner for the Department of Labor	52
7	Chief Deputy for the Department of Insurance	53
8	Assistant Commissioner of Insurance	54
9	Deputies and Assistant to the Attorney General	55-65
10	Board of Economic Development Nonlegislative Member	66-88
11	State Ports Authority Nonlegislative Member	89-96
12	Utilities Commission Member	97-104
13	Post-Release Supervision and	
14	Parole Commission Member	105-109
15	State Board Member, Commission Member,	
16	or State Employee Not Named in List	110-200".
17	(e) G.S. 66-58(b) reads as rewritten:	
18	"(b) The provisions of subsection (a) of this section shall not apply to:	
19	(1) Counties and municipalities.	
20	(2) The Department of Health and Human Services or the Department	
21	of Agriculture and Consumer Services for the sale of serums,	
22	vaccines, and other like products.	
23	(3) The Department of Administration, except that the agency shall	
24	not exceed the authority granted in the act creating the agency.	
25	(4) The State hospitals for the mentally ill.	
26	(5) The Department of Health and Human Services.	
27	(6) The North Carolina School for the Blind at Raleigh.	
28	<u>(6a) The Department of Juvenile Justice.</u>	
29	(7) The North Carolina Schools for the Deaf.	
30	(8) The Greater University of North Carolina with regard to its	
31	utilities and other services now operated by it nor to the sale of	
32	articles produced incident to the operation of instructional	
33	departments, articles incident to educational research, articles of	
34	merchandise incident to classroom work, meals, books, or to	
35	articles of merchandise not exceeding twenty-five cents (25¢) in	
36	value when sold to members of the educational staff or staff	
37	auxiliary to education or to duly enrolled students or occasionally	
38	to immediate members of the families of members of the	
39	educational staff or of duly enrolled students nor to the sale of	
40	meals or merchandise to persons attending meetings or conventions	
41	as invited guests nor to the operation by the University of North	
42	Carolina of an inn or hotel and dining and other facilities usually	
43	connected with a hotel or inn, nor to the hospital and Medical	
44	School of the University of North Carolina, nor to the Coliseum of	

- 1 North Carolina State University at Raleigh, and the other schools
2 and colleges for higher education maintained or supported by the
3 State, nor to the Centennial Campus of North Carolina State
4 University at Raleigh, nor to the comprehensive student health
5 services or the comprehensive student infirmaries maintained by
6 the constituent institutions of the University of North Carolina.
- 7 (9) The Department of Environment and Natural Resources, except
8 that the Department shall not construct, maintain, operate or lease
9 a hotel or tourist inn in any park over which it has jurisdiction.
10 The North Carolina Wildlife Resources Commission may sell
11 wildlife memorabilia as a service to members of the public
12 interested in wildlife conservation.
- 13 (10) Child-caring institutions or orphanages receiving State aid.
14 (11) Highlands School in Macon County.
15 (12) The North Carolina State Fair.
16 (13) Rural electric memberships corporations.
17 (13a) State Farm Operations Commission.
18 (13b) The Department of Agriculture and Consumer Services with
19 regard to its lessees at farmers' markets operated by the
20 Department.
- 21 (13c) The Western North Carolina Agricultural Center.
22 (14) Nothing herein contained shall be construed to prohibit the
23 engagement in any of the activities described in subsection (a)
24 hereof by a firm, corporation or person who or which is a lessee of
25 space only of the State of North Carolina or any of its departments
26 or agencies; provided the leases shall be awarded by the
27 Department of Administration to the highest bidder, as provided
28 by law in the case of State contracts and which lease shall be for a
29 term of not less than one year and not more than five years.
- 30 (15) The State Department of Correction is authorized to purchase and
31 install automobile license tag plant equipment for the purpose of
32 manufacturing license tags for the State and local governments and
33 for such other purposes as the Department may direct.
- 34 The Commissioner of Motor Vehicles, or such other authority as
35 may exercise the authority to purchase automobile license tags is
36 hereby directed to purchase from, and to contract with, the State
37 Department of Correction for the State automobile license tag
38 requirements from year to year.
- 39 The price to be paid to the State Department of Correction for
40 the tags shall be fixed and agreed upon by the Governor, the State
41 Department of Correction, and the Motor Vehicle Commissioner,
42 or such authority as may be authorized to purchase the supplies.
- 43 (16) Laundry services performed by the Department of Correction may
44 be provided only for agencies and instrumentalities of the State

1 which are supported by State funds and for county or municipally
2 controlled and supported hospitals presently being served by the
3 Department of Correction, or for which services have been
4 contracted or applied for in writing, as of May 22, 1973. In
5 addition to the prior sentence, laundry services performed by the
6 Department of Correction may be provided for the Governor
7 Morehead School and the North Carolina School for the Deaf.

8 The services shall be limited to wet-washing, drying and ironing
9 of flatwear or flat goods such as towels, sheets and bedding, linens
10 and those uniforms prescribed for wear by the institutions and
11 further limited to only flat goods or apparel owned, distributed or
12 controlled entirely by the institutions and shall not include
13 processing by any dry-cleaning methods; provided, however, those
14 garments and items presently being serviced by wet-washing,
15 drying and ironing may in the future, at the election of the
16 Department of Correction, be processed by a dry-cleaning method.

17 (17) The North Carolina Global TransPark Authority or a lessee of the
18 Authority.

19 (18) The activities and products of private enterprise carried on or
20 manufactured within a State prison facility pursuant to G.S. 148-
21 70."

22 (f) G.S. 66-58(c) reads as rewritten:

23 "(c) The provisions of subsection (a) shall not prohibit:

24 (1) The sale of products of experiment stations or test farms.

25 (2) The sale of learned journals, works of art, books or publications of
26 the Department of Cultural Resources or other agencies, or the
27 Supreme Court Reports or Session Laws of the General Assembly.

28 (3) The business operation of endowment funds established for the
29 purpose of producing income for educational purposes; for
30 purposes of this section, the phrase "operation of endowment
31 funds" shall include the operation by public postsecondary
32 educational institutions of campus stores, the profits from which
33 are used exclusively for awarding scholarships to defray the
34 expenses of students attending the institution; provided, that the
35 operation of the stores must be approved by the board of trustees
36 of the institution, and the merchandise sold shall be limited to
37 educational materials and supplies, gift items and miscellaneous
38 personal-use articles. Provided further that sales at campus stores
39 are limited to employees of the institution and members of their
40 immediate families, to duly enrolled students of the campus at
41 which a campus store is located and their immediate families, to
42 duly enrolled students of other campuses of the University of
43 North Carolina other than the campus at which the campus store is
44 located, to other campus stores and to other persons who are on

- 1 campus other than for the purpose of purchasing merchandise from
2 campus stores. It is the intent of this subdivision that campus stores
3 be established and operated for the purpose of assuring the
4 availability of merchandise described in this Article for sale to
5 persons enumerated herein and not for the purpose of competing
6 with stores operated in the communities surrounding the campuses
7 of the University of North Carolina.
- 8 (4) The operation of lunch counters by the Department of Health and
9 Human Services as blind enterprises of the type operated on
10 January 1, 1951, in State buildings in the City of Raleigh.
- 11 (5) The operation of a snack bar and cafeteria in the State Legislative
12 Building.
- 13 (6) The maintenance by the prison system authorities of eating and
14 sleeping facilities at units of the State prison system for prisoners
15 and for members of the prison staff while on duty, or the
16 maintenance by the highway system authorities of eating and
17 sleeping facilities for working crews on highway construction or
18 maintenance when actually engaged in such work on parts of the
19 highway system.
- 20 (7) The operation by penal, correctional or facilities operated by the
21 Department of Health and Human ~~Services~~ Services, the
22 Department of Juvenile Justice, or by the Department of
23 Agriculture and Consumer Services, of dining rooms for the
24 inmates or clients or members of the staff while on duty and for
25 the accommodation of persons visiting the inmates or clients, and
26 other bona fide visitors.
- 27 (8) The sale by the Department of Agriculture and Consumer Services
28 of livestock, poultry and publications in keeping with its present
29 livestock and farm program.
- 30 (9) The operation by the public schools of school cafeterias.
- 31 (9a) The use of a public school bus or public school activity bus for a
32 purpose allowed under G.S. 115C-242 or the use of a public school
33 activity bus for a purpose authorized by G.S. 115C-247.
- 34 (10) Sale by any State correctional or other institution of farm, dairy,
35 livestock or poultry products raised or produced by it in its normal
36 operations as authorized by the act creating it.
- 37 (11) The sale of textbooks, library books, forms, bulletins, and
38 instructional supplies by the State Board of Education, State
39 Department of Public Instruction, and local school authorities.
- 40 (12) The sale of North Carolina flags by or through the auspices of the
41 Department of Administration, to the citizens of North Carolina.
- 42 (13) The operation by the Department of Correction of forestry
43 management programs on State-owned lands, including the sale on

1 the open market of timber cut as a part of the management
2 program.

3 (14) The operation by the Department of Correction of facilities to
4 manufacture and produce traffic and street name signs for use on
5 the public streets and highways of the State.

6 (15) The operation by the Department of Correction of facilities to
7 manufacture and produce paint for use on the public streets and
8 highways of the State.

9 (16) The performance by the Department of Transportation of dredging
10 services for a unit of local government.

11 (17) The sale by the State Board of Elections to political committees
12 and candidate committees of computer software designed by or for
13 the State Board of Elections to provide a uniform system of
14 electronic filing of the campaign finance reports required by
15 Article 22A of Chapter 163 of the General Statutes and to facilitate
16 the State Board's monitoring of compliance with that Article. This
17 computer software for electronic filing of campaign finance reports
18 shall not exceed a cost of one hundred dollars (\$100.00) to any
19 political committee or candidate committee without the State
20 Board of Elections first notifying in writing the Joint Legislative
21 Commission on Governmental Operations.

22 (18) The leasing of no more than 50 acres within the North Carolina
23 Zoological Park by the Department of Environment and Natural
24 Resources to the North Carolina Zoological Society for the
25 maintenance or operation, pursuant to a contract or otherwise, of
26 an exhibition center, theater, conference center, and associated
27 restaurants and lodging facilities."

28 (g) G.S. 114-19.6 reads as rewritten:

29 "**§ 114-19.6. Criminal history record checks of employees of and applicants for**
30 **employment with the Department of Health and Human Services: and the Department**
31 **of Juvenile Justice.**

32 (a) Definitions. -- As used in this section, the term:

33 (1) 'Covered person' means:

34 a. An applicant for employment or a current employee in a
35 position in the Department of Health and Human Services
36 or the Department of Juvenile Justice who provides direct
37 care for a client, patient, student, resident or ward of the
38 Department; or

39 b. Supervises positions providing direct care as outlined in sub-
40 subdivision a. of this subdivision.

41 (2) 'Criminal history' means a State or federal history of conviction of
42 a crime, whether a misdemeanor or felony, that bears upon a
43 covered person's fitness for employment in the Department of
44 Health and Human ~~Services~~: Services or the Department of

1 Juvenile Justice. The crimes include, but are not limited to,
2 criminal offenses as set forth in any of the following Articles of
3 Chapter 14 of the General Statutes: Article 5, Counterfeiting and
4 Issuing Monetary Substitutes; Article 5A, Endangering Executive
5 and Legislative Officers; Article 6, Homicide; Article 7A, Rape and
6 Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and
7 Abduction; Article 13, Malicious Injury or Damage by Use of
8 Explosive or Incendiary Device or Material; Article 14, Burglary
9 and Other Housebreakings; Article 15, Arson and Other Burnings;
10 Article 16, Larceny; Article 17, Robbery; Article 18,
11 Embezzlement; Article 19, False Pretenses and Cheats; Article
12 19A, Obtaining Property or Services by False or Fraudulent Use of
13 Credit Device or Other Means; Article 19B, Financial Transaction
14 Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article
15 26, Offenses Against Public Morality and Decency; Article 26A,
16 Adult Establishments; Article 27, Prostitution; Article 28, Perjury;
17 Article 29, Bribery; Article 31, Misconduct in Public Office; Article
18 35, Offenses Against the Public Peace; Article 36A, Riots and Civil
19 Disorders; Article 39, Protection of Minors; Article 40, Protection
20 of the Family; Article 59, Public Intoxication; and Article 60,
21 Computer-Related Crime. The crimes also include possession or
22 sale of drugs in violation of the North Carolina Controlled
23 Substances Act, Article 5 of Chapter 90 of the General Statutes,
24 and alcohol-related offenses such as sale to underage persons in
25 violation of G.S. 18B-302, or driving while impaired in violation of
26 G.S. 20-138.1 through G.S. 20-138.5.

27 (b) When requested by the Department of Health and Human ~~Services~~, Services
28 or the Department of Juvenile Justice, the North Carolina Department of Justice may
29 provide to the Department of ~~Health and Human Services~~ a covered person's
30 criminal history from the State Repository of Criminal Histories. Such requests shall
31 not be due to a person's age, sex, race, color, national origin, religion, creed, political
32 affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a
33 State criminal history record check only, the Department of ~~Health and Human~~
34 ~~Services~~ shall provide to the Department of Justice a form consenting to the check
35 signed by the covered person to be checked and any additional information required
36 by the Department of Justice. National criminal record checks are authorized for
37 covered applicants who have not resided in the State of North Carolina during the
38 past five years. For national checks the Department of ~~Health and Human Services~~
39 shall provide to the North Carolina Department of Justice the fingerprints of the
40 covered person to be checked, any additional information required by the
41 Department of Justice, and a form signed by the covered person to be checked
42 consenting to the check of the criminal record and to the use of fingerprints and
43 other identifying information required by the State or National Repositories. The
44 fingerprints of the individual shall be forwarded to the State Bureau of Investigation

1 for a search of the State criminal history record file and the State Bureau of
2 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation
3 for a national criminal history record check. The Department of Health and Human
4 Services shall keep all information pursuant to this section confidential. The
5 Department of Justice shall charge a reasonable fee for conducting the checks of the
6 criminal history records authorized by this section.

7 (c) All releases of criminal history information to the Department of Health and
8 Human Services or the Department of Juvenile Justice shall be subject to, and in
9 compliance with, rules governing the dissemination of criminal history record checks
10 as adopted by the North Carolina Division of Criminal Information. All of the
11 information the Department of ~~Health and Human Services~~ receives through the
12 checking of the criminal history is privileged information and for the exclusive use of
13 the ~~Department of Health and Human Services~~. Department.

14 (d) If the covered person's verified criminal history record check reveals one or
15 more convictions covered under subsection (a) of this section, then the conviction
16 shall constitute just cause for not selecting the person for employment, or for
17 dismissing the person from current employment with the Department of Health and
18 Human ~~Services~~. Services or the Department of Juvenile Justice. The conviction shall
19 not automatically prohibit employment; however, the following factors shall be
20 considered by the Department of ~~Health and Human Services~~ in determining whether
21 employment shall be denied:

- 22 (1) The level and seriousness of the crime;
- 23 (2) The date of the crime;
- 24 (3) The age of the person at the time of the conviction;
- 25 (4) The circumstances surrounding the commission of the crime, if
26 known;
- 27 (5) The nexus between the criminal conduct of the person and job
28 duties of the person;
- 29 (6) The prison, jail, probation, parole, rehabilitation, and employment
30 records of the person since the date the crime was committed; and
- 31 (7) The subsequent commission by the person of a crime listed in
32 subsection (a) of this section.

33 (e) The Department of Health and Human Services and the Department of
34 Juvenile Justice may deny employment to or dismiss a covered person who refuses to
35 consent to a criminal history record check or use of fingerprints or other identifying
36 information required by the State or National Repositories of Criminal Histories. Any
37 such refusal shall constitute just cause for the employment denial or the dismissal
38 from employment.

39 (f) The Department of Health and Human Services and the Department of
40 Juvenile Justice may extend a conditional offer of employment pending the results of
41 a criminal history record check authorized by this section."

42 (h) G.S. 115C-110 reads as rewritten:
43 "**§ 115C-110. Services mandatory; single-agency responsibility; State and local plans;**
44 **census and registration.**

1 (a) The Board shall cause to be provided by all local school administrative units
2 and by all other State and local governmental agencies providing special education
3 services or having children with special needs in their care, custody, management,
4 jurisdiction, control, or programs, special education and related services appropriate
5 to all children with special needs. In this regard, all local school administrative units
6 and all other State and local governmental agencies providing special education and
7 related services shall explore available local resources and determine whether the
8 services are currently being offered by an existing public or private agency.

9 When a specified special education or related service is being offered by a local
10 public or private resource, any unit or agency described above shall negotiate for the
11 purchase of that service or shall present full consideration of alternatives and its
12 recommendations to the Board. In this regard, a new or additional program for
13 special education or related services shall be developed with the approval of the
14 Board only when that service is not being provided by existing public or private
15 resources or the service cannot be purchased from existing providers. Further, the
16 Board shall support and encourage joint and collaborative special education planning
17 and programming at local levels to include local administrative units and the
18 programs and agencies of the Departments of Health and Human ~~Services~~ Services,
19 Juvenile Justice, and Correction.

20 The jurisdiction of the Board with respect to the design and content of special
21 education programs or related services for children with special needs extends to and
22 over the Department of Health and Human ~~Services~~ Services, the Department of
23 Juvenile Justice, and the Department of Correction.

24 All provisions of this Article that are specifically applicable to local school
25 administrative units also are applicable to the Department of Health and Human
26 ~~Services~~ Services, the Department of Juvenile Justice, and the Department of
27 Correction and their divisions and agencies; all duties, responsibilities, rights and
28 privileges specifically imposed on or granted to local school administrative units by
29 this Article also are imposed on or granted to the Department of Health and Human
30 ~~Services~~ Services, the Department of Juvenile Justice, and the Department of
31 Correction and their divisions and agencies. However, with respect to children with
32 special needs who are residents or patients of any state-operated or state-supported
33 residential treatment facility, including without limitation, a school for the deaf,
34 school for the blind, mental hospital or center, mental retardation center, or in a
35 facility operated by the Department of Juvenile Justice, the Department of Correction
36 or any of its divisions and agencies, the Board shall have the power to contract with
37 the Department of Health and Human ~~Services~~ Services, the Department of Juvenile
38 Justice, and the Department of Correction for the provision of special education and
39 related services and the power to review, revise and approve ~~said~~ these Departments'
40 plans for special education and related services to those residents.

41 The Departments of Health and Human ~~Services~~ Services, Juvenile Justice, and
42 Correction shall submit to the Board their plans for the education of children with
43 special needs in their care, custody, or control. The Board shall have general
44 supervision and shall set standards, by rule or regulation, for the programs of special

1 education to be administered by it, by local educational agencies, and by the
2 Departments of Health and Human ~~Services~~ Services, Juvenile Justice, and
3 Correction. The Board may grant specific exemptions for programs administered by
4 the Department of Health and Human ~~Services~~ Services, the Department of Juvenile
5 Justice, or the Department of Correction when compliance by them with the Board's
6 standards would, in the Board's judgment, impose undue hardship on ~~such~~ this
7 Department and when other procedural due process requirements, substantially
8 equivalent to those of G.S. 115C-116, are assured in programs of special education
9 and related services furnished to children with special needs served by ~~such~~ this
10 Department. Further, the Board shall recognize that inpatient and residential special
11 education programs within the Departments of Health and Human ~~Services~~ Services,
12 Juvenile Justice, and Correction may require more program resources than those
13 necessary for optimal operation of ~~such~~ these programs in local school administrative
14 units.

15 Every State and local department, division, unit or agency covered by this section
16 is hereinafter referred to as a 'local educational agency' unless the text of this Article
17 otherwise provides.

18 (b) The Board shall make and keep current a plan for the implementation of the
19 policy set forth in G.S. 115C-106(b). The plan shall include:

- 20 (1) A census of the children with special needs in the State, as
21 required by subsection (j) of this section;
- 22 (2) A procedure for diagnosis and evaluation of each ~~such~~ child;
- 23 (3) An inventory of the personnel and facilities available to provide
24 special education for ~~such~~ these children;
- 25 (4) An analysis of the present distribution of responsibility for special
26 education between State and local educational agencies, together
27 with recommendations for any necessary or desirable changes in
28 the distribution of responsibilities;
- 29 (5) Standards for the education of children with special needs;
- 30 (6) Programs and procedures for the development and implementation
31 of a comprehensive system of personnel development; and
- 32 (7) Any additional matters, including recommendations for
33 amendment of laws, changes in administrative regulations, rules
34 and practices and patterns of special organization, and changes in
35 levels and patterns of education financial support.

36 (c) The Board shall annually submit amendments to or revisions of the plan
37 required by subsection (b) to the Governor and General Assembly and make it
38 available for public comment pursuant to subdivision (1) and for public distribution
39 no less than 30 days before January 15 of each year. All such submissions shall set
40 forth in detail the progress made in the implementation of the plan.

41 (d) The Board shall adopt rules ~~or regulations~~ covering:

- 42 (1) The qualifications of and standards for certification of teachers,
43 teacher assistants, speech clinicians, school psychologists, and

- 1 others involved in the education and training of children with
2 special needs;
- 3 (2) Minimum standards for the individualized educational program for
4 all children with special needs other than for the pregnant
5 children, and for the educational program for the pregnant
6 children, who receive special education and related services; and
7 (3) ~~Such~~ Any other rules ~~or regulations~~ as may be necessary or
8 appropriate for carrying out the purposes of this Article.
9 Representatives from the Departments of Health and Human
10 ~~Services~~ Services, Juvenile Justice, and Correction shall be
11 involved in the development of the standards outlined under this
12 subsection.
- 13 (e) On or before October 15, each local educational agency shall report annually
14 to the Board the extent to which it is then providing special education for children
15 with special needs. The annual report also shall detail the means by which the local
16 educational agency proposes to secure full compliance with the policy of this Article,
17 including the following:
- 18 (1) A statement of the extent to which the required education and
19 services will be provided directly by the agency;
- 20 (2) A statement of the extent to which standards in force pursuant to
21 G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and
22 (3) The means by which the agency will contract to provide, at levels
23 meeting standards in force pursuant to G.S. 115C-110(b)(5) and
24 (d)(2), all special education and related services not provided
25 directly by it or by the State.
- 26 (f) After submitting the report required by subsection (e), the local educational
27 agency also shall submit such supplemental and additional reports as the Board may
28 require to keep the local educational agency's plan current.
- 29 (g) By ~~rule or regulation,~~ rule, the Board shall prescribe due dates not later than
30 October 15 of each year, and all other necessary or appropriate matters relating to
31 ~~such~~ these annual and supplemental and additional reports.
- 32 (h) The annual report shall be a two-year plan for providing appropriate special
33 education and related services to children with special needs. The agency shall submit
34 the plan to the Board for its review, approval, modification, or disapproval. Unless
35 thereafter modified with approval of the Board, the plan shall be adhered to by the
36 local educational agency. The procedure for approving, disapproving, establishing,
37 and enforcing the plan shall be the same as that set forth for the annual plan. The
38 long-range plan shall include such provisions as may be appropriate for the following,
39 without limitation:
- 40 (1) Establishment of classes, other programs of instruction, curricula,
41 facilities, equipment, and special services for children with special
42 needs; and
43 (2) Utilization and professional development of teachers and other
44 personnel working with children with special needs.

1 (i) Each local educational agency shall provide free appropriate special education
2 and related services in accordance with the provisions of this Article for all children
3 with special needs who are residents of, or whose parents or guardians are residents
4 of, the agency's district, beginning with children aged five. No matriculation or
5 tuition fees or other fees or charges shall be required or asked of children with
6 special needs or their parents or guardians except ~~such~~ those fees or charges as are
7 required uniformly of all public school pupils. The provision of free appropriate
8 special education within the facilities of the Department of Health and Human
9 Services and the Department of Juvenile Justice shall not prevent ~~that~~ those
10 Department from charging for other services or treatment.

11 (j) The Board shall require an annual census of children with special needs,
12 subdivided for 'identified' and 'suspected' children with special needs, to be taken in
13 each school year. Suspected children are those in the formal process of being
14 identified, evaluated or diagnosed as children with special needs. The census shall be
15 conducted annually and shall be completed not later than October 15, and shall be
16 submitted to the Governor and General Assembly and be made available to the
17 public no later than January 15 annually.

18 In taking the census, the Board shall require the cooperation, participation, and
19 assistance of all local educational agencies and all other State and local governmental
20 departments and agencies providing or required to provide special education services
21 to children with special needs, and those departments and agencies shall cooperate
22 and participate with and assist the Board in conducting the census.

23 The census shall include the number of children identified and suspected with
24 special needs, their age, the nature of their disability, their county or city of
25 residence, their local school administrative unit residence, whether they are being
26 provided special educational or related services and if so by what department or
27 agency, whether they are not being provided special education or related services, the
28 identity of each department or agency having children with special needs in its care,
29 custody, management, jurisdiction, control, or programs, the number of children with
30 special needs being served by each department or agency, and such other information
31 or data as the Board shall require. The census shall be of children with special needs
32 between the ages of three and 21, inclusive.

33 (k) The Department shall monitor the effectiveness of individualized education
34 programs in meeting the educational needs of all children with special needs other
35 than pregnant children, and of educational programs in meeting the educational
36 needs of the pregnant children.

37 (l) The Board shall provide for procedures assuring that in carrying out the
38 requirements of this Article procedures are established for consultation with
39 individuals involved in or concerned with the education of children with special
40 needs, including parents or guardians of such children, and there are public hearings,
41 adequate notice of such hearings, and an opportunity for comment available to the
42 general public prior to the adoption of the policies, procedures, and rules or
43 regulations required by this Article.

1 (m) Children with special needs shall be educated in the least restrictive
2 appropriate setting, as defined by the State Board of Education."

3 (i) G.S. 115C-111 reads as rewritten:

4 **"§ 115C-111. Free appropriate education for all children with special needs.**

5 No child with special needs between the ages specified by G.S. 115C-109 shall be
6 denied a free appropriate public education or be prevented from attending the public
7 schools of the local educational agency in which he or his parents or legal guardian
8 resides or from which he receives services or from attending any other public
9 program of free appropriate public education because he is a child with special
10 needs. If it appears that a child should receive a program of free appropriate public
11 education in a program operated by or under the supervision of the Department of
12 Health and Human ~~Services~~; Services or the Department of Juvenile Justice, the local
13 educational agency shall confer with the appropriate Department of Health and
14 Human Services or Juvenile Justice staff for their participation and determination of
15 the appropriateness of placement in said program and development of the child's
16 individualized education program. The individualized education program may then
17 be challenged under the due process provisions of G.S. 115C-116. Every child with
18 special needs shall be entitled to attend ~~such~~ these nonresidential schools or programs
19 and receive from them free appropriate public education."

20 (j) G.S. 115C-113(f) reads as rewritten:

21 "(f) Each local educational agency shall prepare individualized educational
22 programs for all children found to be children with special needs other than the
23 pregnant children, and educational programs prescribed in subsection (h) of this
24 section for the pregnant children. The individualized educational program shall be
25 developed in conformity with Public Law 94-142 and the implementing regulations
26 issued by the United States Department of Education and shall be implemented in
27 conformity with timeliness set by that Department. The term "individualized
28 educational program" means a written statement for each such child developed in
29 any meeting by a representative of the local educational agency who shall be
30 qualified to provide, or supervise the provision of, specially designed instruction to
31 meet the unique needs of such children, the teacher, the parents or guardian of such
32 child, and, whenever appropriate, such child, which statement shall be based on rules
33 developed by the Board. Each local educational agency shall establish, or revise,
34 whichever is appropriate, the individualized educational program of each child with
35 special needs each school year and will then review and, if appropriate revise, its
36 provisions periodically, but not less than annually. In the facilities and programs of
37 the Department of Health and Human ~~Services~~; Services and the Department of
38 Juvenile Justice, the individualized educational program shall be planned in
39 collaboration with those other individuals responsible for the design of the total
40 treatment or habilitation plan or both; the resulting educational, treatment, and
41 habilitation plans shall be coordinated, integrated, and internally consistent."

42 (k) G.S. 115C-113.1 reads as rewritten:

43 **"§ 115C-113.1. Surrogate parents.**

1 In the case of a child whose parent or guardian is unknown, whose whereabouts
2 cannot be determined after reasonable investigation, or who is a ward of the State,
3 the local educational agency shall appoint a surrogate parent for the child. The
4 surrogate parent shall be appointed from a group of persons approved by the
5 Superintendent of Public ~~Instruction and Instruction~~, the Secretary of Health and
6 Human Services, and the Secretary of the Department of Juvenile Justice, but in no
7 case shall the person appointed be an employee of the local educational agency or
8 directly involved in the education or care of the child. The Superintendent shall
9 ensure that local educational agencies appoint a surrogate parent for every child in
10 need of a surrogate parent."

11 (l) G.S. 115C-115 reads as rewritten:

12 "**§ 115C-115. Placements in private schools, out-of-state schools and schools in other**
13 **local educational agencies.**

14 The board shall adopt rules and regulations to assure that:

15 (1) There be no cost to the parents or guardian for the placement of a
16 child in a private school, out-of-state school or a school in another
17 local education agency if the child was so placed by the Board or
18 by the appropriate local educational agency as the means of
19 carrying out the requirement of this Article or any other applicable
20 law requiring the provision of special education and related
21 services to children within the State.

22 (2) No child shall be placed by the Board or by the local educational
23 agency in a private or out-of-state school unless the Board has
24 determined that the school meets standards that apply to State and
25 local educational agencies and that the child so placed will have all
26 the rights he would have if served by a State or local educational
27 agency.

28 (3) If the placement of the child in a private school, out-of-state school
29 or a school in another local educational agency determined by the
30 Superintendent of Public Instruction to be the most cost-effective
31 way to provide an appropriate education to that child and the
32 child is not currently being educated by the Department of Health
33 and Human ~~Services~~ Services, the Department of Juvenile Justice,
34 or the Department of Correction, the State will bear a portion of
35 the cost of the placement of the child. The local school
36 administrative unit shall pay an amount equal to what it receives
37 per pupil from the State Public School Fund and from other State
38 and federal funds for children with special needs for that child.
39 The State shall pay the full cost of any remainder up to a
40 maximum of fifty percent (50%) of the total cost."

41 (m) G.S. 115C-121(b) reads as rewritten:

42 "(b) The Council shall consist of ~~48~~ 23 members to be appointed as follows: five ex
43 officio members; two members appointed by the Governor; two members of the
44 Senate appointed by the President Pro Tempore; two members of the House of

1 Representatives appointed by the Speaker of the House; and 12 members appointed
2 by the State Board of Education. Of those members of the Council appointed by the
3 State Board one member shall be selected from each congressional district within the
4 State, and the members so selected shall be composed of at least one person
5 representing each of the following: handicapped individuals, parents or guardians of
6 children with special needs, teachers of children with special needs, and State and
7 local education officials and administrators of programs for children with special
8 needs. The Council shall designate a chairperson from among its members. The
9 designation of the chairperson is subject to the approval of the State Board of
10 Education. The board shall promulgate rules or regulations to carry out this
11 subsection.

12 Ex officio members of the Council shall be the following:

- 13 (1) The Secretary of the Department of Health and Human Services or
14 the Secretary's designee;
- 15 (1a) The Secretary of the Department of Juvenile Justice or the
16 Secretary's designee;
- 17 (2) The Secretary of the Department of Correction or the Secretary's
18 designee;
- 19 (3) A representative from The University of North Carolina Planning
20 Consortium for Children with Special Needs; and
- 21 (4) The Superintendent of Public Instruction or the Superintendent's
22 designee.

23 The term of appointment for all members except those appointed by the State
24 Board of Education shall be for two years. The term for members appointed by the
25 State Board of Education shall be for four years. No person shall serve more than two
26 consecutive four-year terms. The initial term of office of the person appointed from
27 the 12th Congressional District shall commence on January 3, 1993, and expire on
28 June 30, 1996.

29 Each Council member shall serve without pay, but shall receive travel allowances
30 and per diem in the same amount provided for members of the North Carolina
31 General Assembly."

32 (n) G.S. 115C-139(a) reads as rewritten:

33 "(a) The Board, any two or more local educational agencies and any such agency
34 and any State department, agency, or division having responsibility for the education,
35 treatment or habilitation of children with special needs are authorized to enter into
36 interlocal cooperation undertakings pursuant to the provisions of Chapter 160A,
37 Article 20, Part 1 of the General Statutes or into undertakings with a State agency
38 such as the Departments of Public Instruction, Health and Human Services, Juvenile
39 Justice, or Correction, or their divisions, agencies, or units, for the purpose of
40 providing for the special education and related services, treatment or habilitation of
41 such children within the jurisdiction of the agency or unit, and shall do so when it
42 itself is unable to provide the appropriate public special education or related services
43 for ~~such~~ these children. In entering into such undertakings, the local agency and State
44 department, agency, or division shall also contract to provide the special education or

1 related services that are most educationally appropriate to the children with special
2 needs for whose benefit the undertaking is made, and provide ~~such~~ these services by
3 or in the local agency unit or State department, agency, or division located in the
4 place most convenient to ~~such~~ these children."

5 (o) G.S. 115C-250(a) reads as rewritten:

6 "(a) The State Board of Education and local boards of education may expend
7 public funds for transportation of handicapped children with special needs who are
8 unable because of their handicap to ride the regular school buses and who have been
9 placed in programs by a local school board as a part of its duty to provide such
10 children with a free appropriate education, including its duty under G.S. 115C-115.
11 At the option of the local board of education with the concurrence of the State Board
12 of Education, funds appropriated to the State Board of Education for contract
13 transportation of exceptional children may be used to purchase buses and minibuses
14 as well as for the purposes authorized in the budget. The State Board of Education
15 shall adopt rules and regulations concerning the construction and equipment of these
16 buses and minibuses.

17 The Department of Health and Human ~~Services~~ Services, the Department of
18 Juvenile Justice, and the Department of Correction may also expend public funds for
19 transportation of handicapped children with special needs who are unable because of
20 their handicap to ride the regular school buses and who have been placed in
21 programs by one of these agencies as a part of that agency's duty to provide such
22 children with a free appropriate public education.

23 If a local area mental health center places a child with special needs in an
24 educational program, the local area mental health center shall pay for the
25 transportation of the child, if handicapped and unable because of the handicap to
26 ride the regular school buses, to the program."

27 (p) G.S. 115C-325(p) reads as rewritten:

28 "(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or
29 regulation to the contrary, this section shall apply to all persons employed in teaching
30 and related educational classes in the schools and institutions of the Departments of
31 Health and Human ~~Services~~ Services, Juvenile Justice, and Correction regardless of
32 the age of the students."

33 (q) G.S. 115D-1 reads as rewritten:

34 "**§ 115D-1. Statement of purpose.**

35 The purposes of this Chapter are to provide for the establishment, organization,
36 and administration of a system of educational institutions throughout the State
37 offering courses of instruction in one or more of the general areas of two-year college
38 parallel, technical, vocational, and adult education programs, to serve as a legislative
39 charter for such institutions, and to authorize the levying of local taxes and the
40 issuing of local bonds for the support thereof. The major purpose of each and every
41 institution operating under the provisions of this Chapter shall be and shall continue
42 to be the offering of vocational and technical education and training, and of basic,
43 high school level, academic education needed in order to profit from vocational and
44 technical education, for students who are high school graduates or who are beyond

1 the compulsory age limit of the public school system and who have left the public
2 schools, provided, juveniles of any age committed to the ~~Division of Youth Services~~
3 ~~of the Department of Health and Human Services~~ Department of Juvenile Justice by
4 a court of competent jurisdiction may, if approved by the director of the training
5 school to which they are assigned, take courses offered by institutions of the system if
6 they are otherwise qualified for admission."

7 (r) G.S. 115D-5(b) reads as rewritten:

8 "(b) In order to make instruction as accessible as possible to all citizens, the
9 teaching of curricular courses and of noncurricular extension courses at convenient
10 locations away from institution campuses as well as on campuses is authorized and
11 shall be encouraged. A pro rata portion of the established regular tuition rate charged
12 a full-time student shall be charged a part-time student taking any curriculum course.
13 In lieu of any tuition charge, the State Board of Community Colleges shall establish a
14 uniform registration fee, or a schedule of uniform registration fees, to be charged
15 students enrolling in extension courses for which instruction is financed primarily
16 from State funds; provided, however, that the State Board of Community Colleges
17 may provide by general and uniform regulations for waiver of tuition and registration
18 fees for persons not enrolled in elementary or secondary schools taking courses
19 leading to a high school diploma or equivalent certificate, for training courses for
20 volunteer firemen, local fire department personnel, volunteer rescue and lifesaving
21 department personnel, local rescue and lifesaving department personnel, Radio
22 Emergency Associated Citizens Team (REACT) members when the REACT team is
23 under contract to a county as an emergency response agency, local law-enforcement
24 officers, patients in State alcoholic rehabilitation centers, all full-time custodial
25 employees of the Department of Correction, employees of the Department's Division
26 of Adult Probation and Parole and employees of the ~~Division of Youth Services~~
27 ~~of the Department of Health and Human Services~~ Department of Juvenile Justice
28 required to be certified pursuant to Chapter 17C of the General Statutes and the
29 rules of the Criminal Justice and Training Standards Commission, trainees enrolled
30 in courses conducted under the New and Expanding Industry Program, clients of
31 sheltered workshops, clients of adult developmental activity programs, students in
32 Health and Human Services Development Programs, juveniles of any age committed
33 to the ~~Division of Youth Services of the Department of Health and Human Services~~
34 Department of Juvenile Justice by a court of competent jurisdiction, prison inmates,
35 and members of the North Carolina State Defense Militia as defined in G.S. 127A-5
36 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes.
37 Provided further, tuition shall be waived for senior citizens attending institutions
38 operating pursuant to this Chapter as set forth in Chapter 115B of the General
39 Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be
40 waived for all courses taken by high school students at community colleges in
41 accordance with G.S. 115D-20(4) and this section."

42 (s) G.S. 122C-3(13a) reads as rewritten:

43 "(13a) 'Eligible assaultive and violent children' means children who are
44 citizens of North Carolina and:

- 1 a. Who suffer from emotional, mental, or neurological
2 handicaps that have been accompanied by behavior that is
3 characterized as violent or assaultive; and
4 b. Who are involuntarily institutionalized or otherwise placed
5 in residential programs, including:
6 1. Minors who are mentally ill as defined by G.S. 122C-
7 3(21) and who are admitted for evaluation or
8 treatment to a treatment facility under Article 5 of
9 Chapter 122C of the General Statutes or are
10 presented for admission and denied due to their
11 behaviors or handicapping conditions;
12 2. Minors who are referred to an area mental health,
13 developmental disabilities, and substance abuse
14 authority pursuant to ~~G.S. 7A-647(3)~~ G.S. 7B-903 for
15 whom residential treatment or placement is
16 recommended;
17 3. Minors who are placed in residential programs as a
18 condition of probation pursuant to ~~G.S. 7A-649(8)~~;
19 G.S. 7B-2504;
20 4. Minors who are ordered to a professional residential
21 treatment program pursuant to ~~G.S. 7A-649(6)~~; G.S.
22 7B-2504; and
23 5. Minors committed to the custody of the ~~Division of~~
24 Youth Services Department of Juvenile Justice,
25 pursuant to ~~G.S. 7A-649(10)~~; G.S. 7B-2504; and
26 c. For whom the State has not provided appropriate treatment
27 and educational programs."

28 (t) G.S. 122C-113(b1) reads as rewritten:

29 "(b1) The Secretary shall cooperate with the State Board of Education and the
30 Department of Juvenile Justice in coordinating the responsibilities of the Department
31 of Health and Human Services, the State Board of Education, the Department of
32 Juvenile Justice, and the Department of Public Instruction for adolescent substance
33 abuse programs. The Department of Health and Human Services, through its
34 Division of Mental Health, Developmental Disabilities, and Substance Abuse
35 Services, in cooperation with the Department of Juvenile Justice, shall be responsible
36 for intervention and treatment in non-school based programs. The State Board of
37 Education and the Department of Public ~~Instruction~~ Instruction, in consultation with
38 the Department of Juvenile Justice, shall have primary responsibility for in-school
39 education, identification, and intervention services, including student assistance
40 programs."

41 (u) G.S. 122C-117(a) reads as rewritten:

42 "(a) The area authority shall:

- 1 (1) Engage in comprehensive planning, budgeting, implementing, and
- 2 monitoring of community-based mental health, developmental
- 3 disabilities, and substance abuse services;
- 4 (2) Provide services to clients in the catchment ~~area;~~ area, including
- 5 clients committed to the custody of the Department of Juvenile
- 6 Justice;
- 7 (3) Determine the needs of the area authority's clients and coordinate
- 8 with the Secretary and with the Secretary of the Department of
- 9 Juvenile Justice the provision of services to clients through area
- 10 and State facilities;
- 11 (4) Develop plans and budgets for the area authority subject to the
- 12 approval of the Secretary;
- 13 (5) Assure that the services provided by the area authority meet the
- 14 rules of the Commission and Secretary;
- 15 (6) Comply with federal requirements as a condition of receipt of
- 16 federal grants; and
- 17 (7) Appoint an area director, chosen through a search committee on
- 18 which the Secretary of the Department of Health and Human
- 19 Services or the Secretary's designee serves as a nonvoting
- 20 member."

(v) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

29 OFFICIAL OR AGENCY	NUMBER OF COPIES
30 State Departments and Officials	
31 Governor	1
32 Lieutenant Governor	1
33 Auditor	1
34 Treasurer	1
35 Secretary of State	1
36 Superintendent of Public Instruction.....	1
37 Attorney General (Library)	1
38 Commissioner of Agriculture	1
39 Commissioner of Labor	1
40 Commissioner of Insurance.....	1
41 Department of Environment and	
42 Natural Resources.....	1
43 Department of Health and Human Services.....	1
44 <u>Department of Juvenile Justice</u>	<u>1</u>

1 Board of Transportation.....1
 2 Utilities Commission.....1
 3 Department of Administration.....1
 4 Clerk of the Supreme Court.....1
 5 Clerk of the Court of Appeals.....1
 6 Clerk of the Superior Court.....1 each
 7 Department of Cultural Resources [State
 8 Library].....5
 9 Supreme Court Library.....2
 10 Legislative Library.....1
 11 Schools
 12 All state-supported colleges and universities
 13 in the State of North Carolina.....*1 each
 14 Local Officials
 15 Clerks of the Superior Courts.....1 each
 16 Chief Building Inspector of each incorporated
 17 municipality or county.....1
 18

19 In addition, the Building Code Council shall make additional copies available at
 20 such price as it shall deem reasonable to members of the general public."

21 (w) G.S. 143B-138.1(a) reads as rewritten:

22 "(a) All functions, powers, duties, and obligations previously vested in the
 23 following commissions, boards, councils, committees, or subunits of the Department
 24 of Human Resources are transferred to and vested in the Department of Health and
 25 Human Services by a Type I transfer, as defined in G.S. 143A-6:

- 26 (1) Division of Aging.
- 27 (2) Division of Services for the Blind.
- 28 (3) Division of Medical Assistance.
- 29 (4) Division of Mental Health, Developmental Disabilities, and
 30 Substance Abuse Services.
- 31 (5) Division of Social Services.
- 32 (6) Division of Facility Services.
- 33 (7) Division of Vocational Rehabilitation.
- 34 ~~(8) Division of Youth Services.~~
- 35 (9) Division of Services for the Deaf and the Blind.
- 36 (10) Office of Economic Opportunity.
- 37 (11) Division of Child Development.
- 38 (12) Office of Rural Health."

39 (x) G.S. 143B-150.7(b) reads as rewritten:

40 "(b) The Committee shall have 24 members appointed for staggered four-year
 41 terms and until their successors are appointed and qualify. The Governor shall have
 42 the power to remove any member of the Committee from office in accordance with
 43 the provisions of G.S. 143B-13. Members may succeed themselves for one term and
 44 may be appointed again after being off the Committee for one term. Six of the

1 members shall be legislators appointed by the General Assembly, three of whom shall
2 be recommended by the Speaker of the House of Representatives, and three of whom
3 shall be recommended by the President Pro Tempore of the Senate. Two of the
4 members shall be appointed by the General Assembly from the public at large, one of
5 whom shall be recommended by the Speaker of the House of Representatives, and
6 one of whom shall be recommended by the President Pro Tempore of the Senate.
7 The remainder of the members shall be appointed by the Governor as follows:

- 8 (1) ~~Five~~ Four members representing the Department of Health and
9 Human Services, one of whom shall be the Assistant Secretary for
10 Children and Family, one of whom shall represent the Division of
11 Social Services, ~~one of whom shall represent the Division of Youth~~
12 ~~Services~~, one of whom shall represent the Division of Mental
13 Health, Developmental Disabilities, and Substance Abuse Services,
14 and one of whom shall represent the Division of Maternal and
15 Child Health;
- 16 (2a) One member representing the Department of Juvenile Justice;
- 17 (2) Two members, one from each of the following: the Administrative
18 Office of the Courts and the Department of Public Instruction;
- 19 (3) One member who represents the Juvenile Justice Planning
20 Committee of the Governor's Crime Commission, and one
21 member appointed at large;
- 22 (4) One member who is a district court judge certified by the
23 Administrative Office of the Courts to hear juvenile cases;
- 24 (5) One member representing the schools of social work of The
25 University of North Carolina;
- 26 (6) Two members, one of whom is a provider of family preservation
27 services, and one of whom is a consumer of family preservation
28 services; and
- 29 (7) Three members who represent county-level associations; one of
30 whom represents the Association of County Commissioners, one of
31 whom represents the Association of Directors of Social Services,
32 and one of whom represents the North Carolina Council of Mental
33 Health, Developmental Disabilities, and Substance Abuse Services.

34 The Secretary of the Department of Health and Human Services shall serve as the
35 Chair of the Committee. The Secretary shall appoint the cochair of the Committee
36 for a two-year term on a rotating basis from among the Committee members who
37 represent the ~~Division of Youth Services~~, Department of Juvenile Justice, the
38 Division of Social Services, and the Division of Mental Health, Developmental
39 Disabilities, and Substance Abuse Services."

40 (y) G.S. 143B-152.6 reads as rewritten:

41 "§ 143B-152.6. Cooperation S.O.S. Program; cooperation of State and local agencies.

42 All agencies of the State and local government, including the Department of
43 Juvenile Justice, departments of social services, health departments, local mental
44 health, mental retardation, and substance abuse authorities, court personnel, law

1 enforcement agencies, The University of North Carolina, the community college
2 system, and cities and counties, shall cooperate with the Department of Health and
3 Human Services, and local nonprofit corporations that receive grants in coordinating
4 the program at the State level and in implementing the program at the local level.
5 The Secretary of Health and Human Services, after consultation with the
6 Superintendent of Public Instruction, shall develop a plan for ensuring the
7 cooperation of State agencies and local agencies, and encouraging the cooperation of
8 private entities, especially those receiving State funds, in the coordination and
9 implementation of the program."

10 (z) G.S. 143B-152.14 reads as rewritten:

11 "**§ 143B-152.14. Cooperation Family Resource Center Grant Program; cooperation of**
12 **State and local agencies.**

13 All agencies of the State and local government, including the Department of
14 Juvenile Justice, departments of social services, health departments, local mental
15 health, mental retardation, and substance abuse authorities, court personnel, law
16 enforcement agencies, The University of North Carolina, the community college
17 system, and cities and counties, shall cooperate with the Department of Health and
18 Human Services, and local nonprofit corporations that receive grants in coordinating
19 the program at the State level and in implementing the program at the local level.
20 The Secretary of Health and Human Services, after consultation with the
21 Superintendent of Public Instruction, shall develop a plan for ensuring the
22 cooperation of State agencies and local agencies and encouraging the cooperation of
23 private entities, especially those receiving State funds, in the coordination and
24 implementation of the program."

25 (aa) G.S. 143B-153(2) reads as rewritten:

26 "(2) The Social Services Commission shall have the power and duty to
27 establish standards and adopt rules and regulations:

28 a. For the programs of public assistance established by federal
29 legislation and by Article 2 of Chapter 108A of the General
30 Statutes of the State of North Carolina with the exception of
31 the program of medical assistance established by G.S. 108A-
32 25(b);

33 b. To achieve maximum cooperation with other agencies of the
34 State and with agencies of other states and of the federal
35 government in rendering services to strengthen and maintain
36 family life and to help recipients of public assistance obtain
37 self-support and self-care;

38 c. For the placement and supervision of dependent children
39 and delinquent children who are placed in the custody of
40 the Department of Juvenile Justice, and payment of
41 necessary costs of foster home care for needy and homeless
42 children as provided by G.S. 108A-48; and

43 d. For the payment of State funds to private child-placing
44 agencies as defined in G.S. 131D-10.2(4) and residential

1 child care facilities as defined in G.S. 131D-10.2(13) for care
2 and services provided to children who are in the custody or
3 placement responsibility of a county department of social
4 services."

5 (bb) G.S. 143B-417 reads as rewritten:

6 "**§ 143B-417. North Carolina Internship Council -- creation; powers and duties.**

7 There is hereby created the North Carolina Internship Council of the Department
8 of Administration. The North Carolina Internship Council shall have the following
9 functions and duties:

- 10 (1) To determine the number of student interns to be allocated to each
11 of the following offices or departments:
- 12 a. Office of the Governor
 - 13 b. Department of Administration
 - 14 c. Department of Correction
 - 15 d. Department of Cultural Resources
 - 16 e. Department of Revenue
 - 17 f. Department of Transportation
 - 18 g. Department of Environment and Natural Resources
 - 19 h. Department of Commerce
 - 20 i. Department of Crime Control and Public Safety
 - 21 j. Department of Health and Human Services
 - 22 j1. Department of Juvenile Justice
 - 23 k. Office of the Lieutenant Governor
 - 24 l. Office of the Secretary of State
 - 25 m. Office of the State Auditor
 - 26 n. Office of the State Treasurer
 - 27 o. Department of Public Instruction
 - 28 p. Repealed by Session Laws 1985, c. 757, s. 162.
 - 29 q. Department of Agriculture and Consumer Services
 - 30 r. Department of Labor
 - 31 s. Department of Insurance
 - 32 t. Office of the Speaker of the House of Representatives
 - 33 u. Justices of the Supreme Court and Judges of the Court of
34 Appeals
 - 35 v. Department of Community Colleges
 - 36 w. Office of State Personnel
 - 37 x. Office of the Senate President Pro Tempore;
- 38 (2) To screen applications for student internships and select from these
39 applications the recipients of student internships; and
- 40 (3) To determine the appropriateness of proposals for projects for
41 student interns submitted by the offices and departments
42 enumerated in (1)."
- 43 (cc) G.S. 143B-478 reads as rewritten:

1 "§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings,
2 etc.

3 (a) There is hereby created the Governor's Crime Commission of the Department
4 of Crime Control and Public Safety. The Commission shall consist of ~~34~~ 35 voting
5 members and six nonvoting members. The composition of the Commission shall be as
6 follows:

7 (1) The voting members shall be:

8 a. The Governor, the Chief Justice of the Supreme Court of
9 North Carolina (or his alternate), the Attorney General, the
10 Director of the Administrative Office of the Courts, the
11 Secretary of the Department of Health and Human Services,
12 the Secretary of the Department of Juvenile Justice, the
13 Secretary of the Department of Correction, and the
14 Superintendent of Public Instruction;

15 b. A judge of superior court, a judge of district court
16 specializing in juvenile matters, a chief district court judge,
17 and a district attorney;

18 c. A defense attorney, three sheriffs (one of whom shall be
19 from a "high crime area"), three police executives (one of
20 whom shall be from a "high crime area"), six citizens (two
21 with knowledge of juvenile delinquency and the public
22 school system, two of whom shall be under the age of 21 at
23 the time of their appointment, one representative of a
24 'private juvenile delinquency program,' and one in the
25 discretion of the Governor), three county commissioners or
26 county officials, and three mayors or municipal officials;

27 d. Two members of the North Carolina House of
28 Representatives and two members of the North Carolina
29 Senate.

30 (2) The nonvoting members shall be the Director of the State Bureau
31 of Investigation, the Secretary of the Department of Crime Control
32 and Public Safety, the Director of the ~~Division of Youth Services~~
33 ~~of the Department of Health and Human Services~~, the
34 ~~Administrator for Juvenile Services of the Administrative Office of~~
35 ~~the Courts~~, Department of Juvenile Justice, the Director of the
36 Division of Prisons and the Director of the Division of Adult
37 Probation and Paroles.

38 (b) The membership of the Commission shall be selected as follows:

39 (1) The following members shall serve by virtue of their office: the
40 Governor, the Chief Justice of the Supreme Court, the Attorney
41 General, the Director of the Administrative Office of the Courts,
42 the Secretary of the Department of Health and Human Services,
43 the Secretary of the Department of Juvenile Justice, the Secretary
44 of the Department of Correction, the Director of the State Bureau

- 1 of Investigation, the Secretary of the Department of Crime Control
2 and Public Safety, the Director of the Division of Prisons, the
3 Director of the Division of Adult Probation and Paroles, the
4 Director of the ~~Division of Youth Services, the Administrator for~~
5 ~~Juvenile Services of the Administrative Office of the Courts,~~
6 Department of Juvenile Justice, and the Superintendent of Public
7 Instruction. Should the Chief Justice of the Supreme Court choose
8 not to serve, his alternate shall be selected by the Governor from a
9 list submitted by the Chief Justice which list must contain no less
10 than three nominees from the membership of the Supreme Court.
- 11 (2) The following members shall be appointed by the Governor: the
12 district attorney, the defense attorney, the three sheriffs, the three
13 police executives, the six citizens, the three county commissioners
14 or county officials, the three mayors or municipal officials.
- 15 (3) The following members shall be appointed by the Governor from a
16 list submitted by the Chief Justice of the Supreme Court, which list
17 shall contain no less than three nominees for each position and
18 which list must be submitted within 30 days after the occurrence of
19 any vacancy in the judicial membership: the judge of superior
20 court, the judge of district court specializing in juvenile matters,
21 and the chief district court judge.
- 22 (4) The two members of the House of Representatives provided by
23 subdivision (a)(1)d. of this section shall be appointed by the
24 Speaker of the House of Representatives and the two members of
25 the Senate provided by subdivision (a)(1)d. of this section shall be
26 appointed by the President Pro Tempore of the Senate. These
27 members shall perform the advisory review of the State plan for
28 the General Assembly as permitted by section 206 of the Crime
29 Control Act of 1976 (Public Law 94-503).
- 30 (5) The Governor may serve as chairman, designating a vice-chairman
31 to serve at his pleasure, or he may designate a chairman and vice-
32 chairman both of whom shall serve at his pleasure.
- 33 (c) The initial members of the Commission shall be those appointed pursuant to
34 subsection (b) above, which appointments shall be made by March 1, 1977. The terms
35 of the present members of the Governor's Commission on Law and Order shall
36 expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint
37 members, other than those serving by virtue of their office, to serve staggered terms;
38 seven shall be appointed for one-year terms, seven for two-year terms, and seven for
39 three-year terms. At the end of their respective terms of office their successors shall
40 be appointed for terms of three years and until their successors are appointed and
41 qualified. The Commission members from the House and Senate shall serve two-year
42 terms effective March 1, of each odd-numbered year; and they shall not be
43 disqualified from Commission membership because of failure to seek or attain
44 reelection to the General Assembly, but resignation or removal from office as a

1 member of the General Assembly shall constitute resignation or removal from the
 2 Commission. Any other Commission member no longer serving in the office from
 3 which he qualified for appointment shall be disqualified from membership on the
 4 Commission. Any appointment to fill a vacancy on the Commission created by the
 5 resignation, dismissal, death, disability, or disqualification of a member shall be for
 6 the balance of the unexpired term.

7 (d) The Governor shall have the power to remove any member from the
 8 Commission for misfeasance, malfeasance or nonfeasance.

9 (e) The Commission shall meet quarterly and at other times at the call of the
 10 chairman or upon written request of at least eight of the members. A majority of the
 11 voting members shall constitute a quorum for the transaction of business."

12 (dd) G.S. 147-45 reads as rewritten:

13 "§ 147-45. Distribution of copies of State publications.

14 The Secretary of State shall, at the State's expense, as soon as possible after
 15 publication, provide such number of copies of the Session Laws and Senate and
 16 House Journals to federal, State, and local governmental officials, departments and
 17 agencies, and to educational institutions of instruction and exchange use, as is set out
 18 in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services,		
Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1

1	Budget Bureau	2	1
2	Controller	1	0
3	Property Control	1	0
4	Purchase and Contract	2	0
5	Policy and Development	1	0
6	Veterans Affairs Commission	1	0
7	Environment and Natural Resources,		
8	Department of	6	0
9	Wildlife Resources Commission	2	0
10	Revenue, Department of	5	1
11	Health and Human Services, Department of	6	0
12	Mental Health, Developmental Disabilities,		
13	and Substance Abuse Services,		
14	Division of	1	0
15	Social Services, Division of	3	0
16	Facilities Services, Division of	1	0
17	Youth Services , Division of	1	0
18	Hospitals and Institutions	1 ea.	0
19	<u>Juvenile Justice, Department of</u>	<u>3</u>	<u>0</u>
20	Transportation, Department of	1	0
21	Board of Transportation	3	0
22	Motor Vehicles, Division of	1	0
23	Commerce, Department of	1	0
24	Economic Development, Division of	2	0
25	State Ports Authority	1	0
26	Alcoholic Beverage Control Commission,		
27	North Carolina	2	0
28	Banking Commission	2	0
29	Utilities Commission	8	1
30	Industrial Commission	7	0
31	Labor Force Development Council	1	0
32	Milk Commission	5	0
33	Employment Security Commission	1	1
34	Correction, Department of	1	0
35	Department of Correction	2	0
36	Parole Commission	2	0
37	State Prison	1	0
38	Correctional Institutions	1 ea.	0
39	Cultural Resources, Department of	1	0
40	Archives and History, Division of	5	1
41	State Library	5	5
42	Publications Division	1	1
43	Crime Control and Public Safety, Department of	2	1
44	North Carolina Crime Commission	1	0

1	Adjutant General	2	0
2	Elections, State Board of	2	0
3	Office of Administrative Hearings	2	0
4	State Personnel Commission	1	0
5	Office of State Personnel	1	1
6	Legislative Branch		
7	State Senators	1 ea.	1 ea.
8	State Representatives	1 ea.	1 ea.
9	Principal Clerk -- Senate	1	1
10	Principal Clerk -- House	1	1
11	Reading Clerk -- Senate	1	1
12	Reading Clerk -- House	1	1
13	Sergeant at Arms -- House	1	1
14	Sergeant at Arms -- Senate	1	1
15	Enrolling Clerk	1	0
16	Engrossing Clerk	1	0
17	Indexer of the Laws	1	0
18	Legislative Building Library	35	15
19	Judicial System		
20	Justices of the Supreme Court	1 ea.	1 ea.
21	Judges of the Court of Appeals	1 ea.	1 ea.
22	Judges of the Superior Court	1 ea.	0
23	Emergency and Special Judges of the		
24	Superior Court	1 ea.	0
25	District Court Judges	1 ea.	0
26	District Attorneys	1 ea.	0
27	Clerk of the Supreme Court	1	1
28	Clerk of the Court of Appeals	1	1
29	Administrative Office of the Courts	4	1
30	Supreme Court Library	AS MANY AS REQUESTED	
31	Colleges and Universities		
32	The University of North Carolina System		
33	Administrative Offices	3	0
34	University of North Carolina,		
35	Chapel Hill	65	25
36	University of North Carolina,		
37	Charlotte	3	1
38	University of North Carolina,		
39	Greensboro	3	1
40	University of North Carolina,		
41	Asheville	2	1
42	University of North Carolina,		
43	Wilmington	2	1
44	North Carolina State University,		

1	Raleigh	5	3
2	Appalachian State University	2	1
3	East Carolina University	3	2
4	Elizabeth City State University	2	1
5	Fayetteville State University	2	1
6	North Carolina Agricultural and		
7	Technical University	2	1
8	North Carolina Central University	5	5
9	Western Carolina University	2	1
10	University of North Carolina,		
11	Pembroke	2	1
12	Winston-Salem State University	2	1
13	North Carolina School of the Arts	1	1
14	Private Institutions		
15	Duke University	6	6
16	Davidson College	3	2
17	Wake Forest University	5	5
18	Lenoir Rhyne College	1	1
19	Elon College	1	1
20	Guilford College	1	1
21	Campbell University	5	5
22	Wingate College	1	1
23	Pfeiffer College	1	1
24	Barber Scotia College	1	1
25	Barton College	1	1
26	Shaw University	1	1
27	St. Augustine's College	1	1
28	J. C. Smith University	1	1
29	Belmont Abbey College	1	1
30	Bennett College	1	1
31	Catawba College	1	1
32	Gardner-Webb College	1	1
33	Greensboro College	1	1
34	High Point College	1	1
35	Livingstone College	1	1
36	Mars Hill College	1	1
37	Meredith College	1	1
38	Methodist College	1	1
39	North Carolina Wesleyan College	1	1
40	Queens College	1	1
41	Sacred Heart College	1	1
42	St. Andrews Presbyterian College	1	1
43	Salem College	1	1
44	Warren Wilson College	1	1

1	County and Local Officials		
2	Clerks of the Superior Court	1 ea.	1 ea.
3	Register of Deeds	1 ea.	1 ea.
4	Federal, Out-of-State and Foreign		
5	Secretary to the President	1	0
6	Secretary of State	1	1
7	Secretary of Defense	1	0
8	Secretary of Agriculture	1	0
9	Secretary of the Interior	1	0
10	Secretary of Labor	1	1
11	Secretary of Commerce	1	1
12	Secretary of the Treasury	1	0
13	Secretary of Health, Education and		
14	Welfare	1	0
15	Secretary of Housing and Urban		
16	Development	1	0
17	Secretary of Transportation	1	0
18	Attorney General	1	0
19	Postmaster General	1	0
20	Bureau of Census	1	0
21	Bureau of Public Roads	1	0
22	Department of Justice	1	0
23	Department of Internal Revenue	1	0
24	Veterans' Administration	1	0
25	Farm Credit Administration	1	0
26	Securities and Exchange Commission	1	0
27	Social Security Board	1	0
28	Environmental Protection Agency	1	0
29	Library of Congress	8	2
30	Federal Judges resident in North		
31	Carolina	1 ea.	0
32	Federal District Attorneys resident in		
33	North Carolina	1 ea.	0
34	Marshal of the United States		
35	Supreme Court	1	0
36	Federal Clerks of Court resident in		
37	North Carolina	1 ea.	0
38	Supreme Court Library exchange list	1 ea.	0
39	One copy of the Session Laws shall be furnished the head of any department of		
40	State government created in the future.		
41	State agencies, institutions, etc., not found in or covered by this list may, upon		
42	written request from their respective department head to the Secretary of State, and		
43	upon the discretion of the Secretary of State as to need, be issued copies of the		

1 Session Laws on a permanent loan basis with the understanding that should said
2 copies be needed they will be recalled."

3 **PART II. JUVENILE CODE STATUTORY RECOMMENDATIONS.**

4 Section 3. Subchapter XI, Articles 41 through 59 of Chapter 7A of the
5 General Statutes, the North Carolina Juvenile Code, Articles 24B and 39 of Chapter
6 7A of the General Statutes, Articles 2A, 4, 4A, and 10 of Chapter 110 of the General
7 Statutes, and Article 62 of Chapter 143 of the General Statutes are repealed.

8 Section 4. The General Statutes are amended by adding a new Chapter
9 to read:

10 "Chapter 7B.

11 "Juvenile Code.

12 "SUBCHAPTER I. ABUSE, NEGLECT, DEPENDENCY.

13 "ARTICLE 1.

14 "Purposes; Definitions.

15 "§ 7B-100. Purpose.

16 This Subchapter shall be interpreted and construed so as to implement the
17 following purposes and policies:

- 18 (1) To provide procedures for the hearing of juvenile cases that assure
19 fairness and equity and that protect the constitutional rights of
20 juveniles and parents;
21 (2) To develop a disposition in each juvenile case that reflects
22 consideration of the facts, the needs and limitations of the juvenile,
23 the strengths and weaknesses of the family, and the protection of
24 the public safety;
25 (3) To provide for services for the protection of juveniles by means
26 that respect both the right to family autonomy and juveniles' needs
27 for safety, continuity, and permanence; and
28 (4) To provide standards for the removal, when necessary, of juveniles
29 from their homes and for the return of juveniles to their homes
30 consistent with preventing the unnecessary or inappropriate
31 separation of juveniles from their parents.

32 "§ 7B-101. Definitions.

33 As used in this Subchapter, unless the context clearly requires otherwise, the
34 following words have the listed meanings:

- 35 (1) Abused juveniles. -- Any juvenile less than 18 years of age whose
36 parent, guardian, custodian, or caretaker:
37 a. Inflicts or allows to be inflicted upon the juvenile a serious
38 physical injury by other than accidental means;
39 b. Creates or allows to be created a substantial risk of serious
40 physical injury to the juvenile by other than accidental
41 means;
42 c. Uses or allows to be used upon the juvenile cruel or grossly
43 inappropriate procedures or cruel or grossly inappropriate
44 devices to modify behavior;

- 1 d. Commits, permits, or encourages the commission of a
2 violation of the following laws by, with, or upon the
3 juvenile: first-degree rape, as provided in G.S. 14-27.2;
4 second degree rape as provided in G.S. 14-27.3; first-degree
5 sexual offense, as provided in G.S. 14-27.4; second degree
6 sexual offense, as provided in G.S. 14-27.5; sexual act by a
7 custodian, as provided in G.S. 14-27.7; crime against nature,
8 as provided in G.S. 14-177; incest, as provided in G.S. 14-
9 178 and G.S. 14-179; preparation of obscene photographs,
10 slides or motion pictures of the juvenile, as provided in G.S.
11 14-190.5; employing or permitting the juvenile to assist in a
12 violation of the obscenity laws as provided in G.S. 14-190.6;
13 dissemination of obscene material to the juvenile as
14 provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or
15 disseminating material harmful to the juvenile as provided
16 in G.S. 14-190.14 and G.S. 14-190.15; first and second
17 degree sexual exploitation of the juvenile as provided in
18 G.S. 14-190.16 and G.S. 14-190.17; promoting the
19 prostitution of the juvenile as provided in G.S. 14-190.18;
20 and taking indecent liberties with the juvenile, as provided
21 in G.S. 14-202.1, regardless of the age of the parties;
22 e. Creates or allows to be created serious emotional damage to
23 the juvenile. Serious emotional damage is evidenced by a
24 juvenile's severe anxiety, depression, withdrawal, or
25 aggressive behavior toward himself or others; or
26 f. Encourages, directs, or approves of delinquent acts involving
27 moral turpitude committed by the juvenile.
28 (2) Caretaker. -- Any person other than a parent, guardian, or
29 custodian who has responsibility for the health and welfare of a
30 juvenile in a residential setting. A person responsible for a
31 juvenile's health and welfare means a stepparent, foster parent, an
32 adult member of the juvenile's household, an adult relative
33 entrusted with the juvenile's care, or any person such as a house
34 parent or cottage parent who has primary responsibility for
35 supervising a juvenile's health and welfare in a residential child
36 care facility or residential educational facility. 'Caretaker' also
37 means any person who has the responsibility for the care of a
38 juvenile in a child care facility as defined in Article 7 of Chapter
39 110 of the General Statutes and includes any person who has the
40 approval of the care provider to assume responsibility for the
41 juveniles under the care of the care provider. Nothing in this
42 subdivision shall be construed to impose a legal duty of support
43 under Chapter 50 or Chapter 110 of the General Statutes. The

- 1 duty imposed upon a caretaker as defined in this subdivision shall
2 be for the purpose of this Subchapter only.
- 3 (3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
4 deputy clerk.
- 5 (4) Community-based program. -- A program providing nonresidential
6 or residential treatment to a juvenile in the community where the
7 juvenile's family lives. A community-based program may include
8 specialized foster care, family counseling, shelter care, and other
9 appropriate treatment.
- 10 (5) Court. -- The district court division of the General Court of
11 Justice.
- 12 (6) Custodian. -- The person or agency that has been awarded legal
13 custody of a juvenile by a court.
- 14 (7) Dependent juvenile. -- A juvenile in need of assistance or
15 placement because the juvenile has no parent, guardian, or
16 custodian responsible for the juvenile's care or supervision or
17 whose parent, guardian, or custodian is unable to provide for the
18 care or supervision and lacks an appropriate alternative child care
19 arrangement.
- 20 (8) Director. -- The director of the county department of social
21 services in the county in which the juvenile resides or is found, or
22 the director's representative as authorized in G.S. 108A-14.
- 23 (9) District. -- Any district court district as established by G.S. 7A-133.
- 24 (10) In loco parentis. -- A person acting in loco parentis means one,
25 other than parents or legal guardian, who has assumed the status
26 and obligation of a parent without being awarded the legal custody
27 of a juvenile by a court.
- 28 (11) Judge. -- Any district court judge.
- 29 (12) Judicial district. -- Any district court district as established by G.S.
30 7A-133.
- 31 (13) Juvenile. -- A person who has not reached the person's eighteenth
32 birthday and is not married, emancipated, or a member of the
33 armed services of the United States.
- 34 (14) Neglected juvenile. -- A juvenile who does not receive proper care,
35 supervision, or discipline from the juvenile's parent, guardian,
36 custodian, or caretaker; or who has been abandoned; or who is not
37 provided necessary medical care; or who is not provided necessary
38 remedial care; or who lives in an environment injurious to the
39 juvenile's welfare; or who has been placed for care or adoption in
40 violation of law. In determining whether a juvenile is a neglected
41 juvenile, it is relevant whether that juvenile lives in a home where
42 another juvenile has been subjected to abuse or neglect by an adult
43 who regularly lives in the home.

1 When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until
2 terminated by order of the court, until the juvenile reaches the age of 18 years, or is
3 otherwise emancipated.

4 "ARTICLE 3.

5 "Screening of Abuse and Neglect Complaints.

6 "§ 7B-300. Protective services.

7 The director of the department of social services in each county of the State shall
8 establish protective services for juveniles alleged to be abused, neglected, or
9 dependent.

10 Protective services shall include the investigation and screening of complaints,
11 casework, or other counseling services to parents or other caretakers as provided by
12 the director to help the parents or other caretakers and the court to prevent abuse or
13 neglect, to improve the quality of child care, to be more adequate parents or
14 caretakers, and to preserve and stabilize family life.

15 The provisions of this Article shall also apply to child care facilities as defined in
16 G.S. 110-86.

17 "§ 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.

18 Any person or institution who has cause to suspect that any juvenile is abused,
19 neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of
20 maltreatment, shall report the case of that juvenile to the director of the department
21 of social services in the county where the juvenile resides or is found. The report
22 may be made orally, by telephone, or in writing. The report shall include
23 information as is known to the person making it including the name and address of
24 the juvenile; the name and address of the juvenile's parent, guardian, or caretaker;
25 the age of the juvenile; the names and ages of other juveniles in the home; the
26 present whereabouts of the juvenile if not at the home address; the nature and extent
27 of any injury or condition resulting from abuse, neglect, or dependency; and any
28 other information which the person making the report believes might be helpful in
29 establishing the need for protective services or court intervention. If the report is
30 made orally or by telephone, the person making the report shall give the person's
31 name, address, and telephone number. Refusal of the person making the report to
32 give a name shall not preclude the department's investigation of the alleged abuse,
33 neglect, dependency, or death as a result of maltreatment.

34 Upon receipt of any report of sexual abuse of the juvenile in a child care facility,
35 the director shall notify the State Bureau of Investigation within 24 hours or on the
36 next workday. If sexual abuse in a child care facility is not alleged in the initial
37 report, but during the course of the investigation there is reason to suspect that sexual
38 abuse has occurred, the director shall immediately notify the State Bureau of
39 Investigation. Upon notification that sexual abuse may have occurred in a child care
40 facility, the State Bureau of Investigation may form a task force to investigate the
41 report.

42 "§ 7B-302. Investigation by director; access to confidential information; notification of
43 person making the report.

1 When a report of abuse, neglect, or dependency is received, the director of the
2 department of social services shall make a prompt and thorough investigation in
3 order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk
4 of harm to the juvenile, in order to determine whether protective services should be
5 provided or the complaint filed as a petition. When the report alleges abuse, the
6 director shall immediately, but no later than 24 hours after receipt of the report,
7 initiate the investigation. When the report alleges neglect or dependency, the director
8 shall initiate the investigation within 72 hours following receipt of the report. The
9 investigation and evaluation shall include a visit to the place where the juvenile
10 resides. All information received by the department of social services, including the
11 identity of the reporter, shall be held in strictest confidence by the department.

12 When a report of suspected abuse, neglect, or dependency of a juvenile is received,
13 the director of the department of social services shall immediately ascertain if other
14 juveniles remain in the home, and, if so, initiate an investigation in order to
15 determine whether they require protective services or whether immediate removal of
16 the juveniles from the home is necessary for their protection.

17 If the investigation indicates that abuse, neglect, or dependency has occurred, the
18 director shall decide whether immediate removal of the juvenile or any other
19 juveniles in the home is necessary for their protection. If immediate removal does not
20 seem necessary, the director shall immediately provide or arrange for protective
21 services. If the parent or other caretaker refuses to accept the protective services
22 provided or arranged by the director, the director shall sign a complaint seeking to
23 invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

24 If immediate removal seems necessary for the protection of the juvenile or other
25 juveniles in the home, the director shall sign a complaint which alleges the applicable
26 facts to invoke the jurisdiction of the court. Where the investigation shows that it is
27 warranted, a protective services worker may assume temporary custody of the
28 juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

29 In performing any duties related to the investigation of the complaint or the
30 provision or arrangement for protective services, the director may consult with any
31 public or private agencies or individuals, including the available State or local law
32 enforcement officers who shall assist in the investigation and evaluation of the
33 seriousness of any report of abuse, neglect, or dependency when requested by the
34 director. The director or the director's representative may make a written demand for
35 any information or reports, whether or not confidential, that may in the director's
36 opinion be relevant to the investigation of or the provision for protective services.
37 Upon the director's or the director's representative's request and unless protected by
38 the attorney-client privilege, any public or private agency or individual shall provide
39 access to and copies of this confidential information and these records to the extent
40 permitted by federal law and regulations. If a custodian of criminal investigative
41 information or records believes that release of the information will jeopardize the
42 right of the State to prosecute a defendant or the right of a defendant to receive a fair
43 trial or will undermine an ongoing or future investigation, it may seek an order from
44 a court of competent jurisdiction to prevent disclosure of the information. In such an

1 action, the custodian of the records shall have the burden of showing by a
2 preponderance of the evidence that disclosure of the information in question will
3 jeopardize the right of the State to prosecute a defendant or the right of a defendant
4 to receive a fair trial or will undermine an ongoing or future investigation. Actions
5 brought pursuant to this paragraph shall be set down for immediate hearing, and
6 subsequent proceedings in the actions shall be accorded priority by the trial and
7 appellate courts.

8 Within five working days after receipt of the report of abuse, neglect, or
9 dependency, the director shall give written notice to the person making the report,
10 unless requested by that person not to give notice, as to whether the report was
11 accepted for investigation and whether the report was referred to the appropriate
12 State or local law enforcement agency.

13 Within five working days after completion of the protective services investigation,
14 the director shall give subsequent written notice to the person making the report,
15 unless requested by that person not to give notice, as to whether there is a finding of
16 abuse, neglect, or dependency, whether the county department of social services is
17 taking action to protect the juvenile, and what action it is taking, including whether
18 or not a petition was filed. The person making the report shall be informed of
19 procedures necessary to request a review by the prosecutor of the director's decision
20 not to file a petition. A request for review by the prosecutor shall be made within five
21 working days of receipt of the second notification. The second notification shall
22 include notice that, if the person making the report is not satisfied with the director's
23 decision, the person may request review of the decision by the prosecutor within five
24 working days of receipt. The person making the report may waive the person's right
25 to this notification, and no notification is required if the person making the report
26 does not identify himself to the director.

27 **"§ 7B-303. Interference with investigation.**

28 (a) If any person obstructs or interferes with an investigation required by G.S. 7B-
29 302, the director may file a petition naming said person as respondent and requesting
30 an order directing the respondent to cease such obstruction or interference. The
31 petition shall contain the name and date of birth and address of the juvenile who is
32 the subject of the investigation, shall specifically describe the conduct alleged to
33 constitute obstruction of or interference with the investigation, and shall be verified.

34 (b) For purposes of this section, obstruction of or interference with an
35 investigation means refusing to disclose the whereabouts of the juvenile, refusing to
36 allow the director to have personal access to the juvenile, refusing to allow the
37 director to observe or interview the juvenile in private, refusing to allow the director
38 access to confidential information and records upon request pursuant to G.S. 7B-302,
39 refusing to allow the director to arrange for an evaluation of the juvenile by a
40 physician or other expert, or other conduct that makes it impossible for the director
41 to carry out the duty to investigate.

42 (c) Upon filing of the petition, the court shall schedule a hearing to be held not
43 less than five days after service of the petition and summons on the respondent.
44 Service of the petition and summons and notice of hearing shall be made as provided

1 by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian,
2 custodian, or caretaker; and any other person determined by the court to be a
3 necessary party. If at the hearing on the petition the court finds by clear, cogent, and
4 convincing evidence that the respondent, without lawful excuse, has obstructed or
5 interfered with an investigation required by G.S. 7B-302, the court may order the
6 respondent to cease such obstruction or interference. The burden of proof shall be
7 on the petitioner.

8 (d) If the director has reason to believe that the juvenile is in need of immediate
9 protection or assistance, the director shall so allege in the petition and may seek an
10 ex parte order from the court. If the court, from the verified petition and any inquiry
11 the court makes of the director, finds probable cause to believe both that the juvenile
12 is at risk of immediate harm and that the respondent is obstructing or interfering with
13 the director's ability to investigate to determine the juvenile's condition, the court
14 may enter an ex parte order directing the respondent to cease such obstruction or
15 interference. The order shall be limited to provisions necessary to enable the director
16 to conduct an investigation sufficient to determine whether the juvenile is in need of
17 immediate protection or assistance. Within 10 days after the entry of an ex parte
18 order under this subsection, a hearing shall be held to determine whether there is
19 good cause for the continuation of the order or the entry of a different order. An
20 order entered under this subsection shall be served on the respondent along with a
21 copy of the petition, summons, and notice of hearing.

22 (e) The director may be required at a hearing under this section to reveal the
23 identity of any person who made a report of suspected abuse, neglect, or dependency
24 as required by G.S. 7B-301.

25 (f) An order entered pursuant to this section is enforceable by civil or criminal
26 contempt as provided in Chapter 5A of the General Statutes.

27 **"§ 7B-304. Evaluation for court.**

28 In all cases in which a petition is filed, the director of the department of social
29 services shall prepare a report for the court containing a home placement plan and a
30 treatment plan deemed by the director to be appropriate to the needs of the juvenile.
31 The report shall be available to the court immediately following the adjudicatory
32 hearing.

33 **"§ 7B-305. Request for review by prosecutor.**

34 The person making the report shall have five working days, from receipt of the
35 decision of the director of the department of social services not to petition the court,
36 to notify the prosecutor that the person is requesting a review. The prosecutor shall
37 notify the person making the report and the director of the time and place for the
38 review, and the director shall immediately transmit to the prosecutor a copy of the
39 investigation report.

40 **"§ 7B-306. Review by prosecutor.**

41 The prosecutor shall review the director's determination that a petition should not
42 be filed within 20 days after the person making the report is notified. The review
43 shall include conferences with the person making the report, the protective services
44 worker, the juvenile, if practicable, and other persons known to have pertinent

1 information about the juvenile or the juvenile's family. At the conclusion of the
2 conferences, the prosecutor may affirm the decision made by the director, may
3 request the appropriate local law enforcement agency to investigate the allegations, or
4 may direct the director to file a petition.

5 "§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local
6 law enforcement; notification of Department of Health and Human Services and State
7 Bureau of Investigation.

8 (a) If the director finds evidence that a juvenile may have been abused as defined
9 by G.S. 7B-101, the director shall make an immediate oral and subsequent written
10 report of the findings to the district attorney or the district attorney's designee and
11 the appropriate local law enforcement agency within 48 hours after receipt of the
12 report. The local law enforcement agency shall immediately, but no later than 48
13 hours after receipt of the information, initiate and coordinate a criminal investigation
14 with the protective services investigation being conducted by the county department
15 of social services. Upon completion of the investigation, the district attorney shall
16 determine whether criminal prosecution is appropriate and may request the director
17 or the director's designee to appear before a magistrate.

18 If the director receives information that a juvenile may have been physically
19 harmed in violation of any criminal statute by any person other than the juvenile's
20 parent, guardian, custodian, or caretaker, the director shall make an immediate oral
21 and subsequent written report of that information to the district attorney or the
22 district attorney's designee and to the appropriate local law enforcement agency
23 within 48 hours after receipt of the information. The local law enforcement agency
24 shall immediately, but no later than 48 hours after receipt of the information, initiate
25 a criminal investigation. Upon completion of the investigation, the district attorney
26 shall determine whether criminal prosecution is appropriate.

27 If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a
28 juvenile in child care, the director shall notify the Department of Health and Human
29 Services within 24 hours or on the next working day of receipt of the report.

30 (b) If the director finds evidence that a juvenile has been abused or neglected as
31 defined by G.S. 7B-101 in a child care facility, the director shall immediately so
32 notify the Department of Health and Human Services and, in the case of sexual
33 abuse, the State Bureau of Investigation, in such a way as does not violate the law
34 guaranteeing the confidentiality of the records of the department of social services.

35 (c) Upon completion of the investigation, the director shall give the department
36 written notification of the results of the investigation required by G.S. 7B-302. Upon
37 completion of an investigation of sexual abuse in a child care facility, the director
38 shall also make written notification of the results of the investigation to the State
39 Bureau of Investigation.

40 The director of the department of social services shall submit a report of alleged
41 abuse, neglect, or dependency cases or child fatalities that are the result of alleged
42 maltreatment to the central registry under the policies adopted by the Social Services
43 Commission.

44 "§ 7B-308. Authority of medical professionals in abuse cases.

1 (a) Any physician or administrator of a hospital, clinic, or other medical facility to
2 which a suspected abused juvenile is brought for medical diagnosis or treatment shall
3 have the right, when authorized by the chief district court judge of the district or the
4 judge's designee, to retain physical custody of the juvenile in the facility when the
5 physician who examines the juvenile certifies in writing that the juvenile who is
6 suspected of being abused should remain for medical treatment or that, according to
7 the juvenile's medical evaluation, it is unsafe for the juvenile to return to the
8 juvenile's parent, guardian, custodian, or caretaker. This written certification must be
9 signed by the certifying physician and must include the time and date that the judicial
10 authority to retain custody is given. Copies of the written certification must be
11 appended to the juvenile's medical and judicial records and another copy must be
12 given to the juvenile's parent, guardian, custodian, or caretaker. The right to retain
13 custody in the facility shall exist for up to 12 hours from the time and date contained
14 in the written certification.

15 (b) Immediately upon receipt of judicial authority to retain custody, the physician,
16 the administrator, or that person's designee shall so notify the director of social
17 services for the county in which the facility is located. The director shall treat this
18 notification as a report of suspected abuse and shall immediately begin an
19 investigation of the case.

20 (1) If the investigation reveals (i) that it is the opinion of the certifying
21 physician that the juvenile is in need of medical treatment to cure
22 or alleviate physical distress, or to prevent the juvenile from
23 suffering serious physical injury, and (ii) that it is the opinion of
24 the physician that the juvenile should for these reasons remain in
25 the custody of the facility for 12 hours, but (iii) that the juvenile's
26 parent, guardian, custodian, or caretaker cannot be reached or,
27 upon request, will not consent to the treatment within the facility,
28 the director shall within the initial 12-hour period file a juvenile
29 petition alleging abuse and setting forth supporting allegations and
30 shall seek a nonsecure custody order. A petition filed and a
31 nonsecure custody order obtained in accordance with this
32 subdivision shall come on for hearing under the regular provisions
33 of this Subchapter unless the director and the certifying physician
34 together voluntarily dismiss the petition.

35 (2) In all cases except those described in subdivision (1) above, the
36 director shall conduct the investigation and may initiate juvenile
37 proceedings and take all other steps authorized by the regular
38 provisions of this Subchapter. If the director decides not to file a
39 petition, the physician, the administrator, or that person's designee
40 may ask the prosecutor to review this decision according to the
41 provisions of G.S. 7B-305 and G.S. 7B-306.

42 (c) If, upon hearing, the court determines that the juvenile is found in a county
43 other than the county of legal residence, in accord with G.S. 153A-257, the juvenile

1 may be transferred, in accord with G.S. 7B-903(2), to the custody of the department
2 of social services in the county of residence.

3 (d) If the court, upon inquiry, determines that the medical treatment rendered was
4 necessary and appropriate, the cost of that treatment may be charged to the parents,
5 guardian, custodian, or caretaker, or, if the parents are unable to pay, to the county
6 of residence in accordance with G.S. 7B-903 and G.S. 7B-904.

7 (e) Except as otherwise provided, a petition begun under this section shall
8 proceed in like manner with petitions begun under G.S. 7B-302.

9 (f) The procedures in this section are in addition to, and not in derogation of, the
10 abuse and neglect reporting provisions of G.S. 7B-301 and the temporary custody
11 provisions of G.S. 7B-500. Nothing in this section shall preclude a physician or
12 administrator and a director of social services from following the procedures of G.S.
13 7B-301 and G.S. 7B-500 whenever these procedures are more appropriate to the
14 juvenile's circumstances.

15 **"§ 7B-309. Immunity of persons reporting and cooperating in an investigation.**

16 Anyone who makes a report pursuant to this Article, cooperates with the county
17 department of social services in a protective services inquiry or investigation, testifies
18 in any judicial proceeding resulting from a protective services report or investigation,
19 or otherwise participates in the program authorized by this Article, is immune from
20 any civil or criminal liability that might otherwise be incurred or imposed for that
21 action provided that the person was acting in good faith. In any proceeding involving
22 liability, good faith is presumed.

23 **"§ 7B-310. Privileges not grounds for failing to report or for excluding evidence.**

24 No privilege shall be grounds for any person or institution failing to report that a
25 juvenile may have been abused, neglected, or dependent, even if the knowledge or
26 suspicion is acquired in an official professional capacity, except when the knowledge
27 or suspicion is gained by an attorney from that attorney's client during representation
28 only in the abuse, neglect, or dependency case. No privilege, except the attorney-
29 client privilege, shall be grounds for excluding evidence of abuse, neglect, or
30 dependency in any judicial proceeding (civil, criminal, or juvenile) in which a
31 juvenile's abuse, neglect, or dependency is in issue nor in any judicial proceeding
32 resulting from a report submitted under this Article, both as this privilege relates to
33 the competency of the witness and to the exclusion of confidential communications.

34 **"§ 7B-311. Central registry.**

35 The Department of Health and Human Services shall maintain a central registry of
36 abuse, neglect, and dependency cases and child fatalities that are the result of alleged
37 maltreatment that are reported under this Article in order to compile data for
38 appropriate study of the extent of abuse and neglect within the State and to identify
39 repeated abuses of the same juvenile or of other juveniles in the same family. This
40 data shall be furnished by county directors of social services to the Department of
41 Health and Human Services and shall be confidential, subject to policies adopted by
42 the Social Services Commission providing for its use for study and research and for
43 other appropriate disclosure. Data shall not be used at any hearing or court
44 proceeding unless based upon a final judgment of a court of law.

"ARTICLE 4."Venue; Petitions."§ 7B-400. Venue; pleading.

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. When a proceeding is commenced in a district other than that of the juvenile's residence, the court, on its own motion or upon motion of any party, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this subsection may be made at any time.

"§ 7B-401. Pleading and process.

The pleading in an abuse, neglect, or dependency action is the petition. The process in an abuse, neglect, or dependency action is the summons.

"§ 7B-402. Petition.

(a) The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian and shall allege the facts which invoke jurisdiction over the juvenile. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

Sufficient copies of the petition shall be prepared so that copies will be available for each juvenile, each parent if living separate and apart, the guardian ad litem, the social worker, and any person determined by the court to be a necessary party.

"§ 7B-403. Receipt of reports; filing of petition.

(a) All reports concerning a juvenile alleged to be abused, neglected, or dependent shall be referred to the director of the department of social services for screening. Thereafter, if it is determined by the director that a report should be filed as a petition, the petition shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing.

(b) A decision of the director of social services not to file a report as a petition shall be reviewed by the prosecutor if review is requested pursuant to G.S. 7B-305.

"§ 7B-404. Immediate need for petition when clerk's office is closed.

(a) When the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:

(1) When the director of the department of social services requests a petition alleging a juvenile to be abused, neglected, or dependent,
or

(2) When the director of the department of social services requests a petition alleging the obstruction of or interference with an investigation required by G.S. 7B-302.

(b) The authority of the magistrate under this section is limited to emergency situations when a petition is required in order to obtain a nonsecure custody order or an order under G.S. 7B-303. Any petition issued under this section shall be delivered to the clerk's office for processing as soon as that office is open for business.

"§ 7B-405. Commencement of action.

1 An action is commenced by the filing of a petition in the clerk's office when that
2 office is open, or by the issuance of a juvenile petition by a magistrate when the
3 clerk's office is closed, which issuance shall constitute filing.

4 "§ 7B-406. Issuance of summons.

5 (a) Immediately after a petition has been filed alleging that a juvenile is abused,
6 neglected, or dependent, the clerk shall issue a summons to the parent, guardian,
7 custodian, or caretaker requiring them to appear for a hearing at the time and place
8 stated in the summons. A copy of the petition shall be attached to each summons.

9 (b) A summons shall be on a printed form supplied by the Administrative Office
10 of the Courts and shall include:

11 (1) Notice of the nature of the proceeding;

12 (2) Notice of any right to counsel and information about how to seek
13 the appointment of counsel prior to a hearing;

14 (3) Notice that, if the court determines at the hearing that the
15 allegations of the petition are true, the court will conduct a
16 dispositional hearing to consider the needs of the juvenile and
17 enter an order designed to meet those needs and the objectives of
18 the State; and

19 (4) Notice that the dispositional order or a subsequent order:

20 a. May remove the juvenile from the custody of the parent,
21 guardian, or custodian.

22 b. May require that the juvenile receive medical, psychiatric,
23 psychological, or other treatment and that the parent
24 participate in the treatment.

25 c. May require the parent to undergo psychiatric,
26 psychological, or other treatment or counseling for the
27 purpose of remedying the behaviors or conditions that are
28 alleged in the petition or that contributed to the removal of
29 the juvenile from the custody of the parent.

30 d. May order the parent to pay for treatment that is ordered
31 for the juvenile or the parent.

32 (c) The summons shall advise the parent that upon service, jurisdiction over the
33 parent is obtained and that failure to comply with any order of the court pursuant to
34 G.S. 7B-904 may cause the court to issue a show cause order for contempt.

35 (d) A summons shall be directed to the person summoned to appear and shall be
36 delivered to any person authorized to serve process.

37 "§ 7B-407. Service of summons.

38 The summons shall be personally served upon the parent, guardian, custodian, or
39 caretaker, and the juvenile or counsel or guardian ad litem, not less than five days
40 prior to the date of the scheduled hearing. The time for service may be waived in the
41 discretion of the court.

42 If the parent, guardian, custodian, or caretaker entitled to receive a summons
43 cannot be found by a diligent effort, the court may authorize service of the summons

1 and petition by mail or by publication. The cost of the service by publication shall be
2 advanced by the petitioner and may be charged as court costs as the court may direct.
3 If the parent, guardian, custodian, or caretaker is personally served as herein
4 provided and fails without reasonable cause to appear and to bring the juvenile
5 before the court, the parent, guardian, custodian, or caretaker may be proceeded
6 against as for contempt of court.

7 "ARTICLE 5.

8 "Temporary Custody; Nonsecure Custody; Custody Hearings.

9 "§ 7B-500. Taking a juvenile into temporary custody.

10 Temporary custody means the taking of physical custody and providing personal
11 care and supervision until a court order for nonsecure custody can be obtained. A
12 juvenile may be taken into temporary custody without a court order by a law
13 enforcement officer or a department of social services worker if there are reasonable
14 grounds to believe that the juvenile is abused, neglected, or dependent and that the
15 juvenile would be injured or could not be taken into custody if it were first necessary
16 to obtain a court order. If a department of social services worker takes a juvenile
17 into temporary custody under this section, the worker may arrange for the placement,
18 care, supervision, and transportation of the juvenile.

19 "§ 7B-501. Duties of person taking juvenile into temporary custody.

20 (a) A person who takes a juvenile into custody without a court order under G.S.
21 7B-500 shall proceed as follows:

22 (1) Notify the juvenile's parent, guardian, custodian, or caretaker that
23 the juvenile has been taken into temporary custody and advise the
24 parent, guardian, custodian, or caretaker of the right to be present
25 with the juvenile until a determination is made as to the need for
26 nonsecure custody. Failure to notify the parent that the juvenile is
27 in custody shall not be grounds for release of the juvenile.

28 (2) Release the juvenile to the juvenile's parent, guardian, custodian,
29 or caretaker if the person having the juvenile in temporary custody
30 decides that continued custody is unnecessary.

31 (3) The person having temporary custody shall communicate with the
32 director of the department of social services who shall consider
33 prehearing diversion. If the decision is made to file a petition, the
34 director shall contact the judge or person delegated authority
35 pursuant to G.S. 7B-502 for a determination of the need for
36 continued custody.

37 (b) A juvenile taken into temporary custody under this Article shall not be held
38 for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a
39 Saturday, Sunday, or legal holiday, unless:

40 (1) A petition or motion for review has been filed by the director of
41 the department of social services, and

42 (2) An order for nonsecure custody has been entered by the court.

43 "§ 7B-502. Authority to issue custody orders; delegation.

1 In the case of any juvenile alleged to be within the jurisdiction of the court, the
2 court may order that the juvenile be placed in nonsecure custody pursuant to criteria
3 set out in G.S. 7B-503 when custody of the juvenile is necessary.

4 Any district court judge shall have the authority to issue nonsecure custody orders
5 pursuant to G.S. 7B-503. The chief district court judge may delegate the court's
6 authority to persons other than district court judges by administrative order which
7 shall be filed in the office of the clerk of superior court. The administrative order
8 shall specify which persons shall be contacted for approval of a nonsecure custody
9 order pursuant to G.S. 7B-503.

10 **"§ 7B-503. Criteria for nonsecure custody.**

11 When a request is made for nonsecure custody, the court shall first consider
12 release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other
13 responsible adult. An order for nonsecure custody shall be made only when there is
14 a reasonable factual basis to believe the matters alleged in the petition are true, and

15 (1) The juvenile has been abandoned; or

16 (2) The juvenile has suffered physical injury or sexual abuse; or

17 (3) The juvenile is exposed to a substantial risk of physical injury or
18 sexual abuse because the parent, guardian, custodian, or caretaker
19 has created the conditions likely to cause injury or abuse or has
20 failed to provide, or is unable to provide, adequate supervision or
21 protection; or

22 (4) The juvenile is in need of medical treatment to cure, alleviate, or
23 prevent suffering serious physical harm which may result in death,
24 disfigurement, or substantial impairment of bodily functions, and
25 the juvenile's parent, guardian, custodian, or caretaker is unwilling
26 or unable to provide or consent to the medical treatment; or

27 (5) The parent, guardian, custodian, or caretaker consents to the
28 nonsecure custody order; or

29 (6) The juvenile is a runaway and consents to nonsecure custody.

30 A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure
31 custody only when there is a reasonable factual basis to believe that there is no other
32 reasonable means available to protect the juvenile. In no case shall a juvenile alleged
33 to be abused, neglected, or dependent be placed in secure custody.

34 **"§ 7B-504. Order for nonsecure custody.**

35 The custody order shall be in writing and shall direct a law enforcement officer or
36 other authorized person to assume custody of the juvenile and to make due return on
37 the order. A copy of the order shall be given to the juvenile's parent, guardian,
38 custodian, or caretaker by the official executing the order.

39 An officer receiving an order for custody which is complete and regular on its face
40 may execute it in accordance with its terms. The officer is not required to inquire
41 into the regularity or continued validity of the order and shall not incur criminal or
42 civil liability for its due service.

43 **"§ 7B-505. Place of nonsecure custody.**

1 A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure
2 custody with the department of social services or a person designated in the order for
3 temporary residential placement in:

- 4 (1) A licensed foster home or a home otherwise authorized by law to
5 provide such care; or
6 (2) A facility operated by the department of social services; or
7 (3) Any other home or facility approved by the court and designated
8 in the order.

9 In placing a juvenile in nonsecure custody under this section, the court shall first
10 consider whether a relative of the juvenile is willing and able to provide proper care
11 and supervision of the juvenile in a safe home. If the court finds that the relative is
12 willing and able to provide proper care and supervision in a safe home, then the
13 court shall order placement of the juvenile with the relative. Prior to placement of a
14 juvenile with a relative outside of this State, the placement must be in accordance
15 with the Interstate Compact on the Placement of Children, Article 38 of this Chapter.
16 **§ 7B-506. Hearing to determine need for continued nonsecure custody.**

17 (a) No juvenile shall be held under a nonsecure custody order for more than
18 seven calendar days without a hearing on the merits or a hearing to determine the
19 need for continued custody. A hearing on nonsecure custody conducted under this
20 subsection may be continued for up to 10 business days with the consent of the
21 juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's
22 guardian ad litem. In addition, the court may require the consent of additional parties
23 or may schedule the hearing on custody despite a party's consent to a continuance. In
24 every case in which an order has been entered by an official exercising authority
25 delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued
26 custody shall be conducted on the day of the next regularly scheduled session of
27 district court in the city or county where the order was entered if such session
28 precedes the expiration of the applicable time period set forth in this subsection:
29 Provided, that if such session does not precede the expiration of the time period, the
30 hearing may be conducted at another regularly scheduled session of district court in
31 the district where the order was entered.

32 (b) At a hearing to determine the need for continued custody, the court shall
33 receive testimony and shall allow the guardian ad litem, or juvenile, and the
34 juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce
35 evidence, to be heard in the person's own behalf, and to examine witnesses. The
36 State shall bear the burden at every stage of the proceedings to provide clear and
37 convincing evidence that the juvenile's placement in custody is necessary. The court
38 shall not be bound by the usual rules of evidence at such hearings.

39 (c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining
40 whether continued custody is warranted.

41 (d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and
42 should continue in custody, the court shall issue an order to that effect. The order
43 shall be in writing with appropriate findings of fact. The findings of fact shall include

1 the evidence relied upon in reaching the decision and the purposes which continued
2 custody is to achieve.

3 (e) If the court orders at the hearing required in subsection (a) of this section that
4 the juvenile remain in custody, a subsequent hearing on continued custody shall be
5 held within seven business days of that hearing, excluding Saturdays, Sundays, and
6 legal holidays, and pending a hearing on the merits, hearings thereafter shall be held
7 at intervals of no more than 30 calendar days.

8 (f) Hearings conducted under subsection (e) of this section may be waived only
9 with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if
10 appointed, the juvenile's guardian ad litem.

11 The court may require the consent of additional parties or schedule a hearing
12 despite a party's consent to waiver.

13 (g) Any order authorizing the continued custody of a juvenile shall include
14 findings as to whether reasonable efforts have been made to prevent or eliminate the
15 need for placement of the juvenile in custody and may provide for services or other
16 efforts aimed at returning the juvenile promptly to a safe home. A finding that
17 reasonable efforts have not been made shall not preclude the entry of an order
18 authorizing continued custody when the court finds that continued custody is
19 necessary for the protection of the juvenile. Where efforts to prevent the need for the
20 juvenile's placement were precluded by an immediate threat of harm to the juvenile,
21 the court may find that the placement of the juvenile in the absence of such efforts
22 was reasonable. If the court finds through written findings of fact that efforts to
23 eliminate the need for placement of the juvenile in custody clearly would be futile or
24 would be inconsistent with the juvenile's safety and need for a safe, permanent home
25 within a reasonable period of time, then the court shall specify in its order that
26 reunification efforts are not required or order that reunification efforts cease.

27 (h) At each hearing to determine the need for continued custody, the court shall:

28 (1) Inquire as to the identity and location of any missing parent. The
29 court shall include findings as to the efforts undertaken to locate
30 the missing parent and to serve that parent. The order may provide
31 for specific efforts aimed at determining the identity and location
32 of any missing parent;

33 (2) Inquire as to whether a relative of the juvenile is willing and able
34 to provide proper care and supervision of the juvenile in a safe
35 home. If the court finds that the relative is willing and able to
36 provide proper care and supervision in a safe home, then the court
37 shall order temporary placement of the juvenile with the relative.
38 Prior to placement of a juvenile with a relative outside of this
39 State, the placement must be in accordance with the Interstate
40 Compact on the Placement of Children set forth in Article 38 of
41 this Chapter; and

42 (3) Inquire as to whether there are other juveniles remaining in the
43 home from which the juvenile was removed and, if there are,
44 inquire as to the specific findings of the investigation conducted

1 under G.S. 7B-302 and any actions taken or services provided by
2 the director for the protection of the other juveniles.

3 **"§ 7B-507. Telephonic communication authorized.**

4 All communications, notices, orders, authorizations, and requests authorized or
5 required by G.S. 7B-501, 7B-503, and 7B-504 may be made by telephone when other
6 means of communication are impractical. All written orders pursuant to telephonic
7 communication shall bear the name and the title of the person communicating by
8 telephone, the signature and the title of the official entering the order, and the hour
9 and the date of the authorization.

10 **"ARTICLE 6.**

11 **"Basic Rights.**

12 **"§ 7B-600. Appointment of guardian.**

13 In any case when no parent appears in a hearing with the juvenile or when the
14 court finds it would be in the best interests of the juvenile, the court may appoint a
15 guardian of the person for the juvenile. The guardian shall operate under the
16 supervision of the court with or without bond and shall file only such reports as the
17 court shall require. The guardian shall have the care, custody, and control of the
18 juvenile or may arrange a suitable placement for the juvenile and may represent the
19 juvenile in legal actions before any court. The guardian may consent to certain
20 actions on the part of the juvenile in place of the parent including (i) marriage, (ii)
21 enlisting in the armed forces, and (iii) enrollment in school. The guardian may also
22 consent to any necessary remedial, psychological, medical, or surgical treatment for
23 the juvenile. The authority of the guardian shall continue until the guardianship is
24 terminated by court order, until the juvenile is emancipated pursuant to Article 35 of
25 Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

26 **"§ 7B-601. Appointment and duties of guardian ad litem.**

27 (a) When in a petition a juvenile is alleged to be abused or neglected, the court
28 shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged
29 to be dependent, the court may appoint a guardian ad litem to represent the juvenile.
30 The guardian ad litem and attorney advocate have standing to represent the juvenile
31 in all actions under this Subchapter where they have been appointed. The
32 appointment shall be made pursuant to the program established by Article 12 of this
33 Chapter unless representation is otherwise provided legally made. The appointment
34 shall terminate at the end of two years. The court may reappoint the guardian ad
35 litem pursuant to a showing of good cause upon motion of any party, including the
36 guardian ad litem, or of the court. In every case where a nonattorney is appointed as
37 a guardian ad litem, an attorney shall be appointed in the case in order to assure
38 protection of the juvenile's legal rights through the dispositional phase of the
39 proceedings, and after disposition when necessary to further the best interests of the
40 juvenile. The duties of the guardian ad litem program shall be to make an
41 investigation to determine the facts, the needs of the juvenile, and the available
42 resources within the family and community to meet those needs; to facilitate, when
43 appropriate, the settlement of disputed issues; to offer evidence and examine
44 witnesses at adjudication; to explore options with the court at the dispositional

1 hearing; and to protect and promote the best interests of the juvenile until formally
2 relieved of the responsibility by the court.

3 (b) The court may order the department of social services or the guardian ad
4 litem to conduct follow-up investigations to ensure that the orders of the court are
5 being properly executed and to report to the court when the needs of the juvenile are
6 not being met. The court may also authorize the guardian ad litem to accompany the
7 juvenile to court in any criminal action wherein the juvenile may be called on to
8 testify in a matter relating to abuse.

9 (c) The court may grant the guardian ad litem the authority to demand any
10 information or reports, whether or not confidential, that may in the guardian ad
11 litem's opinion be relevant to the case. Neither the physician-patient privilege nor the
12 husband-wife privilege may be invoked to prevent the guardian ad litem and the
13 court from obtaining such information. The confidentiality of the information or
14 reports shall be respected by the guardian ad litem and no disclosure of any
15 information or reports shall be made to anyone except by order of the court or unless
16 otherwise provided by law.

17 **"§ 7B-602. Parent's right to counsel.**

18 In cases where the juvenile petition alleges that a juvenile is abused, neglected, or
19 dependent, the parent has the right to counsel and to appointed counsel in cases of
20 indigency unless the parent waives the right. In no case may the court appoint a
21 county attorney, prosecutor, or public defender.

22 **"§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

23 An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 or G.S. 7B-
24 602 pursuant to any other provision of the Juvenile Code shall be paid a reasonable
25 fee fixed by the court in the same manner as fees for attorneys appointed in cases of
26 indigency or by direct engagement for specialized guardian ad litem services through
27 the Administrative Office of the Courts. The court may require payment of the
28 attorney or guardian ad litem fee from a person other than the juvenile as provided
29 in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be
30 required to pay the fees for a court-appointed attorney or guardian ad litem in an
31 abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to
32 be abused, neglected, or dependent, or, in a proceeding to terminate parental rights,
33 unless the parent's rights have been terminated. A person who does not comply with
34 the court's order of payment may be punished for contempt as provided in G.S. 5A-
35 21.

36 **"ARTICLE 7.**

37 **"Discovery.**

38 **"§ 7B-700. Regulation of discovery; protective orders.**

39 (a) Upon written motion of a party and a finding of good cause, the court may at
40 any time order that discovery be denied, restricted, or deferred.

41 (b) The court may permit a party seeking relief under subsection (a) of this section
42 to submit supporting affidavits or statements to the court for in camera inspection. If,
43 thereafter, the court enters an order granting relief under subsection (a) of this

1 section, the material submitted in camera must be available to the Court of Appeals
2 in the event of an appeal.

3 "ARTICLE 8.

4 "Hearing Procedures.

5 "§ 7B-800. Amendment of petition.

6 The court may permit a petition to be amended when the amendment does not
7 change the nature of the offense alleged or the conditions upon which the petition is
8 based.

9 "§ 7B-801. Adjudicatory hearing.

10 The adjudicatory hearing shall be held in the district at such time and place as the
11 chief district court judge shall designate. The court may exclude the public from the
12 hearing unless the juvenile moves that the hearing be open, which motion shall be
13 granted.

14 "§ 7B-802. Conduct of hearing.

15 The adjudicatory hearing shall be a judicial process designed to adjudicate the
16 existence or nonexistence of any of the conditions alleged in a petition. In the
17 adjudicatory hearing, the court shall protect the following rights of the juvenile and
18 the juvenile's parent to assure due process of law.

19 "§ 7B-803. Continuances.

20 The court may, for good cause, continue the hearing for as long as is reasonably
21 required to receive additional evidence, reports, or assessments that the court has
22 requested, or other information needed in the best interests of the juvenile and to
23 allow for a reasonable time for the parties to conduct expeditious discovery.
24 Otherwise, continuances shall be granted only in extraordinary circumstances when
25 necessary for the proper administration of justice or in the best interests of the
26 juvenile.

27 "§ 7B-804. Rules of evidence.

28 Where the juvenile is alleged to be abused, neglected, or dependent, the rules of
29 evidence in civil cases shall apply.

30 "§ 7B-805. Quantum of proof in adjudicatory hearing.

31 The allegations in a petition alleging abuse, neglect, or dependence shall be proved
32 by clear and convincing evidence.

33 "§ 7B-806. Record of proceedings.

34 All adjudicatory and dispositional hearings shall be recorded by stenographic notes
35 or by electronic or mechanical means. Records shall be reduced to a written
36 transcript only when timely notice of appeal has been given. The court may order
37 that other hearings be recorded.

38 "§ 7B-807. Adjudication.

39 If the court finds that the allegations in the petition have been proven by clear and
40 convincing evidence, the court shall so state. If the court finds that the allegations
41 have not been proven, the court shall dismiss the petition with prejudice and the
42 juvenile shall be released from nonsecure custody.

43 "§ 7B-808. Predisposition investigation and report.

1 The court shall proceed to the dispositional hearing upon receipt of sufficient
2 social, medical, psychiatric, psychological, and educational information. No
3 predisposition report shall be submitted to or considered by the court prior to the
4 completion of the adjudicatory hearing. The court shall permit the guardian ad litem
5 or juvenile to inspect any predisposition report to be considered by the court in
6 making the disposition unless the court determines that disclosure would seriously
7 harm the juvenile's treatment or rehabilitation or would violate a promise of
8 confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the
9 guardian ad litem or juvenile, and the juvenile's parent, guardian, custodian, or
10 caretaker at the dispositional hearing. The court may order counsel not to disclose
11 parts of the report to the guardian ad litem or juvenile, or the juvenile's parent,
12 guardian, custodian, or caretaker if the court finds that disclosure would seriously
13 harm the treatment or rehabilitation of the juvenile or would violate a promise of
14 confidentiality given to a source of information.

15 "ARTICLE 9.

16 "Dispositions.

17 "§ 7B-900. Purpose.

18 The purpose of dispositions in juvenile actions is to design an appropriate plan to
19 meet the needs of the juvenile and to achieve the objectives of the State in exercising
20 jurisdiction. If possible, the initial approach should involve working with the juvenile
21 and the juvenile's family in their own home so that the appropriate community
22 resources may be involved in care, supervision, and treatment according to the needs
23 of the juvenile. Thus, the court should arrange for appropriate community-level
24 services to be provided to the juvenile and the juvenile's family in order to strengthen
25 the home situation.

26 "§ 7B-901. Dispositional hearing.

27 The dispositional hearing may be informal and the court may consider written
28 reports or other evidence concerning the needs of the juvenile. The juvenile and the
29 juvenile's parent, guardian, custodian, or caretaker shall have an opportunity to
30 present evidence, and they may advise the court concerning the disposition they
31 believe to be in the best interests of the juvenile. The court may exclude the public
32 from the hearing unless the juvenile moves that the hearing be open, which motion
33 shall be granted.

34 "§ 7B-902. Consent judgment in abuse, neglect, or dependency proceeding.

35 Nothing in this Article precludes the court from entering a consent order or
36 judgment on a petition for abuse, neglect, or dependency when all parties are present,
37 the juvenile is represented by counsel, and all other parties are either represented by
38 counsel or have waived counsel, and sufficient findings of fact are made by the court.

39 "§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.

40 The following alternatives for disposition shall be available to any court exercising
41 jurisdiction, and the court may combine any of the applicable alternatives when the
42 court finds the disposition to be in the best interests of the juvenile:

- 43 (1) The court may dismiss the case or continue the case in order to
44 allow the parent or others to take appropriate action.

1 (2) In the case of any juvenile who needs more adequate care or
2 supervision or who needs placement, the court may:

3 a. Require that the juvenile be supervised in the juvenile's own
4 home by the department of social services in the juvenile's
5 county, or by other personnel as may be available to the
6 court, subject to conditions applicable to the parent,
7 guardian, custodian, or caretaker as the court may specify;
8 or

9 b. Place the juvenile in the custody of a parent, relative,
10 private agency offering placement services, or some other
11 suitable person; or

12 c. Place the juvenile in the custody of the department of social
13 services in the county of the juvenile's residence, or in the
14 case of a juvenile who has legal residence outside the State,
15 in the physical custody of the department of social services
16 in the county where the juvenile is found so that agency
17 may return the juvenile to the responsible authorities in the
18 juvenile's home state. The director may, unless otherwise
19 ordered by the court, arrange for, provide, or consent to,
20 needed routine or emergency medical or surgical care or
21 treatment. In the case where the parent is unknown,
22 unavailable, or unable to act on behalf of the juvenile, the
23 director may, unless otherwise ordered by the court, arrange
24 for, provide, or consent to any psychiatric, psychological,
25 educational, or other remedial evaluations or treatment for
26 the juvenile placed by a court or the court's designee in the
27 custody or physical custody of a county department of social
28 services under the authority of this or any other Chapter of
29 the General Statutes. Prior to exercising this authority, the
30 director shall make reasonable efforts to obtain consent from
31 a parent or guardian of the affected juvenile. If the director
32 cannot obtain such consent, the director shall promptly
33 notify the parent or guardian that care or treatment has
34 been provided and shall give the parent frequent status
35 reports on the circumstances of the juvenile. Upon request
36 of a parent or guardian of the affected juvenile, the results
37 or records of the aforementioned evaluations, findings, or
38 treatment shall be made available to such parent or guardian
39 by the director unless prohibited by G.S. 122C-53(d).

40 (3) In any case, the court may order that the juvenile be examined by
41 a physician, psychiatrist, psychologist, or other qualified expert as
42 may be needed for the court to determine the needs of the
43 juvenile:

- 1 a. Upon completion of the examination, the court shall
2 conduct a hearing to determine whether the juvenile is in
3 need of medical, surgical, psychiatric, psychological, or other
4 treatment and who should pay the cost of the treatment. The
5 county manager, or such person who shall be designated by
6 the chairman of the county commissioners, of the juvenile's
7 residence shall be notified of the hearing, and allowed to be
8 heard. If the court finds the juvenile to be in need of
9 medical, surgical, psychiatric, psychological, or other
10 treatment, the court shall permit the parent or other
11 responsible persons to arrange for treatment. If the parent
12 declines or is unable to make necessary arrangements, the
13 court may order the needed treatment, surgery, or care, and
14 the court may order the parent to pay the cost of the care
15 pursuant to G.S. 7B-904. If the court finds the parent is
16 unable to pay the cost of treatment, the court shall order the
17 county to arrange for treatment of the juvenile and to pay
18 for the cost of the treatment. The county department of
19 social services shall recommend the facility that will provide
20 the juvenile with treatment.
- 21 b. If the court believes, or if there is evidence presented to the
22 effect that the juvenile is mentally ill or is developmentally
23 disabled, the court shall refer the juvenile to the area mental
24 health, developmental disabilities, and substance abuse
25 services director for appropriate action. A juvenile shall not
26 be committed directly to a State hospital or mental
27 retardation center; and orders purporting to commit a
28 juvenile directly to a State hospital or mental retardation
29 center except for an examination to determine capacity to
30 proceed shall be void and of no effect. The area mental
31 health, developmental disabilities, and substance abuse
32 director shall be responsible for arranging an
33 interdisciplinary evaluation of the juvenile and mobilizing
34 resources to meet the juvenile's needs. If institutionalization
35 is determined to be the best service for the juvenile,
36 admission shall be with the voluntary consent of the parent
37 or guardian. If the parent, guardian, custodian, or caretaker
38 refuses to consent to a mental hospital or retardation center
39 admission after such institutionalization is recommended by
40 the area mental health, developmental disabilities, and
41 substance abuse director, the signature and consent of the
42 court may be substituted for that purpose. In all cases in
43 which a regional mental hospital refuses admission to a
44 juvenile referred for admission by a court and an area

1 mental health, developmental disabilities, and substance
2 abuse director or discharges a juvenile previously admitted
3 on court referral prior to completion of treatment, the
4 hospital shall submit to the court a written report setting out
5 the reasons for denial of admission or discharge and setting
6 out the juvenile's diagnosis, indications of mental illness,
7 indications of need for treatment, and a statement as to the
8 location of any facility known to have a treatment program
9 for the juvenile in question.

10 "§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or
11 dependent.

12 (a) If the court orders medical, surgical, psychiatric, psychological, or other
13 treatment pursuant to G.S. 7B-903, the court may order the parent or other
14 responsible parties to pay the cost of the treatment or care ordered.

15 (b) At the dispositional hearing or a subsequent hearing in the case of a juvenile
16 who has been adjudicated abused, neglected, or dependent, if the court finds that it is
17 in the best interests of the juvenile for the parent to be directly involved in the
18 juvenile's treatment, the court may order the parent to participate in medical,
19 psychiatric, psychological, or other treatment of the juvenile. The cost of the
20 treatment shall be paid pursuant to G.S. 7B-903.

21 (c) At the dispositional hearing or a subsequent hearing in the case of a juvenile
22 who has been adjudicated abused, neglected, or dependent, the court may determine
23 whether the best interests of the juvenile requires that the parent undergo psychiatric,
24 psychological, or other treatment or counseling directed toward remediating or
25 remedying behaviors or conditions that led to or contributed to the juvenile's
26 adjudication or to the court's decision to remove custody of the juvenile from the
27 parent. If the court finds that the best interests of the juvenile require the parent
28 undergo treatment, it may order the parent to comply with a plan of treatment
29 approved by the court or condition legal custody or physical placement of the
30 juvenile with the parent upon the parent's compliance with the plan of treatment.
31 The court may order the parent to pay the cost of treatment ordered pursuant to this
32 subsection. In cases in which the court has conditioned legal custody or physical
33 placement of the juvenile with the parent upon the parent's compliance with a plan
34 of treatment, the court may charge the cost of the treatment to the county of the
35 juvenile's residence if the court finds the parent is unable to pay the cost of the
36 treatment. In all other cases, if the court finds the parent is unable to pay the cost of
37 the treatment ordered pursuant to this subsection, the court may order the parent to
38 receive treatment currently available from the area mental health program that serves
39 the parent's catchment area.

40 (d) Whenever legal custody of a juvenile is vested in someone other than the
41 juvenile's parent, after due notice to the parent and after a hearing, the court may
42 order that the parent pay a reasonable sum that will cover, in whole or in part, the
43 support of the juvenile after the order is entered. If the court requires the payment of
44 child support, the amount of the payments shall be determined as provided in G.S.

1 50-13.4(c). If the court places a juvenile in the custody of a county department of
2 social services and if the court finds that the parent is unable to pay the cost of the
3 support required by the juvenile, the cost shall be paid by the county department of
4 social services in whose custody the juvenile is placed, provided the juvenile is not
5 receiving care in an institution owned or operated by the State or federal government
6 or any subdivision thereof.

7 (e) Failure of a parent who is personally served to participate in or comply with
8 this section may result in a civil proceeding for contempt.

9 **"§ 7B-905. Dispositional order.**

10 (a) The dispositional order shall be in writing and shall contain appropriate
11 findings of fact and conclusions of law. The court shall state with particularity, both
12 orally and in the written order of disposition, the precise terms of the disposition
13 including the kind, duration, and the person who is responsible for carrying out the
14 disposition and the person or agency in whom custody is vested.

15 (b) A dispositional order under which a juvenile is removed from the custody of a
16 parent or person standing in loco parentis shall direct that the review hearing
17 required by G.S. 7B-906 be held within six months of the date of the juvenile's
18 placement in custody and, if practicable, shall set the date and time for the review
19 hearing.

20 (c) Any order directing placement of a juvenile in foster care shall also contain:

21 (1) A finding that the juvenile's continuation in or return to the
22 juvenile's home would be contrary to the juvenile's best interests;
23 and

24 (2) Findings as to whether reasonable efforts have been made to
25 prevent or eliminate the need for placement of the juvenile in
26 foster care. A finding that reasonable efforts were not made shall
27 not preclude entry of a dispositional order authorizing placement
28 in foster care when the court finds that such placement is needed
29 for protection of the juvenile. When efforts to prevent the need for
30 the juvenile's placement are precluded by an immediate threat of
31 harm to the juvenile, the court may find that placement of the
32 juvenile in the absence of such efforts is reasonable.

33 The order may provide for services or other efforts aimed at returning the juvenile
34 promptly to a safe home. If the court finds through written findings of fact that efforts
35 to eliminate the need for placement of the juvenile in custody clearly would be futile
36 or would be inconsistent with the juvenile's safety and need for a safe, permanent
37 home within a reasonable period of time, the court shall specify in its order that
38 reunification efforts are not required or order that reunification efforts cease.

39 (d) An order that places a juvenile in the custody of a county department of social
40 services for placement shall specify that the juvenile's placement and care are the
41 responsibility of the county department of social services and that the county
42 department is to provide or arrange for the foster care or other placement of the
43 juvenile.

44 **"§ 7B-906. Review of custody order.**

1 (a) In any case where custody is removed from a parent, the court shall conduct a
2 review within six months of the date the order was entered, shall conduct a second
3 review within six months after the first review, and shall conduct subsequent reviews
4 at least every year thereafter. The director of social services shall make timely
5 requests to the clerk to calendar the case at a session of court scheduled for the
6 hearing of juvenile matters within six months of the date the order was entered. The
7 director shall make timely requests for calendaring subsequent reviews. The clerk
8 shall give 15 days' notice of the review to the parent or the person standing in loco
9 parentis, the juvenile, if 12 years of age or more, the guardian, foster parent,
10 custodian or agency with custody, the guardian ad litem, and any other person the
11 court may specify, indicating the court's impending review.

12 (b) Notwithstanding other provisions of this Article, the court may waive the
13 holding of review hearings required by subsection (a) of this section, may require
14 written reports to the court by the agency or person holding custody in lieu of review
15 hearings, or order that review hearings be held less often than every 12 months, if the
16 court finds by clear, cogent, and convincing evidence that:

- 17 (1) The juvenile has resided with a relative or has been in the custody
18 of another suitable person for a period of at least one year;
- 19 (2) The placement is stable and continuation of the placement is in the
20 juvenile's best interests;
- 21 (3) Neither the juvenile's best interests nor the rights of any party
22 require that review hearings be held every 12 months;
- 23 (4) All parties are aware that the matter may be brought before the
24 court for review at any time by the filing of a motion for review or
25 on the court's own motion; and
- 26 (5) The court order has designated the relative or other suitable
27 person as the juvenile's permanent caretaker or guardian of the
28 person.

29 The court may not waive or refuse to conduct a review hearing if a party files a
30 motion seeking the review.

31 (c) At every review hearing, the court shall consider information from the
32 department of social services, the juvenile, the parent or person standing in loco
33 parentis, the custodian, the foster parent, the guardian ad litem, and any public or
34 private agency which will aid it in its review.

35 In each case the court shall consider the following criteria and make written
36 findings regarding those that are relevant:

- 37 (1) Services which have been offered to reunite the family, or whether
38 efforts to reunite the family clearly would be futile or inconsistent
39 with the juvenile's safety and need for a safe, permanent home
40 within a reasonable period of time.
- 41 (2) Where the juvenile's return home is unlikely, the efforts which
42 have been made to evaluate or plan for other methods of care.
- 43 (3) Goals of the foster care placement and the appropriateness of the
44 foster care plan.

1 (4) A new foster care plan, if continuation of care is sought, that
2 addresses the role the current foster parent will play in the
3 planning for the juvenile.

4 (5) Reports on the placements the juvenile has had and any services
5 offered to the juvenile and the parent.

6 (6) When and if termination of parental rights should be considered.

7 (7) Any other criteria the court deems necessary.

8 (d) The court, after making findings of fact, may appoint a guardian of the person
9 for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by
10 G.S. 7B-903, including the authority to place the juvenile in the custody of either
11 parent or any relative found by the court to be suitable and found by the court to be
12 in the best interests of the juvenile. If the juvenile is placed in or remains in the
13 custody of the department of social services, the court may authorize the department
14 to arrange and supervise a visitation plan. Except for such visitation, the juvenile
15 shall not be returned to the parent or person standing in loco parentis without a
16 hearing at which the court finds sufficient facts to show that the juvenile will receive
17 proper care and supervision. The court may enter an order continuing the placement
18 under review or providing for a different placement as is deemed to be in the best
19 interests of the juvenile. If at any time custody is restored to a parent, the court shall
20 be relieved of the duty to conduct periodic judicial reviews of the placement.

21 (e) At a hearing designated by the court, but at least within 12 months after the
22 juvenile's placement, a review hearing shall be held under this section and designated
23 as a permanency-planning hearing. The purpose of the hearing shall be to develop a
24 plan to achieve a safe, permanent home for the juvenile within a reasonable period of
25 time. Notice of the hearing shall inform the parties of the purpose of the hearing. At
26 the conclusion of the hearing, if the juvenile is not returned home, the court shall
27 make specific findings as to the best plan of care to achieve a safe, permanent home
28 for the juvenile within a reasonable period of time and shall enter an order consistent
29 with those findings.

30 (f) The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any
31 order entered under this section which continues the foster care placement of a
32 juvenile.

33 **"§ 7B-907. Posttermination of parental rights' placement court review.**

34 (a) The purpose of each placement review is to ensure that every reasonable effort
35 is being made to provide for a permanent placement plan for the juvenile who has
36 been placed in the custody of a county director or licensed child-placing agency,
37 which is consistent with the juvenile's best interests. At each review hearing the court
38 may consider information from the department of social services, the licensed
39 child-placing agency, the guardian ad litem, the juvenile, the foster parent, and any
40 other person or agency the court determines is likely to aid in the review.

41 (b) The court shall conduct a placement review not later than six months from the
42 date of the termination hearing when parental rights have been terminated by a
43 petition brought by any person or agency designated in G.S. 7B-1102(2) through (5)
44 and a county director or licensed child-placing agency has custody of the juvenile.

- 1 The court shall conduct reviews every six months until the juvenile is placed for
2 adoption and the adoption petition is filed by the adoptive parents:
- 3 (1) No more than 30 days and no less than 15 days prior to each
4 review, the clerk shall give notice of the review to the juvenile if
5 the juvenile is at least 12 years of age, the legal custodian of the
6 juvenile, the foster parent, the guardian ad litem, if any, and any
7 other person the court may specify. Only the juvenile, if the
8 juvenile is at least 12 years of age, the legal custodian of the
9 juvenile, the foster parent, and the guardian ad litem shall attend
10 the review hearings, except as otherwise directed by the court.
- 11 (2) If a guardian ad litem for the juvenile has not been appointed
12 previously by the court in the termination proceeding, the court, at
13 the initial six-month review hearing, may appoint a guardian ad
14 litem to represent the juvenile. The court may continue the case
15 for such time as is necessary for the guardian ad litem to become
16 familiar with the facts of the case.
- 17 (c) The court shall consider at least the following in its review:
- 18 (1) The adequacy of the plan developed by the county department of
19 social services or a licensed child-placing agency for a permanent
20 placement relative to the juvenile's best interests and the efforts of
21 the department or agency to implement such plan;
- 22 (2) Whether the juvenile has been listed for adoptive placement with
23 the North Carolina Adoption Resource Exchange, the North
24 Carolina Photo Adoption Listing Service (PALS), or any other
25 specialized adoption agency; and
- 26 (3) The efforts previously made by the department or agency to find a
27 permanent home for the juvenile.
- 28 (d) The court, after making findings of fact, shall affirm the county department's
29 or child-placing agency's plans or require specific additional steps which are
30 necessary to accomplish a permanent placement which is in the best interests of the
31 juvenile.
- 32 (e) If the juvenile has been placed for adoption prior to the date scheduled for
33 the review, written notice of said placement shall be given to the clerk to be placed
34 in the court file, and the review hearing shall be cancelled with notice of said
35 cancellation given by the clerk to all persons previously notified.
- 36 (f) The process of selection of specific adoptive parents shall be the responsibility
37 of and within the discretion of the county department of social services or licensed
38 child-placing agency. The guardian ad litem may request information from and
39 consult with the county department or child-placing agency concerning the selection
40 process. If the guardian ad litem requests information about the selection process, the
41 county shall provide the information within five days. Any issue of abuse of
42 discretion by the county department or child-placing agency in the selection process
43 must be raised by the guardian ad litem within 10 days following the date the agency

1 notifies the court and the guardian ad litem in writing of the filing of the adoption
2 petition.

3 **"§ 7B-908. Review of agency's plan for placement.**

4 (a) The director of social services or the director of the licensed private child-
5 placing agency shall promptly notify the clerk to calendar the case for review of the
6 department's or agency's plan for the juvenile at a session of court scheduled for the
7 hearing of juvenile matters in any case where:

8 (1) One parent has surrendered a juvenile for adoption under the
9 provisions of Part 7 of Article 3 of Chapter 48 of the General
10 Statutes and the termination of parental rights proceedings have
11 not been instituted against the nonsurrendering parent within six
12 months of the surrender by the other parent, or

13 (2) Both parents have surrendered a juvenile for adoption under the
14 provisions of Part 7 of Article 3 of Chapter 48 of the General
15 Statutes and that juvenile has not been placed for adoption within
16 six months from the date of the more recent parental surrender.

17 (b) In any case where an adoption is dismissed or withdrawn and the juvenile
18 returns to foster care with a department of social services or a licensed private child-
19 placing agency, then the department of social services or licensed child-placing
20 agency shall notify the clerk, within 30 days from the date the juvenile returns to
21 care, to calendar the case for review of the agency's plan for the child at a session of
22 court scheduled for the hearing of juvenile matters.

23 (c) Notification of the court required under subsection (a) or (b) of this section
24 shall be by a petition for review. The petition shall set forth the circumstances
25 necessitating the review under subsection (a) or (b) of this section. The review shall
26 be conducted within 30 days following the filing of the petition for review unless the
27 court shall otherwise direct. The court shall conduct reviews every six months until
28 the juvenile is placed for adoption and the adoption petition is filed by the adoptive
29 parents. The initial review and all subsequent reviews shall be conducted pursuant to
30 G.S. 7B-907.

31 **"§ 7B-909. Review of voluntary foster care placements.**

32 (a) The court shall review the placement of any juvenile in foster care made
33 pursuant to a voluntary agreement between the juvenile's parents or guardian and a
34 county department of social services and shall make findings from evidence presented
35 at a review hearing with regard to:

36 (1) The voluntariness of the placement;
37 (2) The appropriateness of the placement;
38 (3) Whether the placement is in the best interests of the juvenile; and
39 (4) The services that have been or should be provided to the parents,
40 guardian, foster parents, and juvenile, as the case may be, either (i)
41 to improve the placement or (ii) to eliminate the need for the
42 placement.

43 (b) The court may approve the continued placement of the juvenile in foster care
44 on a voluntary agreement basis, disapprove the continuation of the voluntary

1 placement, or direct the department of social services to petition the court for legal
2 custody if the placement is to continue.

3 (c) An initial review hearing shall be held not more than 180 days after the
4 juvenile's placement and shall be calendared by the clerk for hearing within such
5 period upon timely request by the director of social services. Additional review
6 hearings shall be held at such times as the court shall deem appropriate and shall
7 direct, either upon its own motion or upon written request of the parents, guardian,
8 foster parents, or director of social services. A juvenile placed under a voluntary
9 agreement between the juvenile's parent or guardian and the county department of
10 social services shall not remain in placement more than 12 months without the filing
11 of a petition alleging abuse, neglect, or dependency.

12 (d) The clerk shall give at least 15 days' advance written notice of the initial and
13 subsequent review hearings to the parents or guardian of the juvenile, to the juvenile
14 if 12 or more years of age, to the director of social services, and to any other persons
15 whom the court may specify.

16 "ARTICLE 10.

17 "Modification and Enforcement of Dispositional Orders; Appeals.

18 "§ 7B-1000. Authority to modify or vacate.

19 (a) Upon motion in the cause or petition, and after notice, the court may conduct
20 a review hearing to determine whether the order of the court is in the best interests
21 of the juvenile, and the court may modify or vacate the order in light of changes in
22 circumstances or the needs of the juvenile.

23 (b) In any case where the court finds the juvenile to be abused, neglected, or
24 dependent, the jurisdiction of the court to modify any order or disposition made in
25 the case shall continue during the minority of the juvenile, until terminated by order
26 of the court, or until the juvenile is otherwise emancipated.

27 "§ 7B-1001. Right to appeal.

28 Upon motion of a proper party as defined in G.S. 7B-1002, review of any final
29 order of the court in a juvenile matter under this Article shall be before the Court of
30 Appeals. Notice of appeal shall be given in open court at the time of the hearing or
31 in writing within 10 days after entry of the order. However, if no disposition is made
32 within 60 days after entry of the order, written notice of appeal may be given within
33 70 days after such entry. A final order shall include:

- 34 (1) Any order finding absence of jurisdiction;
- 35 (2) Any order which in effect determines the action and prevents a
36 judgment from which appeal might be taken;
- 37 (3) Any order of disposition after an adjudication that a juvenile is
38 abused, neglected, or dependent; or
- 39 (4) Any order modifying custodial rights.

40 "§ 7B-1002. Proper parties for appeal.

41 An appeal may be taken by the guardian ad litem, or juvenile, the juvenile's
42 parent, guardian, custodian, or caretaker, or the petitioner. The State's appeal is
43 limited to any final order.

44 "§ 7B-1003. Disposition pending appeal.

1 Pending disposition of an appeal, the return of the juvenile to the custody of the
2 parent, guardian, custodian, or caretaker of the juvenile, with or without conditions,
3 should issue in every case unless the court orders otherwise. For compelling reasons
4 which must be stated in writing, the court may enter a temporary order affecting the
5 custody or placement of the juvenile as the court finds to be in the best interests of
6 the juvenile or the State. The provisions of subsections (b), (c), and (d) of G.S. 7B-
7 905 shall apply to any order entered under this section which provides for the
8 placement or continued placement of a juvenile in foster care.

9 **"§ 7B-1004. Disposition after appeal.**

10 Upon the affirmation of the order of adjudication or disposition of the court by the
11 Court of Appeals or by the Supreme Court in the event of an appeal, the court shall
12 have authority to modify or alter the original order of adjudication or disposition as
13 the court finds to be in the best interests of the juvenile to reflect any adjustment
14 made by the juvenile or change in circumstances during the period of time the appeal
15 was pending. If the modifying order is entered ex parte, the court shall give notice to
16 interested parties to show cause within 10 days thereafter as to why the modifying
17 order should be vacated or altered.

18 **"ARTICLE 11.**

19 **"Termination of Parental Rights.**

20 **"§ 7B-1100. Legislative intent; construction of Article.**

21 The General Assembly hereby declares as a matter of legislative policy with
22 respect to termination of parental rights:

23 (1) The general purpose of this Article is to provide judicial
24 procedures for terminating the legal relationship between a
25 juvenile and the juvenile's biological or legal parents when the
26 parents have demonstrated that they will not provide the degree of
27 care which promotes the healthy and orderly physical and
28 emotional well-being of the juvenile.

29 (2) It is the further purpose of this Article to recognize the necessity
30 for any juvenile to have a permanent plan of care at the earliest
31 possible age, while at the same time recognizing the need to
32 protect all juveniles from the unnecessary severance of a
33 relationship with biological or legal parents.

34 (3) Action which is in the best interests of the juvenile should be taken
35 in all cases where the interests of the juvenile and those of the
36 juvenile's parents or other persons are in conflict.

37 (4) This Article shall not be used to circumvent the provisions of
38 Chapter 50A of the General Statutes, the Uniform Child Custody
39 Jurisdiction Act.

40 **"§ 7B-1101. Jurisdiction.**

41 The court shall have exclusive original jurisdiction to hear and determine any
42 petition relating to termination of parental rights to any juvenile who resides in, is
43 found in, or is in the legal or actual custody of a county department of social services
44 or licensed child-placing agency in the district at the time of filing of the petition.

1 The court shall have jurisdiction to terminate the parental rights of any parent
2 irrespective of the age of the parent. The parent has the right to counsel and to
3 appointed counsel in cases of indigency unless the parent waives the right. The fees
4 of appointed counsel shall be borne by the Administrative Office of the Courts. In
5 addition to the right to appointed counsel set forth above, a guardian ad litem shall
6 be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a
7 parent in the following cases:

8 (1) Where it is alleged that a parent's rights should be terminated
9 pursuant to G.S. 7B-1110(7); or

10 (2) Where the parent is under the age of 18 years.

11 The fees of the guardian ad litem shall be borne by the Administrative Office of the
12 Courts when the court finds that the respondent is indigent. In other cases the fees of
13 the court-appointed guardian ad litem shall be a proper charge against the
14 respondent if the respondent does not secure private legal counsel. Provided, that
15 before exercising jurisdiction under this Article, the court shall find that it would
16 have jurisdiction to make a child-custody determination under the provisions of G.S.
17 50A-3. Provided, further, that the clerk of superior court shall have jurisdiction for
18 adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General
19 Statutes generally.

20 "§ 7B-1102. Who may petition.

21 A petition to terminate the parental rights of either or both parents to his, her, or
22 their minor juvenile may only be filed by:

23 (1) Either parent seeking termination of the right of the other parent;
24 or

25 (2) Any person who has been judicially appointed as the guardian of
26 the person of the juvenile; or

27 (3) Any county department of social services, consolidated county
28 human services agency, or licensed child-placing agency to whom
29 custody of the juvenile has been given by a court of competent
30 jurisdiction; or

31 (4) Any county department of social services, consolidated county
32 human services agency, or licensed child-placing agency to which
33 the juvenile has been surrendered for adoption by one of the
34 parents or by the guardian of the person of the juvenile, pursuant
35 to G.S. 48-9(a)(1); or

36 (5) Any person with whom the juvenile has resided for a continuous
37 period of two years or more next preceding the filing of the
38 petition; or

39 (6) Any guardian ad litem appointed to represent the minor juvenile
40 pursuant to G.S. 7B-601 who has not been relieved of this
41 responsibility and who has served in this capacity for at least one
42 continuous year; or

43 (7) Any person who has filed a petition for adoption pursuant to
44 Chapter 48 of the General Statutes.

1 "§ 7B-1103. Petition.

2 The petition shall be verified by the petitioner and shall be entitled 'In Re (last
3 name of juvenile)', a minor juvenile; and shall set forth such of the following facts as
4 are known; and with respect to the facts which are unknown the petitioner shall so
5 state:

- 6 (1) The name of the juvenile as it appears on the juvenile's birth
7 certificate, the date and place of birth, and the county where the
8 juvenile is presently residing.
- 9 (2) The name and address of the petitioner and facts sufficient to
10 identify the petitioner as one entitled to petition under G.S. 7B-
11 1102.
- 12 (3) The name and address of the parents of the juvenile. If the name
13 or address of one or both parents is unknown to the petitioner, the
14 petitioner shall set forth with particularity the petitioner's efforts to
15 ascertain the identity or whereabouts of the parent or parents. The
16 information may be contained in an affidavit attached to the
17 petition and incorporated therein by reference.
- 18 (4) The name and address of any person appointed as guardian of the
19 person of the juvenile pursuant to the provisions of Chapter 35A of
20 the General Statutes, or of G.S. 7B-600.
- 21 (5) The name and address of any person or agency to whom custody
22 of the juvenile has been given by a court of this or any other state;
23 and a copy of the custody order shall be attached to the petition.
- 24 (6) Facts that are sufficient to warrant a determination that one or
25 more of the grounds for terminating parental rights exist.
- 26 (7) That the petition has not been filed to circumvent the provisions of
27 Chapter 50A of the General Statutes, the Uniform Child Custody
28 Jurisdiction Act.

29 "§ 7B-1104. Preliminary hearing; unknown parent.

30 (a) If either the name or identity of any parent whose parental rights the petitioner
31 seeks to terminate is not known to the petitioner, the court shall, within 10 days from
32 the date of filing of the petition, or during the next term of court in the county where
33 the petition is filed if there is no court in the county in that 10-day period, conduct a
34 preliminary hearing to ascertain the name or identity of such parent.

35 (b) The court may, in its discretion, inquire of any known parent of the juvenile
36 concerning the identity of the unknown parent and may appoint a guardian ad litem
37 for the unknown parent to conduct a diligent search for the parent. Should the court
38 ascertain the name or identity of the parent, it shall enter a finding to that effect; and
39 the parent shall be summoned to appear in accordance with G.S. 7B-1105.

40 (c) Notice of the preliminary hearing need be given only to the petitioner who
41 shall appear at the hearing; but the court may cause summons to be issued to any
42 person directing the person to appear and testify.

43 (d) If the court is unable to ascertain the name or identity of the unknown parent,
44 the court shall order publication of notice of the termination proceeding and shall

1 specifically order the place or places of publication and the contents of the notice
2 which the court concludes is most likely to identify the juvenile to such unknown
3 parent. The notice shall be published in a newspaper qualified for legal advertising in
4 accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by
5 the court, once a week for three successive weeks. Provided, further, the notice shall:

- 6 (1) Designate the court in which the petition is pending;
- 7 (2) Be directed to 'the father (mother) (father and mother) of a male
8 (female) juvenile born on or aboutin
9 (date)
10County,
11 (city)
12 respondent';
13 (State)
- 14 (3) Designate the docket number and title of the case (the court may
15 direct the actual name of the title be eliminated and the words 'In
16 Re Doe' substituted therefor);
- 17 (4) State that a petition seeking to terminate the parental rights of the
18 respondent has been filed;
- 19 (5) Direct the respondent to answer the petition within 30 days after a
20 date stated in the notice, exclusive of such date, which date so
21 stated shall be the date of first publication of notice and be
22 substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and
- 23 (6) State that the respondent's parental rights to the juvenile will be
24 terminated upon failure to answer the petition within the time
25 prescribed.

26 Upon completion of the service, an affidavit of the publisher shall be filed with the
27 court.

28 (e) The court shall issue the order required by subsections (b) and (d) of this
29 section within 30 days from the date of the preliminary hearing unless the court shall
30 determine that additional time for investigation is required.

31 (f) Upon the failure of the parent served by publication pursuant to subsection (d)
32 of this section to answer the petition within the time prescribed, the court shall issue
33 an order terminating all parental rights of the unknown parent.

34 **"§ 7B-1105. Issuance of summons.**

35 (a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court
36 shall cause a summons to be issued. The summons shall be directed to the following
37 persons or agency, not otherwise a party petitioner, who shall be named as
38 respondents:

- 39 (1) The parents of the juvenile;
- 40 (2) Any person who has been judicially appointed as guardian of the
41 person of the juvenile;
- 42 (3) The custodian of the juvenile appointed by a court of competent
43 jurisdiction;

1 (4) Any county department of social services or licensed child-placing
2 agency to whom a juvenile has been released by one parent
3 pursuant to Part 7 of Article 3 of Chapter 48 of the General
4 Statutes; and

5 (5) The juvenile, if the juvenile is 12 years of age or older at the time
6 the petition is filed.

7 Provided, no summons need be directed to or served upon any parent who has
8 previously surrendered the juvenile to a county department of social services or
9 licensed child-placing agency nor to any parent who has consented to the adoption of
10 the juvenile by the petitioner. The summons shall notify the respondents to file a
11 written answer within 30 days after service of the summons and petition. Service of
12 the summons shall be completed as provided under the procedures established by
13 G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under
14 disability even though the parent is a minor.

15 (b) The summons shall be issued for the purpose of terminating parental rights
16 pursuant to the provisions of subsection (a) of this section and shall include:

17 (1) The name of the minor juvenile;

18 (2) Notice that a written answer to the petition must be filed with the
19 clerk who signed the petition within 30 days after service of the
20 summons and a copy of the petition, or the parent's rights may be
21 terminated;

22 (3) Notice that if they are indigent, the parents are entitled to
23 appointed counsel. The parents may contact the clerk immediately
24 to request counsel;

25 (4) Notice that this is a new case. Any attorney appointed previously
26 will not represent the parents in this proceeding unless ordered by
27 the court;

28 (5) Notice that the date, time, and place of the hearing will be mailed
29 by the clerk upon filing of the answer or 30 days from the date of
30 service if no answer is filed; and

31 (6) Notice of the purpose of the hearing and notice that the parents
32 may attend the termination hearing.

33 **"§ 7B-1106. Failure of respondents to answer.**

34 Upon the failure of the respondents to file written answer to the petition with the
35 court within 30 days after service of the summons and petition, or within the time
36 period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by
37 publication, the court shall issue an order terminating all parental and custodial rights
38 of the respondent or respondents with respect to the juvenile; provided the court
39 shall order a hearing on the petition and may examine the petitioner or others on the
40 facts alleged in the petition.

41 **"§ 7B-1107. Answer of respondents.**

42 (a) Any respondent may file a written answer to the petition. The answer shall
43 admit or deny the allegations of the petition and shall set forth the name and address
44 of the answering respondent or the respondent's attorney.

1 (b) If an answer denies any material allegation of the petition, the court shall
2 appoint a guardian ad litem for the juvenile to represent the best interests of the
3 juvenile, unless the petition was filed by the guardian ad litem pursuant to G.S. 7B-
4 1102. A licensed attorney shall be appointed to assist those guardians ad litem who
5 are not attorneys licensed to practice in North Carolina. The appointment, duties,
6 and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S.
7 7B-603. The court shall conduct a special hearing after notice of not less than 10 days
8 nor more than 30 days to the petitioner, the answering respondent, and the guardian
9 ad litem for the juvenile to determine the issues raised by the petition and answer.
10 Notice of the hearing shall be deemed to have been given upon the depositing thereof
11 in the United States mail, first-class postage prepaid, and addressed to the petitioner,
12 respondent, and guardian ad litem or their counsel of record, at the addresses
13 appearing in the petition and responsive pleading.

14 (c) In proceedings under this Article, the appointment of a guardian ad litem shall
15 not be required except, as provided above, in cases in which an answer is filed
16 denying material allegations, or as required under G.S. 7B-1101; but the court may, in
17 its discretion, appoint a guardian ad litem for a juvenile, either before or after
18 determining the existence of grounds for termination of parental rights, in order to
19 assist the court in determining the best interests of the juvenile.

20 (d) If a guardian ad litem has previously been appointed for the juvenile under
21 G.S. 7B-601, and the appointment of a guardian ad litem could also be made under
22 this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney
23 appointed to assist that guardian, shall also represent the juvenile in all proceedings
24 under this Article and shall have the duties and payment of a guardian ad litem
25 appointed under this section, unless the court determines that the best interests of the
26 juvenile require otherwise.

27 **"§ 7B-1108. Adjudicatory hearing on termination.**

28 (a) The hearing on the termination of parental rights shall be conducted by the
29 court sitting without a jury. Reporting of the hearing shall be as provided by G.S.
30 7A-198 for reporting civil trials.

31 (b) The court shall inquire whether the juvenile's parents are present at the
32 hearing and, if so, whether they are represented by counsel. If the parents are not
33 represented by counsel, the court shall inquire whether the parents desire counsel but
34 are indigent. In the event that the parents desire counsel but are indigent as defined
35 in G.S. 7A-450(a) and are unable to obtain counsel to represent them, the court shall
36 appoint counsel to represent them. The court shall grant the parents such an
37 extension of time as is reasonable to permit their appointed counsel to prepare their
38 defense to the termination petition. In the event that the parents do not desire
39 counsel and are present at the hearing, the court shall examine each parent and make
40 findings of fact sufficient to show that the waivers were knowing and voluntary. This
41 examination shall be reported as provided in G.S. 7A-198.

42 (c) The court may, upon finding that reasonable cause exists, order the juvenile to
43 be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or
44 private agency, or any other expert in order that the juvenile's psychological or

1 physical condition or needs may be ascertained or, in the case of a parent whose
2 ability to care for the juvenile is at issue, the court may order a similar examination
3 of any parent of the juvenile.

4 (d) The court may for good cause shown continue the hearing for such time as is
5 required for receiving additional evidence, any reports or assessments which the court
6 has requested, or any other information needed in the best interests of the juvenile.

7 (e) The court shall take evidence, find the facts, and shall adjudicate the existence
8 or nonexistence of any of the circumstances set forth in G.S. 7B-1110 which authorize
9 the termination of parental rights of the respondent.

10 (f) All findings of fact shall be based on clear, cogent, and convincing evidence.
11 No husband-wife or physician-patient privilege shall be grounds for excluding any
12 evidence regarding the existence or nonexistence of any circumstance authorizing the
13 termination of parental rights.

14 **"§ 7B-1109. Disposition.**

15 (a) Should the court determine that any one or more of the conditions authorizing
16 a termination of the parental rights of a parent exist, the court shall issue an order
17 terminating the parental rights of such parent with respect to the juvenile unless the
18 court shall further determine that the best interests of the juvenile require that the
19 parental rights of the parent not be terminated.

20 (b) Should the court conclude that, irrespective of the existence of one or more
21 circumstances authorizing termination of parental rights, the best interests of the
22 juvenile require that rights should not be terminated, the court shall dismiss the
23 petition, but only after setting forth the facts and conclusions upon which the
24 dismissal is based.

25 (c) Should the court determine that circumstances authorizing termination of
26 parental rights do not exist, the court shall dismiss the petition, making appropriate
27 findings of fact and conclusions.

28 (d) Counsel for the petitioner shall serve a copy of the termination of parental
29 rights order upon the guardian ad litem for the juvenile, if any, and upon the
30 juvenile if the juvenile is 12 years of age or older.

31 (e) The court may tax the cost of the proceeding to any party.

32 **"§ 7B-1110. Grounds for terminating parental rights.**

33 The court may terminate the parental rights upon a finding of one or more of the
34 following:

35 (1) The parent has abused or neglected the juvenile. The juvenile
36 shall be deemed to be abused or neglected if the court finds the
37 juvenile to be an abused juvenile within the meaning of G.S. 7B-
38 101 or a neglected juvenile within the meaning of G.S. 7B-101.

39 (2) The parent has willfully left the juvenile in foster care for more
40 than 12 months without showing to the satisfaction of the court
41 that reasonable progress under the circumstances has been made
42 within 12 months in correcting those conditions which led to the
43 removal of the juvenile. Provided, however, that no parental rights

- 1 shall be terminated for the sole reason that the parents are unable
2 to care for the juvenile on account of their poverty.
- 3 (3) The burden in such proceedings shall be upon the petitioner to
4 prove the facts justifying such termination by clear and convincing
5 evidence.
- 6 (4) The juvenile has been placed in the custody of a county
7 department of social services, a licensed child-placing agency, a
8 child-caring institution, or a foster home, and the parent, for a
9 continuous period of six months next preceding the filing of the
10 petition, has willfully failed for such period to pay a reasonable
11 portion of the cost of care for the juvenile although physically and
12 financially able to do so.
- 13 (5) One parent has been awarded custody of the juvenile by judicial
14 decree or has custody by agreement of the parents, and the other
15 parent whose parental rights are sought to be terminated has for a
16 period of one year or more next preceding the filing of the petition
17 willfully failed without justification to pay for the care, support,
18 and education of the juvenile, as required by said decree or
19 custody agreement.
- 20 (6) The father of a juvenile born out of wedlock has not, prior to the
21 filing of a petition to terminate parental rights:
- 22 a. Established paternity judicially or by affidavit which has
23 been filed in a central registry maintained by the
24 Department of Health and Human Services; provided, the
25 court shall inquire of the Department of Health and Human
26 Services as to whether such an affidavit has been so filed
27 and shall incorporate into the case record the Department's
28 certified reply; or
- 29 b. Legitimated the juvenile pursuant to provisions of G.S. 49-
30 10 or filed a petition for this specific purpose; or
- 31 c. Legitimated the juvenile by marriage to the mother of the
32 juvenile; or
- 33 d. Provided substantial financial support or consistent care with
34 respect to the juvenile and mother.
- 35 (7) That the parent is incapable of providing for the proper care and
36 supervision of the juvenile, such that the juvenile is a dependent
37 juvenile within the meaning of G.S. 7B-101, and that there is a
38 reasonable probability that such incapability will continue for the
39 foreseeable future. Incapability under this subdivision may be the
40 result of substance abuse, mental retardation, mental illness,
41 organic brain syndrome, or any other similar cause or condition.
- 42 (8) The parent has willfully abandoned the juvenile for at least six
43 consecutive months immediately preceding the filing of the
44 petition. For the purpose of this subdivision, a juvenile may be

1 willfully abandoned by the juvenile's natural father if the mother
2 of the juvenile had been willfully abandoned by and was living
3 separate and apart from the father at the time of the juvenile's
4 birth, although the father may not have known of such birth; but in
5 any event the juvenile must be over the age of three months at the
6 time of the filing of the petition.

7 **"§ 7B-1111. Effects of termination order.**

8 An order terminating the parental rights completely and permanently terminates
9 all rights and obligations of the parent to the juvenile and of the juvenile to the
10 parent arising from the parental relationship, except that the juvenile's right of
11 inheritance from the juvenile's parent shall not terminate until a final order of
12 adoption is issued. The parent is not thereafter entitled to notice of proceedings to
13 adopt the juvenile and may not object thereto or otherwise participate therein:

14 (1) If the juvenile had been placed in the custody of or released for
15 adoption by one parent to a county department of social services
16 or licensed child-placing agency and is in the custody of the agency
17 at the time of the filing of the petition, including a petition filed
18 pursuant to G.S. 7B-1102(6), that agency shall, upon entry of the
19 order terminating parental rights, acquire all of the rights for
20 placement of the juvenile as the agency would have acquired had
21 the parent whose rights are terminated released the juvenile to
22 that agency pursuant to the provisions of Part 7 of Article 3 of
23 Chapter 48 of the General Statutes, including the right to consent
24 to the adoption of the juvenile.

25 (2) Except as provided in subdivision (1) above, upon entering an
26 order terminating the parental rights of one or both parents, the
27 court may place the juvenile in the custody of the petitioner, or
28 some other suitable person, or in the custody of the department of
29 social services or licensed child-placing agency, as may appear to
30 be in the best interests of the juvenile.

31 **"§ 7B-1112. Appeals; modification of order after affirmation.**

32 Any juvenile, parent, guardian, custodian, caretaker, or agency who is a party to a
33 proceeding under this Article may appeal from an adjudication or any order of
34 disposition to the Court of Appeals, provided that notice of appeal is given in open
35 court at the time of the hearing or in writing within 10 days after the hearing.
36 Pending disposition of an appeal, the court may enter a temporary order affecting the
37 custody or placement of the juvenile as the court finds to be in the best interests of
38 the juvenile or the best interests of the State. Upon the affirmation of the order of
39 adjudication or disposition of the court in a juvenile case by the Court of Appeals, or
40 by the Supreme Court in the event of an appeal, the court shall have authority to
41 modify or alter its original order of adjudication or disposition as the court finds to
42 be in the best interests of the juvenile to reflect any adjustment made by the
43 juvenile or change in circumstances during the period of time the case on appeal was
44 pending, provided that if the modifying order be entered ex parte, the court shall give

1 notice to interested parties to show cause, if any there be, within 10 days thereafter,
2 as to why the modifying order should be vacated or altered.

3 "ARTICLE 12.

4 "Guardian ad Litem Program.

5 "§ 7B-1200. Office of Guardian ad Litem Services established.

6 There is established within the Administrative Office of the Courts an Office of
7 Guardian ad Litem Services to provide services in accordance with G.S. 7B-601 to
8 abused, neglected, or dependent juveniles involved in judicial proceedings and to
9 assure that all participants in these proceedings are adequately trained to carry out
10 their responsibilities. Each local program shall consist of volunteer guardians ad
11 litem, at least one program attorney, a program coordinator who is a paid State
12 employee, and any clerical staff as the Administrative Office of the Courts in
13 consultation with the local program deems necessary. The Administrative Office of
14 the Courts shall adopt rules and regulations necessary and appropriate for the
15 administration of the program.

16 "§ 7B-1201. Implementation and administration.

17 (a) Local Programs. -- The Administrative Office of the Courts shall, in
18 cooperation with each chief district court judge and other personnel in the district,
19 implement and administer the program mandated by this Article. Where a local
20 program has not yet been established in accordance with this Article, the district
21 court district shall operate a guardian ad litem program approved by the
22 Administrative Office of the Courts.

23 (b) Advisory Committee Established. -- The Director of the Administrative Office
24 of the Courts shall appoint a Guardian ad Litem Advisory Committee consisting of at
25 least five members to advise the Office of Guardian ad Litem Services in matters
26 related to this program. The members of the Advisory Committee shall receive the
27 same per diem and reimbursement for travel expenses as members of State boards
28 and commissions generally.

29 "§ 7B-1202. Conflict of interest or impracticality of implementation.

30 If a conflict of interest prohibits a local program from providing representation to
31 an abused, neglected, or dependent juvenile, the court may appoint any member of
32 the district bar to represent the juvenile. If the Administrative Office of the Courts
33 determines that within a particular district court district the implementation of a local
34 program is impractical, or that an alternative plan meets the conditions of G.S. 7B-
35 1203, the Administrative Office of the Courts shall waive the establishment of the
36 program within the district.

37 "§ 7B-1203. Alternative plans.

38 A district court district shall be granted a waiver from the implementation of a
39 local program if the Administrative Office of the Courts determines that the following
40 conditions are met:

41 (1) An alternative plan has been developed to provide adequate
42 guardian ad litem services for every juvenile consistent with the
43 duties stated in G.S. 7B-601; and

1 (2) The proposed alternative plan will require no greater proportion of
2 State funds than the district court district's abuse and neglect
3 caseload represents to the State's abuse and neglect caseload.
4 Computation of abuse and neglect caseloads shall include such
5 factors as the juvenile population, number of substantiated abuse
6 and neglect reports, number of abuse and neglect petitions, number
7 of abused and neglected juveniles in care to be reviewed pursuant
8 to G.S. 7B-906, nature of the district's district court caseload, and
9 number of petitions to terminate parental rights.

10 When an alternative plan is approved pursuant to this section, the Administrative
11 Office of the Courts shall retain authority to monitor implementation of the said plan
12 in order to assure compliance with the requirements of this Article and G.S. 7B-601.
13 In any district court district where the Administrative Office of the Courts determines
14 that implementation of an alternative plan is not in compliance with the requirements
15 of this section, the Administrative Office of the Courts may implement and
16 administer a program authorized by this Article.

17 "§ 7B-1204. Civil liability of volunteers.

18 Any volunteer participating in a judicial proceeding pursuant to the program
19 authorized by this Article shall not be civilly liable for acts or omissions committed in
20 connection with the proceeding if the volunteer acted in good faith and was not
21 guilty of gross negligence.

22 "ARTICLE 13.

23 "Prevention of Abuse and Neglect.

24 "§ 7B-1300. Purpose.

25 It is the expressed intent of this Article to make the prevention of abuse and
26 neglect, as defined in G.S. 7B-101, a priority of this State and to establish the
27 Children's Trust Fund as a means to that end.

28 "§ 7B-1301. Council on Prevention of Abuse and Neglect.

29 (a) For purposes of implementing this program, the State Board of Education
30 shall designate the Interagency Advisory Council on Community Schools in the
31 Department of Public Instruction as the Advisory Council on Prevention of Child
32 Abuse and Neglect, hereinafter called the Council.

33 (b) Staff and support services for implementing this program shall be provided by
34 the Division of Community Schools in the Department of Public Instruction.

35 (c) In order to carry out the purposes of this Article:

36 (1) The Council shall, with the assistance of the Division of
37 Community Schools, review applications and make
38 recommendations to the State Board of Education concerning the
39 awarding of contracts pursuant to this Article.

40 (2) The State Board of Education shall contract with public or private
41 nonprofit organizations, agencies, schools, or with qualified
42 individuals to operate community-based educational and service
43 programs designed to prevent the occurrence of abuse and neglect.
44 Every contract entered into by the State Board of Education shall

1 contain provisions that at least twenty-five percent (25%) of the
2 total funding required for a program be provided by the
3 administering organization in the form of in-kind or other services
4 and that a mechanism for evaluation of services provided under
5 the contract be included in the services to be performed. In
6 addition, every proposal to the Council for funding pursuant to this
7 Article shall include assurances that the proposal has been
8 forwarded to the local department of social services for comment
9 so that the Council may consider coordination and duplication of
10 effort on the local level as criteria in making recommendations to
11 the State Board of Education.

12 (3) The State Board of Education shall, with the assistance of the
13 Division of Community Schools, develop appropriate guidelines
14 and criteria for awarding contracts pursuant to this Article. These
15 criteria shall include, but not be limited to: documentation of need
16 within the proposed geographical impact area; diversity of
17 geographical areas of programs funded pursuant to this Article;
18 demonstrated effectiveness of the proposed strategy or program for
19 preventing abuse and neglect; reasonableness of implementation
20 plan for achieving stated objectives; utilization of community
21 resources including volunteers; provision for an evaluation
22 component that will provide outcome data; plan for dissemination
23 of the program for implementation in other communities; and
24 potential for future funding from private sources.

25 (4) The State Board of Education shall, with the assistance of the
26 Division of Community Schools, develop guidelines for regular
27 monitoring of contracts awarded pursuant to this Article in order
28 to maximize the investments in prevention programs by the
29 Children's Trust Fund and to establish appropriate accountability
30 measures for administration of contracts.

31 (5) The State Board of Education shall develop a State plan for the
32 prevention of abuse and neglect for submission to the Governor,
33 the President of the Senate, and the Speaker of the House of
34 Representatives.

35 (d) To assist in implementing this Article, the State Board of Education may
36 accept contributions, grants, or gifts in cash or otherwise from persons, associations,
37 or corporations. All moneys received by the State Board of Education from
38 contributions, grants, or gifts and not through appropriation by the legislature shall be
39 deposited in the Children's Trust Fund. Disbursements of the funds shall be on the
40 authorization of the State Board of Education or a duly authorized representative
41 thereof. In order to maintain an effective expenditure and revenue control, such
42 funds shall be subject in all respects to State law and regulations, but no
43 appropriation shall be required to permit expenditure of the funds.

44 "§ 7B-1302. Programs.

1 (a) Programs contracted for under this Article are intended to prevent abuse and
2 neglect of juveniles. Abuse and neglect prevention programs are defined to be those
3 programs and services which impact on juveniles and families before any
4 substantiated incident of abuse or neglect has occurred. These programs may include,
5 but are not limited to:

6 (1) Community-based educational programs on prenatal care, perinatal
7 bonding, child development, basic child care, care of children with
8 special needs, and coping with family stress; and

9 (2) Community-based programs relating to crisis care, aid to parents,
10 and support groups for parents and their children experiencing
11 stress within the family unit.

12 (b) No more than twenty percent (20%) of each year's total awards may be
13 utilized for funding State-level programs to coordinate community-based programs.

14 **"§ 7B-1303. Children's Trust Fund.**

15 There is established a fund to be known as the 'Children's Trust Fund,' in the
16 Department of State Treasurer, which shall be funded pursuant to G.S. 161-11.1, and
17 which shall be used by the State Board of Education to fund abuse and neglect
18 prevention programs so authorized by this Article.

19 **"ARTICLE 14.**

20 **"North Carolina Child Fatality Prevention System.**

21 **"§ 7B-1400. Declaration of public policy.**

22 The General Assembly finds that it is the public policy of this State to prevent the
23 abuse, neglect, and death of juveniles. The General Assembly further finds that the
24 prevention of the abuse, neglect, and death of juveniles is a community responsibility;
25 that professionals from disparate disciplines have responsibilities for children or
26 juveniles and have expertise that can promote their safety and well-being; and that
27 multidisciplinary reviews of the abuse, neglect, and death of juveniles can lead to a
28 greater understanding of the causes and methods of preventing these deaths. It is,
29 therefore, the intent of the General Assembly, through this Article, to establish a
30 statewide multidisciplinary, multiagency child fatality prevention system consisting of
31 the State Team established in G.S. 7B-1404 and the Local Teams established in G.S.
32 7B-1406. The purpose of the system is to assess the records of selected cases in which
33 children are being served by child protective services and the records of all deaths of
34 children in North Carolina from birth to age 18 in order to (i) develop a
35 communitywide approach to the problem of child abuse and neglect, (ii) understand
36 the causes of childhood deaths, (iii) identify any gaps or deficiencies that may exist in
37 the delivery of services to children and their families by public agencies that are
38 designed to prevent future child abuse, neglect, or death, and (iv) make and
39 implement recommendations for changes to laws, rules, and policies that will support
40 the safe and healthy development of our children and prevent future child abuse,
41 neglect, and death.

42 **"§ 7B-1401. Definitions.**

43 The following definitions apply in this Article:

- 1 (1) Additional Child Fatality. -- Any death of a child that did not
2 result from suspected abuse or neglect and about which no report
3 of abuse or neglect had been made to the county department of
4 social services within the previous 12 months.
- 5 (2) Local Team. -- A Community Child Protection Team or a Child
6 Fatality Prevention Team.
- 7 (3) State Team. -- The North Carolina Child Fatality Prevention
8 Team.
- 9 (4) Task Force. -- The North Carolina Child Fatality Task Force.
- 10 (5) Team Coordinator. -- The Child Fatality Prevention Team
11 Coordinator.

12 **"§ 7B-1402. Task Force -- creation; membership; vacancies.**

13 (a) There is created the North Carolina Child Fatality Task Force within the
14 Department of Health and Human Services for budgetary purposes only.

15 (b) The Task Force shall be composed of 35 members, 11 of whom shall be ex
16 officio members, four of whom shall be appointed by the Governor, 10 of whom shall
17 be appointed by the Speaker of the House of Representatives, and 10 of whom shall
18 be appointed by the President Pro Tempore of the Senate. The ex officio members
19 other than the Chief Medical Examiner shall be nonvoting members and may
20 designate representatives from their particular departments, divisions, or offices to
21 represent them on the Task Force. The members shall be as follows:

- 22 (1) The Chief Medical Examiner;
- 23 (2) The Attorney General;
- 24 (3) The Director of the Division of Social Services;
- 25 (4) The Director of the State Bureau of Investigation;
- 26 (5) The Director of the Division of Maternal and Child Health of the
27 Department of Health and Human Services;
- 28 (6) The Director of the Governor's Youth Advocacy and Involvement
29 Office;
- 30 (7) The Superintendent of Public Instruction;
- 31 (8) The Chairman of the State Board of Education;
- 32 (9) The Director of the Division of Mental Health, Developmental
33 Disabilities, and Substance Abuse Services;
- 34 (10) The Secretary of the Department of Health and Human Services;
- 35 (11) The Director of the Administrative Office of the Courts;
- 36 (12) A director of a county department of social services, appointed by
37 the Governor upon recommendation of the President of the North
38 Carolina Association of County Directors of Social Services;
- 39 (13) A representative from a Sudden Infant Death Syndrome counseling
40 and education program, appointed by the Governor upon
41 recommendation of the Director of the Division of Maternal and
42 Child Health of the Department of Health and Human Services;

- 1 (14) A representative from the North Carolina Child Advocacy
2 Institute, appointed by the Governor upon recommendation of the
3 President of the Institute;
4 (15) A director of a local department of health, appointed by the
5 Governor upon the recommendation of the President of the North
6 Carolina Association of Local Health Directors;
7 (16) A representative from a private group, other than the North
8 Carolina Child Advocacy Institute, that advocates for children,
9 appointed by the Speaker of the House of Representatives upon
10 recommendation of private child advocacy organizations;
11 (17) A pediatrician, licensed to practice medicine in North Carolina,
12 appointed by the Speaker of the House of Representatives upon
13 recommendation of the North Carolina Pediatric Society;
14 (18) A representative from the North Carolina League of
15 Municipalities, appointed by the Speaker of the House of
16 Representatives upon recommendation of the League;
17 (19) Two public members, appointed by the Speaker of the House of
18 Representatives;
19 (20) A county or municipal law enforcement officer, appointed by the
20 President Pro Tempore of the Senate upon recommendation of
21 organizations that represent local law enforcement officers;
22 (21) A district attorney, appointed by the President Pro Tempore of the
23 Senate upon recommendation of the President of the North
24 Carolina Conference of District Attorneys;
25 (22) A representative from the North Carolina Association of County
26 Commissioners, appointed by the President Pro Tempore of the
27 Senate upon recommendation of the Association;
28 (23) Two public members, appointed by the President Pro Tempore of
29 the Senate; and
30 (24) Five members of the Senate, appointed by the President Pro
31 Tempore of the Senate, and five members of the House of
32 Representatives, appointed by the Speaker of the House of
33 Representatives.

34 (c) All members of the Task Force are voting members. Vacancies in the
35 appointed membership shall be filled by the appointing officer who made the initial
36 appointment. At the first meeting the members shall elect a chair who shall preside
37 for the duration of the Task Force.

38 "§ 7B-1403. Task Force -- duties.

39 The Task Force shall:

- 40 (1) Undertake a statistical study of the incidences and causes of child
41 deaths in this State during 1988 and 1989 and establish a profile of
42 child deaths. The study shall include (i) an analysis of all
43 community and private and public agency involvement with the

1 decedents and their families prior to death, and (ii) an analysis of
2 child deaths by age, cause, and geographic distribution;

3 (2) Develop a system for multidisciplinary review of child deaths. In
4 developing such a system, the Task Force shall study the operation
5 of existing Local Teams. The Task Force shall also consider the
6 feasibility and desirability of local or regional review teams and,
7 should it determine such teams to be feasible and desirable,
8 develop guidelines for the operation of the teams. The Task Force
9 shall also examine the laws, rules, and policies relating to
10 confidentiality of and access to information that affect those
11 agencies with responsibilities for children, including State and local
12 health, mental health, social services, education, and law
13 enforcement agencies, to determine whether those laws, rules, and
14 policies inappropriately impede the exchange of information
15 necessary to protect children from preventable deaths, and, if so,
16 recommend changes to them;

17 (3) Receive and consider reports from the State Team; and

18 (4) Perform any other studies, evaluations, or determinations the Task
19 Force considers necessary to carry out its mandate. .

20 **§ 7B-1404. State Team -- creation; membership; vacancies.**

21 (a) There is created the North Carolina Child Fatality Prevention Team within
22 the Department of Health and Human Services for budgetary purposes only.

23 (b) The State Team shall be composed of the following 11 members of whom nine
24 members are ex officio and two are appointed:

25 (1) The Chief Medical Examiner, who shall chair the State Team;

26 (2) The Attorney General;

27 (3) The Director of the Division of Social Services, Department of
28 Health and Human Services;

29 (4) The Director of the State Bureau of Investigation;

30 (5) The Director of the Division of Maternal and Child Health of the
31 Department of Health and Human Services;

32 (6) The Superintendent of Public Instruction;

33 (7) The Director of the Division of Mental Health, Developmental
34 Disabilities, and Substance Abuse Services, Department of Health
35 and Human Services;

36 (8) The Director of the Administrative Office of the Courts;

37 (9) The pediatrician appointed pursuant to G.S. 7B-1402(b) to the
38 Task Force;

39 (10) A public member, appointed by the Governor; and

40 (11) The Team Coordinator.

41 The ex officio members other than the Chief Medical Examiner may designate a
42 representative from their departments, divisions, or offices to represent them on the
43 State Team.

1 (c) All members of the State Team are voting members. Vacancies in the
2 appointed membership shall be filled by the appointing officer who made the initial
3 appointment.

4 "§ 7B-1405. State Team -- duties.

5 The State Team shall:

- 6 (1) Review current deaths of children when those deaths are attributed
7 to child abuse or neglect or when the decedent was reported as an
8 abused or neglected juvenile pursuant to G.S. 7B-301 at any time
9 before death;
- 10 (2) Report to the Task Force during the existence of the Task Force,
11 in the format and at the time required by the Task Force, on the
12 State Team's activities and its recommendations for changes to any
13 law, rule, and policy that would promote the safety and well-being
14 of children;
- 15 (3) Upon request of a Local Team, provide technical assistance to the
16 Team;
- 17 (4) Periodically assess the operations of the multidisciplinary child
18 fatality prevention system and make recommendations for changes
19 as needed;
- 20 (5) Work with the Team Coordinator to develop guidelines for
21 selecting child deaths to receive detailed, multidisciplinary death
22 reviews by Local Teams that review cases of additional child
23 fatalities; and
- 24 (6) Receive reports of findings and recommendations from Local
25 Teams that review cases of additional child fatalities and work with
26 the Team Coordinator to implement recommendations.

27 "§ 7B-1406. Community Child Protection Teams; Child Fatality Prevention Teams;
28 creation and duties.

29 (a) Community Child Protection Teams are established in every county of the
30 State. Each Community Child Protection Team shall:

- 31 (1) Review, in accordance with the procedures established by the
32 director of the county department of social services under G.S. 7B-
33 1409:
- 34 a. Selected active cases in which children are being served by
35 child protective services; and
- 36 b. Cases in which a child died as a result of suspected abuse or
37 neglect, and
- 38 1. A report of abuse or neglect has been made about the
39 child or the child's family to the county department
40 of social services within the previous 12 months, or
- 41 2. The child or the child's family was a recipient of
42 child protective services within the previous 12
43 months.

1 (2) Submit annually to the board of county commissioners
2 recommendations, if any, and advocate for system improvements
3 and needed resources where gaps and deficiencies may exist.

4 In addition, each Community Child Protection Team may review the records of all
5 additional child fatalities and report findings in connection with these reviews to the
6 Team Coordinator.

7 (b) Any Community Child Protection Team that determines it will not review
8 additional child fatalities shall notify the Team Coordinator. In accordance with the
9 plan established under G.S. 7B-1408(1), a separate Child Fatality Prevention Team
10 shall be established in that county to conduct these reviews. Each Child Fatality
11 Prevention Team shall:

12 (1) Review the records of all cases of additional child fatalities.

13 (2) Submit annually to the board of county commissioners
14 recommendations, if any, and advocate for system improvements
15 and needed resources where gaps and deficiencies may exist.

16 (3) Report findings in connection with these reviews to the Team
17 Coordinator.

18 (c) All reports to the Team Coordinator under this section shall include:

19 (1) A listing of the system problems identified through the review
20 process and recommendations for preventive actions;

21 (2) Any changes that resulted from the recommendations made by the
22 Local Team;

23 (3) Information about each death reviewed; and

24 (4) Any additional information requested by the Team Coordinator.

25 **§ 7B-1407. Local Teams; composition.**

26 (a) Each Local Team shall consist of representatives of public and nonpublic
27 agencies in the community that provide services to children and their families and
28 other individuals who represent the community. No single team shall encompass a
29 geographic or governmental area larger than one county.

30 (b) Each Local Team shall consist of the following persons:

31 (1) The director of the county department of social services and a
32 member of the director's staff;

33 (2) A local law enforcement officer, appointed by the board of county
34 commissioners;

35 (3) An attorney from the district attorney's office, appointed by the
36 district attorney;

37 (4) The executive director of the local community action agency, as
38 defined by the Department of Health and Human Services, or the
39 executive director's designee;

40 (5) The superintendent of each local school administrative unit located
41 in the county, or the superintendent's designee;

42 (6) A member of the county board of social services, appointed by the
43 chair of that board;

- 1 (7) A local mental health professional, appointed by the director of the
2 area authority established under Chapter 122C of the General
3 Statutes;
4 (8) The local guardian ad litem coordinator, or the coordinator's
5 designee;
6 (9) The director of the local department of public health; and
7 (10) A local health care provider, appointed by the local board of
8 health.

9 (c) In addition, a Local Team that reviews the records of additional child fatalities
10 shall include the following four additional members:

- 11 (1) An emergency medical services provider or firefighter, appointed
12 by the board of county commissioners;
13 (2) A district court judge, appointed by the chief district judge in that
14 district;
15 (3) A county medical examiner, appointed by the Chief Medical
16 Examiner;
17 (4) A representative of a local child care facility or Head Start
18 program, appointed by the director of the county department of
19 social services; and
20 (5) A parent of a child who died before reaching the child's
21 eighteenth birthday, to be appointed by the board of county
22 commissioners.

23 (d) The Team Coordinator shall serve as an ex officio member of each Local
24 Team that reviews the records of additional child fatalities. The board of county
25 commissioners may appoint a maximum of five additional members to represent
26 county agencies or the community at large to serve on any Local Team. Vacancies on
27 a Local Team shall be filled by the original appointing authority.

28 (e) Each Local Team shall elect a member to serve as chair at the Team's
29 pleasure.

30 (f) Each Local Team shall meet at least four times each year.

31 (g) The director of the local department of social services shall call the first
32 meeting of the Community Child Protection Team. The director of the local
33 department of health, upon consultation with the Team Coordinator, shall call the
34 first meeting of the Child Fatality Prevention Team. Thereafter, the chair of each
35 Local Team shall schedule the time and place of meetings, in consultation with these
36 directors, and shall prepare the agenda. The chair shall schedule Team meetings no
37 less often than once per quarter and often enough to allow adequate review of the
38 cases selected for review. Within three months of election, the chair shall participate
39 in the appropriate training developed under this Article.

40 **"§ 7B-1408. Child Fatality Prevention Team Coordinator; duties.**

41 The Child Fatality Prevention Team Coordinator shall serve as liaison between the
42 State Team and the Local Teams that review records of additional child fatalities and
43 shall provide technical assistance to these Local Teams. The Team Coordinator shall:

- 1 (1) Develop a plan to establish Local Teams that review the records of
2 additional child fatalities in each county.
- 3 (2) Develop model operating procedures for these Local Teams that
4 address when public meetings should be held, what items should
5 be addressed in public meetings, what information may be released
6 in written reports, and any other information the Team
7 Coordinator considers necessary.
- 8 (3) Provide structured training for these Local Teams at the time of
9 their establishment, and continuing technical assistance thereafter.
- 10 (4) Provide statistical information on all child deaths occurring in each
11 county to the appropriate Local Team, and assure that all child
12 deaths in a county are assessed through the multidisciplinary
13 system.
- 14 (5) Monitor the work of these Local Teams.
- 15 (6) Receive reports of findings, and other reports that the Team
16 Coordinator may require, from these Local Teams.
- 17 (7) Report the aggregated findings of these Local Teams to each Local
18 Team that reviews the records of additional child fatalities and to
19 the State Team.
- 20 (8) Evaluate the impact of local efforts to identify problems and make
21 changes.

22 **"§ 7B-1409. Community Child Protection Teams; duties of the director of the county**
23 **department of social services.**

24 In addition to any other duties as a member of the Community Child Protection
25 Team, and in connection with the reviews under G.S. 7B-1406(a)(1), the director of
26 the county department of social services shall:

- 27 (1) Assure the development of written operating procedures in
28 connection with these reviews, including frequency of meetings,
29 confidentiality policies, training of members, and duties and
30 responsibilities of members;
- 31 (2) Assure that the Team defines the categories of cases that are
32 subject to its review;
- 33 (3) Determine and initiate the cases for review;
- 34 (4) Bring for review any case requested by a Team member;
- 35 (5) Provide staff support for these reviews;
- 36 (6) Maintain records, including minutes of all official meetings, lists of
37 participants for each meeting of the Team, and signed
38 confidentiality statements required under G.S. 7B-1413, in
39 compliance with applicable rules and law; and
- 40 (7) Report quarterly to the county board of social services, or as
41 required by the board, on the activities of the Team.

42 **"§ 7B-1410. Local Teams; duties of the director of the local department of health.**

1 In addition to any other duties as a member of the Local Team and in connection
2 with reviews of additional child fatalities, the director of the local department of
3 health shall:

- 4 (1) Distribute copies of the written procedures developed by the Team
5 Coordinator under G.S. 7B-1408 to the administrators of all
6 agencies represented on the Local Team and to all members of the
7 Local Team;
8 (2) Maintain records, including minutes of all official meetings, lists of
9 participants for each meeting of the Local Team, and signed
10 confidentiality statements required under G.S. 7B-1413, in
11 compliance with applicable rules and law;
12 (3) Provide staff support for these reviews; and
13 (4) Report quarterly to the local board of health, or as required by the
14 board, on the activities of the Local Team.

15 "§ 7B-1411. Community Child Protection Teams; responsibility for training of team
16 members.

17 The Division of Social Services, Department of Health and Human Services, shall
18 develop and make available, on an ongoing basis, for the members of Local Teams
19 that review active cases in which children are being served by child protective
20 services, training materials that address the role and function of the Local Team,
21 confidentiality requirements, an overview of child protective services law and policy,
22 and Team record keeping.

23 "§ 7B-1412. Task Force -- reports.

24 (a) The Task Force may make a written report to the Governor and General
25 Assembly within one week of the convening of the 1998 Regular Session of the 1997
26 General Assembly. The Task Force shall make a final written report to the Governor
27 and General Assembly within the first week of the convening of the 1999 General
28 Assembly. The final report shall include final conclusions and recommendations for
29 each of the Task Force's duties, as well as any other recommendations for changes to
30 any law, rule, and policy that it has determined will promote the safety and well-
31 being of children. Any recommendations of changes to law, rule, or policy shall be
32 accompanied by specific legislative or policy proposals and detailed fiscal notes
33 setting forth the costs to the State.

34 (b) After the Task Force provides its final report to the Governor and General
35 Assembly, the Task Force shall cease to be in existence.

36 "§ 7B-1413. Access to records.

37 (a) The State Team, the Local Teams, and the Task Force during its existence,
38 shall have access to all medical records, hospital records, and records maintained by
39 this State, any county, or any local agency as necessary to carry out the purposes of
40 this Article, including police investigations data, medical examiner investigative data,
41 health records, mental health records, and social services records. The State Team,
42 the Task Force, and the Local Teams shall not, as part of the reviews authorized
43 under this Article, contact, question, or interview the child, the parent of the child, or
44 any other family member of the child whose record is being reviewed. Any member

1 of a Local Team may share, only in an official meeting of that Local Team, any
2 information available to that member that the Local Team needs to carry out its
3 duties.

4 (b) Meetings of the State Team and the Local Teams are not subject to the
5 provisions of Article 33C of Chapter 143 of the General Statutes. However, the
6 Local Teams may hold periodic public meetings to discuss, in a general manner not
7 revealing confidential information about children and families, the findings of their
8 reviews and their recommendations for preventive actions. Minutes of all public
9 meetings, excluding those of executive sessions, shall be kept in compliance with
10 Article 33C of Chapter 143 of the General Statutes. Any minutes or any other
11 information generated during any closed session shall be sealed from public
12 inspection.

13 (c) All otherwise confidential information and records acquired by the State
14 Team, the Local Teams, and the Task Force during its existence, in the exercise of
15 their duties are confidential; are not subject to discovery or introduction into
16 evidence in any proceedings; and may only be disclosed as necessary to carry out the
17 purposes of the State Team, the Local Teams, and the Task Force. In addition, all
18 otherwise confidential information and records created by a Local Team in the
19 exercise of its duties are confidential; are not subject to discovery or introduction into
20 evidence in any proceedings; and may only be disclosed as necessary to carry out the
21 purposes of the Local Team. No member of the State Team, a Local Team, nor any
22 person who attends a meeting of the State Team or a Local Team, may testify in any
23 proceeding about what transpired at the meeting, about information presented at the
24 meeting, or about opinions formed by the person as a result of the meetings. This
25 subsection shall not, however, prohibit a person from testifying in a civil or criminal
26 action about matters within that person's independent knowledge.

27 (d) Each member of a Local Team and invited participant shall sign a statement
28 indicating an understanding of and adherence to confidentiality requirements,
29 including the possible civil or criminal consequences of any breach of confidentiality.

30 (e) Cases receiving child protective services at the time of review by a Local
31 Team shall have an entry in the child's protective services record to indicate that the
32 case was received by that Team. Additional entry into the record shall be at the
33 discretion of the director of the county department of social services.

34 (f) The Social Services Commission shall adopt rules to implement this section in
35 connection with reviews conducted by Community Child Protection Teams. The
36 Health Services Commission shall adopt rules to implement this section in connection
37 with Local Teams that review additional child fatalities. In particular, these rules
38 shall allow information generated by an executive session of a Local Team to be
39 accessible for administrative or research purposes only.

40 **"§ 7B-1414. Administration; funding.**

41 (a) To the extent of funds available, the chairs of the Task Force and State Team
42 may hire staff or consultants to assist the Task Force and the State Team in
43 completing their duties.

1 (b) Members, staff, and consultants of the Task Force or State Team shall receive
2 travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or
3 G.S. 138-6, as the case may be, paid from funds appropriated to implement this
4 Article and within the limits of those funds.

5 (c) With the approval of the Legislative Services Commission, legislative staff and
6 space in the Legislative Building and the Legislative Office Building may be made
7 available to the Task Force.

8 "SUBCHAPTER II. UNDISCIPLINED AND DELINQUENT JUVENILES.

9 "ARTICLE 15.

10 "Purposes; Definitions.

11 "§ 7B-1500. Purpose.

12 This Subchapter shall be interpreted and construed so as to implement the
13 following purposes and policies:

- 14 (1) To protect the public from acts of delinquency.
15 (2) To deter delinquency and crime, including patterns of repeat
16 offending:
17 a. By providing swift, effective dispositions that emphasize the
18 juvenile offender's accountability for the juvenile's actions;
19 and
20 b. By providing appropriate rehabilitative services to juveniles
21 and their families.
22 (3) To provide an effective system of intake services for the screening
23 and evaluation of complaints and, in appropriate cases, where
24 court intervention is not necessary to ensure public safety, to refer
25 juveniles to community-based resources.
26 (4) To provide uniform procedures that assure fairness and equity; that
27 protect the constitutional rights of juveniles, parents, and victims;
28 and that encourage the court and others involved with juvenile
29 offenders to proceed with all possible speed in making and
30 implementing determinations required by this Subchapter.

31 "§ 7B-1501. Definitions.

32 In this Subchapter, unless the context clearly requires otherwise, the following
33 words have the listed meanings:

- 34 (1) Chief court counselor. -- The person responsible for administration
35 and supervision of juvenile intake, probation, and post-release
36 supervision in each judicial district, operating under the
37 supervision of the Secretary of the Department of Juvenile Justice.
38 (2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
39 deputy clerk.
40 (3) Community-based program. -- A program providing nonresidential
41 or residential treatment to a juvenile under the jurisdiction of the
42 juvenile court in the community where the juvenile's family lives.
43 A community-based program may include specialized foster care,
44 family counseling, shelter care, and other appropriate treatment.

- 1 (4) Court. -- The district court division of the General Court of
2 Justice.
- 3 (5) Court counselor. -- A person responsible for probation and post-
4 release supervision to juveniles under the supervision of the chief
5 court counselor.
- 6 (6) Custodian. -- The person or agency that has been awarded legal
7 custody of a juvenile by a court.
- 8 (7) Delinquent juvenile. -- Any juvenile who, while less than 16 years
9 of age but at least 6 years of age, commits a crime or infraction
10 under State law or under an ordinance of local government,
11 including violation of the motor vehicle laws.
- 12 (8) Department. -- The North Carolina Department of Juvenile Justice.
- 13 (9) Detention. -- The secure confinement of a juvenile pursuant to a
14 court order.
- 15 (10) Detention facility. -- A facility authorized to provide secure
16 confinement and care for juveniles. Detention facilities include
17 both State and locally administered detention homes, centers, and
18 facilities.
- 19 (11) District. -- Any district court district as established by G.S. 7A-133.
- 20 (12) Extended jurisdiction. -- Juvenile court jurisdiction, pursuant to a
21 court order, over a person who is at least 18 years of age and has
22 not reached the person's nineteenth birthday.
- 23 (13) Holdover facility. -- A place in a jail which has been approved by
24 the Department of Health and Human Services as meeting the
25 State standards for detention as required in G.S. 153A-221
26 providing close supervision where the juvenile cannot converse
27 with, see, or be seen by the adult population.
- 28 (14) House arrest. -- A requirement that the juvenile remain at the
29 juvenile's residence unless the court or the juvenile court
30 counselor authorizes the juvenile to leave for specific purposes
31 such as employment, counseling, a course of study, or vocational
32 training. The juvenile may be required to wear a device that
33 permits the supervising agency to monitor electronically the
34 juvenile's compliance.
- 35 (15) In loco parentis. -- A person acting in loco parentis means one,
36 other than parents or legal guardian, who has assumed the status
37 and obligation of a parent without being awarded the legal custody
38 of a juvenile by a court.
- 39 (16) Intake counselor. -- A person who screens and evaluates a
40 complaint alleging that a juvenile is delinquent or undisciplined to
41 determine whether the complaint should be filed as a petition.
- 42 (17) Interstate Compact on Juveniles. -- An agreement ratified by 50
43 states and the District of Columbia providing a formal means of
44 returning a juvenile, who is an absconder, escapee, or runaway, to

- 1 the juvenile's home state, and codified in Article 28 of this
2 Chapter.
- 3 (18) Judge. -- Any district court judge.
- 4 (19) Judicial district. -- Any district court district as established by G.S.
5 7A-133.
- 6 (20) Juvenile. -- Except as provided in subdivisions (7) and (28) of this
7 section, any person who has not reached the person's eighteenth
8 birthday and is not married, emancipated, or a member of the
9 armed services of the United States. Wherever the term 'juvenile'
10 is used with reference to rights and privileges, that term
11 encompasses the attorney for the juvenile as well.
- 12 (21) Juvenile court. -- Any district court exercising jurisdiction pursuant
13 to this Chapter.
- 14 (22) Petitioner. -- The individual who initiates court action by the filing
15 of a petition or a motion for review alleging the matter for
16 adjudication.
- 17 (23) Post-release supervision. -- The supervision of a juvenile who has
18 been returned to the community after having been committed to
19 the Department of Juvenile Justice.
- 20 (24) Probation. -- The status of a juvenile who has been adjudicated
21 delinquent, is subject to specified conditions under the supervision
22 of a court counselor, and may be returned to the court for
23 violation of those conditions during the period of probation.
- 24 (25) Prosecutor. -- The district attorney or assistant district attorney
25 assigned by the district attorney to juvenile proceedings.
- 26 (26) Secretary. -- The Secretary of the Department of Juvenile Justice.
- 27 (27) Teen court program. -- A community resource for the diversion of
28 cases in which a juvenile has allegedly committed certain offenses
29 not involving violence or personal injury for hearing by a jury of
30 the juvenile's peers, which may assign the juvenile to counseling,
31 restitution, curfews, community service, or other rehabilitative
32 measures.
- 33 (28) Undisciplined juvenile. --
- 34 a. A juvenile who, while less than 16 years of age but at least 6
35 years of age, is unlawfully absent from school; or is regularly
36 disobedient to and beyond the disciplinary control of the
37 juvenile's parent, guardian, or custodian; or is regularly
38 found in places where it is unlawful for a juvenile to be; or
39 has run away from home; or
- 40 b. A juvenile who is 16 or 17 years of age and who is regularly
41 disobedient to and beyond the disciplinary control of the
42 juvenile's parent, guardian, or custodian; or is regularly
43 found in places where it is unlawful for a juvenile to be; or
44 has run away from home.

1 (29) Wilderness program. -- A rehabilitative residential treatment
2 program in a rural or outdoor setting.

3 The singular includes the plural, unless otherwise specified.

4 "ARTICLE 16.

5 "Jurisdiction.

6 "§ 7B-1600. Jurisdiction over undisciplined juveniles.

7 (a) The court has exclusive, original jurisdiction over any case involving a juvenile
8 who is alleged to be undisciplined. For purposes of determining jurisdiction, the age
9 of the juvenile at the time of the alleged offense governs.

10 (b) When the court obtains jurisdiction over a juvenile under this section,
11 jurisdiction shall continue until terminated by order of the court, the juvenile reaches
12 the age of 18 years, or the juvenile is emancipated.

13 (c) The court has jurisdiction over the parent, guardian, or custodian of a juvenile
14 who is under the jurisdiction of the court pursuant to this section, if the parent,
15 guardian, or custodian has been served with a summons pursuant to G.S. 7B-1805.

16 "§ 7B-1601. Jurisdiction over delinquent juveniles.

17 (a) The court has exclusive, original jurisdiction over any case involving a juvenile
18 who is alleged to be delinquent. For purposes of determining jurisdiction, the age of
19 the juvenile at the time of the alleged offense governs.

20 (b) When the court obtains jurisdiction over a juvenile alleged to be delinquent,
21 jurisdiction shall continue until terminated by order of the court or until the juvenile
22 reaches the age of 18 years, except as provided otherwise in this Article.

23 (c) When delinquency proceedings cannot be concluded before the juvenile
24 reaches the age of 18 years, the court retains jurisdiction for the sole purpose of
25 conducting proceedings pursuant to Article 22 of this Chapter and either transferring
26 the case to superior court for trial as an adult or dismissing the petition.

27 (d) When the court has not obtained jurisdiction over a juvenile before the
28 juvenile reaches the age of 18, for a felony and any related misdemeanors the juvenile
29 allegedly committed on or after the juvenile's thirteenth birthday and prior to the
30 juvenile's sixteenth birthday, the court has jurisdiction for the sole purpose of
31 conducting proceedings pursuant to Article 22 of this Chapter and either transferring
32 the case to superior court for trial as an adult or dismissing the petition.

33 (e) The court has jurisdiction over delinquent juveniles in the custody of the
34 Department and over proceedings to determine whether a juvenile who is under the
35 post-release supervision of the court counselor has violated the terms of the juvenile's
36 post-release supervision.

37 (f) The court has jurisdiction over persons 18 years of age or older who are under
38 the extended jurisdiction of the juvenile court.

39 (g) The court has jurisdiction over the parent, guardian, or custodian of a juvenile
40 who is under the jurisdiction of the court pursuant to this section if the parent,
41 guardian, or custodian has been served with a summons pursuant to G.S. 7B-1805.

42 "§ 7B-1602. Extended jurisdiction over a delinquent juvenile under certain
43 circumstances.

1 If the court orders that jurisdiction be extended pursuant to G.S. 7B-2513,
2 jurisdiction over a juvenile shall continue after the juvenile reaches the age of 18
3 years until (i) jurisdiction is terminated by order of the court or (ii) the juvenile
4 reaches the age of 19 years.

5 **"§ 7B-1603. Jurisdiction in certain circumstances.**

6 The court has exclusive original jurisdiction of the following proceedings:

7 (1) Proceedings under the Interstate Compact on the Placement of
8 Children set forth in Article 38 of this Chapter;

9 (2) Proceedings involving judicial consent for emergency surgical or
10 medical treatment for a juvenile when the juvenile's parent,
11 guardian, custodian, or other person standing in loco parentis
12 refuses to consent for treatment to be rendered; and

13 (3) Proceedings to determine whether a juvenile should be
14 emancipated.

15 **"§ 7B-1604. Limitations on juvenile court jurisdiction.**

16 (a) Any juvenile, including a juvenile who is under the jurisdiction of the court,
17 who commits a criminal offense after the juvenile's sixteenth birthday is subject to
18 prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an
19 adult for the commission of a criminal offense.

20 (b) A juvenile who is transferred to and convicted in superior court shall be
21 prosecuted as an adult for any criminal offense the juvenile commits after the
22 superior court conviction.

23 **"ARTICLE 17.**

24 **"Screening of Delinquency and Undisciplined Complaints.**

25 **"§ 7B-1700. Intake services.**

26 The chief court counselor, under the direction of the Secretary, shall establish
27 intake services in each judicial district of the State for all delinquency and
28 undisciplined cases.

29 The purpose of intake services shall be to determine from available evidence
30 whether there are reasonable grounds to believe the facts alleged are true, to
31 determine whether the facts alleged constitute a delinquent or undisciplined offense
32 within the jurisdiction of the court, to determine whether the facts alleged are
33 sufficiently serious to warrant court action, and to obtain assistance from community
34 resources when court referral is not necessary. The intake counselor shall not engage
35 in field investigations to substantiate complaints or to produce supplementary
36 evidence but may refer complainants to law enforcement agencies for those purposes.

37 **"§ 7B-1701. Preliminary inquiry.**

38 When a complaint is received, the intake counselor shall make a preliminary
39 determination as to whether the juvenile is within the jurisdiction of the court as a
40 delinquent or undisciplined juvenile. If the intake counselor finds that the facts
41 contained in the complaint do not state a case within the jurisdiction of the court,
42 that legal sufficiency has not been established, or that the matters alleged are
43 frivolous, the intake counselor, without further inquiry, shall refuse authorization to
44 file the complaint as a petition.

1 When requested by the intake counselor, the prosecutor shall assist in determining
2 the sufficiency of evidence as it affects the quantum of proof and the elements of
3 offenses.

4 The intake counselor, without further inquiry, shall authorize the complaint to be
5 filed as a petition if the intake counselor finds reasonable grounds to believe that the
6 juvenile has committed one of the following nondivertible offenses:

7 (1) Murder;

8 (2) First-degree rape or second degree rape;

9 (3) First-degree sexual offense or second degree sexual offense;

10 (4) Arson;

11 (5) Any violation of Article 5, Chapter 90 of the General Statutes that
12 would constitute a felony if committed by an adult;

13 (6) First degree burglary;

14 (7) Crime against nature; or

15 (8) Any felony which involves the willful infliction of serious bodily
16 injury upon another or which was committed by use of a deadly
17 weapon.

18 **"§ 7B-1702. Evaluation.**

19 Upon a finding of legal sufficiency, except in cases involving nondivertible offenses
20 set out in G.S. 7B-1701, the intake counselor shall determine whether a complaint
21 should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the
22 case resolved without further action. In making the decision, the counselor shall
23 consider criteria provided by the Secretary. The intake process shall include the
24 following steps if practicable:

25 (1) Interviews with the complainant and the victim if someone other
26 than the complainant;

27 (2) Interviews with the juvenile and the juvenile's parent, guardian, or
28 custodian;

29 (3) Interviews with persons known to have relevant information about
30 the juvenile or the juvenile's family.

31 Interviews required by this section shall be conducted in person unless it is necessary
32 to conduct them by telephone.

33 **"§ 7B-1703. Evaluation decision.**

34 (a) The intake counselor shall complete evaluation of a complaint within 15 days
35 of receipt of the complaint, with an extension for a maximum of 15 additional days at
36 the discretion of the chief court counselor. The intake counselor shall decide within
37 this time period whether a complaint shall be filed as a juvenile petition.

38 (b) If the intake counselor determines that a complaint should be filed as a
39 petition, the counselor shall file the petition as soon as practicable, but in any event
40 within 15 days after the complaint is received, with an extension for a maximum of
41 15 additional days at the discretion of the chief court counselor. The intake
42 counselor shall assist the complainant when necessary with the preparation and filing
43 of the petition, shall include on it the date and the words 'Approved for Filing', shall
44 sign it, and shall transmit it to the clerk of superior court.

1 (c) If the intake counselor determines that a petition should not be filed, the
2 intake counselor shall notify the complainant immediately in writing with reasons for
3 the decision and shall include notice of the complainant's right to have the decision
4 reviewed by the prosecutor. The intake counselor shall sign the complaint after
5 indicating on it:

- 6 (1) The date of the determination;
- 7 (2) The words 'Not Approved for Filing'; and
- 8 (3) Whether the matter is 'Closed' or 'Diverted and Retained'.

9 Except as provided in G.S. 7B-1706, any complaint not approved for filing as a
10 juvenile petition shall be destroyed by the intake counselor after holding the
11 complaint for a temporary period to allow review as provided in G.S. 7B-1705.

12 **"§ 7B-1704. Request for review by prosecutor.**

13 The complainant has five calendar days, from receipt of the intake counselor's
14 decision not to approve the filing of a petition, to request review by the prosecutor.
15 The intake counselor shall notify the prosecutor immediately of such request and
16 shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify
17 the complainant and the intake counselor of the time and place for the review.

18 **"§ 7B-1705. Review of determination that petition should not be filed.**

19 No later than 20 days after the complainant is notified, the prosecutor shall review
20 the intake counselor's determination that a juvenile petition should not be filed.
21 Review shall include conferences with the complainant and the intake counselor. At
22 the conclusion of the review, the prosecutor shall: (i) affirm the decision of the intake
23 counselor or direct the filing of a petition and (ii) notify the complainant of the
24 prosecutor's action.

25 **"§ 7B-1706. Diversion plans and referral.**

26 (a) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon
27 a finding of legal sufficiency the intake counselor may divert the juvenile pursuant to
28 a diversion plan, which may include referring the juvenile to any of the following
29 resources:

- 30 (1) An appropriate public or private resource;
- 31 (2) Restitution;
- 32 (3) Community service;
- 33 (4) Victim-offender mediation;
- 34 (5) Regimented physical training;
- 35 (6) Counseling;
- 36 (7) A teen court program, as set forth in subsection (c) of this section.

37 As part of a diversion plan, the intake counselor may enter into a diversion
38 contract with the juvenile and the juvenile's parent, guardian, or custodian.

39 (b) Unless the offense is one in which a petition is required by G.S. 7B-1701,
40 upon a finding of legal sufficiency the intake counselor may enter into a diversion
41 contract with the juvenile and the parent, guardian, or custodian; provided, a
42 diversion contract requires the consent of the juvenile and the juvenile's parent,
43 guardian, or custodian. A diversion contract shall:

- 1 (1) State conditions by which the juvenile agrees to abide and any
2 actions the juvenile agrees to take;
- 3 (2) State conditions by which the parent, guardian, or custodian agrees
4 to abide and any actions the parent, guardian, or custodian agrees
5 to take;
- 6 (3) Describe the role of the court counselor in relation to the juvenile
7 and the parent, guardian, or custodian;
- 8 (4) Specify the length of the contract, which shall not exceed six
9 months;
- 10 (5) Indicate that all parties understand and agree that:
 - 11 a. The juvenile's violation of the contract may result in the
12 filing of the complaint as a petition; and
 - 13 b. The juvenile's successful completion of the contract shall
14 preclude the filing of a petition.

15 After a diversion contract is signed by the parties, the intake counselor shall
16 provide copies of the contract to the juvenile and the juvenile's parent, guardian, or
17 custodian. The intake counselor shall notify any agency or other resource from
18 which the juvenile or the juvenile's parent, guardian, or custodian will be seeking
19 services or treatment pursuant to the terms of the contract. At any time during the
20 term of the contract if the court counselor determines that the juvenile has failed to
21 comply substantially with the terms of the contract, the court counselor shall file the
22 complaint as a petition. Unless the court counselor has filed the complaint as a
23 petition, the counselor shall close the juvenile's file in regard to the diverted matter
24 within six months after the date of the contract.

25 (c) If a teen court program has been established in the district, the intake
26 counselor, upon a finding of legal sufficiency, may refer any case in which a juvenile
27 has allegedly committed an offense that would be an infraction or misdemeanor if
28 committed by an adult to a teen court program. However, the counselor shall not
29 refer a case to a teen court program (i) if the juvenile has been referred to a teen
30 court program previously, or (ii) if the juvenile is alleged to have committed any of
31 the following offenses:

- 32 (1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-
33 138.5, or 20-138.7, or any other motor vehicle violation;
- 34 (2) A Class A1 misdemeanor;
- 35 (3) An assault in which a weapon is used; or
- 36 (4) A controlled substance offense under Article 5 of Chapter 90 of
37 the General Statutes, other than simple possession of a Schedule
38 VI drug or alcohol.

39 (d) The intake counselor shall maintain diversion plans and contracts entered into
40 pursuant to this section to allow intake counselors to determine when a juvenile has
41 had a complaint diverted previously. Diversion plans and contracts are not public
42 records under Chapter 132 of the General Statutes, shall not be included in the
43 clerk's record pursuant to G.S. 7B-3000, and shall be withheld from public inspection
44 or examination. Diversion plans and contracts shall be destroyed when the juvenile

1 reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of
2 the court, whichever is longer.

3 (e) No later than 60 days after the intake counselor diverts a juvenile, the intake
4 counselor shall determine whether the juvenile and the juvenile's parent, guardian, or
5 custodian have complied with the terms of the diversion plan or contract. In making
6 this determination, the intake counselor shall contact any referral resources to
7 determine whether the juvenile and the juvenile's parent, guardian, or custodian
8 complied with any recommendations for treatment or services made by the resource.
9 If the juvenile and the juvenile's parent, guardian, or custodian have not complied,
10 the intake counselor shall reconsider the decision to divert and may authorize the
11 filing of the complaint as a petition within 10 days after making the determination. If
12 the intake counselor does not file a petition, the intake counselor may continue to
13 monitor the case for up to six months from the date of the diversion plan or contract.
14 At any point during that time period if the juvenile and the juvenile's parent,
15 guardian, or custodian fail to comply, the intake counselor shall reconsider the
16 decision to divert and may authorize the filing of the complaint as a petition. After
17 six months, the intake counselor shall close the diversion plan or contract file.

18 "ARTICLE 18.

19 "Venue; Petition; Summons.

20 "§ 7B-1800. Venue.

21 A proceeding in which a juvenile is alleged to be delinquent or undisciplined shall
22 be commenced and adjudicated in the district in which the offense is alleged to have
23 occurred. When a proceeding is commenced in a district other than that of the
24 juvenile's residence, the court shall proceed to adjudication in that district. After
25 adjudication, these procedures shall be available to the court:

- 26 (1) The court may transfer the proceeding to the court in the district
27 where the juvenile resides for disposition.
28 (2) Where the proceeding is not transferred under subdivision (1) of
29 this section, the court shall immediately notify the chief district
30 judge in the district in which the juvenile resides. If the chief
31 district judge requests a transfer within five days after receipt of
32 notification, the court shall transfer the proceeding.
33 (3) Where the proceeding is not transferred under subdivision (1) or
34 (2), the court, upon motion of the juvenile, shall transfer the
35 proceeding to the court in the district where the juvenile resides
36 for disposition. The court shall advise the juvenile of the juvenile's
37 right to transfer under this section.

38 "§ 7B-1801. Pleading and process.

39 The pleading in a juvenile action is the petition. The process in a juvenile action is
40 the summons.

41 "§ 7B-1802. Petition.

42 The petition shall contain the name, date of birth, and address of the juvenile and
43 the name and last known address of the juvenile's parent, guardian, or custodian.

1 The petition shall allege the facts which invoke jurisdiction over the juvenile. The
2 petition shall not contain information on more than one juvenile.

3 A petition in which delinquency is alleged shall contain a plain and concise
4 statement, without allegations of an evidentiary nature, asserting facts supporting
5 every element of a criminal offense and the juvenile's commission thereof with
6 sufficient precision clearly to apprise the juvenile of the conduct which is the subject
7 of the allegation.

8 Sufficient copies of the petition shall be prepared so that copies will be available
9 for the juvenile, for each parent if living separate and apart, for the court counselor,
10 for the prosecutor, and for any person determined by the court to be a necessary
11 party.

12 **"§ 7B-1803. Receipt of complaints; filing of petition.**

13 (a) All complaints concerning a juvenile alleged to be delinquent or undisciplined
14 shall be referred to the intake counselor for screening and evaluation. Thereafter, if
15 the intake counselor determines that a petition should be filed, the petition shall be
16 drawn by the intake counselor or the clerk, signed by the complainant, and verified
17 before an official authorized to administer oaths. If the circumstances indicate a need
18 for immediate attachment of jurisdiction and if the intake counselor is out of the
19 county or otherwise unavailable to receive a complaint and to draw a petition when
20 it is needed, the clerk shall assist the complainant in communicating the complaint to
21 the intake counselor by telephone and, with the approval of the intake counselor,
22 shall draw a petition and file it when signed and verified. A copy of the complaint
23 and petition shall be transmitted to the intake counselor. Procedures for receiving
24 delinquency and undisciplined complaints and drawing petitions thereon, consistent
25 with this Article and Article 17 of this Chapter shall be established by administrative
26 order of the chief judge in each judicial district.

27 (b) If review is requested pursuant to G.S. 7B-1704, the prosecutor shall review a
28 complaint and any decision of the intake counselor not to authorize that the
29 complaint be filed as a petition. If the prosecutor, after review, authorizes a
30 complaint to be filed as a petition, the prosecutor shall prepare the complaint to be
31 filed by the clerk as a petition, recording the day of filing.

32 **"§ 7B-1804. Commencement of action.**

33 (a) An action is commenced by the filing of a petition in the clerk's office when
34 that office is open, or by a magistrate's acceptance of a petition for filing pursuant to
35 subsection (b) of this section when the clerk's office is closed.

36 (b) When the office of the clerk is closed and an intake counselor requests a
37 petition alleging a juvenile to be delinquent or undisciplined, a magistrate may draw
38 and verify the petition and accept it for filing, which acceptance shall constitute
39 filing. The magistrate's authority under this subsection is limited to emergency
40 situations when a petition is required in order to obtain a secure or nonsecure
41 custody order. Any petition accepted for filing under this subsection shall be
42 delivered to the clerk's office for processing as soon as that office is open for
43 business.

44 **"§ 7B-1805. Issuance of summons.**

1 (a) Immediately after a petition has been filed alleging that a juvenile is
2 undisciplined or delinquent, the clerk shall issue a summons to the juvenile and to
3 the parent, guardian, or custodian requiring them to appear for a hearing at the time
4 and place stated in the summons. A copy of the petition shall be attached to each
5 summons.

6 (b) A summons shall be on a printed form supplied by the Administrative Office
7 of the Courts and shall include:

8 (1) Notice of the nature of the proceeding and the purpose of the
9 hearing scheduled on the summons.

10 (2) Notice of any right to counsel and information about how to seek
11 the appointment of counsel prior to a hearing.

12 (3) Notice that, if the court determines at the adjudicatory hearing that
13 the allegations of the petition are true, the court will conduct a
14 dispositional hearing and will have jurisdiction to enter orders
15 affecting substantial rights of the juvenile and of the parent,
16 guardian, or custodian, including orders that:

17 a. Affect the juvenile's custody;

18 b. Impose conditions on the juvenile;

19 c. Require that the juvenile receive medical, psychiatric,
20 psychological, or other treatment and that the parent,
21 guardian, or custodian participate in the treatment;

22 d. Require the parent, guardian, or custodian to undergo
23 psychiatric, psychological, or other treatment or counseling;

24 e. Order the parent to pay for treatment that is ordered for the
25 juvenile or the parent; and

26 f. Order the parent to pay support for the juvenile for any
27 period the juvenile does not reside with the parent or to pay
28 attorneys' fees or other expenses as ordered by the court.

29 (4) Notice that the parent, guardian, or custodian shall be required to
30 attend scheduled hearings and that failure without reasonable
31 cause to attend may result in proceedings for contempt of court.

32 (5) Notice that the parent, guardian, or custodian shall be responsible
33 for bringing the juvenile before the court at any hearing the
34 juvenile is required to attend and that failure without reasonable
35 cause to bring the juvenile before the court may result in
36 proceedings for contempt of court.

37 (c) The summons shall advise the parent, guardian, or custodian that upon
38 service, jurisdiction over the parent, guardian, or custodian is obtained and that
39 failure of the parent, guardian, or custodian to appear or bring the juvenile before the
40 court without reasonable cause or to comply with any order of the court pursuant to
41 Article 27 of this Chapter may cause the court to issue a show cause order for
42 contempt. The summons shall contain the following language in bold type:

1 'TO THE PARENT, GUARDIAN, OR CUSTODIAN: YOUR FAILURE TO APPEAR
2 IN COURT FOR A SCHEDULED HEARING OR TO COMPLY WITH AN ORDER
3 OF THE COURT MAY RESULT IN A FINDING OF CONTEMPT.'

4 (d) A summons shall be directed to the person summoned to appear and shall be
5 delivered to any person authorized to serve process.

6 "§ 7B-1806. Service of summons.

7 The summons and petition shall be personally served upon the parent, the
8 guardian, or custodian and the juvenile not less than five days prior to the date of the
9 scheduled hearing. The time for service may be waived in the discretion of the court.

10 If the parent, guardian, or custodian entitled to receive a summons cannot be
11 found by a diligent effort, the court may authorize service of the summons and
12 petition by mail or by publication. The cost of the service by publication shall be
13 advanced by the petitioner and may be charged as court costs as the court may direct.

14 The court may issue a show cause order for contempt against a parent, guardian,
15 or custodian who is personally served and fails without reasonable cause to appear
16 and to bring the juvenile before the court.

17 The provisions of G.S. 15A-301(a), (c), (d), and (e) relating to criminal process
18 apply to juvenile process; provided the period of time for return of an unserved
19 summons is 30 days.

20 "§ 7B-1806.1. Notice to parent and juvenile of scheduled hearings.

21 The clerk shall give to all parties, including both parents of the juvenile, five days
22 written notice of the date and time of all scheduled hearings unless the party is
23 notified in open court or the court orders otherwise.

24 "§ 7B-1807. First appearance for felony cases.

25 (a) A juvenile who is alleged in the petition to have committed an offense that
26 would be a felony if committed by an adult shall be summoned to appear before the
27 court for a first appearance within 10 days of the filing of the petition. If the juvenile
28 is in secure or nonsecure custody, the first appearance shall take place at the initial
29 hearing required by G.S. 7B-1906. Unless the juvenile is in secure or nonsecure
30 custody, the court may continue the first appearance to a time certain for good cause.

31 (b) At the first appearance, the court shall:

- 32 (1) Inform the juvenile of the allegations set forth in the petition;
- 33 (2) Determine whether the juvenile has retained counsel or has been
34 assigned counsel and, if the juvenile is not represented by counsel,
35 appoint counsel for the juvenile;
- 36 (3) If applicable, inform the juvenile of the date of the probable cause
37 hearing, which shall be within 15 days of the first appearance; and
- 38 (4) Inform the parent, guardian, or custodian that the parent, guardian,
39 or custodian is required to attend all hearings scheduled in the
40 matter and may be held in contempt of court for failure to attend
41 any scheduled hearing.

42 "ARTICLE 19.

43 "Temporary Custody; Secure and Nonsecure Custody;
44 Custody Hearings.

1 "§ 7B-1900. Taking a juvenile into temporary custody.

2 Temporary custody means the taking of physical custody and providing personal
3 care and supervision until a court order for secure or nonsecure custody can be
4 obtained. A juvenile may be taken into temporary custody without a court order
5 under the following circumstances:

- 6 (1) By a law enforcement officer if grounds exist for the arrest of an
7 adult in identical circumstances under G.S. 15A-401(b).
8 (2) By a law enforcement officer or a court counselor if there are
9 reasonable grounds to believe that the juvenile is an undisciplined
10 juvenile.
11 (3) By a law enforcement officer, by a court counselor, by a member
12 of the Black Mountain Center, Alcohol Rehabilitation Center, and
13 Juvenile Evaluation Center Joint Security Force established
14 pursuant to G.S. 122C-421, or by personnel of the Department if
15 there are reasonable grounds to believe the juvenile is an
16 absconder from any residential facility operated by the Department
17 or from an approved detention facility.

18 "§ 7B-1901. Duties of person taking juvenile into temporary custody.

19 (a) A person who takes a juvenile into custody without a court order under G.S.
20 7B-1900(1) or (2) shall proceed as follows:

- 21 (1) Notify the juvenile's parent, guardian, or custodian that the
22 juvenile has been taken into temporary custody and advise the
23 parent, guardian, or custodian of the right to be present with the
24 juvenile until a determination is made as to the need for secure or
25 nonsecure custody. Failure to notify the parent, guardian, or
26 custodian that the juvenile is in custody shall not be grounds for
27 release of the juvenile.
28 (2) Release the juvenile to the juvenile's parent, guardian, or custodian
29 if the person having the juvenile in temporary custody decides that
30 continued custody is unnecessary. In the case of a juvenile
31 unlawfully absent from school, if continued custody is unnecessary,
32 the person having temporary custody may deliver the juvenile to
33 the juvenile's school or, if the local city or county government and
34 the local school board adopt a policy, to a place in the local school
35 administrative unit.
36 (3) If the juvenile is not released, request that a petition be drawn
37 pursuant to G.S. 7B-1803 or G.S. 7B-1804. Once the petition has
38 been drawn and verified, the person shall communicate with the
39 intake counselor. If the intake counselor approves the filing of the
40 petition, the intake counselor shall contact the judge, or the person
41 delegated authority pursuant to G.S. 7B-1902 if other than the
42 intake counselor, for a determination of the need for continued
43 custody.

1 (b) A juvenile taken into temporary custody under this Article shall not be held
2 for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a
3 Saturday, Sunday, or legal holiday, unless a petition or motion for review has been
4 filed and an order for secure or nonsecure custody has been entered.

5 (c) A person who takes a juvenile into custody under G.S. 7B-1900(3), after
6 receiving an order for secure custody, shall transport the juvenile to the nearest
7 approved facility providing secure custody. The person then shall contact the
8 administrator of the facility from which the juvenile absconded, who shall be
9 responsible for returning the juvenile to that facility.

10 "§ 7B-1902. Authority to issue custody orders; delegation.

11 In the case of any juvenile alleged to be within the jurisdiction of the court, when
12 the court finds it necessary to place the juvenile in custody, the court may order that
13 the juvenile be placed in secure or nonsecure custody pursuant to criteria set out in
14 G.S. 7B-1903.

15 Any district court judge may issue secure and nonsecure custody orders pursuant
16 to G.S. 7B-1903. The chief district court judge may delegate the court's authority to
17 the chief court counselor or the chief court counselor's counseling staff by
18 administrative order filed in the office of the clerk of superior court. The
19 administrative order shall specify which persons may be contacted for approval of a
20 secure or nonsecure custody order. The chief district court judge shall not delegate
21 the court's authority to detain or house juveniles in holdover facilities pursuant to
22 G.S. 7B-1905 or G.S. 7B-2509.

23 "§ 7B-1903. Criteria for secure or nonsecure custody.

24 (a) When a request is made for nonsecure custody, the court shall first consider
25 release of the juvenile to the juvenile's parent, guardian, custodian, or other
26 responsible adult. An order for nonsecure custody shall be made only when there is a
27 reasonable factual basis to believe the matters alleged in the petition are true, and
28 that:

29 (1) The juvenile is a runaway and consents to nonsecure custody; or
30 (2) The juvenile meets one or more of the criteria for secure custody,
31 but the court finds it in the best interests of the juvenile that the
32 juvenile be placed in a nonsecure placement.

33 (b) When a request is made for secure custody, the court may order secure custody
34 only where the court finds there is a reasonable factual basis to believe that the
35 juvenile committed the offense as alleged in the petition, and that:

36 (1) The juvenile is charged with a felony and has demonstrated that
37 the juvenile is a danger to property or persons;
38 (2) The juvenile is charged with a misdemeanor at least one element
39 of which is assault on a person;
40 (3) The juvenile has willfully failed to appear on a pending
41 delinquency charge or on charges of violation of probation or post-
42 release supervision, providing the juvenile was properly notified;
43 (4) A delinquency charge is pending against the juvenile, and there is
44 reasonable cause to believe the juvenile will not appear in court;

- 1 (5) The juvenile is an absconder from (i) any residential facility
2 operated by the Department or any detention facility in this State
3 or (ii) any comparable facility in another state;
- 4 (6) There is reasonable cause to believe the juvenile should be
5 detained for the juvenile's own protection because the juvenile has
6 recently suffered or attempted self-inflicted physical injury. In such
7 case, the juvenile must have been refused admission by one
8 appropriate hospital, and the period of secure custody is limited to
9 24 hours to determine the need for inpatient hospitalization. If the
10 juvenile is placed in secure custody, the juvenile shall receive
11 continuous supervision and a physician shall be notified
12 immediately;
- 13 (7) The juvenile is alleged to be undisciplined by virtue of the
14 juvenile's being a runaway and is inappropriate for nonsecure
15 custody placement or refuses nonsecure custody, and the court
16 finds that the juvenile needs secure custody for up to 24 hours,
17 excluding Saturdays, Sundays, and State holidays, or where
18 circumstances require, for a period not to exceed 72 hours to
19 evaluate the juvenile's need for medical or psychiatric treatment or
20 to facilitate reunion with the juvenile's parents; or
- 21 (8) The juvenile is alleged to be undisciplined and has willfully failed
22 to appear in court after proper notice; the juvenile shall be brought
23 to court as soon as possible and in no event should be held more
24 than 24 hours, excluding Saturdays, Sundays, and State holidays or
25 where circumstances require for a period not to exceed 72 hours.
- 26 (c) When a juvenile has been adjudicated delinquent, the court may order secure
27 custody pending the dispositional hearing or pending placement of the juvenile
28 pursuant to G.S. 7B-2504.
- 29 (d) The court may order secure custody for a juvenile who is alleged to have
30 violated the conditions of the juvenile's probation or post-release supervision, but
31 only if the juvenile is alleged to have committed acts that damage property or injure
32 persons.
- 33 (e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this
34 section are met, the court may enter an order directing an officer or other authorized
35 person to assume custody of the juvenile and to take the juvenile to the place
36 designated in the order.
- 37 **§ 7B-1904. Order for secure or nonsecure custody.**
- 38 The custody order shall be in writing and shall direct a law enforcement officer or
39 other authorized person to assume custody of the juvenile and to make due return on
40 the order. The official executing the order shall give a copy of the order to the
41 juvenile's parent, guardian, or custodian. If the order is for secure custody, copies of
42 the petition and custody order shall accompany the juvenile to the detention facility
43 or holdover facility of the jail. A message of the Division of Criminal Information,
44 State Bureau of Investigation, stating that a juvenile petition and secure custody order

1 relating to a specified juvenile are on file in a particular county shall be authority to
2 detain the juvenile in secure custody until a copy of the juvenile petition and secure
3 custody order can be forwarded to the juvenile detention facility. The copies of the
4 juvenile petition and secure custody order shall be transmitted to the detention
5 facility no later than 72 hours after the initial detention of the juvenile.

6 An officer receiving an order for custody which is complete and regular on its face
7 may execute it in accordance with its terms and need not inquire into its regularity or
8 continued validity, nor does the officer incur criminal or civil liability for its
9 execution.

10 "§ 7B-1905. Place of secure or nonsecure custody.

11 (a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in
12 nonsecure custody with a department of social services or a person designated in the
13 order for temporary residential placement in:

14 (1) A licensed foster home or a home otherwise authorized by law to
15 provide such care;

16 (2) A facility operated by a department of social services; or

17 (3) Any other home or facility approved by the court and designated
18 in the order.

19 In placing a juvenile in nonsecure custody, the court shall first consider whether a
20 relative of the juvenile is willing and able to provide proper care and supervision of
21 the juvenile. If the court finds that the relative is willing and able to provide proper
22 care and supervision, the court shall order placement of the juvenile with the relative.
23 Placement of a juvenile outside of this State shall be in accordance with the Interstate
24 Compact on the Placement of Children set forth in Article 38 of this Chapter.

25 (b) A juvenile meeting the criteria set out in G.S. 7B-1903(b), (c), or (d) may be
26 temporarily detained in an approved detention facility which shall be separate from
27 any jail, lockup, prison, or other adult penal institution, except as provided in
28 subsection (c) of this section. It shall be unlawful for a county or any unit of
29 government to operate a juvenile detention facility unless the facility meets the
30 standards and rules adopted by the Department of Health and Human Services.

31 (c) A juvenile who has allegedly committed an offense that would be a Class A,
32 B1, B2, C, D, or E felony if committed by an adult may be detained in secure custody
33 in a holdover facility up to 72 hours, if the court, based on information provided by
34 the court counselor, determines that no acceptable alternative placement is available
35 and the protection of the public requires the juvenile be housed in a holdover facility.

36 "§ 7B-1906. Secure or nonsecure custody hearings.

37 (a) No juvenile shall be held under a secure custody order for more than five
38 calendar days or under a nonsecure custody order for more than seven calendar days
39 without a hearing on the merits or an initial hearing to determine the need for
40 continued custody. A hearing conducted under this subsection may not be continued
41 or waived. In every case in which an order has been entered by an official exercising
42 authority delegated pursuant to G.S. 7B-1902, a hearing to determine the need for
43 continued custody shall be conducted on the day of the next regularly scheduled
44 session of district court in the city or county where the order was entered if the

1 session precedes the expiration of the applicable time period set forth in this
2 subsection. If the session does not precede the expiration of the time period, the
3 hearing may be conducted at another regularly scheduled session of district court in
4 the district where the order was entered.

5 (b) As long as the juvenile remains in secure or nonsecure custody, further
6 hearings to determine the need for continued secure custody shall be held at intervals
7 of no more than 10 calendar days. A subsequent hearing on continued nonsecure
8 custody shall be held within seven business days, excluding Saturdays, Sundays, and
9 legal holidays, of the initial hearing required in subsection (a) of this section and
10 hearings thereafter shall be held at intervals of no more than 30 calendar days. In the
11 case of a juvenile alleged to be delinquent, further hearings may be waived only with
12 the consent of the juvenile, through counsel for the juvenile.

13 (c) The court shall determine whether a juvenile who is alleged to be delinquent
14 has retained counsel or has been assigned counsel; and, if the juvenile is not
15 represented by counsel, appoint counsel for the juvenile.

16 (d) At a hearing to determine the need for continued custody, the court shall
17 receive testimony and shall allow the juvenile and the juvenile's parent, guardian, or
18 custodian an opportunity to introduce evidence, to be heard in their own behalf, and
19 to examine witnesses. The State shall bear the burden at every stage of the
20 proceedings to provide clear and convincing evidence that restraints on the juvenile's
21 liberty are necessary and that no less intrusive alternative will suffice. The court shall
22 not be bound by the usual rules of evidence at the hearings.

23 (e) The court shall be bound by criteria set forth in G.S. 7B-1903 in determining
24 whether continued custody is warranted.

25 (f) The court may impose appropriate restrictions on the liberty of a juvenile who
26 is released from secure custody, including:

27 (1) Release on the written promise of the juvenile's parent, guardian,
28 or custodian to produce the juvenile in court for subsequent
29 proceedings;

30 (2) Release into the care of a responsible person or organization;

31 (3) Release conditioned on restrictions on activities, associations,
32 residence, or travel if reasonably related to securing the juvenile's
33 presence in court; or

34 (4) Any other conditions reasonably related to securing the juvenile's
35 presence in court.

36 (g) If the court determines that the juvenile meets the criteria in G.S. 7B-1903 and
37 should continue in custody, the court shall issue an order to that effect. The order
38 shall be in writing with appropriate findings of fact. The findings of fact shall include
39 the evidence relied upon in reaching the decision and the purposes which continued
40 custody is to achieve.

41 (h) The court may conduct a hearing to determine the need to continue custody
42 by audio and video transmission between the court and the juvenile in which the
43 parties can see and hear each other. If the juvenile has counsel, the juvenile may
44 communicate fully and confidentially with the juvenile's attorney during the

1 proceeding. Prior to the use of audio and video transmission, the procedures and
2 type of equipment for audio and video transmission shall be submitted to the
3 Administrative Office of the Courts by the chief district court judge and approved by
4 the Administrative Office of the Courts.

5 **"§ 7B-1907. Telephonic communication authorized.**

6 All communications, notices, orders, authorizations, and requests authorized or
7 required by G.S. 7B-1901, 7B-1903, and 7B-1904 may be made by telephone when
8 other means of communication are impractical. All written orders pursuant to
9 telephonic communication shall bear the name and the title of the person
10 communicating by telephone, the signature and the title of the official entering the
11 order, and the hour and the date of the authorization.

12 **"ARTICLE 20.**

13 **"Basic Rights.**

14 **"§ 7B-2000. Juvenile's right to counsel; presumption of indigence.**

15 (a) A juvenile alleged to be within the jurisdiction of the court has the right to be
16 represented by counsel in all proceedings. The court shall appoint counsel for the
17 juvenile, unless counsel is retained for the juvenile, in any proceeding in which the
18 juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or
19 adjudicated to be undisciplined.

20 (b) All juveniles shall be conclusively presumed to be indigent, and it shall not be
21 necessary for the court to receive from any juvenile an affidavit of indigency.

22 **"§ 7B-2001. Appointment of guardian.**

23 In any case when no parent, guardian, or custodian appears in a hearing with the
24 juvenile or when the court finds it would be in the best interests of the juvenile, the
25 court may appoint a guardian of the person for the juvenile. The guardian shall
26 operate under the supervision of the court with or without bond and shall file only
27 such reports as the court shall require. Unless the court orders otherwise, the
28 guardian:

- 29 (1) Shall have the care, custody, and control of the juvenile or may
30 arrange a suitable placement for the juvenile.
31 (2) May represent the juvenile in legal actions before any court.
32 (3) May consent to certain actions on the part of the juvenile in place
33 of the parent, guardian, or custodian, including (i) marriage, (ii)
34 enlisting in the armed forces, and (iii) enrollment in school.
35 (4) May consent to any necessary remedial, psychological, medical, or
36 surgical treatment for the juvenile.

37 The authority of the guardian shall continue until the guardianship is terminated by
38 court order, until the juvenile is emancipated pursuant to Subchapter IV of this
39 Chapter, or until the juvenile reaches the age of majority.

40 **"§ 7B-2002. Payment of court-appointed attorney.**

41 An attorney appointed pursuant to G.S. 7B-2000 or pursuant to any other
42 provision of this Subchapter shall be paid a reasonable fee fixed by the court in the
43 same manner as fees for attorneys appointed in cases of indigency through the
44 Administrative Office of the Courts. The court may require payment of the

1 attorneys' fees from a person other than the juvenile as provided in G.S. 7A-450.1,
2 7A-450.2, and 7A-450.3. A person who does not comply with the court's order of
3 payment may be found in civil contempt as provided in G.S. 5A-21.

4 "ARTICLE 21.

5 "Law Enforcement Procedures in Delinquency Proceedings.

6 "§ 7B-2100. Role of the law enforcement officer.

7 A law enforcement officer who takes a juvenile into temporary custody should
8 select the most appropriate course of action to the situation, the needs of the juvenile,
9 and the protection of the public safety. The officer may:

- 10 (1) Release the juvenile, with or without first counseling the juvenile;
11 (2) Release the juvenile to the juvenile's parent, guardian, or
12 custodian;
13 (3) Refer the juvenile to community resources;
14 (4) Seek a petition; or
15 (5) Seek a petition and request a custody order.

16 "§ 7B-2101. Interrogation procedures.

17 (a) Any juvenile in custody must be advised prior to questioning:

- 18 (1) That the juvenile has a right to remain silent;
19 (2) That any statement the juvenile does make can be and may be
20 used against the juvenile;
21 (3) That the juvenile has a right to have a parent, guardian, or
22 custodian present during questioning; and
23 (4) That the juvenile has a right to consult with an attorney and that
24 one will be appointed for the juvenile if the juvenile is not
25 represented and wants representation.

26 (b) When the juvenile is less than 14 years of age, no in-custody admission or
27 confession resulting from interrogation may be admitted into evidence unless the
28 confession or admission was made in the presence of the juvenile's parent, guardian,
29 custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian
30 as well as the juvenile must be advised of the juvenile's rights as set out in subsection
31 (a) of this section; however, a parent, guardian, or custodian may not waive any right
32 on behalf of the juvenile.

33 (c) If the juvenile indicates in any manner and at any stage of questioning pursuant
34 to this section that the juvenile does not wish to be questioned further, the officer
35 shall cease questioning.

36 (d) Before admitting into evidence any statement resulting from custodial
37 interrogation, the court shall find that the juvenile knowingly, willingly, and
38 understandingly waived the juvenile's rights.

39 "§ 7B-2102. Fingerprinting and photographing juveniles.

40 (a) A law enforcement officer or agency may fingerprint and photograph a
41 juvenile in custody who is alleged to have committed an offense that would be a
42 felony if committed by an adult.

43 (b) If a law enforcement officer or agency does not take the fingerprints or a
44 photograph of the juvenile pursuant to subsection (a) of this section or the

1 fingerprints or photograph have been destroyed pursuant to subsection (e) of this
2 section, a law enforcement officer or agency shall fingerprint and photograph a
3 juvenile who has been adjudicated delinquent if the juvenile was 10 years of age or
4 older at the time the juvenile committed an offense that would be a felony if
5 committed by an adult.

6 (c) A law enforcement officer or agency who fingerprints or photographs a
7 juvenile pursuant to this section shall do so in a proper format for transfer to the
8 State Bureau of Investigation and the Federal Bureau of Investigation. Fingerprints
9 obtained pursuant to this section shall be transferred to the State Bureau of
10 Investigation and placed in the Automated Fingerprint Identification System (AFIS)
11 to be used for all investigative and comparison purposes. Photographs obtained
12 pursuant to this section shall be placed in a format approved by the State Bureau of
13 Investigation and may be used for all investigative or comparison purposes.
14 Fingerprints of a juvenile who has been adjudicated delinquent for an offense that
15 would be a Class A, B1, B2, C, D, or E felony if committed by an adult, and who was
16 10 years of age or older at the time the juvenile committed the offense, shall be
17 transferred to the Federal Bureau of Investigation to be used for all investigative or
18 comparison purposes.

19 (d) Fingerprints and photographs taken pursuant to this section are not public
20 records under Chapter 132 of the General Statutes, shall not be included in the
21 clerk's record pursuant to G.S. 7B-3000, shall be withheld from public inspection or
22 examination, and shall not be eligible for expunction pursuant to G.S. 7B-3200.
23 Fingerprints and photographs taken pursuant to this section shall be maintained
24 separately from any juvenile record, other than the electronic file maintained by the
25 State Bureau of Investigation.

26 (e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of
27 this section, the custodian of records shall destroy all fingerprints and photographs at
28 the earlier of the following:

29 (1) The intake counselor or prosecutor does not file a petition against
30 the juvenile;

31 (2) The court does not find probable cause pursuant to G.S. 7B-2202;
32 or

33 (3) The juvenile is not adjudicated delinquent.

34 The chief court counselor shall notify the local custodian of records, and the local
35 custodian of records shall notify any other record-holding agencies, when a decision
36 is made not to file a petition, the court does not find probable cause, or the court
37 does not adjudicate the juvenile delinquent.

38 **§ 7B-2103. Authority to issue nontestimonial identification order where juvenile**
39 **alleged to be delinquent.**

40 Except as provided in G.S. 7B-2102, nontestimonial identification procedures shall
41 not be conducted on any juvenile without a court order issued pursuant to this
42 Article unless the juvenile has been charged as an adult or transferred to superior
43 court for trial as an adult in which case procedures applicable to adults, as set out in
44 Articles 14 and 23 of Chapter 15A of the General Statutes, shall apply. A

1 nontestimonial identification order authorized by this Article may be issued by any
2 judge of the district court or of the superior court upon request of a prosecutor. As
3 used in this Article, 'nontestimonial identification' means identification by
4 fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens,
5 saliva samples, hair samples, or other reasonable physical examination, handwriting
6 exemplars, voice samples, photographs, and lineups or similar identification
7 procedures requiring the presence of a juvenile.

8 **"§ 7B-2104. Time of application for nontestimonial identification order.**

9 A request for a nontestimonial identification order may be made prior to taking a
10 juvenile into custody or after custody and prior to the adjudicatory hearing.

11 **"§ 7B-2105. Grounds for nontestimonial identification order.**

12 (a) Except as provided in subsection (b) of this section, a nontestimonial
13 identification order may issue only on affidavit or affidavits sworn to before the court
14 and establishing the following grounds for the order:

- 15 (1) That there is probable cause to believe that an offense has been
16 committed that would be a felony if committed by an adult;
- 17 (2) That there are reasonable grounds to suspect that the juvenile
18 named or described in the affidavit committed the offense; and
- 19 (3) That the results of specific nontestimonial identification procedures
20 will be of material aid in determining whether the juvenile named
21 in the affidavit committed the offense.

22 (b) A nontestimonial identification order to obtain a blood specimen from a
23 juvenile may issue only on affidavit or affidavits sworn to before the court and
24 establishing the following grounds for the order:

- 25 (1) That there is probable cause to believe that an offense has been
26 committed that would be a felony if committed by an adult;
- 27 (2) That there is probable cause to believe that the juvenile named or
28 described in the affidavit committed the offense; and
- 29 (3) That there is probable cause to believe that obtaining a blood
30 specimen from the juvenile will be of material aid in determining
31 whether the juvenile named in the affidavit committed the offense.

32 **"§ 7B-2106. Issuance of order.**

33 Upon a showing that the grounds specified in G.S. 7B-2105 exist, the judge may
34 issue an order following the same procedure as in the case of adults under G.S.
35 15A-274, 15A-275, 15A-276, 15A-277, 15A-278, 15A-279, 15A-280, and 15A-282.

36 **"§ 7B-2107. Nontestimonial identification order at request of juvenile.**

37 A juvenile in custody for or charged with an offense which if committed by an
38 adult would be a felony offense may request that nontestimonial identification
39 procedures be conducted. If it appears that the results of specific nontestimonial
40 identification procedures will be of material aid to the juvenile's defense, the judge to
41 whom the request was directed must order the State to conduct the identification
42 procedures.

43 **"§ 7B-2108. Destruction of records resulting from nontestimonial identification**
44 **procedures.**

1 The results of any nontestimonial identification procedures shall be retained or
2 disposed of as follows:

- 3 (1) If a petition is not filed against a juvenile who has been the subject
4 of nontestimonial identification procedures, all records of the
5 evidence shall be destroyed.
- 6 (2) If the juvenile is not adjudicated delinquent or convicted in
7 superior court following transfer, all records resulting from a
8 nontestimonial order shall be destroyed. Further, in the case of a
9 juvenile who is under 13 years of age and who is adjudicated
10 delinquent for an offense that would be less than a felony if
11 committed by an adult, all records shall be destroyed.
- 12 (3) If a juvenile 13 years of age or older is adjudicated delinquent for
13 an offense that would be a felony if committed by an adult, all
14 records resulting from a nontestimonial order may be retained in
15 the court file. Special precautions shall be taken to ensure that
16 these records will be maintained in a manner and under sufficient
17 safeguards to limit their use to inspection by law enforcement
18 officers for comparison purposes in the investigation of a crime.
- 19 (4) If the juvenile is transferred to and convicted in superior court, all
20 records resulting from nontestimonial identification procedures
21 shall be processed as in the case of an adult.
- 22 (5) Any evidence seized pursuant to a nontestimonial order shall be
23 retained by law enforcement officers until further order is entered
24 by the court.
- 25 (6) Destruction of nontestimonial identification records pursuant to
26 this section shall be performed by the law enforcement agency
27 having possession of the records. Following destruction, the law
28 enforcement agency shall make written certification to the court of
29 the destruction.

30 **"§ 7B-2109. Penalty for willful violation.**

31 Any person who willfully violates provisions of this Article which prohibit
32 conducting nontestimonial identification procedures without an order issued by the
33 court shall be guilty of a Class 1 misdemeanor.

34 **"ARTICLE 22.**

35 **"Probable Cause Hearing and Transfer Hearing.**

36 **"§ 7B-2200. Transfer of jurisdiction of juvenile to superior court; direct filing in**
37 **superior court.**

38 (a) Except as provided in subsection (b) of this section, after notice, hearing, and a
39 finding of probable cause the court may, upon motion of the prosecutor or the
40 juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to
41 superior court if the juvenile was 13 years of age or older at the time the juvenile
42 allegedly committed an offense that would be a felony if committed by an adult. If
43 the alleged felony constitutes a Class A felony and the court finds probable cause, the
44 court shall transfer the case to the superior court for trial as in the case of adults.

1 (b) Notwithstanding G.S. 7B-1601, the prosecutor may file charges in superior
2 court against a juvenile who was 15 years of age at the time the juvenile allegedly
3 committed an offense that would be a Class A, B1, B2, C, D, or E felony if
4 committed by an adult.

5 "§ 7B-2201. Fingerprinting juvenile transferred to superior court.

6 When jurisdiction over a juvenile is transferred to the superior court, the juvenile
7 shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau
8 of Investigation.

9 "§ 7B-2202. Probable cause hearing.

10 (a) The court shall conduct a hearing to determine probable cause in all felony
11 cases in which a juvenile was 13 years of age or older when the offense was allegedly
12 committed. The hearing shall be conducted within 15 days of the date of the
13 juvenile's first appearance. The court may continue the hearing for good cause.

14 (b) At the probable cause hearing:

- 15 (1) A prosecutor shall represent the State;
16 (2) The juvenile shall be represented by counsel;
17 (3) The juvenile may testify, call, and examine witnesses, and present
18 evidence; and
19 (4) Each witness shall testify under oath or affirmation and be subject
20 to cross-examination.

21 (c) The State shall by nonhearsay evidence, or by evidence that satisfies an
22 exception to the hearsay rule, show that there is probable cause to believe that the
23 offense charged has been committed and that there is probable cause to believe that
24 the juvenile committed it, except:

- 25 (1) A report or copy of a report made by a physicist, chemist, firearms
26 identification expert, fingerprint technician, or an expert or
27 technician in some other scientific, professional, or medical field,
28 concerning the results of an examination, comparison, or test
29 performed in connection with the case in issue, when stated by that
30 person in a report made by the juvenile, is admissible in evidence;
31 (2) If there is no serious contest, reliable hearsay is admissible to prove
32 value, ownership of property, possession of property in a person
33 other than the juvenile, lack of consent of the owner, possessor, or
34 custodian of property to the breaking or entering of premises,
35 chain of custody, and authenticity of signatures.

36 (d) Counsel for the juvenile may waive in writing the right to the hearing and
37 stipulate to a finding of probable cause.

38 (e) If probable cause is found and transfer to superior court is not required by G.S.
39 7B-2200, upon motion of the prosecutor or the juvenile's attorney or upon its own
40 motion, the court shall either proceed to a transfer hearing or set a date for that
41 hearing. If the juvenile has not received notice of the intention to seek transfer at
42 least five days prior to the probable cause hearing, the court shall continue the
43 transfer hearing.

44 (f) If the court does not find probable cause for a felony offense, the court shall:

- 1 (1) Dismiss the proceeding, or
2 (2) If the court finds probable cause to believe that the juvenile
3 committed a lesser included offense that would constitute a
4 misdemeanor if committed by an adult, either proceed to an
5 adjudicatory hearing or set a date for that hearing.

6 **"§ 7B-2203. Transfer hearing.**

7 (a) At the transfer hearing, the prosecutor and the juvenile may be heard and may
8 offer evidence, and the juvenile's attorney may examine any court or probation
9 records, or other records the court may consider in determining whether to transfer
10 the case.

11 (b) In the transfer hearing, the court shall determine whether the protection of the
12 public and the needs of the juvenile will be served by transfer of the case to superior
13 court and shall consider the following factors:

- 14 (1) The age of the juvenile;
15 (2) The maturity of the juvenile;
16 (3) The intellectual functioning of the juvenile;
17 (4) The prior record of the juvenile;
18 (5) Prior attempts to rehabilitate the juvenile;
19 (6) Facilities or programs available to the court prior to the expiration
20 of the court's jurisdiction under this Subchapter and the likelihood
21 that the juvenile would benefit from treatment or rehabilitative
22 efforts;
23 (7) Whether the alleged offense was committed in an aggressive,
24 violent, premeditated, or willful manner; and
25 (8) The seriousness of the offense and whether the protection of the
26 public requires that the juvenile be prosecuted as an adult.

27 (c) Any order of transfer shall specify the reasons for transfer. When the case is
28 transferred to superior court, the superior court has jurisdiction over that felony, any
29 offense based on the same act or transaction or on a series of acts or transactions
30 connected together or constituting parts of a single scheme or plan of that felony, and
31 any greater or lesser included offense of that felony.

32 (d) If the court does not transfer the case to superior court, the court shall either
33 proceed to an adjudicatory hearing or set a date for that hearing.

34 **"§ 7B-2204. Right to pretrial release; detention.**

35 Once the order of transfer has been entered, the juvenile has the right to pretrial
36 release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall
37 specify the person or persons to whom the juvenile may be released. Pending release,
38 the court shall order that the juvenile be detained in a detention facility while
39 awaiting trial. The court may order the juvenile to be held in a holdover facility at
40 any time the presence of the juvenile is required in court for pretrial hearings or trial,
41 if the court finds that it would be inconvenient to return the juvenile to the detention
42 facility.

43 Should the juvenile be found guilty, or enter a plea of guilty or no contest to a
44 criminal offense in superior court and receive an active sentence, then immediate

1 transfer to the Department of Correction shall be ordered. Until such time as the
2 juvenile is transferred to the Department of Correction, the juvenile may be detained
3 in a holdover facility. The juvenile may not be detained in a detention facility
4 pending transfer to the Department of Correction.

5 The juvenile may be kept by the Department of Correction as a safekeeper until
6 the juvenile is placed in an appropriate correctional program.

7 "§ 7B-2205. When jeopardy attaches.

8 Jeopardy attaches in an adjudicatory hearing when the court begins to hear
9 evidence.

10 "ARTICLE 23.

11 "Discovery.

12 "§ 7B-2300. Disclosure of evidence by petitioner.

13 (a) Statement of the Juvenile. -- Upon motion of a juvenile alleged to be
14 delinquent, the court shall order the petitioner:

15 (1) To permit the juvenile to inspect and copy any relevant written or
16 recorded statements within the possession, custody, or control of
17 the petitioner made by the juvenile or any other party charged in
18 the same action; and

19 (2) To divulge, in written or recorded form, the substance of any oral
20 statement made by the juvenile or any other party charged in the
21 same action.

22 (b) Names of Witnesses. -- Upon motion of the juvenile, the court shall order the
23 petitioner to furnish the names of persons to be called as witnesses. A copy of the
24 record of witnesses under the age of 16 shall be provided by the petitioner to the
25 juvenile upon the juvenile's motion if accessible to the petitioner.

26 (c) Documents and Tangible Objects. -- Upon motion of the juvenile, the court
27 shall order the petitioner to permit the juvenile to inspect and copy books, papers,
28 documents, photographs, motion pictures, mechanical or electronic recordings,
29 tangible objects, or portions thereof:

30 (1) Which are within the possession, custody, or control of the
31 petitioner, the prosecutor, or any law enforcement officer
32 conducting an investigation of the matter alleged; and

33 (2) Which are material to the preparation of the defense, are intended
34 for use by the petitioner as evidence, or were obtained from or
35 belong to the juvenile.

36 (d) Reports of Examinations and Tests. -- Upon motion of a juvenile, the court
37 shall order the petitioner to permit the juvenile to inspect and copy results of physical
38 or mental examinations or of tests, measurements, or experiments made in connection
39 with the case, within the possession, custody, or control of the petitioner. In addition
40 upon motion of a juvenile, the court shall order the petitioner to permit the juvenile
41 to inspect, examine, and test, subject to appropriate safeguards, any physical evidence
42 or a sample of it or tests or experiments made in connection with the evidence in the
43 case if it is available to the petitioner, the prosecutor, or any law enforcement officer

1 conducting an investigation of the matter alleged and if the petitioner intends to offer
2 the evidence at trial.

3 (e) Except as provided in subsections (a) through (d) of this section, this Article
4 does not require the production of reports, memoranda, or other internal documents
5 made by the petitioner, law enforcement officers, or other persons acting on behalf of
6 the petitioner in connection with the investigation or prosecution of the case or of
7 statements made by witnesses or the petitioner to anyone acting on behalf of the
8 petitioner.

9 (f) Nothing in this section prohibits a petitioner from making voluntary disclosures
10 in the interest of justice.

11 **"§ 7B-2301. Disclosure of evidence by juvenile.**

12 (a) Names of Witnesses. -- Upon motion of the petitioner, the court shall order the
13 juvenile to furnish to the petitioner the names of persons to be called as witnesses.

14 (b) Documents and Tangible Objects. -- If the court grants any relief sought by the
15 juvenile under G.S. 7B-2300, upon motion of the petitioner, the court shall order the
16 juvenile to permit the petitioner to inspect and copy books, papers, documents,
17 photographs, motion pictures, mechanical or electronic recordings, tangible objects,
18 or portions thereof which are within the possession, custody, or control of the
19 juvenile and which the juvenile intends to introduce in evidence.

20 (c) Reports of Examinations and Tests. -- If the court grants any relief sought by
21 the juvenile under G.S. 7B-2300, upon motion of the petitioner, the court shall order
22 the juvenile to permit the petitioner to inspect and copy results of physical or mental
23 examinations or of tests, measurements, or experiments made in connection with the
24 case within the possession and control of the juvenile which the juvenile intends to
25 introduce in evidence or which were prepared by a witness whom the juvenile
26 intends to call if the results relate to the witness's testimony. In addition, upon
27 motion of a petitioner, the court shall order the juvenile to permit the petitioner to
28 inspect, examine, and test, subject to appropriate safeguards, any physical evidence or
29 a sample of it if the juvenile intends to offer the evidence or tests or experiments
30 made in connection with the evidence in the case.

31 **"§ 7B-2302. Regulation of discovery; protective orders.**

32 (a) Upon written motion of a party and a finding of good cause, the court may at
33 any time order that discovery or inspection be denied, restricted, or deferred.

34 (b) The court may permit a party seeking relief under subsection (a) of this section
35 to submit supporting affidavits or statements to the court for in camera inspection. If
36 thereafter the court enters an order granting relief under subsection (a) of this
37 section, the material submitted in camera must be available to the Court of Appeals
38 in the event of an appeal.

39 **"§ 7B-2303. Continuing duty to disclose.**

40 If a party, subject to compliance with an order issued pursuant to this Article,
41 discovers additional evidence prior to or during the hearing or decides to use
42 additional evidence, and if the evidence is or may be subject to discovery or
43 inspection under this Article, the party shall promptly notify the other party of the
44 existence of the additional evidence or of the name of each additional witness.

- 1 "§ 7B-2407. When admissions by juvenile may be accepted.
2 (a) The court may accept an admission from a juvenile only after first addressing
3 the juvenile personally and:
4 (1) Informing the juvenile that the juvenile has a right to remain silent
5 and that any statement the juvenile makes may be used against the
6 juvenile;
7 (2) Determining that the juvenile understands the nature of the charge;
8 (3) Informing the juvenile that the juvenile has a right to deny the
9 allegations;
10 (4) Informing the juvenile that by the juvenile's admissions the
11 juvenile waives the juvenile's right to be confronted by the
12 witnesses against the juvenile;
13 (5) Determining that the juvenile is satisfied with the juvenile's
14 representation; and
15 (6) Informing the juvenile of the most restrictive disposition on the
16 charge.
17 (b) By inquiring of the prosecutor, the juvenile's attorney, and the juvenile
18 personally, the court shall determine whether there were any prior discussions
19 involving admissions, whether the parties have entered into any arrangement with
20 respect to the admissions and the terms thereof, and whether any improper pressure
21 was exerted. The court may accept an admission from a juvenile only after
22 determining that the admission is a product of informed choice.
23 (c) The court may accept an admission only after determining that there is a
24 factual basis for the admission. This determination may be based upon any of the
25 following information: a statement of the facts by the prosecutor; a written statement
26 of the juvenile; sworn testimony which may include reliable hearsay; or a statement of
27 facts by the juvenile's attorney.
28 "§ 7B-2408. Rules of evidence.
29 If the juvenile denies the allegations of the petition, the court shall proceed in
30 accordance with the rules of evidence applicable to criminal cases. In addition, no
31 statement made by a juvenile to the intake counselor during the preliminary inquiry
32 and evaluation process shall be admissible prior to the dispositional hearing.
33 "§ 7B-2409. Quantum of proof in adjudicatory hearing.
34 The allegations of a petition alleging the juvenile is delinquent shall be proved
35 beyond a reasonable doubt. The allegations in a petition alleging undisciplined
36 behavior shall be proved by clear and convincing evidence.
37 "§ 7B-2410. Record of proceedings.
38 All adjudicatory and dispositional hearings and hearings on probable cause and
39 transfer to superior court shall be recorded by stenographic notes or by electronic or
40 mechanical means. Records shall be reduced to a written transcript only when timely
41 notice of appeal has been given. The court may order that other hearings be
42 recorded.
43 "§ 7B-2411. Adjudication.

1 If the court finds that the allegations in the petition have been proved as provided
2 in G.S. 7B-2409, the court shall so state. If the court finds that the allegations have
3 not been proved, the court shall dismiss the petition with prejudice and the juvenile
4 shall be released from secure or nonsecure custody if the juvenile is in custody.

5 **"§ 7B-2412. Legal effect of adjudication of delinquency.**

6 An adjudication that a juvenile is delinquent or commitment of a juvenile to the
7 Department shall neither be considered conviction of any criminal offense nor cause
8 the juvenile to forfeit any citizenship rights.

9 **"§ 7B-2413. Predisposition investigation and report.**

10 The court shall proceed to the dispositional hearing upon receipt of sufficient
11 social, medical, psychiatric, psychological, and educational information. No
12 predisposition report shall be submitted to or considered by the court prior to the
13 completion of the adjudicatory hearing. The court shall permit the juvenile to inspect
14 any predisposition report to be considered by the court in making the disposition
15 unless the court determines that disclosure would seriously harm the juvenile's
16 treatment or rehabilitation or would violate a promise of confidentiality. Opportunity
17 to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent,
18 guardian, or custodian at the dispositional hearing. The court may order counsel not
19 to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or
20 custodian if the court finds that disclosure would seriously harm the treatment or
21 rehabilitation of the juvenile or would violate a promise of confidentiality given to a
22 source of information.

23 **"ARTICLE 25.**

24 **"Dispositions.**

25 **"§ 7B-2500. Purpose.**

26 The purpose of dispositions in juvenile actions is to design an appropriate plan to
27 meet the needs of the juvenile and to achieve the objectives of the State in exercising
28 jurisdiction, including the protection of the public. The court should develop a
29 disposition in each case that:

- 30 (1) Promotes public safety;
31 (2) Emphasizes accountability and responsibility of both the parent,
32 guardian, or custodian and the juvenile for the juvenile's conduct;
33 and
34 (3) Provides the appropriate consequences, treatment, training, and
35 rehabilitation to assist the juvenile toward becoming a
36 nonoffending, responsible, and productive member of the
37 community.

38 **"§ 7B-2500.1. Dispositional hearing.**

39 (a) The dispositional hearing may be informal, and the court may consider written
40 reports or other evidence concerning the needs of the juvenile.

41 (b) The juvenile and the juvenile's parent, guardian, or custodian shall have an
42 opportunity to present evidence, and they may advise the court concerning the
43 disposition they believe to be in the best interests of the juvenile.

1 (c) In choosing among statutorily permissible dispositions, the court shall select the
2 most appropriate disposition both in terms of kind and duration for the delinquent
3 juvenile. Within the guidelines set forth in G.S. 7B-2505, the court shall select a
4 disposition that is designed to protect the public and to meet the needs and best
5 interests of the juvenile, based upon:

- 6 (1) The seriousness of the offense;
7 (2) The need to hold the juvenile accountable;
8 (3) The importance of protecting the public safety;
9 (4) The degree of culpability indicated by the circumstances of the
10 particular case; and
11 (5) The rehabilitative and treatment needs of the juvenile.

12 (d) The court may dismiss the case, or continue the case for no more than six
13 months in order to allow the family an opportunity to meet the needs of the juvenile
14 through more adequate home supervision, through placement in a private or
15 specialized school or agency, through placement with a relative, or through some
16 other plan approved by the court.

17 **§ 7B-2500.2. Evaluation and treatment of undisciplined and delinquent juveniles.**

18 (a) In any case, the court may order that the juvenile be examined by a physician,
19 psychiatrist, psychologist, or other qualified expert as may be needed for the court to
20 determine the needs of the juvenile.

21 (b) Upon completion of the examination, the court shall conduct a hearing to
22 determine whether the juvenile is in need of medical, surgical, psychiatric,
23 psychological, or other evaluation or treatment and who should pay the cost of the
24 evaluation or treatment. The county manager, or any other person who is designated
25 by the chair of the board of county commissioners, of the county of the juvenile's
26 residence shall be notified of the hearing, and allowed to be heard. If the court finds
27 the juvenile to be in need of medical, surgical, psychiatric, psychological, or other
28 evaluation or treatment, the court shall permit the parent, guardian, custodian, or
29 other responsible persons to arrange for evaluation or treatment. If the parent,
30 guardian, or custodian declines or is unable to make necessary arrangements, the
31 court may order the needed evaluation or treatment, surgery, or care, and the court
32 may order the parent to pay the cost of the care pursuant to Article 27 of this
33 Chapter. If the court finds the parent is unable to pay the cost of evaluation or
34 treatment, the court shall order the county to arrange for evaluation or treatment of
35 the juvenile and to pay for the cost of the evaluation or treatment. The county
36 department of social services shall recommend the facility that will provide the
37 juvenile with evaluation or treatment.

38 (c) If the court believes, or if there is evidence presented to the effect that the
39 juvenile is mentally ill or is developmentally disabled, the court shall refer the
40 juvenile to the area mental health, developmental disabilities, and substance abuse
41 services director for appropriate action. A juvenile shall not be committed directly to
42 a State hospital or mental retardation center; and orders purporting to commit a
43 juvenile directly to a State hospital or mental retardation center except for an
44 examination to determine capacity to proceed shall be void and of no effect. The area

1 mental health, developmental disabilities, and substance abuse director shall be
2 responsible for arranging an interdisciplinary evaluation of the juvenile and
3 mobilizing resources to meet the juvenile's needs. If institutionalization is determined
4 to be the best service for the juvenile, admission shall be with the voluntary consent
5 of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a
6 mental hospital or retardation center admission after such institutionalization is
7 recommended by the area mental health, developmental disabilities, and substance
8 abuse director, the signature and consent of the court may be substituted for that
9 purpose. In all cases in which a regional mental hospital refuses admission to a
10 juvenile referred for admission by the court and an area mental health,
11 developmental disabilities, and substance abuse director or discharges a juvenile
12 previously admitted on court referral prior to completion of the juvenile's treatment,
13 the hospital shall submit to the court a written report setting out the reasons for
14 denial of admission or discharge and setting out the juvenile's diagnosis, indications
15 of mental illness, indications of need for treatment, and a statement as to the location
16 of any facility known to have a treatment program for the juvenile in question.

17 **"§ 7B-2501. Dispositional alternatives for undisciplined juveniles.**

18 The following alternatives for disposition shall be available to the court exercising
19 jurisdiction over a juvenile who has been adjudicated undisciplined. The court may
20 combine any of the applicable alternatives when the court finds it to be in the best
21 interests of the juvenile:

22 (1) In the case of any juvenile who needs more adequate care or
23 supervision or who needs placement, the judge may:

24 a. Require that the juvenile be supervised in the juvenile's own
25 home by a department of social services in the juvenile's
26 county of residence, a court counselor, or other personnel as
27 may be available to the court, subject to conditions
28 applicable to the parent, guardian, or custodian or the
29 juvenile as the judge may specify; or

30 b. Place the juvenile in the custody of a parent, guardian,
31 custodian, relative, private agency offering placement
32 services, or some other suitable person; or

33 c. Place the juvenile in the custody of a department of social
34 services in the county of the juvenile's residence, or in the
35 case of a juvenile who has legal residence outside the State,
36 in the physical custody of a department of social services in
37 the county where the juvenile is found so that agency may
38 return the juvenile to the responsible authorities in the
39 juvenile's home state. The director may, unless otherwise
40 ordered by the judge, arrange for, provide, or consent to,
41 needed routine or emergency medical or surgical care or
42 treatment. In the case where the parent is unknown,
43 unavailable, or unable to act on behalf of the child or
44 children, the director may, unless otherwise ordered by the

1 judge, arrange for, provide or consent to any psychiatric,
2 psychological, educational, or other remedial evaluations or
3 treatment for the juvenile placed by a judge or the judge's
4 designee in the custody or physical custody of a county
5 department of social services under the authority of this or
6 any other Chapter of the General Statutes. Prior to
7 exercising this authority, the director shall make reasonable
8 efforts to obtain consent from a parent or guardian of the
9 affected child. If the director cannot obtain consent, the
10 director shall promptly notify the parent or guardian that
11 care or treatment has been provided and shall give the
12 parent or guardian frequent status reports on the
13 circumstances of the child. Upon request of a parent or
14 guardian of the affected child, the results or records of the
15 mentioned evaluations, findings, or treatment shall be
16 made available to the parent or guardian by the director
17 unless prohibited by G.S. 122C-53(d).

18 (2) Place the juvenile under the protective supervision of a court
19 counselor for no more than one year.

20 (3) Excuse the juvenile from compliance with the compulsory school
21 attendance law when the court finds that suitable alternative plans
22 can be arranged by the family through other community resources
23 for one of the following: an education related to the needs or
24 abilities of the juvenile including vocational education or special
25 education; a suitable plan of supervision or placement; or some
26 other plan that the court finds to be in the best interests of the
27 juvenile.

28 **"§ 7B-2502. Conditions of protective supervision for undisciplined juveniles.**

29 The court may place a juvenile on protective supervision pursuant to G.S. 7B-2501
30 so that the court counselor may (i) assist the juvenile in securing social, medical, and
31 educational services and (ii) visit and work with the family as a unit to ensure the
32 juvenile is provided proper supervision and care. The court may impose any
33 combination of the following conditions of protective supervision that are related to
34 the needs of the juvenile, including:

35 (1) That the juvenile shall remain on good behavior and not violate
36 any laws;

37 (2) That the juvenile attend school regularly;

38 (3) That the juvenile maintain passing grades in up to four courses
39 during each grading period and meet with the court counselor and
40 a representative of the school to make a plan for how to maintain
41 those passing grades;

42 (4) That the juvenile not associate with specified persons or be in
43 specified places;

44 (5) That the juvenile abide by a prescribed curfew;

- 1 (6) That the juvenile report to a court counselor as often as required
2 by a court counselor;
3 (7) That the juvenile be employed regularly if not attending school;
4 and
5 (8) That the juvenile satisfy any other conditions determined
6 appropriate by the court.

7 **"§ 7B-2503. Contempt of court for undisciplined juveniles.**

8 Upon motion of the court counselor or on the court's own motion, the court may
9 issue an order directing a juvenile who has been adjudicated undisciplined to appear
10 and show cause why the juvenile should not be held in contempt for willfully failing
11 to comply with an order of the court. The first time the juvenile is held in contempt,
12 the court may order the juvenile confined in an approved detention facility for a
13 period not to exceed 24 hours. The second time the juvenile is held in contempt, the
14 court may order the juvenile confined in an approved detention facility for a period
15 not to exceed three days. The third time and all subsequent times the juvenile is held
16 in contempt, the court may order the juvenile confined in an approved detention
17 facility for a period not to exceed five days.

18 **"§ 7B-2504. Dispositional alternatives for delinquent juveniles.**

19 The court exercising jurisdiction over a juvenile who has been adjudicated
20 delinquent may use the following alternatives in accordance with the dispositional
21 structure set forth in G.S. 7B-2505:

- 22 (1) In the case of any juvenile who needs more adequate care or
23 supervision or who needs placement, the judge may:
24 a. Require that a juvenile be supervised in the juvenile's own
25 home by the department of social services in the juvenile's
26 county, a court counselor, or other personnel as may be
27 available to the court, subject to conditions applicable to the
28 parent, guardian, or custodian or the juvenile as the judge
29 may specify; or
30 b. Place the juvenile in the custody of a parent, guardian,
31 custodian, relative, private agency offering placement
32 services, or some other suitable person; or
33 c. Place the juvenile in the custody of the department of social
34 services in the county of his residence, or in the case of a
35 juvenile who has legal residence outside the State, in the
36 physical custody of a department of social services in the
37 county where the juvenile is found so that agency may
38 return the juvenile to the responsible authorities in the
39 juvenile's home state. The director may, unless otherwise
40 ordered by the judge, arrange for, provide, or consent to,
41 needed routine or emergency medical or surgical care or
42 treatment. In the case where the parent is unknown,
43 unavailable, or unable to act on behalf of the child or
44 children, the director may, unless otherwise ordered by the

1 judge, arrange for, provide, or consent to any psychiatric,
2 psychological, educational, or other remedial evaluations or
3 treatment for the juvenile placed by a judge or his designee
4 in the custody or physical custody of a county department of
5 social services under the authority of this or any other
6 Chapter of the General Statutes. Prior to exercising this
7 authority, the director shall make reasonable efforts to
8 obtain consent from a parent or guardian of the affected
9 child. If the director cannot obtain such consent, the
10 director shall promptly notify the parent or guardian that
11 care or treatment has been provided and shall give the
12 parent or guardian frequent status reports on the
13 circumstances of the child. Upon request of a parent or
14 guardian of the affected child, the results or records of the
15 forementioned evaluations, findings, or treatment shall be
16 made available to such parent or guardian by the director
17 unless prohibited by G.S. 122C-53(d).

18 (2) Excuse the juvenile from compliance with the compulsory school
19 attendance law when the court finds that suitable alternative plans
20 can be arranged by the family through other community resources
21 for one of the following: an education related to the needs or
22 abilities of the juvenile including vocational education or special
23 education; a suitable plan of supervision or placement; or some
24 other plan that the court finds to be in the best interests of the
25 juvenile.

26 (3) Order the juvenile to cooperate with a community-based program
27 or a professional residential or nonresidential treatment program.
28 Participation in the programs shall not exceed 12 months.

29 (4) Require restitution, full or partial, payable within a 12-month
30 period to any person who has suffered loss or damage as a result of
31 the offense committed by the juvenile. The court may determine
32 the amount, terms, and conditions of the restitution. If the juvenile
33 participated with another person or persons, all participants should
34 be jointly and severally responsible for the payment of restitution;
35 however, the court shall not require the juvenile to make
36 restitution if the juvenile satisfies the court that the juvenile does
37 not have, and could not reasonably acquire, the means to make
38 restitution.

39 (5) Impose a fine related to the seriousness of the juvenile's offense. If
40 the juvenile has the ability to pay the fine, it shall not exceed the
41 maximum fine for the offense if committed by an adult.

42 (6) Order the juvenile to perform supervised community service
43 consistent with the juvenile's age, skill, and ability, specifying the
44 nature of the work and the number of hours required. The work

- 1 shall be related to the seriousness of the juvenile's offense and in
2 no event may the obligation to work exceed 12 months.
3 (7) Order the juvenile to participate in the victim-offender
4 reconciliation program.
5 (8) Place the juvenile on probation under the supervision of a court
6 counselor, as specified in G.S. 7B-2506.
7 (9) Order that the juvenile shall not be licensed to operate a motor
8 vehicle in the State of North Carolina for as long as the court
9 retains jurisdiction over the juvenile or for any shorter period of
10 time and notify the Division of Motor Vehicles of that order.
11 (10) Impose a curfew upon the juvenile.
12 (11) Order the juvenile to cooperate with placement in a residential
13 treatment facility or in a group home other than a multipurpose
14 group home operated by a State agency.
15 (12) Order the juvenile to cooperate with placement in a wilderness
16 program.
17 (13) Impose confinement on an intermittent basis in an approved
18 detention facility. Confinement shall be limited to not more than
19 five 24-hour periods, the timing of which is determined by the
20 court in its discretion.
21 (14) Place the juvenile on intensive probation under the supervision of
22 a court counselor.
23 (15) Order the juvenile to cooperate with a supervised day program
24 requiring the juvenile to be present at a specified place for all or
25 part of every day or of certain days. The court also may require the
26 juvenile to comply with any other reasonable conditions specified
27 in the dispositional order that are designed to facilitate supervision.
28 (16) Order the juvenile to participate in a regimented training program.
29 (17) Order the juvenile to submit to house arrest.
30 (18) Suspend imposition of a more severe, statutorily permissible
31 disposition with the provision that the juvenile meet certain
32 conditions agreed to by the juvenile and specified in the
33 dispositional order. The conditions shall not exceed the allowable
34 dispositions for the level under which disposition is being imposed.
35 (19) Order that the juvenile be confined in a secure juvenile detention
36 facility for a term of up to 14 24-hour periods, which confinement
37 shall not be imposed consecutively with intermittent confinement
38 pursuant to subdivision (13) of this section at the same
39 dispositional hearing.
40 (20) Order the residential placement of a juvenile in a multipurpose
41 group home operated by a State agency.
42 (21) Commit the juvenile to the Department in accordance with G.S.
43 7B-2509 for a period of not less than six months.

44 "§ 7B-2504.1. Delinquency history levels.

1 (a) Generally. -- The delinquency history level for a delinquent juvenile is
2 determined by calculating the sum of the points assigned to each of the juvenile's
3 prior adjudications and to the juvenile's probation status, if any, that the court finds
4 to have been proved in accordance with this section.

5 (b) Points. -- Points are assigned as follows:

6 (1) For each prior adjudication of a Class A through E felony offense,
7 4 points.

8 (2) For each prior adjudication of a Class F through I felony offense
9 or Class A1 misdemeanor offense, 2 points.

10 (3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor
11 offense, 1 point.

12 (4) If the juvenile was on probation at the time of adjudication, 2
13 points.

14 (c) Delinquency History Levels. -- The delinquency history levels are:

15 (1) Low -- No more than 1 point.

16 (2) Medium -- At least 2, but not more than 3 points.

17 (3) High -- At least 4 points.

18 In determining the delinquency history level, the classification of a prior offense is
19 the classification assigned to that offense at the time the juvenile committed the
20 offense for which disposition is being ordered.

21 (d) Multiple Prior Adjudications Obtained in One Court Session. -- For purposes
22 of determining the delinquency history level, if a juvenile is adjudicated delinquent
23 for more than one offense in a single session of district court, only the adjudication
24 for the offense with the highest point total is used.

25 (e) Classification of Prior Adjudications From Other Jurisdictions. -- Except as
26 otherwise provided in this subsection, an adjudication occurring in a jurisdiction
27 other than North Carolina is classified as a Class I felony if the jurisdiction in which
28 the offense occurred classifies the offense as a felony, or is classified as a Class 3
29 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as
30 a misdemeanor. If the juvenile proves by the preponderance of the evidence that an
31 offense classified as a felony in the other jurisdiction is substantially similar to an
32 offense that is a misdemeanor in North Carolina, the conviction is treated as that
33 class of misdemeanor for assigning delinquency history level points. If the State
34 proves by the preponderance of the evidence that an offense classified as either a
35 misdemeanor or a felony in the other jurisdiction is substantially similar to an offense
36 in North Carolina that is classified as a Class I felony or higher, the conviction is
37 treated as that class of felony for assigning delinquency history level points. If the
38 State proves by the preponderance of the evidence that an offense classified as a
39 misdemeanor in the other jurisdiction is substantially similar to an offense classified
40 as a Class A1 misdemeanor in North Carolina, the adjudication is treated as a Class
41 A1 misdemeanor for assigning delinquency history level points.

42 (f) Proof of Prior Adjudications. -- A prior adjudication shall be proved by any of
43 the following methods:

44 (1) Stipulation of the parties.

- 1 (2) An original or copy of the court record of the prior adjudication.
- 2 (3) A copy of records maintained by the Division of Criminal
- 3 Information or by the Department.
- 4 (4) Any other method found by the court to be reliable.

5 The State bears the burden of proving, by a preponderance of the evidence, that a
6 prior adjudication exists and that the juvenile before the court is the same person as
7 the juvenile named in the prior adjudication. The original or a copy of the court
8 records or a copy of the records maintained by the Division of Criminal Information
9 or of the Department, bearing the same name as that by which the juvenile is
10 charged, is prima facie evidence that the juvenile named is the same person as the
11 juvenile before the court, and that the facts set out in the record are true. For
12 purposes of this subsection, 'a copy' includes a paper writing containing a
13 reproduction of a record maintained electronically on a computer or other data
14 processing equipment, and a document produced by a facsimile machine. The
15 prosecutor shall make all feasible efforts to obtain and present to the court the
16 juvenile's full record. Evidence presented by either party at trial may be utilized to
17 prove prior adjudications. If asked by the juvenile, the prosecutor shall furnish the
18 juvenile's prior adjudications to the juvenile within a reasonable time sufficient to
19 allow the juvenile to determine if the record available to the prosecutor is accurate.
20 "§ 7B-2505. Dispositional limits for each class of offense and delinquency history
21 level.

22 (a) Offense Classification. -- The offense classifications are as follows:

- 23 (1) Violent -- adjudication of a Class A through E felony offense;
- 24 (2) Serious -- adjudication of a Class F through I felony offense or a
- 25 Class A1 misdemeanor;
- 26 (3) Minor -- adjudication of a Class 1, 2, or 3 misdemeanor.

27 (b) Delinquency History Levels. -- A delinquency history level shall be
28 determined for each delinquent juvenile as provided in G.S. 7B-2504.1.

29 (c) Level 1 -- Community Disposition. -- A court exercising jurisdiction over a
30 juvenile who has been adjudicated delinquent and for whom the dispositional chart
31 in subsection (f) of this section prescribes a Level 1 disposition may provide for
32 evaluation and treatment under G.S. 7B-2500.2 and for any of the dispositional
33 alternatives contained in subdivisions (1) through (13) of G.S. 7B-2504. In
34 determining which dispositional alternative is appropriate, the court shall consider
35 the needs of the juvenile, the appropriate community resources available to meet
36 those needs, and the protection of the public.

37 (d) Level 2 -- Intermediate Disposition. -- A court exercising jurisdiction over a
38 juvenile who has been adjudicated delinquent and for whom the dispositional chart
39 in subsection (f) of this section prescribes a Level 2 disposition may provide for
40 evaluation and treatment under G.S. 7B-2500.2 and for any of the dispositional
41 alternatives contained in subdivisions (1) through (20) of G.S. 7B-2504, but shall
42 provide for at least one of the intermediate dispositions authorized in subdivisions
43 (12) and (14) through (20) of G.S. 7B-2504. In determining which dispositional
44 alternative is appropriate, the court shall consider the needs of the juvenile, the

1 appropriate community resources available to meet those needs, and the protection of
 2 the public.

3 (e) Level 3 -- Commitment. -- A court exercising jurisdiction over a juvenile who
 4 has been adjudicated delinquent and for whom the dispositional chart in subsection
 5 (f) of this section prescribes a Level 3 disposition shall commit the juvenile to the
 6 Department in accordance with G.S. 7B-2504(21). However, a court may impose a
 7 Level 2 disposition rather than a Level 3 disposition if the court submits written
 8 findings on the record that substantiate extraordinary needs on the part of the
 9 offending juvenile.

10 (f) Dispositions for Each Class of Offense and Delinquency History Level;
 11 Disposition Chart Described. -- The authorized disposition for each class of offense
 12 and delinquency history level is as specified in the chart below. Delinquency history
 13 levels are indicated horizontally on the top of the chart. Classes of offense are
 14 indicated vertically on the left side of the chart. Each cell on the chart indicates
 15 which of the dispositional levels described in subsections (c) through (e) of this
 16 section are prescribed for that combination of offense classification and delinquency
 17 history level:

18

19

DELINQUENCY HISTORY

20 OFFENSE

21

LOW

MEDIUM

HIGH

22

23 VIOLENT

Level 2 or 3

Level 3

Level 3

24

25 SERIOUS

Level 1 or 2

Level 2

Level 2 or 3

26

27 MINOR

Level 1

Level 1 or 2

Level 2.

28

29 (g) The court may consider as a mitigating factor evidence of a juvenile's
 30 cooperation with law enforcement in providing information about other persons with
 31 whom the juvenile acted in the commission of the offense for which the juvenile was
 32 adjudicated. A mitigating factor may be used in determining the appropriate
 33 dispositional options within the level prescribed by the dispositional chart in
 34 subsection (f) of this section.

35 (h) If a juvenile is adjudicated of more than one offense at the same time, the
 36 court shall consolidate the offenses for disposition and impose a single disposition for
 37 the consolidated offenses. The disposition shall be specified for the class of offense
 38 and delinquency history level of the most serious offense.

39 "§ 7B-2506. Conditions of probation; violation of probation.

40 (a) In any case where a juvenile is placed on probation pursuant to G.S. 7B-
 41 2504(8), the court counselor shall have the authority to visit the juvenile where the
 42 juvenile resides. The court may impose conditions of probation that are related to
 43 the needs of the juvenile and that are reasonably necessary to ensure that the juvenile
 44 will lead a law-abiding life, including:

- 1 (1) That the juvenile shall remain on good behavior and not violate
2 any laws.
- 3 (2) That the juvenile attend school regularly.
- 4 (3) That the juvenile maintain passing grades in up to four courses
5 during each grading period and meet with the court counselor and
6 a representative of the school to make a plan for how to maintain
7 those passing grades.
- 8 (4) That the juvenile not associate with specified persons or be in
9 specified places.
- 10 (5) That the juvenile remain free of any controlled substance included
11 in any schedule of Article 5 of Chapter 90 of the General Statutes,
12 the Controlled Substances Act, and the juvenile submit to random
13 drug testing.
- 14 (6) That the juvenile abide by a prescribed curfew.
- 15 (7) That the juvenile submit to a warrantless search at reasonable
16 times.
- 17 (8) That the juvenile possess no firearm, explosive device, or other
18 deadly weapon.
- 19 (9) That the juvenile report to a court counselor as often as required
20 by a court counselor.
- 21 (10) That the juvenile make specified financial restitution or pay a fine
22 in accordance with G.S. 7B-2504(4) and (5).
- 23 (11) That the juvenile be employed regularly if not attending school.
- 24 (12) That the juvenile satisfy any other conditions determined
25 appropriate by the court.

26 (b) In addition to the regular conditions of probation specified in subsection (a) of
27 this section, the court may order the juvenile to comply, if directed to comply by the
28 court counselor, with one or more of the following conditions:

- 29 (1) Perform up to 20 hours of community service;
- 30 (2) Submit to substance abuse monitoring and treatment;
- 31 (3) Cooperate with electronic monitoring;
- 32 (4) Cooperate with intensive supervision; and
- 33 (5) Participate in a life skills or an educational skills program
34 administered by the Department.

35 (c) An order of probation shall remain in force for a period not to exceed two
36 years from the date entered. Prior to expiration of an order of probation, the court
37 may extend it for an additional period of one year after a hearing if the court finds
38 that the extension is necessary to protect the community or to safeguard the welfare
39 of the juvenile.

40 (d) If the juvenile violates the conditions of probation set by the court, the court
41 may elect to continue the original conditions of probation, modify the conditions of
42 probation, or, except as provided in subsection (e) of this section, order a new
43 disposition at the next higher level on the disposition chart in G.S. 7B-2505. In the
44 court's discretion, part of the new disposition may include an order of confinement in

1 a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-
2 2505.

3 **"§ 7B-2507. Probation review.**

4 The court may review the progress of any juvenile on probation at any time during
5 the period of probation or at the end of probation. Except as provided in G.S. 7B-
6 2506, the conditions or duration of probation may be modified only as provided in
7 this Subchapter and only after there is notice and a hearing. If a juvenile violates the
8 conditions of probation, the juvenile and the juvenile's parent, guardian, or custodian
9 after notice may be required to appear before the court and the court may make any
10 disposition of the matter authorized by this Subchapter. At the end of or at any time
11 during probation, the court may terminate probation by written order upon finding
12 that there is no further need for supervision. The finding and order terminating
13 probation may be entered in chambers in the absence of the juvenile and may be
14 based on a report from the court counselor or, at the election of the court, the order
15 may be entered with the juvenile present after notice and a hearing.

16 **"§ 7B-2508. Dispositional order.**

17 The dispositional order shall be in writing and shall contain appropriate findings of
18 fact and conclusions of law. The court shall state with particularity, both orally and in
19 the written order of disposition, the precise terms of the disposition including the
20 kind, duration, and the person who is responsible for carrying out the disposition and
21 the person or agency in whom custody is vested.

22 **"§ 7B-2509. Commitment of delinquent juvenile to Department.**

23 (a) Pursuant to G.S. 7B-2504 and G.S. 7B-2505, the court may commit a
24 delinquent juvenile who is at least 10 years of age to the Department for placement in
25 one of the residential facilities operated by the Department. Commitment shall be for
26 a definite or indefinite term of at least six months. In no event shall the term exceed
27 the nineteenth birthday of the juvenile.

28 (b) The court may commit a juvenile to a definite term of not more than two
29 years if the court finds that the juvenile is 14 years of age or older, has been
30 previously adjudicated delinquent for two or more felony offenses, and has been
31 previously committed to a residential facility operated by the Department.

32 (c) The chief court counselor shall have the responsibility for transporting the
33 juvenile to the residential facility designated by the Department. The juvenile shall be
34 accompanied to the residential facility by a person of the same sex.

35 (d) The chief court counselor shall ensure that the records requested by the
36 Secretary or the Secretary's designee accompany the juvenile upon transportation for
37 admittance to a training school or, if not obtainable at the time of admission, are sent
38 to the training school within 15 days of the admission. If records requested by the
39 Department for admission do not exist, to the best knowledge of the chief court
40 counselor, the chief court counselor shall so stipulate in writing to the training school.
41 If such records do exist, but the chief court counselor is unable to obtain copies of
42 them, a district court may order that the records from public agencies be made
43 available to the training school. Records that are confidential by law shall remain
44 confidential and the Department shall be bound by the specific laws governing the

1 confidentiality of these records. All records shall be used in a manner consistent with
2 the best interests of the juvenile.

3 (e) A commitment order accompanied by information requested by the Secretary
4 shall be forwarded to the Department. The Secretary shall place the juvenile in the
5 residential facility that would best provide for the juvenile's needs and shall notify the
6 committing court. The Secretary may assign a juvenile committed for delinquency to
7 any institution or other program of the Department or licensed by the Department,
8 which program is appropriate to the needs of the juvenile.

9 (f) When the court commits a juvenile to the Department, the Secretary shall
10 prepare a plan for care or treatment within 30 days after assuming custody of the
11 juvenile.

12 (g) Commitment of a juvenile to the Department does not terminate the court's
13 continuing jurisdiction over the juvenile and the juvenile's parent, guardian, or
14 custodian. Commitment of a juvenile to the Department transfers only physical
15 custody of the juvenile. Legal custody remains with the parent, guardian, custodian,
16 agency, or institution in whom it was vested.

17 (h) Pending placement of a juvenile with the Department, the court may house a
18 juvenile who has been adjudicated delinquent for an offense that would be a Class A,
19 B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72
20 hours if the court, based on the information provided by the court counselor,
21 determines that no acceptable alternative placement is available and the protection of
22 the public requires that the juvenile be housed in a holdover facility.

23 "§ 7B-2510. Post-release supervision planning; release.

24 (a) The Secretary shall be responsible for evaluation of the progress of each
25 juvenile at least once every six months as long as the juvenile remains in the care of
26 the Department. If the Secretary determines that a juvenile is ready for release, the
27 Secretary shall initiate a post-release supervision planning process. The post-release
28 supervision planning process shall be defined by rules and regulations of the
29 Department, but shall include the following:

30 (1) Written notification shall be given to the court that ordered
31 commitment.

32 (2) A post-release supervision planning conference shall be held
33 involving as many as possible of the following: the juvenile, the
34 juvenile's parent, guardian, or custodian, court counselors who
35 have supervised the juvenile on probation or will supervise the
36 juvenile on post-release supervision, and staff of the facility that
37 found the juvenile ready for release. The planning conference shall
38 include personal contact and evaluation rather than telephonic
39 notification.

40 (3) The planning conference participants shall consider, based on the
41 individual needs of the juvenile and pursuant to rules adopted by
42 the Department, placement of the juvenile in any program under
43 the auspices of the Department, including the Community-Based
44 Alternatives programs, that, in the judgment of the Department,

1 may serve as a transitional placement, pending release under G.S.
2 7B-2512.

3 (b) The Department shall develop the plan in writing and base the terms on the
4 needs of the juvenile and the protection of the public. Every plan shall require the
5 juvenile to complete at least 90 days of post-release supervision.

6 (c) The Department shall release a juvenile under a plan of post-release
7 supervision at least 90 days prior to the later of:

- 8 (1) Completion of the juvenile's definite term of commitment; or
9 (2) If the juvenile is committed for an indefinite term, either on the
10 juvenile's eighteenth birthday if no motion for extended
11 jurisdiction has been filed pursuant to G.S. 7B-2513 or on the
12 juvenile's nineteenth birthday.

13 (d) Notwithstanding Articles 30 and 31 of Subchapter III of this Chapter, before
14 the court releases a juvenile who is serving a commitment for a Class A or B1 felony
15 to post-release supervision, the Department shall notify, at least 45 days in advance of
16 the scheduled release date, by first-class mail at the last known address:

- 17 (1) The juvenile;
18 (2) The juvenile's parent, guardian, or custodian;
19 (3) The district attorney of the district where the juvenile was
20 adjudicated;
21 (4) The head law enforcement agency that took the juvenile into
22 custody; and
23 (5) The victim and any of the victim's immediate family members who
24 have requested in writing to be notified.

25 The notification shall include only the juvenile's name, offense, date of
26 commitment, and date of consideration for release. A copy of the notice shall be
27 placed in the juvenile's file.

28 (e) The Department may release a juvenile under an indefinite commitment to
29 post-release supervision only after the juvenile has been committed for a period of at
30 least six months.

31 (f) A juvenile committed to the Department for a definite term shall receive credit
32 toward that term for the time the juvenile spends on post-release supervision.

33 **§ 7B-2511. Revocation of post-release supervision.**

34 If a juvenile fails to complete the terms of post-release supervision, the court
35 counselor providing post-release supervision may make a motion for review in the
36 court in the district where the juvenile has been residing during post-release
37 supervision. The court shall hold a hearing to determine whether there has been a
38 violation. With respect to any hearing pursuant to this section, the juvenile:

- 39 (1) Shall have reasonable notice in writing of the nature and content
40 of the allegations in the motion, including notice that the purpose
41 of the hearing is to determine whether the juvenile has violated the
42 terms of post-release supervision to the extent that post-release
43 supervision should be revoked;
44 (2) Shall be represented by an attorney at the hearing;

1 (3) Shall have the right to confront and cross-examine any persons
2 who have made allegations against the juvenile; and

3 (4) May admit, deny, or explain the violation alleged and may present
4 proof, including affidavits or other evidence, in support of the
5 juvenile's contentions. A record of the proceeding shall be made
6 and preserved in the juvenile's record.

7 If the court determines that the juvenile has violated the terms of post-release
8 supervision, the court may revoke the post-release supervision or make any other
9 disposition authorized by this Subchapter.

10 If the court revokes the post-release supervision, the chief court counselor shall
11 have the responsibility for returning the juvenile to the facility specified by the
12 Department.

13 **"§ 7B-2512. Final discharge.**

14 (a) The Department shall release a juvenile only after the juvenile completes post-
15 release supervision or when the juvenile is released to the Department of Correction
16 pursuant to G.S. 15A-1340.16B.

17 (b) Notwithstanding the provisions of this section, in no event shall a juvenile
18 remain committed after the juvenile's eighteenth birthday except pursuant to G.S.
19 7B-2513.

20 **"§ 7B-2513. Extended jurisdiction under certain circumstances; review hearing.**

21 (a) By order of the court, juvenile court jurisdiction over a juvenile may be
22 extended past the age of 18 years until the person reaches the person's nineteenth
23 birthday. The provisions of this Subchapter shall apply to any person under the
24 jurisdiction of the juvenile court pursuant to this section, regardless of whether the
25 term 'person' or 'juvenile' is used in the provision.

26 (b) When the chief court counselor, or the Department if the juvenile is committed
27 to the Department, determines a juvenile should remain under the jurisdiction of the
28 court for a period of time after the age of 18 years, the chief court counselor or
29 Department shall file a motion for a review hearing in the judicial district where the
30 juvenile was adjudicated. This motion shall be filed at least 180 days prior to the
31 eighteenth birthday of the juvenile. The chief court counselor or Department shall
32 notify the juvenile, the juvenile's attorney, and the juvenile's parent, guardian, or
33 custodian in writing of the date and time of the scheduled hearing at least 10 days
34 prior to the scheduled hearing date.

35 (c) Within 30 days after the motion is filed, the court shall conduct a review
36 hearing to determine whether the juvenile shall remain under the jurisdiction of the
37 court. The court counselor and the prosecutor shall attend the hearing and, if the
38 court requests, present testimony or evidence as to whether the juvenile continues to
39 be in need of and can benefit from further treatment or services.

40 (d) In determining whether to order that the juvenile remain under the
41 jurisdiction of the court, the court shall consider:

42 (1) The recommendation of the chief court counselor or the Secretary
43 based on the juvenile's progress;

1 Appeals. Notice of appeal shall be given in open court at the time of the hearing or
2 in writing within 10 days after entry of the order. However, if no disposition is made
3 within 60 days after entry of the order, written notice of appeal may be given within
4 70 days after such entry. A final order shall include:

5 (1) Any order finding absence of jurisdiction;

6 (2) Any order which in effect determines the action and prevents a
7 judgment from which appeal might be taken;

8 (3) Any order of disposition after an adjudication that a juvenile is
9 delinquent or undisciplined; or

10 (4) Any order modifying custodial rights.

11 **"§ 7B-2603. Proper parties for appeal.**

12 An appeal may be taken by the juvenile, the juvenile's parent, guardian, or
13 custodian, or the State or county agency. The State's appeal is limited to the
14 following orders in delinquency or undisciplined cases:

15 (1) An order finding a State statute to be unconstitutional; and

16 (2) Any order which terminates the prosecution of a petition by
17 upholding the defense of double jeopardy, by holding that a cause
18 of action is not stated under a statute, or by granting a motion to
19 suppress.

20 **"§ 7B-2604. Disposition pending appeal.**

21 Pending disposition of an appeal, the release of the juvenile, with or without
22 conditions, should issue in every case unless the court orders otherwise. For
23 compelling reasons which must be stated in writing, the court may enter a temporary
24 order affecting the custody or placement of the juvenile as the court finds to be in the
25 best interests of the juvenile or the State.

26 **"§ 7B-2605. Disposition after appeal.**

27 Upon the affirmation of the order of adjudication or disposition of the court by the
28 Court of Appeals or by the Supreme Court in the event of an appeal, the court shall
29 have authority to modify or alter the original order of adjudication or disposition as
30 the court finds to be in the best interests of the juvenile to reflect any adjustment
31 made by the juvenile or change in circumstances during the period of time the appeal
32 was pending. If the modifying order is entered ex parte, the court shall give notice to
33 interested parties to show cause within 10 days thereafter as to why the modifying
34 order should be vacated or altered.

35 **"ARTICLE 27.**

36 **"Authority Over Parents of Juveniles**

37 **Adjudicated Delinquent or Undisciplined.**

38 **"§ 7B-2700. Appearance in court.**

39 (a) The parent, guardian, or custodian of a juvenile under the jurisdiction of the
40 juvenile court shall attend the hearings of which the parent, guardian, or custodian
41 receives notice. The court may excuse the appearance of either or both parents or
42 the guardian or custodian at subsequent hearings. Unless so excused, the willful
43 failure of a parent, guardian, or custodian to attend a hearing of which the parent,
44 guardian, or custodian has notice shall be grounds for contempt.

1 (b) No employer may discharge or demote any employee because the employee is
2 required to appear in court pursuant to this section. Any employer who violates any
3 provision of this section shall be liable in a civil action for reasonable damages
4 suffered by an employee as a result of the violation, and an employee discharged or
5 demoted in violation of this section shall be entitled to be reinstated to the
6 employee's former position. The burden of proof shall be upon the employee. The
7 statute of limitations for actions under this section shall be one year pursuant to G.S.
8 1-54.

9 "§ 7B-2701. Parental responsibility classes.

10 The court may order the parent of a juvenile who has been adjudicated
11 undisciplined or delinquent to attend parental responsibility classes if those classes
12 are available in the judicial district in which the parent resides.

13 "§ 7B-2702. Medical, surgical, psychiatric, or psychological evaluation or treatment of
14 juvenile or parent.

15 (a) If the court orders medical, surgical, psychiatric, psychological, or other
16 evaluation or treatment pursuant to G.S. 7B-2500.2, the court may order the parent
17 or other responsible parties to pay the cost of the treatment or care ordered.

18 (b) At the dispositional hearing or a subsequent hearing, if the court finds that it
19 is in the best interests of the juvenile for the parent, guardian, or custodian to be
20 directly involved in the juvenile's evaluation or treatment, the court may order that
21 person to participate in medical, psychiatric, psychological, or other evaluation or
22 treatment of the juvenile. The cost of the evaluation or treatment shall be paid
23 pursuant to G.S. 7B-2500.2.

24 (c) At the dispositional hearing or a subsequent hearing, the court may determine
25 whether the best interests of the juvenile require that the parent, guardian, or
26 custodian undergo psychiatric, psychological, or other evaluation or treatment or
27 counseling directed toward remedying behaviors or conditions that led to or
28 contributed to the juvenile's adjudication or to the court's decision to remove custody
29 of the juvenile from the parent, guardian, or custodian. If the court finds that the best
30 interests of the juvenile require the parent, guardian, or custodian undergo evaluation
31 or treatment, it may order that person to comply with a plan of evaluation or
32 treatment approved by the court or condition legal custody or physical placement of
33 the juvenile with the parent, guardian, or custodian upon that person's compliance
34 with the plan of evaluation or treatment.

35 (d) In cases in which the court has ordered the parent of the juvenile, rather than
36 a guardian or custodian, to comply with or undergo evaluation or treatment, the
37 court may order the parent to pay the cost of evaluation or treatment ordered
38 pursuant to this subsection. In cases in which the court has conditioned legal custody
39 or physical placement of the juvenile with the parent upon the parent's compliance
40 with a plan of evaluation or treatment, the court may charge the cost of the
41 evaluation or treatment to the county of the juvenile's residence if the court finds the
42 parent is unable to pay the cost of the evaluation or treatment. In all other cases, if
43 the court finds the parent is unable to pay the cost of the evaluation or treatment
44 ordered pursuant to this subsection, the court may order the parent to receive

1 evaluation or treatment currently available from the area mental health program that
2 serves the parent's catchment area.

3 **"§ 7B-2703. Compliance with orders of court.**

4 (a) The court may order the parent, guardian, or custodian, to the extent that
5 person is able to do so, to provide transportation for a juvenile to keep an
6 appointment with a court counselor or to comply with other orders of the court.

7 (b) The court may order a parent, guardian, or custodian to cooperate with and
8 assist the juvenile in complying with the terms and conditions of probation or other
9 orders of the court.

10 **"§ 7B-2704. Payment of support or other expenses; assignment of insurance coverage.**

11 At the dispositional hearing or a subsequent hearing, if the court finds that the
12 parent is able to do so, the court may order the parent to:

13 (1) Pay a reasonable sum that will cover in whole or in part the
14 support of the juvenile. If the court requires the payment of child
15 support, the amount of the payments shall be determined as
16 provided in G.S. 50-13.4;

17 (2) Pay a fee for probation supervision or residential facility costs;

18 (3) Assign private insurance coverage to cover medical costs while the
19 juvenile is in secure detention, training school, or other out-of-
20 home placement; and

21 (4) Pay court-appointed attorneys' fees.

22 If the court places a juvenile in the custody of a county department of social services
23 and if the court finds that the parent is unable to pay the cost of the support required
24 by the juvenile, the cost shall be paid by the county department of social services in
25 whose custody the juvenile is placed, provided the juvenile is not receiving care in an
26 institution owned or operated by the State or federal government or any subdivision
27 thereof.

28 **"§ 7B-2705. Contempt for failure to comply.**

29 Upon motion of the court counselor or prosecutor or upon the court's own
30 motion, the court may issue an order directing the parent, guardian, or custodian to
31 appear and show cause why the parent, guardian, or custodian should not be found
32 or held in civil or criminal contempt for willfully failing to comply with an order of
33 the court. Chapter 5A of the General Statutes shall govern contempt proceedings
34 initiated pursuant to this Article.

35 **"ARTICLE 28.**

36 **"Interstate Compact on Juveniles.**

37 **"§ 7B-2800. Execution of Compact.**

38 The Governor is hereby authorized and directed to execute a Compact on behalf
39 of this State with any other state or states legally joining therein in the form
40 substantially as follows: The contracting states solemnly agree.

41 **"§ 7B-2801. Findings and purposes.**

42 Juveniles who are not under proper supervision and control, or who have
43 absconded, escaped, or run away, are likely to endanger their own health, morals,
44 and welfare, and the health, morals, and welfare of others. The cooperation of the

1 states party to this Compact is therefore necessary to provide for the welfare and
2 protection of juveniles and of the public with respect to:

- 3 (1) Cooperative supervision of delinquent juveniles on probation or
4 parole;
- 5 (2) The return, from one state to another, of delinquent juveniles who
6 have escaped or absconded;
- 7 (3) The return, from one state to another, of nondelinquent juveniles
8 who have run away from home; and
- 9 (4) Additional measures for the protection of juveniles and of the
10 public, which any two or more of the party states may find
11 desirable to undertake cooperatively.

12 In carrying out the provisions of this Compact, the party states shall be guided by
13 the noncriminal, reformative, and protective policies which guide their laws
14 concerning delinquent, neglected, or dependent juveniles generally. It shall be the
15 policy of the states party to this Compact to cooperate and observe their respective
16 responsibilities for the prompt return and acceptance of juveniles and delinquent
17 juveniles who become subject to the provisions of this Compact. The provisions of
18 this Compact shall be reasonably and liberally construed to accomplish the foregoing
19 purposes.

20 **"§ 7B-2802. Existing rights and remedies.**

21 All remedies and procedures provided by this Compact are in addition to and not
22 in substitution for other rights, remedies, and procedures and are not in derogation of
23 parental rights and responsibilities.

24 **"§ 7B-2803. Definitions.**

25 For the purposes of this Compact, 'delinquent juvenile' means any juvenile who
26 has been adjudged delinquent and who, at the time the provisions of this Compact
27 are invoked, is still subject to the jurisdiction of the court that has made adjudication
28 or to the jurisdiction or supervision of an agency or institution pursuant to an order
29 of the court; 'probation or parole' means any kind of post-release supervision of
30 juveniles authorized under the laws of the states party hereto; 'court' means any court
31 having jurisdiction over delinquent, neglected, or dependent children; 'state' means
32 any state, territory, or possession of the United States, the District of Columbia, and
33 the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a
34 place at which a home or regular place of abode is maintained.

35 **"§ 7B-2804. Return of runaways.**

36 (a) The parent, guardian, person, or agency entitled to legal custody of a juvenile
37 who has not been adjudged delinquent but who has run away without the consent of
38 the parent, guardian, person, or agency may petition the appropriate court in the
39 demanding state for the issuance of a requisition for the juvenile's return. The
40 petition shall state the name and age of the juvenile, the name of the petitioner and
41 the basis of entitlement to the juvenile's custody, the circumstances of the running
42 away, the juvenile's location if known at the time application is made, and any other
43 facts that may tend to show that the juvenile who has run away is endangering the
44 juvenile's own welfare or the welfare of others and is not an emancipated minor. The

1 petition shall be verified by affidavit, shall be executed in duplicate, and shall be
2 accompanied by two certified copies of the document or documents on which the
3 petitioner's entitlement to the juvenile's custody is based, such as birth certificates,
4 letters of guardianship, or custody decrees. Any further affidavits and other
5 documents as may be deemed proper may be submitted with the petition. The judge
6 of the court to which this application is made may hold a hearing thereon to
7 determine whether for the purposes of this Compact the petitioner is entitled to the
8 legal custody of the juvenile, whether or not it appears that the juvenile has in fact
9 run away without consent, whether or not the juvenile is an emancipated minor, and
10 whether or not it is in the best interests of the juvenile to compel the juvenile's return
11 to the state. If the judge determines, either with or without a hearing, that the
12 juvenile should be returned, the judge shall present to the appropriate court or to the
13 executive authority of the state where the juvenile is alleged to be located a written
14 requisition for the return of the juvenile. The requisition shall set forth the name and
15 age of the juvenile, the determination of the court that the juvenile has run away
16 without the consent of a parent, guardian, person, or agency entitled to legal custody,
17 and that it is in the best interests and for the protection of the juvenile that the
18 juvenile be returned. In the event that a proceeding for the adjudication of the
19 juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at
20 the time when the juvenile runs away, the court may issue a requisition for the return
21 of the juvenile upon its own motion, regardless of the consent of the parent, guardian,
22 person, or agency entitled to legal custody, reciting therein the nature and
23 circumstances of the pending proceeding. The requisition shall in every case be
24 executed in duplicate and shall be signed by the judge. One copy of the requisition
25 shall be filed with the Compact Administrator of the demanding state, there to
26 remain on file subject to the provisions of law governing records of the court. Upon
27 the receipt of a requisition demanding the return of a juvenile who has run away, the
28 court or the executive authority to whom the requisition is addressed shall issue an
29 order to any peace officer or other appropriate person directing that person to take
30 into custody and detain the juvenile. The detention order must substantially recite the
31 facts necessary to the validity of its issuance hereunder. No juvenile detained upon
32 the order shall be delivered over to the officer whom the court has appointed to
33 receive the juvenile unless the juvenile first is taken before a judge of a court in the
34 state, who shall inform the juvenile of the demand made for the juvenile's return, and
35 who may appoint counsel or guardian ad litem for the juvenile. If the court finds that
36 the requisition is in order, the court shall deliver the juvenile over to the officer
37 appointed to receive the juvenile by the court demanding the juvenile. The court,
38 however, may fix a reasonable time to be allowed for the purpose of testing the
39 legality of the proceeding.

40 Upon reasonable information that a person is a juvenile who has run away from
41 another state party to this Compact without the consent of a parent, guardian, person,
42 or agency entitled to legal custody, the juvenile may be taken into custody without a
43 requisition and brought before a judge of the appropriate court who may appoint
44 counsel or guardian ad litem for the juvenile and who shall determine after a hearing

1 whether sufficient cause exists to hold the person, subject to the order of the court,
2 for the juvenile's own protection and welfare, for such a time not exceeding 90 days
3 as will enable the return of the juvenile to another state party to this Compact
4 pursuant to a requisition for return from a court of that state. If, at the time when a
5 state seeks the return of a juvenile who has run away, there is pending in the state
6 wherein the juvenile is found, any criminal charge, or any proceeding to have the
7 juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the
8 juvenile is suspected of having committed within the state a criminal offense or an act
9 of juvenile delinquency, the juvenile shall not be returned without the consent of the
10 state until discharged from prosecution or other form of proceeding, imprisonment,
11 detention, or supervision for the offense or juvenile delinquency. The duly accredited
12 officers of any state party to this Compact, upon the establishment of their authority
13 and the identity of the juvenile being returned, shall be permitted to transport the
14 juvenile through any and all states party to this Compact, without interference. Upon
15 return of the juvenile to the state from which the juvenile ran away, the juvenile shall
16 be subject to such further proceedings as may be appropriate under the laws of that
17 state.

18 (b) The state to which the juvenile is returned under this Article shall be
19 responsible for payment of the transportation costs of return.

20 (c) The term 'juvenile' as used in this Article means any person who is a minor
21 under the law of the state of residence of the parent, guardian, person, or agency
22 entitled to the legal custody of the minor.

23 **"§ 7B-2805. Return of escapees and absconders.**

24 (a) The appropriate person or authority from whose probation or parole
25 supervision a delinquent juvenile has absconded or from whose institutional custody a
26 delinquent juvenile has escaped shall present to the appropriate court or to the
27 executive authority of the state where the delinquent juvenile is alleged to be located
28 a written requisition for the return of the delinquent juvenile. The requisition shall
29 state the name and age of the delinquent juvenile, the particulars of the juvenile's
30 adjudication as a delinquent juvenile, the circumstances of the breach of the terms of
31 probation or parole or of the juvenile's escape from an institution or agency vested
32 with legal custody or supervision, and the location of the delinquent juvenile, if
33 known, at the time the requisition is made. The requisition shall be verified by
34 affidavit, shall be executed in duplicate, and shall be accompanied by two certified
35 copies of the judgment, formal adjudication, or order of commitment which subjects
36 the delinquent juvenile to probation or parole or to the legal custody of the
37 institution or agency concerned. Any further affidavits and documents as may be
38 deemed proper may be submitted with the requisition. One copy of the requisition
39 shall be filed with the Compact Administrator of the demanding state, there to
40 remain on file subject to the provisions of the law governing records of the
41 appropriate court. Upon the receipt of a requisition demanding the return of a
42 delinquent juvenile who has absconded or escaped, the court or the executive
43 authority to whom the requisition is addressed shall issue an order to any peace
44 officer or other appropriate person directing the person to take into custody and

1 detain such delinquent juvenile. The detention order must substantially recite the
2 facts necessary to the validity of its issuance hereunder. No delinquent juvenile
3 detained upon the order shall be delivered over to the officer whom the appropriate
4 person or authority demanding the juvenile has appointed to receive the juvenile,
5 unless the juvenile is first taken forthwith before a judge of an appropriate court in
6 the state, who shall inform the juvenile of the demand made for the return and who
7 may appoint counsel or guardian ad litem for the juvenile. If the judge of the court
8 finds that the requisition is in order, the judge shall deliver the delinquent juvenile
9 over to the officer whom the appropriate person or authority demanding the juvenile
10 appointed to receive the juvenile. The judge, however, may fix a reasonable time to
11 be allowed for the purpose of testing the legality of the proceeding.

12 Upon reasonable information that a person is a delinquent juvenile who has
13 absconded while on probation or parole, or escaped from an institution or agency
14 vested with legal custody or supervision in any state party to this Compact, the
15 person may be taken into custody in any other state party to this Compact without a
16 requisition. But in that event, the juvenile shall be taken forthwith before a judge of
17 the appropriate court, who may appoint counsel or guardian ad litem for the person
18 and who shall determine after a hearing, whether sufficient cause exists to hold the
19 person subject to the order of the court for a length of time, not exceeding 90 days, as
20 will enable detention of the juvenile under a detention order issued on a requisition
21 pursuant to this Article. If, at the time when a state seeks the return of a delinquent
22 who has either absconded while on probation or parole or escaped from an
23 institution or agency vested with legal custody or supervision, there is pending in the
24 state wherein the juvenile is detained any criminal charge or any proceeding to have
25 the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if
26 the juvenile is suspected of having committed a criminal offense or an act of juvenile
27 delinquency within the state, the juvenile shall not be returned without the consent of
28 the state until discharged from prosecution or other form of proceeding,
29 imprisonment, detention, or supervision for the offense or juvenile delinquency. The
30 duly accredited officers of any state party to this Compact, upon the establishment of
31 their authority and the identity of the delinquent juvenile being returned, shall be
32 permitted to transport the delinquent juvenile through any and all states party to this
33 Compact, without interference. Upon return to the state from which the juvenile
34 escaped or absconded, the delinquent juvenile shall be subject to any further
35 proceedings appropriate under the laws of that state.

36 (b) The state to which a delinquent juvenile is returned under this Article shall be
37 responsible for the payment of transportation costs of the return.

38 "§ 7B-2806. Voluntary return procedure.

39 Any delinquent juvenile who has absconded while on probation or parole, or
40 escaped from an institution or agency vested with legal custody or supervision in any
41 state party to this Compact, and any juvenile who has run away from any state party
42 to this Compact, who is taken into custody without a requisition in another state
43 party to this Compact under the provisions of G.S. 7B-2804(a) or G.S. 7B-2805(a),
44 may consent to the immediate return of the juvenile to the state from which the

1 juvenile absconded, escaped, or ran away. Consent shall be given by the juvenile or
2 delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, by
3 executing or subscribing a writing in the presence of a judge of the appropriate court,
4 which states that the juvenile or delinquent juvenile and the juvenile's counsel or
5 guardian ad litem, if any, consent to return of the juvenile to the demanding state.
6 Before consent is executed or subscribed, however, the judge, in the presence of
7 counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile
8 of the juvenile's rights under this Compact. When the consent has been duly
9 executed, it shall be forwarded to and filed with the Compact Administrator of the
10 state in which the court is located, and the judge shall direct the officer having the
11 juvenile or delinquent juvenile in custody to deliver the juvenile to the duly
12 accredited officer or officers of the state demanding return of the juvenile and shall
13 cause to be delivered to the officer or officers a copy of the consent. The court may,
14 however, upon the request of the state to which the juvenile or delinquent juvenile is
15 being returned, order the juvenile to return unaccompanied to the state and shall
16 provide the juvenile with a copy of the court order; in that event a copy of the
17 consent shall be forwarded to the Compact Administrator of the state to which the
18 juvenile or delinquent juvenile is ordered to return.

19 **"§ 7B-2807. Cooperative supervision of probationers and parolees.**

20 (a) That the duly constituted judicial and administrative authorities of a state party
21 to this Compact (herein called 'sending state') may permit any delinquent juvenile
22 within such state, placed on probation or parole, to reside in any other state party to
23 this Compact (herein called 'receiving state') while on probation or parole, and the
24 receiving state shall accept the delinquent juvenile, if the parent, guardian, or person
25 entitled to the legal custody of the delinquent juvenile is residing or undertakes to
26 reside within the receiving state. Before granting permission, opportunity shall be
27 given to the receiving state to make investigations as it deems necessary. The
28 authorities of the sending state shall send to the authorities of the receiving state
29 copies of pertinent court orders, social case studies, and all other available
30 information which may be of value to and assist the receiving state in supervising a
31 probationer or parolee under this Compact. A receiving state, in its discretion, may
32 agree to accept supervision of a probationer or parolee in cases where the parent,
33 guardian, or person entitled to the legal custody of the delinquent juvenile is not a
34 resident of the receiving state, and if so accepted, the sending state may transfer the
35 supervision accordingly.

36 (b) That each receiving state will assume the duties of visitation and of supervision
37 over any delinquent juvenile and in the exercise of those duties will be governed by
38 the same standards of visitation and supervision that prevail for its own delinquent
39 juveniles released on probation or parole.

40 (c) That, after consultation between the appropriate authorities of the sending state
41 and of the receiving state as to the desirability and necessity of returning the
42 delinquent juvenile, the duly accredited officers of a sending state may enter a
43 receiving state and there apprehend and retake any delinquent juvenile on probation
44 or parole. For that purpose, no formalities will be required other than establishing the

1 authority of the officer and the identity of the delinquent juvenile to be retaken and
2 returned. The decision of the sending state to retake a delinquent juvenile on
3 probation or parole shall be conclusive upon and not reviewable within the receiving
4 state, but if, at the time the sending state seeks to retake a delinquent juvenile on
5 probation or parole, there is pending against the juvenile within the receiving state
6 any criminal charge or any proceeding to have the juvenile adjudicated a delinquent
7 juvenile for any act committed in the state or if the juvenile is suspected of having
8 committed within the state a criminal offense or an act of juvenile delinquency, the
9 juvenile shall not be returned without the consent of the receiving state until
10 discharged from prosecution or other form of proceeding, imprisonment, detention,
11 or supervision for the offense or juvenile delinquency. The duly accredited officers of
12 the sending state shall be permitted to transport delinquent juveniles being so
13 returned through any and all states party to this Compact without interference.

14 (d) The sending state shall be responsible under this Article for paying the costs of
15 transporting any delinquent juvenile to the receiving state or of returning any
16 delinquent juvenile to the sending state.

17 **"§ 7B-2808. Responsibility for costs.**

18 (a) The provisions of G.S. 7B-2804(b), 7B-2805(b), and 7B-2807(d) shall not be
19 construed to alter or affect any internal relationship among the departments, agencies,
20 and officers of and in the government of a party state, or between a party state and its
21 subdivisions, as to the payment of costs or responsibilities therefor.

22 (b) Nothing in this Compact shall be construed to prevent any party state or
23 subdivision thereof from asserting any right against any person, agency, or other
24 entity in regard to costs for which such party state or subdivision thereof may be
25 responsible pursuant to G.S. 7B-2804(b), 7B-2805(b), and 7B-2807(d).

26 **"§ 7B-2809. Detention practices.**

27 To every extent possible, it shall be the policy of states party to this Compact that
28 no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or
29 lockup, nor be detained or transported in association with criminal, vicious, or
30 dissolute persons.

31 **"§ 7B-2810. Supplementary agreements.**

32 The duly constituted administrative authorities of a state party to this Compact
33 may enter into supplementary agreements with any other state or states party hereto
34 for the cooperative care, treatment, and rehabilitation of delinquent juveniles
35 whenever they find that the agreements will improve the facilities or programs
36 available for care, treatment, and rehabilitation. Care, treatment, and rehabilitation
37 may be provided in an institution located within any state entering into a
38 supplementary agreement. Supplementary agreements shall:

- 39 (1) Provide the rates to be paid for the care, treatment, and custody of
40 delinquent juveniles taking into consideration the character of
41 facilities, services, and subsistence furnished;
42 (2) Provide that the delinquent juvenile shall be given a court hearing
43 prior to the juvenile being sent to another state for care, treatment,
44 and custody;

- 1 (3) Provide that the state receiving a delinquent juvenile in one of its
2 institutions shall act solely as agent for the state sending the
3 delinquent juvenile;
- 4 (4) Provide that the sending state shall at all times retain jurisdiction
5 over delinquent juveniles sent to an institution in another state;
- 6 (5) Provide for reasonable inspection of the institutions by the sending
7 state;
- 8 (6) Provide that the consent of the parent, guardian, person, or agency
9 entitled to the legal custody of the delinquent juvenile shall be
10 secured prior to the juvenile being sent to another state; and
- 11 (7) Make provisions for any other matters and details as shall be
12 necessary to protect the rights and equities of delinquent juveniles
13 and of the cooperating states.

14 **"§ 7B-2811. Acceptance of federal and other aid.**

15 Any state party to this Compact may accept any and all donations, gifts, and grants
16 of money, equipment, and services from the federal or any local government, or any
17 agency thereof and from any person, firm, or corporation, for any of the purposes and
18 functions of this Compact, and may receive and utilize, the same subject to the terms,
19 conditions, and regulations governing such donations, gifts, and grants.

20 **"§ 7B-2812. Compact administrators.**

21 The governor of each state party to this Compact shall designate an officer who,
22 acting jointly with like officers of other party states, shall promulgate rules and
23 regulations to carry out more efficiently the terms and provisions of this Compact.

24 **"§ 7B-2813. Execution of Compact.**

25 This Compact shall become operative immediately upon its execution by any state
26 as between it and any other state or states so executing. When executed it shall have
27 the full force and effect of law within the state, the form of execution to be in
28 accordance with the laws of the executing state.

29 **"§ 7B-2814. Renunciation.**

30 This Compact shall continue in force and remain binding upon each executing
31 state until renounced by it. Renunciation of this Compact shall be by the same
32 authority which executed it, by sending six months' notice in writing of its intention
33 to withdraw from the Compact to the other states party hereto. The duties and
34 obligations of a renouncing state under G.S. 7B-2807 hereof shall continue as to
35 parolees and probationers residing therein at the time of withdrawal until retaken or
36 finally discharged. Supplementary agreements entered into under G.S. 7B-2810 hereof
37 shall be subject to renunciation as provided by supplementary agreements and shall
38 not be subject to the six months' renunciation notice of the present section.

39 **"§ 7B-2815. Severability.**

40 The provisions of this Compact shall be severable and if any phrase, clause,
41 sentence, or provision of this Compact is declared to be contrary to the constitution
42 of any participating state or of the United States or the applicability thereof to any
43 government, agency, person, or circumstances is held invalid, the validity of the
44 remainder of this Compact and the applicability thereof to any government, agency,

1 person, or circumstances shall not be affected thereby. If this Compact shall be held
2 contrary to the constitution of any state participating therein, the Compact shall
3 remain in full force and effect as to the remaining states and in full force and effect
4 as to the state affected as to all severable matters.

5 **"§ 7B-2816. Authority of Governor to designate Compact Administrator.**

6 Pursuant to said Compact, the Governor is hereby authorized and empowered to
7 designate an officer who shall be the Compact Administrator and who, acting jointly
8 with like officers of other party states, shall adopt rules and regulations to carry out
9 more effectively the terms of the Compact. The Compact Administrator shall serve
10 subject to the pleasure of the Governor. The Compact Administrator is hereby
11 authorized, empowered, and directed to cooperate with all departments, agencies,
12 and officers of and in the government of this State and its subdivisions in facilitating
13 the proper administration of the Compact or of any supplementary agreement or
14 agreements entered into by this State hereunder.

15 **"§ 7B-2817. Authority of Compact Administrator to enter into supplementary**
16 **agreements.**

17 The Compact Administrator is hereby authorized and empowered to enter into
18 supplementary agreements with appropriate officials of other states pursuant to the
19 Compact. In the event that the supplementary agreement shall require or contemplate
20 the use of any institution or facility of this State or require or contemplate the
21 provision of any service by this State, the supplementary agreement shall have no
22 force or effect until approved by the head of the department or agency under whose
23 jurisdiction said institution or facility is operated or whose department or agency will
24 be charged with the rendering of the service.

25 **"§ 7B-2818. Discharging financial obligations imposed by Compact or agreement.**

26 The Compact Administrator, subject to the approval of the Director of the Budget,
27 may make or arrange for any payments necessary to discharge any financial
28 obligations imposed upon this State by the Compact or by any supplementary
29 agreement entered into thereunder.

30 **"§ 7B-2819. Enforcement of Compact.**

31 The courts, departments, agencies, and officers of this State and subdivisions shall
32 enforce this Compact and shall do all things appropriate to the effectuation of its
33 purposes and intent which may be within their respective jurisdictions.

34 **"§ 7B-2820. Additional procedure for returning runaways not precluded.**

35 In addition to any procedure provided in G.S. 7B-2804 and G.S. 7B-2806 of the
36 Compact for the return of any runaway juvenile, the particular states, the juvenile or
37 the juvenile's parents, the courts, or other legal custodian involved may agree upon
38 and adopt any other plan or procedure legally authorized under the laws of this State
39 and the other respective party states for the return of any runaway juvenile.

40 **"§ 7B-2821. Proceedings for return of runaways under G.S. 7B-2804 of Compact;**
41 **'juvenile' construed.**

42 The judge of any court in North Carolina to which an application is made for the
43 return of a runaway under the provisions of G.S. 7B-2804 of the Interstate Compact
44 on Juveniles shall hold a hearing thereon to determine whether for the purposes of

1 the Compact the petitioner is entitled to the legal custody of the juvenile, whether or
2 not it appears that the juvenile has in fact run away without consent, whether or not
3 the juvenile is an emancipated minor and whether or not it is in the best interests of
4 the juvenile to compel the return of the juvenile to the state. The judge of any court
5 in North Carolina, finding that a requisition for the return of a juvenile under the
6 provisions of G.S. 7B-2804 of the Compact is in order, shall upon request fix a
7 reasonable time to be allowed for the purpose of testing the legality of the
8 proceeding. The period of time for holding a juvenile in custody under the provisions
9 of G.S. 7B-2804 of the Compact for the protection and welfare of the juvenile, subject
10 to the order of a court of this State, to enable the juvenile's return to another state
11 party to the Compact pursuant to a requisition for return from a court of that state,
12 shall not exceed 30 days. In applying the provisions of G.S. 7B-2804 of the Compact
13 to secure the return of a runaway from North Carolina, the courts of this State shall
14 construe the word 'juvenile' as used in this Article to mean any person who has not
15 reached the person's eighteenth birthday.

16 **"§ 7B-2822. Interstate parole and probation hearing procedures for juveniles.**

17 Where supervision of a parolee or probationer is being administered pursuant to
18 the Interstate Compact on Juveniles, the appropriate judicial or administrative
19 authorities in this State shall notify the Compact Administrator of the sending state
20 whenever, in their view, consideration should be given to retaking or reincarceration
21 for a parole or a probation violation. Prior to giving of notification, a hearing shall be
22 held in accordance with this Article within a reasonable time, unless the hearing is
23 waived by the parolee or probationer. The appropriate officer or officers of this State
24 shall, as soon as practicable, following termination of any hearing, report to the
25 sending state, furnish a copy of the hearing record, and make recommendations
26 regarding the disposition to be made of the parolee or probationer by the sending
27 state. Pending any proceeding pursuant to this section, the appropriate officers of this
28 State may take custody of and detain the parolee or probationer involved for a period
29 not to exceed 10 days prior to the hearing and, if it appears to the hearing officer or
30 officers that retaking or reincarceration is likely to follow, for a reasonable period
31 after the hearing or waiver as may be necessary to arrange for retaking or the
32 reincarceration.

33 **"§ 7B-2823. Hearing officers.**

34 Any hearing pursuant to this Article may be before the Administrator of the
35 Interstate Compact on Juveniles, a deputy of the Administrator, or any other person
36 authorized pursuant to the juvenile laws of this State to hear cases of alleged juvenile
37 parole or probation violations, except that no hearing officer shall be the person
38 making the allegation of violation.

39 **"§ 7B-2824. Due process at parole or probation violation hearing.**

40 With respect to any hearing pursuant to this Article, the parolee or probationer:

- 41 (1) Shall have reasonable notice in writing of the nature and content
42 of the allegations to be made, including notice that the purpose of
43 the hearing is to determine whether there is probable cause to

- 1 believe that the parolee or probationer has committed a violation
2 that may lead to a revocation of parole or probation;
3 (2) Shall be permitted to advise with any persons whose assistance the
4 parolee or probationer reasonably desires, prior to the hearing;
5 (3) Shall have the right to confront and examine any persons who
6 have made allegations against the parolee or probationer, unless
7 the hearing officer determines that confrontation would present a
8 substantial present or subsequent danger of harm to the person or
9 persons; and
10 (4) May admit, deny, or explain the violation alleged and may present
11 proof, including affidavits and other evidence, in support of the
12 parolee's or probationer's contentions.

13 A record of the proceedings shall be made and preserved.

14 **"§ 7B-2825. Effect of parole or probation violation hearing outside State.**

15 In any case of alleged parole or probation violation by a person being supervised
16 in another state pursuant to the Interstate Compact on Juveniles, any appropriate
17 judicial or administrative officer or agency in another state is authorized to hold a
18 hearing on the alleged violation. Upon receipt of the record of a parole or probation
19 violation hearing held in another state pursuant to a statute substantially similar to
20 this Article, such record shall have the same standing and effect as though the
21 proceeding of which it is a record was had before the appropriate officer or officers
22 in this State, and any recommendations contained in or accompanying the record
23 shall be fully considered by the appropriate officer or officers of this State in making
24 disposition of the matter.

25 **"§ 7B-2826. Amendment to Interstate Compact on Juveniles concerning interstate**
26 **rendition of juveniles alleged to be delinquent.**

27 (a) This amendment shall provide additional remedies and shall be binding only as
28 among and between those party states which specifically execute the same.

29 (b) All provisions and procedures of G.S. 7B-2805 and G.S. 7B-2806 of the
30 Interstate Compact on Juveniles shall be construed to apply to any juvenile charged
31 with being a delinquent by reason of a violation of any criminal law. Any juvenile,
32 charged with being a delinquent by reason of violating any criminal law, shall be
33 returned to the requesting state upon a requisition to the state where the juvenile may
34 be found. A petition in the case shall be filed in a court of competent jurisdiction in
35 the requesting state where the violation of criminal law is alleged to have been
36 committed. The petition may be filed regardless of whether the juvenile has left the
37 state before or after the filing of the petition. The requisition described in G.S. 7B-
38 2805 of the Compact shall be forwarded by the judge of the court in which the
39 petition has been filed.

40 **"§ 7B-2827. Out-of-State Confinement Amendment.**

41 (a) The Out-of-State Confinement Amendment to the Interstate Compact on
42 Juveniles is hereby enacted into law and entered into by this State with all other
43 states legally joining therein in the form substantially as follows:

- 1 (1) Whenever the fully constituted judicial or administrative
2 authorities in a sending state shall determine that confinement of a
3 probationer or reconfinement of a parolee is necessary or
4 desirable, the officials may direct that the confinement or
5 reconfinement be in an appropriate institution for delinquent
6 juveniles within the territory of the receiving state, the receiving
7 state to act in that regard solely as agent for the sending state.
- 8 (2) Escapees and absconders who would otherwise be returned
9 pursuant to G.S. 7B-2805 of the Compact may be confined or
10 reconfined in the receiving state pursuant to this amendment. In
11 any case in which the information and allegations are required to
12 be made and furnished in a requisition pursuant to G.S. 7B-2805,
13 the sending state shall request confinement or reconfinement in the
14 receiving state. Whenever applicable, detention orders, as provided
15 in G.S. 7B-2805, may be employed pursuant to this paragraph
16 preliminary to disposition of the escapee or absconder.
- 17 (3) The confinement or reconfinement of a parolee, probationer,
18 escapee, or absconder pursuant to this amendment shall require
19 the concurrence of the appropriate judicial or administrative
20 authorities of the receiving state.
- 21 (4) As used in this amendment: (i) 'sending state' means a sending
22 state as that term is used in G.S. 7B-2807 of the Compact or the
23 state from which a delinquent juvenile has escaped or absconded
24 within the meaning of G.S. 7B-2805 of the Compact; (ii) 'receiving
25 state' means any state, other than the sending state, in which a
26 parolee, probationer, escapee, or absconder may be found,
27 provided that the state is a party to this amendment.
- 28 (5) Every state which adopts this amendment shall designate at least
29 one of its institutions for delinquent juveniles as a 'Compact
30 Institution' and shall confine persons therein as provided in
31 subdivision (1) of this subsection unless the sending and receiving
32 state in question shall make specific contractual arrangements to
33 the contrary. All states party to this amendment shall have access
34 to 'Compact Institutions' at all reasonable hours for the purpose of
35 inspecting the facilities thereof and for the purpose of visiting such
36 of the State's delinquents as may be confined in the institution.
- 37 (6) Persons confined in 'Compact Institutions' pursuant to the terms of
38 this Compact shall at all times be subject to the jurisdiction of the
39 sending state and may at any time be removed from the 'Compact
40 Institution' for transfer to an appropriate institution within the
41 sending state, for return to probation or parole, for discharge, or
42 for any purpose permitted by the laws of the sending state.
- 43 (7) All persons who may be confined in a 'Compact Institution'
44 pursuant to the provisions of this amendment shall be treated in a

1 reasonable and humane manner. The fact of confinement or
2 reconfinement in a receiving state shall not deprive any person so
3 confined or reconfinement of any rights which the person would have
4 had if confined or reconfinement in an appropriate institution of the
5 sending state. No agreement to submit to confinement or
6 reconfinement pursuant to the terms of this amendment may be
7 construed as a waiver of any rights which the delinquent would
8 have had if the person had been confined or reconfinement in any
9 appropriate institution of the sending state, except that the hearing
10 or hearings, if any, to which a parolee, probationer, escapee, or
11 absconder may be entitled (prior to confinement or reconfinement)
12 by the laws of the sending state may be had before the appropriate
13 judicial or administrative officers of the receiving state. In this
14 event, said judicial and administrative officers shall act as agents of
15 the sending state after consultation with appropriate officers of the
16 sending state.

17 (8) Any receiving state incurring costs or other expenses under this
18 amendment shall be reimbursed in the amount of the costs or other
19 expenses by the sending state unless the states concerned shall
20 specifically otherwise agree. Any two or more states party to this
21 amendment may enter into supplementary agreements determining
22 a different allocation of costs as among themselves.

23 (9) This amendment shall take initial effect when entered into by any
24 two or more states party to the Compact and shall be effective as
25 to those states which have specifically enacted this amendment.
26 Rules and regulations necessary to effectuate the terms of this
27 amendment may be adopted by the appropriate officers of those
28 states which have enacted this amendment.

29 (b) In addition to any institution in which the authorities of this State may
30 otherwise confine or order the confinement of a delinquent juvenile, the authorities
31 may, pursuant to the Out-of-State Confinement Amendment to the Interstate
32 Compact on Juveniles, confine or order the confinement of a delinquent juvenile in a
33 Compact Institution within another party state.

34 "SUBCHAPTER III. JUVENILE RECORDS.

35 "ARTICLE 29.

36 "Records and Social Reports of Cases of Abuse,
37 Neglect, and Dependency.

38 "§ 7B-2900. Definitions.

39 The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this Subchapter.

40 "§ 7B-2901. Confidentiality of records.

41 (a) The clerk shall maintain a complete record of all juvenile cases filed in the
42 clerk's office alleging abuse, neglect, or dependency. The records shall be withheld
43 from public inspection and, except as provided in this subsection, may be examined
44 only by order of the court. The record shall include the summons, petition, custody

1 order, court order, written motions, the electronic or mechanical recording of the
2 hearing, and other papers filed in the proceeding. The recording of the hearing shall
3 be reduced to a written transcript only when notice of appeal has been timely given.
4 After the time for appeal has expired with no appeal having been filed, the recording
5 of the hearing may be erased or destroyed upon the written order of the court.

6 (b) The Director of the Department of Social Services shall maintain a record of
7 the cases of juveniles under protective custody by the Department or under
8 placement by the court, which shall include family background information; reports
9 of social, medical, psychiatric, or psychological information concerning a juvenile or
10 the juvenile's family; interviews with the juvenile's family; or other information which
11 the court finds should be protected from public inspection in the best interests of the
12 juvenile. The records maintained pursuant to this subsection may be examined only
13 by order of the court except that the guardian ad litem, or juvenile, shall have the
14 right to examine them.

15 (c) In the case of a child victim, the court may order the sharing of information
16 among such public agencies as the court deems necessary to reduce the trauma to the
17 child victim.

18 (d) The court's entire record of a proceeding involving consent for an abortion on
19 an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General
20 Statutes is not a matter of public record, shall be maintained separately from any
21 juvenile record, shall be withheld from public inspection, and may be examined only
22 by order of the court, by the unemancipated minor, or by the unemancipated minor's
23 attorney or guardian ad litem.

24 **"§ 7B-2902. Disclosure in child fatality or near fatality cases.**

25 (a) The following definitions apply in this section:

26 (1) Child fatality. -- The death of a child from suspected abuse,
27 neglect, or maltreatment.

28 (2) Findings and information. -- A written summary, as allowed by
29 subsections (c) through (f) of this section, of actions taken or
30 services rendered by a public agency following receipt of
31 information that a child might be in need of protection. The
32 written summary shall include any of the following information the
33 agency is able to provide:

34 a. The dates, outcomes, and results of any actions taken or
35 services rendered.

36 b. The results of any review by the State Child Fatality
37 Prevention Team, a local child fatality prevention team, a
38 local community child protection team, the Child Fatality
39 Task Force, or any public agency.

40 c. Confirmation of the receipt of all reports, accepted or not
41 accepted by the county department of social services, for
42 investigation of suspected child abuse, neglect, or
43 maltreatment, including confirmation that investigations
44 were conducted, the results of the investigations, a

- 1 description of the conduct of the most recent investigation
2 and the services rendered, and a statement of basis for the
3 department's decision.
- 4 (3) Near fatality. -- A case in which a physician determines that a child
5 is in serious or critical condition as the result of sickness or injury
6 caused by suspected abuse, neglect, or maltreatment.
- 7 (4) Public agency. -- Any agency of State government or its
8 subdivisions as defined in G.S. 132-1(a).
- 9 (b) Notwithstanding any other provision of law and subject to the provisions of
10 subsections (c) through (f) of this section, a public agency shall disclose to the public,
11 upon request, the findings and information related to a child fatality or near fatality
12 if:
- 13 (1) A person is criminally charged with having caused the child
14 fatality or near fatality; or
- 15 (2) The district attorney has certified that a person would be charged
16 with having caused the child fatality or near fatality but for that
17 person's prior death.
- 18 (c) Nothing herein shall be deemed to authorize access to the confidential records
19 in the custody of a public agency, or the disclosure to the public of the substance or
20 content of any psychiatric, psychological, or therapeutic evaluations or like materials
21 or information pertaining to the child or the child's family unless directly related to
22 the cause of the child fatality or near fatality, or the disclosure of information that
23 would reveal the identities of persons who provided information related to the
24 suspected abuse, neglect, or maltreatment of the child.
- 25 (d) Within five working days from the receipt of a request for findings and
26 information related to a child fatality or near fatality, a public agency shall consult
27 with the appropriate district attorney and provide the findings and information unless
28 the agency has a reasonable belief that release of the information:
- 29 (1) Is not authorized by subsections (a) and (b) of this section;
30 (2) Is likely to cause mental or physical harm or danger to a minor
31 child residing in the deceased or injured child's household;
32 (3) Is likely to jeopardize the State's ability to prosecute the defendant;
33 (4) Is likely to jeopardize the defendant's right to a fair trial;
34 (5) Is likely to undermine an ongoing or future criminal investigation;
35 or
36 (6) Is not authorized by federal law and regulations.
- 37 (e) Any person whose request is denied may apply to the appropriate superior
38 court for an order compelling disclosure of the findings and information of the public
39 agency. The application shall set forth, with reasonable particularity, factors
40 supporting the application. The superior court shall have jurisdiction to issue such
41 orders. Actions brought pursuant to this section shall be set down for immediate
42 hearing, and subsequent proceedings in such actions shall be accorded priority by the
43 appellate courts. After the court has reviewed the specific findings and information,

1 in camera, the court shall issue an order compelling disclosure unless the court finds
2 that one or more of the circumstances in subsection (d) of this section exist.

3 (f) Access to criminal investigative reports and criminal intelligence information
4 of public law enforcement agencies and confidential information in the possession of
5 the State Child Fatality Prevention Team, the local teams, and the Child Fatality
6 Task Force, shall be governed by G.S. 132-1.4 and G.S. 7B-1413 respectively.
7 Nothing herein shall be deemed to require the disclosure or release of any
8 information in the possession of a district attorney.

9 (g) Any public agency or its employees acting in good faith in disclosing or
10 declining to disclose information pursuant to this section shall be immune from any
11 criminal or civil liability that might otherwise be incurred or imposed for such action.

12 (h) Nothing herein shall be deemed to narrow or limit the definition of 'public
13 records' as set forth in G.S. 132-1(a).

14 "ARTICLE 30.

15 "Juvenile Records and Social Reports of
16 Delinquency and Undisciplined Cases.

17 "§ 7B-3000. Juvenile court records.

18 (a) The clerk shall maintain a complete record of all juvenile cases filed in the
19 clerk's office to be known as the juvenile record. The record shall include the
20 summons and petition, any secure or nonsecure custody order, any electronic or
21 mechanical recording of hearings, and any written motions, orders, or papers filed in
22 the proceeding.

23 (b) All juvenile records shall be withheld from public inspection and, except as
24 provided in this subsection, may be examined only by order of the court. Except as
25 provided in subsection (c) of this section, the following persons may examine the
26 juvenile's record and obtain copies of written parts of the record without an order of
27 the court:

28 (1) The juvenile and the juvenile's attorney;

29 (2) The juvenile's parent, guardian, or custodian, or authorized
30 representative;

31 (3) The prosecutor; and

32 (4) Court counselors.

33 Except as provided in subsection (c) of this section, law enforcement officers sworn in
34 this State may examine, but not photocopy, the juvenile's record without an order of
35 the court.

36 (c) The court may direct the clerk to 'seal' any portion of a juvenile's record.
37 The clerk shall secure any sealed portion of a juvenile record in an envelope clearly
38 marked 'SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT',
39 or with similar notice, and shall permit examination or copying of sealed portions of
40 a juvenile's record only pursuant to a court order specifically authorizing inspection
41 or copying.

42 (d) Any portion of a juvenile's record consisting of an electronic or mechanical
43 recording of a hearing shall be transcribed only when notice of appeal has been
44 timely given and shall be copied electronically or mechanically, only by order of the

1 court. After the time for appeal has expired with no appeal having been filed, the
2 court may enter a written order directing the clerk to destroy the recording of the
3 hearing.

4 (e) The juvenile's record of an adjudication of delinquency for an offense that
5 would be a felony if committed by an adult may be used by law enforcement, the
6 magistrate, and the prosecutor for pretrial release and plea negotiating decisions.

7 (f) The juvenile's record of an adjudication of delinquency for an offense that
8 would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used
9 in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule
10 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a),
11 G.S. 15A-1340.16(d), or G.S. 15A-2000(e). The record may be so used only by order
12 of the court in the subsequent criminal proceeding, upon motion of the prosecutor,
13 after an in camera hearing to determine whether the record in question is admissible.

14 (g) Except as provided in subsection (d) of this section, a juvenile's record shall
15 be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the
16 Department of Juvenile Justice.

17 **"§ 7B-3001. Other records relating to juveniles.**

18 (a) The chief court counselor shall maintain a record of all cases of juveniles under
19 supervision of court counselors, to be known as the court counselor's record. The
20 court counselor's record shall include family background information; reports of
21 social, medical, psychiatric, or psychological information concerning a juvenile or the
22 juvenile's family; probation reports; interviews with the juvenile's family; or other
23 information the court finds should be protected from public inspection in the best
24 interests of the juvenile.

25 (b) Unless jurisdiction of the juvenile has been transferred to superior court, all
26 law enforcement records and files concerning a juvenile shall be kept separate from
27 the records and files of adults and shall be withheld from public inspection. The
28 following persons may examine and obtain copies of law enforcement records and
29 files concerning a juvenile without an order of the court:

- 30 (1) The juvenile and the juvenile's attorney;
31 (2) The juvenile's parent, guardian, custodian, or authorized
32 representative;
33 (3) The district attorney or prosecutor;
34 (4) Court counselors; and
35 (5) Law enforcement officers sworn in this State.

36 Otherwise, the records and files may be examined or copied only by order of the
37 court.

38 (c) All records and files maintained by the Department pursuant to this Chapter
39 shall be withheld from public inspection. The following persons may examine and
40 obtain copies of the Department records and files concerning a juvenile without an
41 order of the court:

- 42 (1) The juvenile and the juvenile's attorney;
43 (2) The juvenile's parent, guardian, custodian, or authorized
44 representative;

1 subsequently been adjudicated delinquent or convicted as an adult
2 of any felony or misdemeanor other than a traffic violation under
3 the laws of the United States, or the laws of this State or any other
4 state;

5 (2) Verified affidavits of two persons, who are not related to the
6 petitioner or to each other by blood or marriage, that they know
7 the character and reputation of the petitioner in the community in
8 which the petitioner lives and that the petitioner's character and
9 reputation are good;

10 (3) A statement that the petition is a motion in the cause in the case
11 wherein the petitioner was adjudicated delinquent or
12 undisciplined.

13 The petition shall be served upon the district attorney in the district wherein
14 adjudication occurred. The district attorney shall have 10 days thereafter in which to
15 file any objection thereto and shall be duly notified as to the date of the hearing on
16 the petition.

17 (d) If the court, after hearing, finds that the petitioner satisfies the conditions set
18 out in subsections (a) or (b) of this section, the petitioner shall order and direct the
19 clerk and all law enforcement agencies to expunge their records of the adjudication
20 including all references to arrests, complaints, referrals, petitions, and orders.

21 (e) The clerk shall forward a certified copy of the order to the sheriff, chief of
22 police, or other law enforcement agency.

23 (f) Records of a juvenile adjudicated delinquent or undisciplined being
24 maintained by the chief court counselor, an intake counselor or a court counselor
25 shall be retained or disposed of as provided by the Department.

26 (g) Records of a juvenile adjudicated delinquent or undisciplined being
27 maintained by personnel at a residential facility operated by the Department, shall be
28 retained or disposed of as provided by the Department.

29 (h) Any person who was alleged to be delinquent as a juvenile and has attained
30 the age of 16 years, or was alleged to be undisciplined as a juvenile and has attained
31 the age of 18 years, may file a petition in the court in which the person was alleged
32 to be delinquent or undisciplined, for expunction of all juvenile records of the
33 juvenile having been alleged to be delinquent or undisciplined if the court dismissed
34 the juvenile petition without an adjudication that the juvenile was delinquent or
35 undisciplined. The petition shall be served on the chief court counselor in the district
36 where the juvenile petition was filed. The chief court counselor shall have 10 days
37 thereafter in which to file a written objection in the court. If no objection is filed, the
38 court may grant the petition without a hearing. If an objection is filed or the court so
39 directs, a hearing shall be scheduled and the chief court counselor shall be notified as
40 to the date of the hearing. If the court finds at the hearing that the petitioner satisfies
41 the conditions specified herein, the court shall order the clerk and the appropriate
42 law enforcement agencies to expunge their records of the allegations of delinquent or
43 undisciplined acts including all references to arrests, complaints, referrals, juvenile
44 petitions, and orders. The clerk shall forward a certified copy of the order of

1 expunction to the sheriff, chief of police, or other appropriate law enforcement
2 agency, and to the chief court counselor, and these specified officials shall
3 immediately destroy all records relating to the allegations that the juvenile was
4 delinquent or undisciplined.

5 **"§ 7B-3201. Effect of expunction.**

6 (a) Whenever a juvenile's record is expunged, with respect to the matter in which
7 the record was expunged, the juvenile who is the subject of the record and the
8 juvenile's parent may inform any person or organization including employers, banks,
9 credit companies, insurance companies, and schools that the juvenile was not
10 arrested, did not appear before the court, and was not adjudicated delinquent or
11 undisciplined.

12 (b) Notwithstanding subsection (a) of this section, in any delinquency case if the
13 juvenile is the defendant and chooses to testify or if the juvenile is not the defendant
14 and is called as a witness, the juvenile may be ordered to testify with respect to
15 whether the juvenile was adjudicated delinquent.

16 **"§ 7B-3202. Notice of expunction.**

17 Upon expunction of a juvenile's record, the clerk shall send a written notice to the
18 juvenile at the juvenile's last known address informing the juvenile that the record
19 has been expunged and with respect to the matter involved, the juvenile may inform
20 any person that the juvenile has no record. The notice shall inform the juvenile
21 further that if the matter involved is a delinquency record, the juvenile may inform
22 any person that the juvenile was not arrested or adjudicated delinquent except that
23 upon testifying in a delinquency proceeding, the juvenile may be required by a court
24 to disclose that the juvenile was adjudicated delinquent.

25 **"ARTICLE 33.**

26 **"Computation of Recidivism Rates.**

27 **"§ 7B-3300. Juvenile recidivism rates.**

28 (a) On an annual basis, the Department of Juvenile Justice shall compute the
29 recidivism rate of juveniles who are adjudicated delinquent for offenses that would be
30 Class A, B1, B2, C, D, or E felonies if committed by adults and who subsequently are
31 adjudicated delinquent or convicted and shall report the statistics to the Joint
32 Legislative Commission on Governmental Operations by December 31 each year.

33 (b) The chief court counselor of each judicial district shall forward to the
34 Department relevant information, as determined by the Department, regarding every
35 juvenile who is adjudicated delinquent for an offense that would be a Class A, B1,
36 B2, C, D, or E felony if committed by an adult for the purpose of computing the
37 statistics required by this section.

38 **"SUBCHAPTER IV. PARENTAL AUTHORITY; EMANCIPATION.**

39 **"ARTICLE 34.**

40 **"Parental Authority Over Juveniles.**

41 **"§ 7B-3400. Juvenile under 18 subject to parents' control.**

42 Notwithstanding any other provision of law, any juvenile under 18 years of age,
43 except as provided in G.S. 7B-3401 and G.S. 7B-3402, shall be subject to the
44 supervision and control of the juvenile's parents.

1 "§ 7B-3400.1. Definitions.

2 The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this Subchapter.

3 "§ 7B-3401. Exceptions.

4 This Article shall not apply to any juvenile under the age of 18 who is married or
5 who is serving in the armed forces of the United States, or who has been
6 emancipated.

7 "§ 7B-3402. No criminal liability created.

8 This Article shall not be interpreted to place any criminal liability on a parent for
9 any act of the parent's juvenile 16 years of age or older.

10 "§ 7B-3403. Enforcement.

11 The provisions of this Article may be enforced by the parent, guardian, or person
12 standing in loco parentis to the child by filing a civil action in the district court of the
13 county where the child can be found or the county of the plaintiff's residence. Upon
14 the institution of such action by a verified complaint, alleging that the defendant
15 juvenile has left home or has left the place where the juvenile has been residing and
16 refuses to return and comply with the direction and control of the plaintiff, the court
17 may issue an order directing the juvenile personally to appear before the court at a
18 specified time to be heard in answer to the allegations of the plaintiff and to comply
19 with further orders of the court. Such orders shall be served by the sheriff upon the
20 juvenile and upon any other person named as a party defendant in such action. At
21 the time of the issuance of the order directing the juvenile to appear, the court may
22 in the same order, or by separate order, order the sheriff to enter any house, building,
23 structure or conveyance for the purpose of searching for the juvenile and serving the
24 order and for the purpose of taking custody of the person of the juvenile in order to
25 bring the juvenile before the court. Any order issued at said hearing shall be treated
26 as a mandatory injunction and shall remain in full force and effect until the juvenile
27 reaches the age of 18, or until further orders of the court. Within 30 days after the
28 hearing on the original order, the juvenile, or anyone acting in the juvenile's behalf,
29 may file a verified answer to the complaint. Upon the filing of an answer by or on
30 behalf of the juvenile, any district court judge holding court in the county or district
31 court district as defined in G.S. 7A-133 where the action was instituted shall have
32 jurisdiction to hear the matter, without a jury, and to make findings of fact,
33 conclusions of law, and render judgment thereon. Appeals from the district court to
34 the Court of Appeals shall be allowed as in civil actions generally. The district court
35 issuing the original order or the district court hearing the matter after answer has
36 been filed shall also have authority to order that any person named defendant in the
37 order or judgment shall not harbor, keep, or allow the defendant juvenile to remain
38 on the person's premises or in the person's home. Failure of any defendant to
39 comply with the terms of said order or judgment shall be punishable as for contempt.

40 "ARTICLE 35.

41 "Emancipation.

42 "§ 7B-3500. Who may petition.

43 Any juvenile who is 16 years of age or older and who has resided in the same
44 county in North Carolina or on federal territory within the boundaries of North

1 Carolina for six months next preceding the filing of the petition may petition the
2 court in that county for a judicial decree of emancipation.

3 **"§ 7B-3501. Petition.**

4 The petition shall be signed and verified by the petitioner and shall contain the
5 following information:

- 6 (1) The full name of the petitioner and the petitioner's birth date, and
7 state and county of birth;
8 (2) A certified copy of the petitioner's birth certificate;
9 (3) The name and last known address of the parent, guardian, or
10 custodian;
11 (4) The petitioner's address and length of residence at that address;
12 (5) The petitioner's reasons for requesting emancipation; and
13 (6) The petitioner's plan for meeting the petitioner's needs and living
14 expenses which plan may include a statement of employment and
15 wages earned that is verified by the petitioner's employer.

16 **"§ 7B-3502. Summons.**

17 A copy of the filed petition along with a summons shall be served upon the
18 petitioner's parent, guardian, or custodian who shall be named as respondents. The
19 summons shall include the time and place of the hearing and shall notify the
20 respondents to file written answer within 30 days after service of the summons and
21 petition. In the event that personal service cannot be obtained, service shall be in
22 accordance with G.S. 1A-1, Rule 4(j).

23 **"§ 7B-3503. Hearing.**

24 The court, sitting without a jury, shall permit all parties to present evidence and to
25 cross-examine witnesses. The petitioner has the burden of showing by a
26 preponderance of the evidence that emancipation is in the petitioner's best interests.
27 Upon finding that reasonable cause exists, the court may order the juvenile to be
28 examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other
29 expert to evaluate the juvenile's mental or physical condition. The court may
30 continue the hearing and order investigation by a court counselor or by the county
31 department of social services to substantiate allegations of the petitioner or
32 respondents.

33 No husband-wife or physician-patient privilege shall be grounds for excluding any
34 evidence in the hearing.

35 **"§ 7B-3504. Considerations for emancipation.**

36 In determining the best interests of the petitioner and the need for emancipation,
37 the court shall review the following considerations:

- 38 (1) The parental need for the earnings of the petitioner;
39 (2) The petitioner's ability to function as an adult;
40 (3) The petitioner's need to contract as an adult or to marry;
41 (4) The employment status of the petitioner and the stability of the
42 petitioner's living arrangements;
43 (5) The extent of family discord which may threaten reconciliation of
44 the petitioner with the petitioner's family;

1 (6) The petitioner's rejection of parental supervision or support; and

2 (7) The quality of parental supervision or support.

3 **"§ 7B-3505. Final decree of emancipation.**

4 After reviewing the considerations for emancipation, the court may enter a decree
5 of emancipation if the court determines:

6 (1) That all parties are properly before the court or were duly served
7 and failed to appear and that time for filing an answer has expired;
8 and

9 (2) That the petitioner has shown a proper and lawful plan for
10 adequately providing for the petitioner's needs and living expenses;
11 and

12 (3) That the petitioner is knowingly seeking emancipation and fully
13 understands the ramifications of the act; and

14 (4) That emancipation is in the best interests of the petitioner.

15 The decree shall set out the court's findings.

16 If the court determines that the criteria in subdivisions (1) through (4) are not met,
17 the court shall order the proceeding dismissed.

18 **"§ 7B-3506. Costs of court.**

19 The court may tax the costs of the proceeding to any party or may, for good cause,
20 order the costs remitted.

21 The clerk may collect costs for furnishing to the petitioner a certificate of
22 emancipation which shall recite the name of the petitioner and the fact of the
23 petitioner's emancipation by court decree and shall have the seal of the clerk affixed
24 thereon.

25 **"§ 7B-3507. Legal effect of final decree.**

26 As of entry of the final decree of emancipation:

27 (1) The petitioner has the same right to make contracts and
28 conveyances, to sue and to be sued, and to transact business as if
29 the petitioner were an adult.

30 (2) The parent or guardian is relieved of all legal duties and
31 obligations owed to the petitioner and is divested of all rights with
32 respect to the petitioner.

33 (3) The decree is irrevocable.

34 Notwithstanding any other provision of this section, a decree of emancipation shall
35 not alter the application of G.S. 14-326.1 or the petitioner's right to inherit property
36 by intestate succession.

37 **"§ 7B-3508. Appeals.**

38 Any petitioner, parent, or guardian who is a party to a proceeding under this
39 Article may appeal from any order of disposition to the Court of Appeals provided
40 that notice of appeal is given in open court at the time of the hearing or in writing
41 within 10 days after the hearing. Pending disposition of an appeal, the court may
42 enter a temporary order affecting the custody or placement of the petitioner as the
43 court finds to be in the best interests of the petitioner or the State.

44 **"§ 7B-3509. Application of common law.**

1 A married juvenile is emancipated by this Article. All other common-law
2 provisions for emancipation are superseded by this Article.

3 "ARTICLE 36.

4 "Judicial Consent for Emergency Surgical or Medical Treatment.

5 "§ 7B-3600. Judicial authorization of emergency treatment; procedure.

6 A juvenile in need of emergency treatment under Article 1A of Chapter 90 of the
7 General Statutes, whose physician is barred from rendering necessary treatment by
8 reason of parental refusal to consent to treatment, may receive treatment with court
9 authorization under the following procedure:

10 (1) The physician shall sign a written statement setting out:

- 11 a. The treatment to be rendered and the emergency need for
12 treatment;
13 b. The refusal of the parent, guardian, or person standing in
14 loco parentis to consent to the treatment; and
15 c. The impossibility of contacting a second physician for a
16 concurring opinion on the need for treatment in time to
17 prevent immediate harm to the juvenile.

18 (2) Upon examining the physician's written statement prescribed in
19 subdivision (1) of this section and finding:

- 20 a. That the statement is in accordance with this Article, and
21 b. That the proposed treatment is necessary to prevent
22 immediate harm to the juvenile.

23 The court may issue a written authorization for the proposed
24 treatment to be rendered.

25 (3) In acute emergencies in which time may not permit
26 implementation of the written procedure set out in subdivisions (1)
27 and (2) of this section, the court may authorize treatment in person
28 or by telephone upon receiving the oral statement of a physician
29 satisfying the requirements of subdivision (1) of this section and
30 upon finding that the proposed treatment is necessary to prevent
31 immediate harm to the juvenile.

32 (4) The court's authorization for treatment overriding parental refusal
33 to consent should not be given without attempting to offer the
34 parent an opportunity to state the reasons for refusal; however,
35 failure of the court to hear the parent's objections shall not
36 invalidate judicial authorization under this Article.

37 (5) The court's authorization for treatment under subdivisions (1) and
38 (2) of this section shall be issued in duplicate. One copy shall be
39 given to the treating physician and the other copy shall be attached
40 to the physician's written statement and filed as a juvenile
41 proceeding in the office of the clerk of court.

42 (6) The court's authorization for treatment under subdivision (3) of
43 this section shall be reduced to writing as soon as possible,
44 supported by the physician's written statement as prescribed in

1 subdivision (1) of this section and shall be filed as prescribed in
2 subdivision (5) of this section.

3 The court's authorization for treatment under this Article shall have the same effect
4 as parental consent for treatment.

5 Following the court's authorization for treatment and after giving notice to the
6 juvenile's parent, the court shall conduct a hearing in order to provide for payment
7 for the treatment rendered. The court may order the parent or other responsible
8 parties to pay the cost of treatment. If the court finds the parent is unable to pay the
9 cost of treatment, the cost shall be a charge upon the county when so ordered.

10 This Article shall operate as a remedy in addition to the provisions in G.S. 7B-903,
11 7B-2501, and 7B-2504.

12 "SUBCHAPTER V. PLACEMENT OF JUVENILES.

13 "ARTICLE 37.

14 "Placing or Adoption of Juvenile Delinquents or Dependents.

15 "§ 7B-3700. Consent required for bringing child into State for placement or adoption.

16 (a) No person, agency, association, institution, or corporation shall bring or send
17 into the State any child for the purpose of giving custody of the child to some person
18 in the State or procuring adoption by some person in the State without first obtaining
19 the written consent of the Department of Health and Human Services.

20 (b) The person with whom a child is placed for either of the purposes set out in
21 subsection (a) of this section shall be responsible for the child's proper care and
22 training. The Department of Health and Human Services or its agents shall have the
23 same right of visitation and supervision of the child and the home in which it is
24 placed as in the case of a child placed by the Department or its agents as long as the
25 child shall remain within the State and until the child shall have reached the age of
26 18 years or shall have been legally adopted.

27 "§ 7B-3701. Bond required.

28 The Social Services Commission may, in its discretion, require of a person, agency,
29 association, institution, or corporation which brings or sends a child into the State
30 with the written consent of the Department of Health and Human Services, as
31 provided by G.S. 7B-3700, a continuing bond in a penal sum not in excess of one
32 thousand dollars (\$1,000) with such conditions as may be prescribed and such sureties
33 as may be approved by the Department of Health and Human Services. Said bond
34 shall be made in favor of and filed with the Department of Health and Human
35 Services with the premium prepaid by the said person, agency, association, institution
36 or corporation desiring to place such child in the State.

37 "§ 7B-3702. Consent required for removing child from State.

38 No child shall be taken or sent out of the State for the purpose of placing the child
39 in a foster home or in a child-caring institution without first obtaining the written
40 consent of the Department of Health and Human Services. The foster home or child-
41 caring institution in which the child is placed shall report to the Department of
42 Health and Human Services at such times as the Department of Health and Human
43 Services may direct as to the location and well-being of such child until the child
44 shall have reached the age of 18 years or shall have been legally adopted.

1 "§ 7B-3703. Violation of Article a misdemeanor.

2 Every person acting for himself or for an agency who violates any of the provisions
3 of this Article or who shall intentionally make any false statements to the Social
4 Services Commission or the Secretary or an employee thereof acting for the
5 Department of Health and Human Services in an official capacity in the placing or
6 adoption of juvenile delinquents or dependents shall, upon conviction thereof, be
7 guilty of a Class 2 misdemeanor.

8 "§ 7B-3704. Definitions.

9 The term 'Department' wherever used in this Article shall be construed to mean
10 the Department of Health and Human Services.

11 "§ 7B-3705. Application of Article.

12 None of the provisions of this Article shall apply when a child is brought into or
13 sent into, or taken out of, or sent out of the State, by the guardian of the person of
14 such child, or by a parent, stepparent, grandparent, uncle or aunt of such child, or by
15 a brother, sister, half brother, or half sister of such child, if such brother, sister, half
16 brother, or half sister is 18 years of age or older.

17 "ARTICLE 38.

18 "Interstate Compact on the Placement of Children.

19 "§ 7B-3800. Adoption of Compact.

20 The Interstate Compact on the Placement of Children is hereby enacted into law
21 and entered into with all other jurisdictions legally joining therein in a form
22 substantially as contained in this Article. It is the intent of the General Assembly that
23 Article 4 of this Chapter shall govern interstate placements of children between
24 North Carolina and any other jurisdictions not a party to this Compact. It is the
25 intent of the General Assembly that Chapter 48 of the General Statutes shall govern
26 the adoption of children within the boundaries of North Carolina.

27 Article I. Purpose and Policy.

28 It is the purpose and policy of the party states to cooperate with each other in the
29 interstate placement of children to the end that:

30 (a) Each child requiring placement shall receive the maximum opportunity to be
31 placed in a suitable environment and with persons or institutions having appropriate
32 qualifications and facilities to provide a necessary and desirable degree and type of
33 care.

34 (b) The appropriate authorities in a state where a child is to be placed may have
35 full opportunity to ascertain the circumstances of the proposed placement, thereby
36 promoting full compliance with applicable requirements for the protection of the
37 child.

38 (c) The proper authorities of the state from which the placement is made may
39 obtain the most complete information on the basis of which to evaluate a projected
40 placement before it is made.

41 (d) Appropriate jurisdictional arrangements for the care of children will be
42 promoted.

43 Article II. Definitions.

44 As used in this Compact:

1 the support and maintenance of a child who has been placed on behalf of the sending
2 agency without relieving the responsibility set forth in paragraph (a) hereof.

3 Article VI. Institutional Care of Delinquent Children.

4 A child adjudicated delinquent may be placed in an institution in another party
5 jurisdiction pursuant to this Compact but no such placement shall be made unless the
6 child is given a court hearing on notice to the parent or guardian with opportunity to
7 be heard, prior to the child's being sent to such other party jurisdiction for
8 institutional care and the court finds that:

9 (1) Equivalent facilities for the child are not available in the sending
10 agency's jurisdiction; and

11 (2) Institutional care in the other jurisdiction is in the best interests of
12 the child and will not produce undue hardship.

13 Article VII. Compact Administrator.

14 The executive head of each jurisdiction party to this Compact shall designate an
15 officer who shall be general coordinator of activities under this Compact in the
16 officer's jurisdiction and who, acting jointly with like officers of other party
17 jurisdictions, shall have power to promulgate rules and regulations to carry out more
18 effectively the terms and provisions of this Compact.

19 Article VIII. Limitations.

20 This Compact shall not apply to: (a) the sending or bringing of a child into a
21 receiving state by the child's parent, stepparent, grandparent, adult brother or sister,
22 adult uncle or aunt, or the child's guardian and leaving the child with any such
23 relative or nonagency guardian in the receiving state. (b) Any placement, sending or
24 bringing of a child into a receiving state pursuant to any other interstate compact to
25 which both the state from which the child is sent or brought and the receiving state
26 are party, or to any other agreement between said states which has the force of law.

27 Article IX. Enactment and Withdrawal.

28 This Compact shall be open to joinder by any state, territory or possession of the
29 United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with
30 the consent of Congress, the government of Canada or any province thereof. It shall
31 become effective with respect to any such jurisdiction when such jurisdiction has
32 enacted the same into law. Withdrawal from this Compact shall be by the enactment
33 of a statute repealing the same, but shall not take effect until two years after the
34 effective date of such statute and until written notice of the withdrawal has been
35 given by the withdrawing state to the governor of each other party jurisdiction.
36 Withdrawal of a party state shall not affect the rights, duties and obligations under
37 this Compact of any sending agency therein with respect to a placement made prior
38 to the effective date of withdrawal.

39 Article X. Construction and Severability.

40 The provisions of this Compact shall be liberally construed to effectuate the
41 purposes thereof. The provisions of this Compact shall be severable and if any
42 phrase, clause, sentence or provision of this Compact is declared to be contrary to the
43 constitution of any party state or of the United States or the applicability thereof to
44 any government, agency, person or circumstance is held invalid, the validity of the

1 remainder of this Compact and the applicability thereof to any government, agency,
2 person or circumstance shall not be affected thereby. If this Compact shall be held
3 contrary to the constitution of any state party thereto, the Compact shall remain in
4 full force and effect as to the remaining states and in full force and effect as to the
5 state affected as to all severable matters.

6 **"§ 7B-3801. Financial responsibility under Compact.**

7 Financial responsibility for any child placed pursuant to the provisions of the
8 Interstate Compact on the Placement of Children shall be determined in accordance
9 with the provisions of Article V thereof in the first instance. However, in the event of
10 partial or complete default of performance thereunder, the provisions of any other
11 state laws fixing responsibility for the support of children also may be invoked.

12 **"§ 7B-3802. Agreements under Compact.**

13 The officers and agencies of this State and its subdivisions having authority to
14 place children are hereby empowered to enter into agreements with appropriate
15 officers or agencies of or in other party states pursuant to paragraph (b) of Article V
16 of the Interstate Compact on the Placement of Children. Any such agreement which
17 contains a financial commitment or imposes a financial obligation on this State or
18 subdivision or agency thereof shall not be binding unless it has the approval in
19 writing of the Secretary of the Department of Health and Human Services in the case
20 of the State and of the county director of social services in the case of a county or
21 other subdivision of the State.

22 **"§ 7B-3803. Visitation, inspection or supervision.**

23 Any requirements for visitation, inspection or supervision of children, homes,
24 institutions or other agencies in another party state which may apply under the laws
25 of this State shall be deemed to be met if performed pursuant to an agreement
26 entered into by appropriate officers or agencies of this State or a subdivision thereof
27 as contemplated by paragraph (b) of Article V of the Interstate Compact on the
28 Placement of Children.

29 **"§ 7B-3804. Compact to govern between party states.**

30 The provisions of Article 37 of this Chapter shall not apply to placements made
31 pursuant to the Interstate Compact on the Placement of Children.

32 **"§ 7B-3805. Placement of delinquents.**

33 Any court having jurisdiction to place delinquent children may place such a child
34 in an institution or in another state pursuant to Article VI of the Interstate Compact
35 on the Placement of Children and shall retain jurisdiction as provided in Article V
36 thereof.

37 **"§ 7B-3806. Compact Administrator.**

38 The Governor is hereby authorized to appoint a Compact Administrator in
39 accordance with the terms of said Article VII."

40 Section 5. Article 81B of Chapter 15A of the General Statutes is
41 amended by adding a new section to read:

42 **"§ 15A-1340.16B. Sentencing of juveniles.**

43 (a) If a juvenile was under 16 years of age at the time the juvenile committed a
44 felony offense and has been convicted of the offense, the court shall impose a

1 sentence in accordance with G.S. 15A-1340.17. Notwithstanding other requirements
2 of this Chapter, the court may suspend the sentence and place the juvenile on
3 probation on the condition that the juvenile successfully complete any of the
4 applicable terms and conditions set forth in G.S. 15A-1343 and G.S. 7B-2504 that the
5 court deems appropriate. In determining the appropriate terms and conditions, the
6 court shall consider the dispositional report of the chief court counselor.

7 (b) In no event shall a person placed on probation pursuant to this section be
8 confined by the Department past that person's nineteenth birthday.

9 (c) In determining whether to suspend the sentence and place the juvenile on
10 probation, the court shall consider:

- 11 (1) The age of the juvenile;
12 (2) The physical, mental, and emotional needs of the juvenile; and
13 (3) The resources available to the juvenile pursuant to G.S. 7B-2504
14 and the applicability of the resources to the needs of the juvenile.

15 (d) If the court suspends the sentence of the juvenile pursuant to subsection (a) of
16 this section, the court shall order that a probation officer and a juvenile court
17 counselor be assigned to supervise and monitor the progress of the juvenile. Except
18 as provided in subsection (d) of this section, any violations of probation shall be
19 determined and heard pursuant to Article 82 of Chapter 15A of the General Statutes.

20 (e) In the judgment suspending the sentence, the court shall limit jurisdiction to
21 alter or revoke the suspension. This limitation requires that the suspension may be
22 reduced, continued, extended, modified, or revoked only by the sentencing judge or,
23 if the sentencing judge is no longer on the bench, by a presiding judge in the court
24 where the juvenile was sentenced.

25 (f) Parts 1, 2, and 3 of Article 27A of Chapter 14 of the General Statutes applies
26 to juveniles sentenced for offenses set forth in G.S. 14-208.6(5)."

27 Section 6. G.S. 115C-404 reads as rewritten:

28 "**§ 115C-404. Use of juvenile court information.**

29 (a) ~~Written notifications received in accordance with G.S. 7A-675.1~~ G.S. 7B-3101
30 and information gained from examination of juvenile records in accordance with G.S.
31 7B-3100 are confidential records, are not public records as defined under G.S.132-1,
32 and shall not be made part of the student's official record under G.S. 115C-402.
33 Immediately upon receipt, the principal shall maintain these documents in a safe,
34 locked record storage that is separate from the student's other school records. ~~The~~
35 ~~principal shall maintain these documents until the principal receives notification that~~
36 ~~the judge dismissed the petition under G.S. 7A-637, the judge transferred jurisdiction~~
37 ~~over the student to superior court under G.S. 7A-608, or the judge granted the~~
38 ~~student's petition for expunction of the records. At that time, the~~ The principal shall
39 shred, burn, or otherwise destroy ~~the~~ documents received in accordance with G.S.
40 7B-3100 to protect the confidentiality of ~~this information.~~ the information when the
41 principal receives notification that the court dismissed the petition under G.S. 7B-
42 2411, the court transferred jurisdiction over the student to superior court under G.S.
43 7B-2200, or the court granted the student's petition for expunction of the records.
44 The principal shall shred, burn, or otherwise destroy all information gained from

1 examination of juvenile records in accordance with G.S. 7B-3100 when the principal
2 finds that the school no longer needs the information to protect the safety of or to
3 improve the education opportunities for the student or others. In no case shall the
4 principal make a copy of these documents.

5 (b) Documents received under this section ~~may~~ shall be used only to protect the
6 safety of or to improve the education opportunities for the student or others.
7 Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a
8 decision to suspend or expel a student. Upon receipt of each document, the principal
9 shall share the document with those individuals who have (i) direct guidance,
10 teaching, or supervisory responsibility for the student, and (ii) a specific need to
11 know in order to protect the safety of the student or others. Those individuals shall
12 indicate in writing that they have read the document and that they agree to maintain
13 its confidentiality. Failure to maintain the confidentiality of these documents as
14 required by this section is grounds for the dismissal of an employee who is not a
15 career employee and is grounds for dismissal of an employee who is a career
16 employee, in accordance with G.S. 115C-325(e)(1)i.

17 (c) If the student graduates, withdraws from school, is suspended for the
18 remainder of the school year, is expelled, or transfers to another school, the principal
19 shall return ~~the~~ all documents not destroyed in accordance with subsection (a) of this
20 section to the juvenile court counselor and, if applicable, shall provide the counselor
21 with the name and address of the school to which the student is transferring."

22 Section 7. G.S. 143-661(a) reads as rewritten:

23 "(a) The Criminal Justice Information Network Governing Board is established
24 within the Department of Justice, State Bureau of Investigation, to operate the State's
25 Criminal Justice Information Network, the purpose of which shall be to provide the
26 governmental and technical information systems infrastructure necessary for
27 accomplishing State and local governmental public safety and justice functions in the
28 most effective manner by appropriately and efficiently sharing criminal justice and
29 juvenile justice information among law enforcement, judicial, and corrections
30 agencies. The Board is established within the Department of Justice, State Bureau of
31 Investigation, for organizational and budgetary purposes only and the Board shall
32 exercise all of its statutory powers in this Article independent of control by the
33 Department of Justice."

34 Section 8. (a) G.S. 164-36 reads as rewritten:

35 "**§ 164-36. Powers and duties.**

36 (a) Sentences established for violations of the State's criminal laws should be based
37 on the established purposes of our criminal justice and corrections systems. The
38 Commission shall evaluate sentencing laws and policies in relationship to both the
39 stated purposes of the criminal justice and corrections systems and the availability of
40 sentencing options. The Commission shall make recommendations to the General
41 Assembly for the modification of sentencing laws and policies, and for the addition,
42 deletion, or expansion of sentencing options as necessary to achieve policy goals. The
43 Commission shall make a report of its recommendations, including any recommended
44 legislation, to the General Assembly annually.

1 (b) Dispositions established for violations by juveniles of the State's criminal laws
2 should be based on the established purposes set forth in Chapter 7B of the General
3 Statutes. The Commission shall evaluate dispositional laws and policies in
4 relationship to both the stated purposes of Chapter 7B of the General Statutes and
5 the availability of dispositional alternatives. The Commission shall make
6 recommendations to the General Assembly for the modification of dispositional laws
7 and policies, and for the addition, deletion, or expansion of dispositional alternatives
8 as necessary to achieve policy goals. The Commission shall make a report of its
9 recommendations, including any recommended legislation, to the General Assembly
10 annually."

11 (b) G.S. 164-40 reads as rewritten:

12 **"§ 164-40. Correction population simulation model: model; Department of Juvenile**
13 **Justice facilities population simulation model.**

14 (a) The Commission shall develop a correctional population simulation model, and
15 shall have first priority to apply the model to a given fact situation, or theoretical
16 change in the sentencing laws, when requested to do so by the Chairman, the
17 Executive Director, or the Commission as a whole.

18 The Executive Director or the Chairman shall make the model available to
19 respond to inquiries by any State legislator, or by the Secretary of the Department of
20 Correction, in second priority to the work of the Commission.

21 (b) The Commission shall develop a Department of Juvenile Justice facilities
22 population simulation model, and shall have first priority to apply the model to a
23 given fact situation, or theoretical change in the dispositional laws set forth in
24 Chapter 7B of the General Statutes, when requested to do so by the Chairman, the
25 Executive Director, or the Commission as a whole.

26 The Executive Director or the Chairman shall make the model available to
27 respond to inquiries by any State legislator, or by the Secretary of the Department of
28 Juvenile Justice, in second priority to the work of the Commission."

29 (c) G.S. 164-42.1 reads as rewritten:

30 **"§ 164-42.1. Policy recommendations.**

31 (a) Using the studies of the Special Committee on Prisons, the Governor's Crime
32 Commission, and other analyses, including testimony from representatives of the
33 bodies that conducted the analyses, the Commission shall:

- 34 (1) Determine the long-range needs of the criminal justice and
35 corrections systems and recommend policy priorities for those
36 systems;
- 37 (2) Determine the long-range information needs of the criminal justice
38 and corrections systems and acquire that information as it becomes
39 available;
- 40 (3) Identify critical problems in the criminal justice and corrections
41 systems and recommend strategies to solve those problems;
- 42 (4) Assess the cost-effectiveness of the use of State and local funds in
43 the criminal justice and corrections systems;

- 1 (5) Recommend the goals, priorities, and standards for the allocation
- 2 of criminal justice and corrections funds;
- 3 (6) Recommend means to improve the deterrent and rehabilitative
- 4 capabilities of the criminal justice and corrections systems;
- 5 (7) Propose plans, programs, and legislation for improving the
- 6 effectiveness of the criminal justice and corrections systems;
- 7 (8) Determine the sentencing structures for parole decisions;
- 8 (9) Examine the impact of mandatory sentence lengths as opposed to
- 9 the deterrent effect of minimum mandatory terms of imprisonment;
- 10 (10) Examine good time and gain time practices;
- 11 (11) Study the value of presentence reports;
- 12 (12) Consider the rehabilitative potential of the offender and the
- 13 appropriate rehabilitative placement;
- 14 (13) Examine the impact of imprisonment on families of offenders;
- 15 (14) Examine the impact of imprisonment on the ability of the offender
- 16 to make restitution; ~~and~~
- 17 (15) Study the need for an amendment to Article XI, Section 1 of the
- 18 State Constitution to include restitution, restraints on liberty, work
- 19 programs, or other punishments to the list of punishments allowed
- 20 under that section; and
- 21 (16) Study the costs and consequences of criminal behavior in North
- 22 Carolina and consider the value of preventing crimes by using
- 23 incarceration to deter both prospective criminals and convicted
- 24 criminals from future crimes.

25 (b) Using the studies and analyses available, including testimony from
26 representatives of the bodies that conducted the analyses, the Commission shall:

- 27 (1) Determine the long-range needs of the juvenile justice system and
- 28 recommend policy priorities for that system;
- 29 (2) Determine the long-range information needs of the juvenile justice
- 30 system and acquire that information as it becomes available;
- 31 (3) Identify critical problems in the juvenile justice system and
- 32 recommend strategies to solve those problems;
- 33 (4) Assess the cost-effectiveness of the use of State and local funds in
- 34 the juvenile justice system; and
- 35 (5) Recommend the goals, priorities, and standards for the allocation
- 36 of juvenile justice funds."
- 37 (d) G.S. 164-43 reads as rewritten:

38 "§ 164-43. Priority of duties; reports; continuing duties.

39 (a) The Commission shall have two primary duties, and other secondary duties
40 essential to accomplishing the primary ones. The Commission may establish
41 subcommittees or advisory committees composed of Commission members to
42 accomplish duties imposed by this Article.

43 It is the legislative intent that the Commission attach priority to accomplish the
44 following primary duties:

- 1 (1) The classification of criminal offenses as described in G.S. 164-41
2 and the formulation of sentencing structures as described in G.S.
3 164-42; and
- 4 (2) The formulation of proposals and recommendations as described in
5 G.S. 164-42.1 and G.S. 164-42.2.
- 6 (b) The Commission shall report its findings and recommendations to the 1991
7 General Assembly, 1991 Regular Session. The report shall describe the status of the
8 Commission's work, and shall include any completed policy recommendations.
- 9 (c) The Commission shall report on its progress in formulating recommendations
10 for the classification and ranges of punishment for felonies and misdemeanors,
11 required by G.S. 164-41, and sentencing structures, established pursuant to G.S. 164-
12 42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final
13 report on these recommendations no later than 30 days after the convening of the
14 1993 Session of the General Assembly.
- 15 (d) Once the primary duties of the Commission have been accomplished, it shall
16 have the continuing duty to monitor and review the criminal justice and corrections
17 systems and the juvenile justice system in this State to ensure that ~~sentencing remains~~
18 sentences and dispositions remain uniform and consistent, and that the goals and
19 policies established by the State are being implemented by sentencing and
20 dispositional practices, and it shall recommend methods by which this ongoing work
21 may be accomplished and by which the correctional population simulation model and
22 the Department of Juvenile Justice facilities population simulation model developed
23 pursuant to G.S. 164-40 shall continue to be used by the State.
- 24 (e) Upon adoption of a system for the classification of offenses formulated
25 pursuant to G.S. 164-41, the Commission or its successor shall review all proposed
26 legislation which creates a new criminal offense, changes the classification of an
27 offense, or changes the range of punishment or dispositional level for a particular
28 classification, and shall make recommendations to the General Assembly.
- 29 (f) In the case of a new criminal offense, the Commission or its successor shall
30 determine whether the proposal places the offense in the correct classification, based
31 upon the considerations and principles set out in G.S. 164-41. If the proposal does
32 not assign the offense to a classification, it shall be the duty of the Commission or its
33 successor to recommend the proper classification placement.
- 34 (g) In the case of proposed changes in the classification of an offense or changes
35 in the range of punishment or dispositional level for a classification, the Commission
36 or its successor shall determine whether such a proposed change is consistent with the
37 considerations and principles set out in G.S. 164-41, and shall report its findings to
38 the General Assembly.
- 39 (h) The Commission or its successor shall meet within 10 days after the last day
40 for filing general bills in the General Assembly for the purpose of reviewing bills as
41 described in subsections (e), (f), and (g). The Commission or its successor shall
42 include in its report on a bill an analysis based on an application of the correctional
43 population simulation model or the Department of Juvenile Justice facilities
44 population simulation model to the provisions of the bill."

1 (e) G.S. 164-44 reads as rewritten:

2 "**§ 164-44. Statistical information; financial or other aid.**

3 (a) The Commission shall have the secondary duty of collecting, developing, and
4 maintaining statistical data relating to ~~sentencing and corrections~~ sentencing,
5 corrections, and juvenile justice so that the primary duties of the Commission will be
6 formulated using data that is valid, accurate, and relevant to this State. All State
7 agencies shall provide data as it is requested by the Commission. All meetings of the
8 Commission shall be open to the public and the information presented to the
9 Commission shall be available to any State agency or member of the General
10 Assembly.

11 (b) The Commission shall have the authority to apply for, accept, and use any
12 gifts, grants, or financial or other aid, in any form, from the federal government or
13 any agency or instrumentality thereof, or from the State or from any other source
14 including private associations, foundations, or corporations to accomplish any of the
15 duties set out in this Chapter."

16 **PART III. REGISTRATION OF CERTAIN JUVENILES.**

17 Section 9. Effective October 1, 1999, Article 25 of Chapter 7B of the
18 General Statutes is amended by adding a new section to read:

19 "**§ 7B-2505.1. Registration of certain delinquent juveniles.**

20 In any case in which a juvenile, who was at least eleven years of age at the time of
21 the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first-
22 degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sexual
23 offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape
24 or sexual offense), the judge, upon a finding that the juvenile is a danger to the
25 community, may order that the juvenile register in accordance with Part 4 of Article
26 27A of Chapter 14 of the General Statutes."

27 **PART IV. PREVENTION STATUTORY RECOMMENDATIONS EDUCATING**
28 **CHILDREN EXPULLED FROM SCHOOL**

29 Section 10. G.S. 115C-12(24) reads as rewritten:

30 "(24) Duty to Develop Guidelines for Alternative Learning Programs,
31 Provide Technical Assistance on Implementation of Programs, and
32 Evaluate Programs. -- The State Board of Education shall adopt
33 guidelines for assigning students to alternative learning programs.
34 These guidelines shall include (i) a description of the programs
35 and services that are recommended to be provided in alternative
36 learning ~~programs and programs~~, (ii) a process for ensuring that an
37 assignment is appropriate for the student and that the student's
38 parents are involved in the ~~decision~~ decision, and (iii) strategies
39 for providing alternative learning programs, when feasible and
40 appropriate, for students who are subject to long-term suspension
41 or expulsion.

42 The State Board of Education shall also adopt guidelines to
43 require that local school administrative units shall use (i) the
44 teachers allocated for students assigned to alternative learning

1 programs pursuant to the regular teacher allotment and (ii) the
2 teachers allocated for students assigned to alternative learning
3 programs only to serve the needs of these students.

4 The State Board of Education shall provide technical support to
5 local school administrative units to assist them in developing and
6 implementing plans for alternative learning programs.

7 The State Board shall evaluate the effectiveness of alternative
8 learning programs and, in its discretion, of any other programs
9 funded from the Alternative Schools/At-Risk Student allotment.
10 Local school administrative units shall report to the State Board of
11 Education on how funds in the Alternative Schools/At-Risk
12 Student allotment are spent and shall otherwise cooperate with the
13 State Board of Education in evaluating the alternative learning
14 programs."

15 Section 11. G.S. 115C-105.47(b) reads as rewritten:

16 "(b) Each plan shall include each of the following components:

- 17 (1) Clear statements of the standard of behavior expected of students
18 at different grade levels and of school personnel and clear
19 statements of the consequences that will result from one or more
20 violations of those standards. There shall be a statement of
21 consequences for students under the age of 13 who physically
22 assault and seriously injure a teacher or other individual on school
23 property or at a school-sponsored or school-related activity. The
24 consequences may include placement in an alternative setting.
- 25 (2) A clear statement of the responsibility of the superintendent for
26 coordinating the adoption and the implementation of the plan,
27 evaluating principals' performance regarding school safety,
28 monitoring and evaluating the implementation of safety plans at
29 the school level, and coordinating with local law enforcement and
30 court officials appropriate aspects of implementation of the plan.
31 The statement of responsibility shall provide appropriate
32 disciplinary consequences that may occur if the superintendent fails
33 to carry out these responsibilities. These consequences may include
34 a reprimand in the superintendent's personnel file or withholding
35 of the superintendent's salary, or both.
- 36 (3) A clear statement of the responsibility of the school principal for
37 restoring, if necessary, and maintaining a safe, secure, and orderly
38 school environment and of the consequences that may occur if the
39 principal fails to meet that responsibility. The principal's duties
40 shall include exhibiting appropriate leadership for school personnel
41 and students, providing for alternative placements for students who
42 are seriously disruptive, reporting all criminal acts under G.S.
43 115C-288(g), and providing appropriate disciplinary consequences
44 for disruptive students. The consequences to the principal that may

- 1 occur shall include a reprimand in the principal's personnel file
2 and disciplinary proceedings under G.S. 115C-325.
- 3 (4) Clear statements of the roles of other administrators, teachers, and
4 other school personnel in restoring, if necessary, and maintaining a
5 safe, secure, and orderly school environment.
- 6 (5) Procedures for identifying and serving the needs of students who
7 are at risk of academic failure or of engaging in disruptive or
8 disorderly behavior.
- 9 (6) Mechanisms for assessing the needs of disruptive and disorderly
10 students, providing them with services to assist them in achieving
11 academically and in modifying their behavior, and removing them
12 from the classroom when necessary.
- 13 (6a) Strategies for providing alternative learning programs, when
14 feasible and appropriate, for students who are subject to long-term
15 suspension or expulsion.
- 16 (7) Measurable objectives for improving school safety and order.
- 17 (8) Measures of the effectiveness of efforts to assist students at risk of
18 academic failure or of engaging in disorderly or disruptive
19 behavior.
- 20 (9) Professional development clearly matched to the goals and
21 objectives of the plan.
- 22 (10) A plan to work effectively with local law enforcement officials and
23 court officials to ensure that schools are safe and laws are enforced.
- 24 (11) A plan to provide access to information to the school community,
25 parents, and representatives of the local community on the ongoing
26 implementation of the local plan, monitoring of the local plan, and
27 the integration of educational and other services for students into
28 the total school program.
- 29 (12) The name and role description of the person responsible for
30 implementation of the plan.
- 31 (13) Direction to school improvement teams within the local school
32 administrative unit to consider the special conditions at their
33 schools and to incorporate into their school improvement plans the
34 appropriate components of the local plan for maintaining safe and
35 orderly schools.
- 36 (14) A clear and detailed statement of the planned use of federal, State,
37 and local funds allocated for at-risk students, alternative schools, or
38 both.
- 39 (15) Any other information the local board considers necessary or
40 appropriate to implement this Article.

41 A local board may develop its plan under this section by conducting a
42 comprehensive review of its existing policies, plans, statements, and procedures to
43 determine whether they: (i) are effective; (ii) have been updated to address recent
44 changes in the law; (iii) meet the current needs of each school in the local school

1 administrative unit; and (iv) address the components required to be included in the
2 local plan. The board then may consolidate and supplement any previously
3 developed policies, plans, statements, and procedures that the board determines are
4 effective and updated, meet the current needs of each school, and meet the
5 requirements of this subsection.

6 Once developed, the board shall submit the local plan to the State Board of
7 Education and shall ensure the plan is available and accessible to parents and the
8 school community. The board shall provide annually to the State Board information
9 that demonstrates how the At-Risk Student Services/Alternative Schools Funding
10 Allotment has been used to (i) prevent academic failure or (ii) promote school
11 safety."

12 PART V. CONFORMING STATUTORY CHANGES

13 Section 12. (a) G.S. 8-53.1 reads as rewritten:

14 "§ 8-53.1. Physician-patient privilege waived in child abuse.

15 Notwithstanding the provisions of G.S. 8-53, the physician-patient privilege shall
16 not be ground for excluding evidence regarding the abuse or neglect of a child under
17 the age of 16 years or regarding an illness of or injuries to such child or the cause
18 thereof in any judicial proceeding related to a report pursuant to the North Carolina
19 Juvenile Code, ~~Subchapter XI of Chapter 7A~~ 7B of the General Statutes of North
20 Carolina."

21 (b) G.S. 8-53.3 reads as rewritten:

22 "§ 8-53.3. Communications between psychologist and client or patient.

23 No person, duly authorized as a licensed psychologist or licensed psychological
24 associate, nor any of his or her employees or associates, shall be required to disclose
25 any information which he or she may have acquired in the practice of psychology and
26 which information was necessary to enable him or her to practice psychology. Any
27 resident or presiding judge in the district in which the action is pending may, subject
28 to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her
29 opinion disclosure is necessary to a proper administration of justice. If the case is in
30 district court the judge shall be a district court judge, and if the case is in superior
31 court the judge shall be a superior court judge.

32 Notwithstanding the provisions of this section, the psychologist-client or patient
33 privilege shall not be grounds for failure to report suspected child abuse or neglect to
34 the appropriate county department of social services, or for failure to report a
35 disabled adult suspected to be in need of protective services to the appropriate
36 county department of social services. Notwithstanding the provisions of this section,
37 the psychologist-client or patient privilege shall not be grounds for excluding
38 evidence regarding the abuse or neglect of a child, or an illness of or injuries to a
39 child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or
40 exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the
41 cause thereof, in any judicial proceeding related to a report pursuant to the Child
42 Abuse Reporting Law, ~~Article 44 of Chapter 7A,~~ Article 3 of Chapter 7B of the
43 General Statutes, or to the Protection of the Abused, Neglected, or Exploited
44 Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

1 (c) G.S. 8-57.1 reads as rewritten:

2 **"§ 8-57.1. Husband-wife privilege waived in child abuse.**

3 Notwithstanding the provisions of G.S. 8-56 and G.S. 8-57, the husband-wife
4 privilege shall not be ground for excluding evidence regarding the abuse or neglect of
5 a child under the age of 16 years or regarding an illness of or injuries to such child or
6 the cause thereof in any judicial proceeding related to a report pursuant to the Child
7 Abuse Reporting Law, ~~Article 8 of Chapter 110~~ Article 3 of Chapter 7B of the
8 General Statutes of North Carolina."

9 (d) G.S. 14-208.6B reads as rewritten:

10 **"§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in**
11 **superior court.**

12 A juvenile transferred to superior court pursuant to ~~G.S. 7A-608~~ G.S. 7B-2200 who
13 is convicted of a sexually violent offense or an offense against a minor as defined in
14 G.S. 14-208.6 shall register in accordance with this Article just as an adult convicted
15 of the same offense must register."

16 (e) G.S. 15A-502(c) reads as rewritten:

17 "(c) This section does not authorize the taking of photographs or fingerprints of a
18 juvenile alleged to be delinquent except under ~~G.S. 7A-596 through 7A-601 and~~
19 ~~7A-603.~~ Article 21 of Chapter 7B of the General Statutes."

20 (f) G.S. 35A-1371 reads as rewritten:

21 **"§ 35A-1371. Jurisdiction; limits.**

22 Notwithstanding the provisions of Subchapter II of this Chapter, the clerk of
23 superior court shall have original jurisdiction for the appointment of a standby
24 guardian for a minor child under this Article. Provided that the clerk shall have no
25 jurisdiction, no standby guardian may be appointed under this Article, and no
26 designation may become effective under this Article when a district court has
27 assumed jurisdiction over the minor child in an action under Chapter 50 of the
28 General Statutes or in an abuse, neglect, or dependency proceeding under
29 ~~Subchapter XI of Chapter 7A~~ Subchapter I of Chapter 7B of the General Statutes, or
30 when a court in another state has assumed such jurisdiction under a comparable
31 statute."

32 (g) G.S. 48-2-102(b) reads as rewritten:

33 "(b) If an adoptee is also the subject of a pending proceeding under ~~Subchapter~~
34 ~~XI of Chapter 7A~~ Chapter 7B of the General Statutes, then the district court having
35 jurisdiction under Chapter ~~7A~~ 7B shall retain jurisdiction until the final order of
36 adoption is entered. The district court may waive jurisdiction for good cause."

37 (h) G.S. 48-3-201(d) reads as rewritten:

38 "(d) An agency having legal and physical custody of a minor may place the minor
39 for adoption at any time after a relinquishment is executed by anyone as permitted by
40 G.S. 48-3-701. The agency may place the minor for adoption even if other consents
41 are required before an adoption can be granted, unless an individual whose consent is
42 required notifies the agency in writing of the individual's objections before the
43 placement. The agency shall act promptly after accepting a relinquishment to obtain
44 all other necessary consents, relinquishments, or terminations of any guardian's

1 authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant
2 to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes."

3 (i) G.S. 48-2-304(c) reads as rewritten:

4 "(c) A petition to adopt a minor under Article 3 of this Chapter shall also state:

5 (1) A description of the source of placement and the date of
6 placement of the adoptee with the petitioner; and

7 (2) That the provisions of the Interstate Compact on the Placement of
8 Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of Chapter 7B of the
9 General Statutes, were followed if the adoptee was brought into
10 this State from another state for purposes of adoption."

11 (j) G.S. 48-2-603 reads as rewritten:

12 "§ 48-2-603. Hearing on, or disposition of, petition to adopt a minor.

13 (a) At the hearing on, or disposition of, a petition to adopt a minor, the court
14 shall grant the petition upon finding by a preponderance of the evidence that the
15 adoption will serve the best interest of the adoptee, and that:

16 (1) At least 90 days have elapsed since the filing of the petition for
17 adoption, unless the court for cause waives this requirement;

18 (2) The adoptee has been in the physical custody of the petitioner for
19 at least 90 days, unless the court for cause waives this requirement;

20 (3) Notice of the filing of the petition has been served on any person
21 entitled to receive notice under Part 4 of this Article;

22 (4) Each necessary consent, relinquishment, waiver, or judicial order
23 terminating parental rights, has been obtained and filed with the
24 court and the time for revocation has expired;

25 (5) Any assessment required by this Chapter has been filed with and
26 considered by the court;

27 (6) If applicable, the requirements of the Interstate Compact on the
28 Placement of Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of Chapter
29 7B of the General Statutes, have been met;

30 (7) Any motion to dismiss the proceeding has been denied;

31 (8) Each petitioner is a suitable adoptive parent;

32 (9) Any accounting and affidavit required under G.S. 48-2-602 has
33 been reviewed by the court, and the court has denied, modified, or
34 ordered reimbursement of any payment or disbursement that
35 violates Article 10 or is unreasonable when compared with the
36 expenses customarily incurred in connection with an adoption;

37 (10) The petitioner has received information about the adoptee and the
38 adoptee's biological family if required by G.S. 48-3-205; and

39 (11) There has been substantial compliance with the provisions of this
40 Chapter.

41 (b) If the Court finds a violation of this Chapter pursuant to Article 10 or of the
42 Interstate Compact on the Placement of Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of
43 Chapter 7B of the General Statutes, but determines that in every other respect there

1 has been substantial compliance with the provisions of this Chapter, and the adoption
2 will serve the best interest of the adoptee, the court shall:

3 (1) Grant the petition to adopt; and

4 (2) Impose the sanctions provided by this Chapter against any
5 individual or entity who has committed a prohibited act or report
6 the violations to the appropriate legal authorities.

7 (c) The court on its own motion may continue the hearing for further evidence."

8 (j1) G.S. 48-2-305(7) reads as rewritten:

9 "(7) Any signed copy of the form required by the Interstate Compact
10 on the Placement of Children, ~~G.S. 110-57.1, et seq.~~ Article 38 of
11 Chapter 7B of the General Statutes, authorizing a minor to come
12 into this State;"

13 (k) G.S. 48-3-207 reads as rewritten:

14 "**§ 48-3-207. Interstate placements.**

15 An interstate placement of a minor for purposes of adoption shall comply with the
16 Interstate Compact on the Placement of Children, ~~G.S. 110-57.1 et seq.~~ Article 38 of
17 Chapter 7B of the General Statutes."

18 (l) G.S. 48-3-603(a)(1) reads as rewritten:

19 "(1) An individual whose parental rights and duties have been
20 terminated under ~~Article 24B of Chapter 7A~~ Article 11 of Chapter
21 7B of the General Statutes or by a court of competent jurisdiction
22 in another state;"

23 (m) G.S. 50-13.1(f) reads as rewritten:

24 "(f) Neither the mediator nor any party or other person involved in mediation
25 sessions under this section shall be competent to testify to communications made
26 during or in furtherance of such mediation sessions; provided, there is no privilege as
27 to communications made in furtherance of a crime or fraud. Nothing in this
28 subsection shall be construed as permitting an individual to obtain immunity from
29 prosecution for criminal conduct or as excusing an individual from the reporting
30 requirements of ~~G.S. 7A-543~~ Article 3 of Chapter 7B of the General Statutes or G.S.
31 108A-102."

32 (n) G.S. 50A-25 reads as rewritten:

33 "**§ 50A-25. Emergency orders.**

34 Nothing in this Chapter shall be interpreted to limit the authority of the court to
35 issue an interlocutory order under the provisions of G.S. 50-13.5(d)(2); or a secure or
36 nonsecure custody order under the provisions of ~~G.S. 7A-573~~ G.S. 7B-502."

37 (o) G.S. 50B-6 reads as rewritten:

38 "**§ 50B-6. Construction of Chapter.**

39 This Chapter shall not be construed as granting a status to any person for any
40 purpose other than those expressly stated herein. This Chapter shall not be construed
41 as relieving any person or institution of the duty to report to the department of social
42 services, as required by ~~G.S. 7A-543~~, G.S. 7B-301, if the person or institution has
43 cause to suspect that a juvenile is abused or neglected."

44 (p) G.S. 51-2(a) reads as rewritten:

1 "(a) All unmarried persons of 18 years, or older, may lawfully marry, except as
2 hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of
3 age may marry, and the register of deeds may issue a license for such marriage, only
4 after there shall have been filed with the register of deeds a written consent to such
5 marriage, said consent having been signed by the appropriate person as follows:

6 (1) By the father if the male or female child applying to marry resides
7 with his or her father, but not with his or her mother;

8 (2) By the mother if the male or female child applying to marry
9 resides with his or her mother, but not with his or her father;

10 (3) By either the mother or father, without preference, if the male or
11 female child applying to marry resides with his or her mother and
12 father;

13 (4) By a person, agency, or institution having legal custody, standing in
14 loco parentis, or serving as guardian of such male or female child
15 applying to marry.

16 Such written consent shall not be required for an emancipated minor if a certificate
17 of emancipation issued pursuant to Article ~~56 of Chapter 7A~~ 35 of Chapter 7B of the
18 General Statutes or a certified copy of a final decree or certificate of emancipation
19 from this or any other jurisdiction is filed with the register of deeds."

20 (q) G.S. 90-21.6(1) reads as rewritten:

21 "(1) 'Unemancipated minor' or 'minor' means any person under the
22 age of 18 who has not been married or has not been emancipated
23 pursuant to Article ~~56 of Chapter 7A~~ 35 of Chapter 7B of the
24 General Statutes."

25 (r) G.S. 90-21.8(f) reads as rewritten:

26 "(f) The court shall make written findings of fact and conclusions of law
27 supporting its decision and shall order that a confidential record of the evidence be
28 maintained. If the court finds that the minor has been a victim of incest, whether
29 felonious or misdemeanor, it shall advise the Director of the Department of Social
30 Services of its findings for further action pursuant to Article ~~44 of Chapter 7A~~ 3 of
31 Chapter 7B of the General Statutes."

32 (s) G.S. 108A-14(a)(11) reads as rewritten:

33 "(11) To investigate reports of child abuse and neglect and to take
34 appropriate action to protect such children pursuant to the Child
35 Abuse Reporting Law, Article ~~44 of Chapter 7A~~; Article 3 of
36 Chapter 7B of the General Statutes;"

37 (t) G.S. 110-102 reads as rewritten:

38 "**§ 110-102. Information for parents.**

39 The Secretary shall provide to each operator of a child care facility a summary of
40 this Article for the parents, guardian, or full-time custodian of each child receiving
41 child care in the facility to be distributed by the operator. The summary shall include
42 the name and address of the Secretary and the address of the Commission. The
43 summary shall also include a statement regarding the mandatory duty prescribed in
44 ~~G.S. 7A-543~~ G.S. 7B-301 of any person suspecting child abuse or neglect has taken

1 place in child care, or elsewhere, to report to the county Department of Social
2 Services. The statement shall include the definitions of child abuse and neglect
3 described in the Juvenile Code in ~~G.S. 7A-517~~ 7B-101 and of child abuse described
4 in the Criminal Code in G.S. 14-318.2 and G.S. 14-318.4. The statement shall stress
5 that this reporting law does not require that the person reporting reveal the person's
6 identity."

7 (u) G.S. 110-105.2(a) reads as rewritten:

8 "(a) For purposes of this Article, child abuse and neglect, as defined in ~~G.S.~~
9 ~~7A-517~~ G.S. 7B-101 and in G.S. 14-318.2 and G.S. 14-318.4, occurring in child care
10 facilities, are violations of the licensure standards and of the licensure law."

11 (v) G.S. 110-147 reads as rewritten:

12 "**§ 110-147. Purpose.**

13 It is the expressed intent of this Article to make the prevention of child abuse and
14 neglect as defined in ~~G.S. 7A-517~~, G.S. 7B-101, a priority of this State and to
15 establish the Children's Trust Fund as a means to that end."

16 (w) G.S. 114-15.3 reads as rewritten:

17 "**§ 114-15.3. Investigations of child sexual abuse in child care.**

18 The Director of the Bureau may form a task force to investigate and gather
19 evidence following a notification by the director of a county department of social
20 services, pursuant to ~~G.S. 7A-543~~, G.S. 7B-301, that child sexual abuse may have
21 occurred in a child care facility."

22 (x) G.S. 115C-378 reads as rewritten:

23 "**§ 115C-378. Children required to attend.**

24 Every parent, guardian or other person in this State having charge or control of a
25 child between the ages of seven and 16 years shall cause such child to attend school
26 continuously for a period equal to the time which the public school to which the
27 child is assigned shall be in session. Every parent, guardian, or other person in this
28 State having charge or control of a child under age seven who is enrolled in a public
29 school in grades kindergarten through two shall also cause such child to attend school
30 continuously for a period equal to the time which the public school to which the
31 child is assigned shall be in session unless the child has withdrawn from school. No
32 person shall encourage, entice or counsel any such child to be unlawfully absent from
33 school. The parent, guardian, or custodian of a child shall notify the school of the
34 reason for each known absence of the child, in accordance with local school policy.

35 The principal, superintendent, or teacher who is in charge of such school shall
36 have the right to excuse a child temporarily from attendance on account of sickness
37 or other unavoidable cause which does not constitute unlawful absence as defined by
38 the State Board of Education. The term 'school' as used herein is defined to embrace
39 all public schools and such nonpublic schools as have teachers and curricula that are
40 approved by the State Board of Education.

41 All nonpublic schools receiving and instructing children of a compulsory school
42 age shall be required to keep such records of attendance and render such reports of
43 the attendance of such children and maintain such minimum curriculum standards as
44 are required of public schools; and attendance upon such schools, if the school

1 refuses or neglects to keep such records or to render such reports, shall not be
2 accepted in lieu of attendance upon the public school of the district to which the
3 child shall be assigned: Provided, that instruction in a nonpublic school shall not be
4 regarded as meeting the requirements of the law unless the courses of instruction run
5 concurrently with the term of the public school in the district and extend for at least
6 as long a term.

7 The principal or his designee shall notify the parent, guardian, or custodian of his
8 child's excessive absences after the child has accumulated three unexcused absences
9 in a school year. After not more than six unexcused absences, the principal shall
10 notify the parent, guardian, or custodian by mail that he may be in violation of the
11 Compulsory Attendance Law and may be prosecuted if the absences cannot be
12 justified under the established attendance policies of the State and local boards of
13 education. Once the parents are notified, the school attendance counselor shall work
14 with the child and his family to analyze the causes of the absences and determine
15 steps, including adjustment of the school program or obtaining supplemental services,
16 to eliminate the problem. The attendance counselor may request that a law-
17 enforcement officer accompany him if he believes that a home visit is necessary.

18 After 10 accumulated unexcused absences in a school year the principal shall
19 review any report or investigation prepared under G.S. 115C-381 and shall confer
20 with the student and his parent, guardian, or custodian if possible to determine
21 whether the parent, guardian, or custodian has received notification pursuant to this
22 section and made a good faith effort to comply with the law. If the principal
23 determines that parent, guardian, or custodian has not, he shall notify the district
24 attorney. If he determines that parent, guardian, or custodian has, he may file a
25 complaint with the juvenile intake counselor ~~under G.S. 7A-561~~ pursuant to Chapter
26 7B of the General Statutes that the child is habitually absent from school without a
27 valid excuse. Evidence that shows that the parents, guardian, or custodian were
28 notified and that the child has accumulated 10 absences which cannot be justified
29 under the established attendance policies of the local board shall establish a prima
30 facie case that the child's parent, guardian, or custodian is responsible for the
31 absences."

32 (y) G.S. 115C-400 reads as rewritten:

33 "**§ 115C-400. School personnel to report child abuse.**

34 Any person who has cause to suspect child abuse or neglect has a duty to report
35 the case of the child to the Director of Social Services of the county, as provided in
36 ~~G.S. 7A-543 to 7A-552. Article 3 of Chapter 7B of the General Statutes.~~"

37 (z) G.S. 115C-404(a) reads as rewritten:

38 "(a) Written notifications received in accordance with ~~G.S. 7A-675.1~~ Article 31 of
39 Chapter 7B of the General Statutes are confidential records, are not public records as
40 defined under G.S.132-1, and shall not be made part of the student's official record
41 under G.S. 115C-402. Immediately upon receipt, the principal shall maintain these
42 documents in a safe, locked record storage that is separate from the student's other
43 school records. The principal shall maintain these documents until the principal
44 receives notification that the judge dismissed the ~~petition under G.S. 7A-637,~~ petition,

1 the judge transferred jurisdiction over the student to superior court under G.S.
2 ~~7A-608~~, court, or the judge granted the student's petition for expunction of the
3 ~~records~~. records pursuant to Chapter 7B of the General Statutes. At that time, the
4 principal shall shred, burn, or otherwise destroy the documents to protect the
5 confidentiality of this information. In no case shall the principal make a copy of these
6 documents."

7 (aa) G.S. 122C-54(h) reads as rewritten:

8 "(h) A facility shall disclose confidential information for purposes of complying
9 with Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the General Statutes and Article 6
10 of Chapter 108A of the General Statutes, or as required by other State or federal
11 law."

12 (bb) G.S. 122C-66(e) reads as rewritten:

13 "(e) The duty imposed by this section is in addition to any duty imposed by G.S.
14 ~~7A-543~~ 7B-301 or G.S. 108A-102."

15 (cc) G.S. 122C-223(c) reads as rewritten:

16 "(c) If the legally responsible person cannot be located within 72 hours of
17 admission, the responsible professional shall initiate proceedings for juvenile
18 protective services as described in Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the
19 General Statutes in either the minor's county of residence or in the county in which
20 the facility is located."

21 (dd) G.S. 122C-421(a) reads as rewritten:

22 "(a) The Secretary may designate one or more special police officers who shall
23 make up a joint security force to enforce the law of North Carolina and any
24 ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or
25 pursuant to the authority granted the Department by any other law on the territory of
26 the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile
27 Evaluation Center, all in Buncombe County. After taking the oath of office for law
28 enforcement officers as set out in G.S. 11-11, these special police officers have the
29 same powers as peace officers now vested in sheriffs within the territory embraced by
30 the named centers. These special police officers shall also have the power prescribed
31 by ~~G.S. 7A-571(a)(4)~~ G.S. 7B-1900 outside the territory embraced by the named
32 centers but within the confines of Buncombe County. These special police officers
33 may arrest persons outside the territory of the named centers but within the confines
34 of Buncombe County when the person arrested has committed a criminal offense
35 within that territory, for which the officers could have arrested the person within that
36 territory, and the arrest is made during the person's immediate and continuous flight
37 from that territory."

38 (ee) G.S. 131D-10.2(3) reads as rewritten:

39 "(3) 'Child' means an individual less than 18 years of age, who has not
40 been emancipated under the provisions of ~~Article 56 of Chapter~~
41 ~~7A~~ Article 35 of Chapter 7B of the General Statutes."

42 (ff) G.S. 131D-10.4(3) reads as rewritten:

43 "(3) Secure detention facilities as specified in Article ~~5 of Chapter~~
44 ~~134A~~ 40 of Chapter 7B of the General Statutes;"

1 (gg) G.S. 132-1.4(1) reads as rewritten:

2 "(1) Records of investigations of alleged child abuse shall be governed by ~~G.S.~~
3 ~~7A-675.~~ Article 29 of Chapter 7B of the General Statutes."

4 (hh) G.S. 143-576(1) reads as rewritten:

5 "(1) Review current deaths of children when those deaths are attributed
6 to child abuse or neglect or when the decedent was reported as an
7 abused or neglected juvenile pursuant to ~~G.S. 7A-543~~ G.S. 7B-301
8 at any time before death;"

9 (ii) G.S. 143B-168.14(a)(3) reads as rewritten:

10 "(3) Each local partnership shall adopt procedures to ensure that all
11 personnel who provide services to young children and their
12 families under this Part know and understand their responsibility
13 to report suspected child abuse, neglect, or dependency, as defined
14 in ~~G.S. 7A-517.~~ G.S. 7B-101."

15 (jj) G.S. 143B-496 reads as rewritten:

16 "**§ 143B-496. Definitions.**

17 For the purpose of this Part:

18 (1) 'Missing child' means a juvenile as defined in G.S. ~~7A-517(20)~~ 7B-
19 101 whose location has not been determined, who has been
20 reported as missing to a law-enforcement agency, and whose
21 parent's, spouse's, guardian's or legal custodian's temporary or
22 permanent residence is in North Carolina or is believed to be in
23 North Carolina.

24 (2) 'Missing person' means any individual who is 18 years of age or
25 older, whose temporary or permanent residence is in North
26 Carolina, or is believed to be in North Carolina, whose location
27 has not been determined, and who has been reported as missing to
28 a law-enforcement agency.

29 (3) 'Missing person report' is a report prepared on a prescribed form
30 for transmitting information about a missing person or a missing
31 child to an appropriate law-enforcement agency."

32 (kk) G.S. 153A-221.1 reads as rewritten:

33 "**§ 153A-221.1. Standards and inspections.**

34 The legal responsibility of the Secretary of Health and Human Services and the
35 Social Services Commission for State services to county juvenile detention homes
36 under this Article is hereby confirmed and shall include the following: development
37 of State standards under the prescribed procedures; inspection; consultation; technical
38 assistance; and training. Further, the legal responsibility of the Department of Health
39 and Human Services is hereby expanded to give said Department the same legal
40 responsibility as to the State-administered regional detention homes which shall be
41 developed by the State Department of Correction as provided by ~~G.S. 134A-37.~~ G.S.
42 7B-4008.

43 The Secretary of Health and Human Services shall develop new standards which
44 shall be applicable to county detention homes and regional detention homes as

1 defined by ~~G.S. 134-36~~ Article 40 of Chapter 7B of the General Statutes in line with
2 the recommendations of the report entitled Juvenile Detention in North Carolina: A
3 Study Report (January, 1973) where practicable, and such new standards shall
4 become effective not later than July 1, 1977.

5 The Secretary of Health and Human Services shall also develop standards under
6 which a local jail may be approved as a holdover facility for not more than five
7 calendar days pending placement in a juvenile detention home which meets State
8 standards, providing the local jail is so arranged that any child placed in the holdover
9 facility cannot converse with, see, or be seen by the adult population of the jail while
10 in the holdover facility. The personnel responsible for the administration of a jail
11 with an approved holdover facility shall provide close supervision of any child placed
12 in the holdover facility for the protection of the child."

13 Section 13. Effective October 1, 1999, G.S. 14-208.31 reads as rewritten:

14 "**§ 14-208.31. File with Police Information Network.**

15 (a) The Division shall include the registration information in the Police
16 Information Network as set forth in G.S. 114-10.1.

17 (b) The Division shall maintain the registration information permanently even
18 after the registrant's reporting requirement expires; however, the records shall remain
19 confidential in accordance with ~~G.S. 7A-675~~. Article 32 of Chapter 7B of the General
20 Statutes."

21 **PART VI. UNCODIFIED RECOMMENDATIONS.**

22 Section 14. The Department of Justice shall revise the Division of
23 Criminal Information's juvenile arrest form that is used by State and local law
24 enforcement agencies to provide more realistic reporting options and case disposition
25 information. The Department of Justice shall rename the "Juvenile Arrest" form the
26 "Juvenile Contact Report", with instructions to law enforcement "Use to Record the
27 Handling of Juveniles Who Commit Criminal Offenses" and shall amend the report
28 based on the form included with Recommendation 51 of the March 10, 1998, final
29 report of the Governor's Commission on Juvenile Crime and Justice.

30 Section 15. (a) The Department of Justice shall develop and administer
31 minority sensitivity training for all law enforcement personnel throughout the State.
32 The Department shall ensure that all persons who work with minority juveniles in the
33 juvenile justice system are taught how to communicate effectively with minority
34 juveniles and how to recognize and address the needs of those juveniles. The
35 Department shall also advise all law enforcement and professionals who work within
36 the juvenile justice system of ways to improve the treatment of minority juveniles so
37 that all juveniles receive equal treatment. The Department shall conduct the
38 minority sensitivity training annually and, prior to the training each year, shall assess
39 whether minorities are receiving fair and equal treatment in the juvenile justice
40 system with regard to the administration of predisposition procedures, of diversion
41 methods, of dispositional alternatives, and of treatment and post-release supervision
42 plans.

43 (b) The Department of Juvenile Justice shall ensure that all juvenile
44 court counselors and other Department personnel receive the minority sensitivity

1 training specified in subsection (a) of this section. The Chief Justice of the North
2 Carolina Supreme Court shall consider ensuring that all judges who hear cases under
3 the jurisdiction of the juvenile court receive minority sensitivity training.

4 Section 16. The Legislative Research Commission may study the
5 recommendations of the Court Improvement Project regarding the statutory
6 procedures and mandates of Subchapter I. of Chapter 7B of the General Statutes, the
7 Juvenile Code. The study may include a review of the effectiveness of the juvenile
8 justice system with regard to the disposition of abuse, neglect, and dependency cases
9 and may consider whether the recommendations of the Court Improvement Project
10 will improve the procedures and disposition of those cases. The Legislative Research
11 Commission may report its findings, recommendations, and any legislative proposals
12 to the 1999 General Assembly on or before December 1, 1999.

13 Section 17. (a) The State Board of Education shall study the feasibility
14 and advisability of delaying the start of the school day in order to provide students
15 with constructive projects and tasks during late afternoon hours of the school week.
16 If the Board recommends that the school day be delayed, the Board shall consider
17 whether the local school administrative units should provide supervision of students
18 whose working parents do not have early morning child care available.

19 (b) The State Board of Education shall report its findings,
20 recommendations, and any legislative proposals to the Joint Legislative Education
21 Oversight Committee on or before April 1, 1999.

22 Section 18. (a) The Criminal Justice Information Network Governing
23 Board created pursuant to Section 23.3 of Chapter 18 of the Session Laws of the 1996
24 Second Extra Session shall develop a comprehensive juvenile justice information
25 system. The Board shall develop a system to collect data and information about every
26 juvenile who is alleged to be delinquent from the time a complaint is filed against the
27 juvenile, including:

- 28 (1) Fingerprints and photographs taken of the juvenile;
- 29 (2) Diversion agreements or plans entered into by the juvenile;
- 30 (3) Community services provided to the juvenile and any participation
31 of the juvenile in community-based programs;
- 32 (4) Court orders or dispositions of the juvenile; and
- 33 (5) Plans for care or treatment or for post-release supervision prepared
34 by the Department of Juvenile Justice.

35 The system shall allow for information and data on juveniles to be kept in a form to
36 be shared among appropriate agencies to develop treatment and intervention plans
37 based on specific data and to allow reliable assessment and evaluation of the
38 effectiveness of rehabilitative and preventive services provided to delinquent
39 juveniles.

40 (b) The Criminal Justice Information Network Governing Board shall
41 also study the most appropriate methods and procedures for obtaining, retaining, and
42 releasing fingerprints and photographs of juveniles alleged to be delinquent,
43 including:

- 1 (1) How to identify fingerprints and photographs of juveniles,
2 including the use of social security numbers;
- 3 (2) How long fingerprints and photographs of juveniles should be
4 maintained in the criminal justice information system;
- 5 (3) The extent to which juvenile fingerprints and photographs are kept
6 confidential;
- 7 (4) The circumstances or conditions under which juvenile fingerprints
8 and photographs should be disseminated;
- 9 (5) Whether juvenile fingerprints and photographs should be kept
10 separate from adult records and files; and
- 11 (6) When the juvenile fingerprints and photographs should be
12 destroyed.

13 (c) The Criminal Justice Information Network Governing Board shall
14 consider the issue of expunction of juvenile records, including the appropriate length
15 of time juvenile records should be available to law enforcement, prosecutors, and
16 service providers and under what limitations and conditions records should be
17 expunged.

18 (d) The Criminal Justice Information Network Governing Board shall
19 report to the Chairs of the Senate and House Appropriations Subcommittees on
20 Justice and Public Safety and to the Fiscal Research Division of the General
21 Assembly on the proposed system and any findings, recommendations, and legislative
22 proposals from its study on or before April 1, 1999.

23 Section 19. (a) The Department of Juvenile Justice shall develop a cost-
24 effective plan to establish statewide community-based dispositional alternatives for
25 juveniles who are adjudicated delinquent. The plan shall include a funding strategy to
26 encourage communities to provide local resources, services, and treatment options to
27 meet the physical, emotional, and mental needs of juveniles and their families. In
28 developing the plan, the Department shall consider the following community-based
29 alternatives:

- 30 (1) Home-based family counseling with family support groups that can
31 provide required intervention services;
- 32 (2) After-school activity programs for middle school juveniles targeted
33 at potential at-risk juveniles during the time when most juvenile
34 crimes occur;
- 35 (3) Inpatient and outpatient substance abuse and sex offender
36 treatment programs;
- 37 (4) Intensive supervision of high-risk juveniles;
- 38 (5) Group homes with psychological treatment and programs for
39 juveniles who do not pose a threat to the public but who need long
40 term intervention services.

41 In addition, in developing the plan, the Department shall recommend which judicial
42 districts with high crime rates should have non-residential day reporting centers to
43 provide intensive supervision.

1 (b) The Department shall report to the Chairs of the Senate and House
2 Appropriations Subcommittees on Justice and Public Safety and to the Fiscal
3 Research Division of the General Assembly on the proposed plan, the cost of the
4 plan, and on any legislative proposals required to implement the plan on or before
5 April 1, 1999.

6 Section 20. (a) The Administrative Office of the Courts shall establish
7 pilot programs for the holding of family court within district court districts to be
8 chosen by the Administrative Office of the Courts. Each pilot program shall be
9 conducted following the guidelines for the establishment of family courts contained in
10 the report of the Commission for the Future of Justice and the Courts in North
11 Carolina and shall be assigned to hear all matters involving intrafamily rights,
12 relationships, and obligations, and all juvenile justice matters, including:

- 13 (1) Child abuse, neglect, and dependency;
- 14 (2) Delinquent and undisciplined juvenile matters;
- 15 (3) Emancipation of minors and termination of parental rights;
- 16 (4) Divorce;
- 17 (5) Annulment;
- 18 (6) Equitable distribution;
- 19 (7) Alimony and postseparation support;
- 20 (8) Child custody;
- 21 (9) Child support;
- 22 (10) Paternity;
- 23 (11) Adoption;
- 24 (12) Domestic violence civil restraining orders;
- 25 (13) Abortion consent waivers;
- 26 (14) Adult protective services; and
- 27 (15) Guardianship, involuntary commitment, and voluntary
28 admissions to mental health facilities.

29 (b) The Administrative Office of the Courts shall report to the Chairs of
30 the Senate and House Appropriations Subcommittees on Justice and Public Safety
31 and to the Fiscal Research Division of the General Assembly by March 1, 1999, on
32 the success of the pilot programs in bringing consistency, efficiency, and fairness to
33 the resolution of family matters and on the impact of the programs on caseloads in
34 the district court division.

35 Section 21. (a) The General Assembly finds that there are multiple risk
36 factors that put youth at risk of becoming delinquent, such as aggression, school
37 failure, child abuse and neglect, substance abuse, extreme economic deprivation,
38 friends who engage in problem behavior, inconsistent, ineffective discipline, poor
39 parental supervision, and family conflict. There are currently a number of screening
40 programs available through a number of State and local entities that, if better
41 coordinated, can provide adequate identification of delinquency risk factors so that
42 delinquency prevention programs and services can be effective.

43 The General Assembly further finds that there are currently a number of
44 State and local entities that provide delinquency prevention programs to at-risk youth

1 and their families, including early intervention programs and programs improving
2 cognitive and social competence and self-control skills, improving parenting skills,
3 and providing a positive role model. Many of these programs are already available
4 and need only to be made more accessible and to be better coordinated with other
5 existing programs and services.

6 (b) The Department of Juvenile Justice shall ensure that existing
7 programs made available through a number of entities, both at the State and at the
8 local level, that provide screenings that can provide adequate identification of
9 delinquency risk factors, continue to be used in a consistent, coordinated, and cost-
10 effective way so as to enable delinquency prevention programs and services to be
11 utilized in a consistent, coordinated, and cost-effective way.

12 (c) In implementing this section, the Department shall cooperate with all
13 affected State and local public and private entities, including local education
14 agencies, local health departments, developmental evaluation centers, local
15 departments of social services, the Divisions of Women and Children's Health, of
16 Social Services, and Mental Health, Developmental Disabilities, and Substance Abuse
17 Services of the Department of Health and Human Services, law enforcement
18 agencies, and nonprofit agencies.

19 (d) The Department shall report to the General Assembly by April 1,
20 1999, on its implementation of this section. This report shall include an evaluation of
21 the screenings and prevention programs, an identification of any bars in the law or in
22 any agency's policy that preclude effective cooperation, together with any legislative
23 and rule recommendations that are needed, recommendations as to any new
24 screening or prevention programs and services that are needed, and a detailed cost
25 analysis of these recommendations.

26 Section 22. (a) The Department of Juvenile Justice, in cooperation with
27 the Department of Public Instruction, shall study more effective and efficient ways to:

- 28 (1) Coordinate case management of delinquency and undisciplined
29 cases;
- 30 (2) Provide services to juveniles who are in need of treatment,
31 counseling, or rehabilitation and to the families of those juveniles,
32 including court-ordered parenting responsibility classes; and
- 33 (3) Provide the maximum protection to the public and to local school
34 administrative units, in particular, through the sharing of
35 information between agencies that work with juveniles who are
36 delinquent or undisciplined and increased accountability of those
37 juveniles and their parents.

38 The study shall include a review of all the agencies, councils, and programs that
39 provide services to juveniles, including the Center for the Prevention of School
40 Violence, School Resource Officers, the Guardian ad Litem Program of the
41 Administrative Office of the Courts, the Department of Social Services, the
42 Department of Administration, the Division of Child and Family Services, the
43 Division of Mental Health, Developmental Disabilities, and Substance Abuse
44 Services, and the Willie M. Program, and whether the agencies, councils, or programs

1 should be eliminated, consolidated, or incorporated within the Department of
2 Juvenile Justice. In determining whether to incorporate any of the above-listed
3 programs or agencies in the new department, the Department of Juvenile Justice and
4 the Department of Public Instruction shall consider the funding mechanisms of those
5 programs and agencies in an effort to operate the Department of Juvenile Justice in a
6 cost-effective and efficient manner.

7 (b) The Department of Juvenile Justice in cooperation with the
8 Department of Public Instruction, shall develop proposed rules, forms, and policies
9 required to establish the Department of Juvenile Justice and to implement the
10 objectives and mandates of Article 12 of Chapter 143B of the General Statutes, as
11 enacted by this act.

12 (c) On or before April 1, 1999, the Department of Juvenile Justice and
13 the Department of Public Instruction shall report its findings and recommendations,
14 including any legislative proposals and funding requirements that are required to
15 implement Article 12 of Chapter 143B of the General Statutes, as enacted by this act,
16 to the 1999 General Assembly by April 1, 1999.

17 **PART VII. DEPARTMENT OF JUVENILE JUSTICE STUDY AND REPORT.**

18 Section 23. The Department of Juvenile Justice shall use funds within its
19 budget to evaluate the effectiveness of the reform measures implemented pursuant to
20 the provisions of this act. The Department shall report the results of the evaluation
21 and any recommended legislative amendments to Chapter 7B of the General Statutes
22 to the Joint Legislative Commission on Governmental Operations by April 1, 2001.

23 **PART VIII. DEPARTMENT TRANSITIONAL PERIOD.**

24 Section 24. Beginning October 1, 1998, the Department of Juvenile
25 Justice shall perform all functions and duties of the Division of Youth Services of the
26 Department of Health and Human Services and of the Division of Juvenile Services
27 of the Administrative Office of the Courts and shall have all powers and authority
28 vested in those Divisions pursuant to the General Statutes, notwithstanding that
29 Section 4 of this act amends the applicable sections of the General Statutes to revise
30 statutory references to "Division of Youth Services", "Division of Juvenile Services",
31 "Juvenile Services Division", "Administrative Office of the Courts", "Director of
32 Youth Services", and "Administrator of Juvenile Services", effective July 1, 1999.

33 **PART IX. FACILITIES CONSTRUCTION.**

34 Section 25. The Office of State Construction of the Department of
35 Administration may contract for and supervise all aspects of administration, technical
36 assistance, design, construction, or demolition of any juvenile facilities authorized for
37 the 1998-99 fiscal year, including renovation of existing adult facilities to juvenile
38 facilities.

39 The facilities authorized for the 1998-99 fiscal year shall be constructed in
40 accordance with the provisions of general law applicable to the construction of State
41 facilities. If the Secretary of Administration, after consultation with the Secretary of
42 the Department of Juvenile Justice, finds that the delivery of juvenile facilities must
43 be expedited for good cause, the Office of State Construction of the Department of
44 Administration shall be exempt from the following statutes and rules implementing

1 those statutes, to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128,
2 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-
3 66, 133-1.1(g), and 143-408.1 through 143-408.7.

4 Prior to exercising the exemptions allowable under this section, the
5 Secretary of Administration shall give reasonable notice in writing of the
6 Department's intent to exercise the exemptions to the Speaker of the House, the
7 President Pro Tempore of the Senate, the Chairs of the House and Senate
8 Appropriations Committees, the Joint Legislative Commission on Governmental
9 Operations, and the Fiscal Research Division. The written notice shall contain at
10 least the following information: (i) the specific statutory requirement or requirements
11 from which the Department intends to exempt itself; (ii) the reason the exemption is
12 necessary to expedite delivery of juvenile facilities; (iii) the way in which the
13 Department anticipates the exemption will expedite the delivery of facilities; and (iv)
14 a brief summary of the proposed contract for the project which is to be exempted.

15 The Office of State Construction of the Department of Administration
16 shall have a verifiable ten percent (10%) goal for participation by minority and
17 women-owned businesses. All contracts for the design, construction, or demolition of
18 juvenile facilities shall include a penalty for failure to complete the work by a
19 specified date.

20 The Office of State Construction of the Department of Administration
21 shall consult the Department of Juvenile Justice on these projects to the extent that
22 such involvement relates to the Department's program needs and to its responsibility
23 for the care of the population of the facility.

24 (b) The Office of State Construction of the Department of
25 Administration shall provide a report by May 1, 1999, to the Chairs of the Senate and
26 House Appropriations Committees, the Joint Legislative Commission on
27 Governmental Operations, and the Fiscal Research Division as to any changes in
28 projects and allocations authorized for the 1998-99 fiscal year. The report shall
29 include information on which contractors have been selected, what contracts have
30 been entered into, the projected and actual occupancy dates of facilities contracted
31 for, the number of beds to be constructed on each project, the location of each
32 project, and the projected and actual cost of each project.

33 PART X. APPROPRIATIONS.

34 Section 26. There is established in the Office of State Budget and
35 Management a reserve fund entitled the "Juvenile Justice Reserve Fund" to provide
36 funds to implement the provisions of this act. There is appropriated from the General
37 Fund to the Office of State Budget and Management the sum of forty-two million
38 four hundred thousand dollars (\$42,400,000) for the 1998-99 fiscal year for the
39 Juvenile Justice Reserve Fund. The Office of State Budget and Management shall
40 report to the Joint Legislative Commission on Governmental Operations on the
41 intended use of the funds prior to expenditure of any funds from the Juvenile Justice
42 Reserve Fund.

43 PART XI. SEVERABILITY CLAUSE.

1 Section 27. If any section or provision of this act is declared
2 unconstitutional or invalid by the courts, it does not affect the validity of this act as a
3 whole or any part other than the part so declared to be unconstitutional or invalid.

4 **PART XII. EFFECTIVE DATES.**

5 Section 28. (a) Sections 1, 2, 19, 21, and 22 of this act become effective
6 October 1, 1998.

7 (b) Sections 3 through 8, Sections 10 through 12, and Sections 14, 15, and
8 18 of this act become effective July 1, 1999.

9 (c) Sections 9 and 13 of this act become effective October 1, 1999.

10 (d) The remainder of this act becomes effective July 1, 1998.

11 (e) G.S. 7B-1402 and G.S. 7B-1403, as enacted by Section 4 of this act,
12 are repealed February 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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D

SENATE BILL 1260
PROPOSED SENATE COMMITTEE SUBSTITUTE S1260-CSSC-001

17-JUN-98/23:55:09

ATTENTION: Line numbers may change after adoption.

Short Title: Juvenile Justice Reform Act.

(Public)

Sponsors:

Referred to:

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO AMEND
3 AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO MAKE
4 CONFORMING CHANGES TO THE STATUTES, AND TO APPROPRIATE FUNDS,
5 AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE;
6 AND TO PROVIDE THAT A CHILD WHO POSSESSES OR SELLS ALCOHOL OR A
7 CONTROLLED SUBSTANCE ON SCHOOL PROPERTY, WHO POSSESSES OR USES
8 A WEAPON ON SCHOOL PROPERTY, OR WHO ASSAULTS A SCHOOL EMPLOYEE
9 SHALL NOT BE ELIGIBLE TO OBTAIN OR SHALL LOSE HIS OR HER NORTH
10 CAROLINA DRIVERS LICENSE.

11 The General Assembly of North Carolina enacts:

12 PART I. ESTABLISHMENT OF THE DEPARTMENT OF JUVENILE JUSTICE AND
13 CONFORMING STATUTORY CHANGES.

14 Section. 1. (a) Articles 24 and 24A of Chapter 7A of the
15 General Statutes, Article 2 of Chapter 110 of the General
16 Statutes, and Chapter 134A of the General Statutes are repealed.

17 (b) Chapter 143B of the General Statutes is amended by
18 adding a new Article to read:

19 "ARTICLE 12.
20 "Department of Juvenile Justice.

"Part 1. General Provisions."§ 143B-511. Department of Juvenile Justice -- creation.

There is hereby created and constituted a department to be known as the 'Department of Juvenile Justice,' with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article.

"§ 143B-512. Definitions.

The following definitions shall apply to this Article, unless the context or subject matter otherwise requires:

- (1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Secretary of the Department of Juvenile Justice.
- (2) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.
- (3) Court. -- The district court division of the General Court of Justice.
- (4) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.
- (5) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.
- (6) Delinquent juvenile. -- A juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government.
- (7) Department. -- The North Carolina Department of Juvenile Justice.
- (8) Detention facility. -- A facility authorized to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.
- (9) District. -- Any district court district as established by G.S. 7A-133.
- (10) Intake Counselor. -- A person who screens and evaluates a complaint alleging that a juvenile is

- 1 delinquent or undisciplined to determine whether
2 the complaint should be filed as a petition.
3 (11) Judge. -- Any district court judge.
4 (12) Judicial district. -- Any district court district
5 as established by G.S. 7A-133.
6 (13) Juvenile. -- Except as provided in subdivisions (6)
7 and (23) of this section, any person who has not
8 reached the person's eighteenth birthday and is not
9 married, emancipated, or a member of the armed
10 services of the United States. Wherever the term
11 'juvenile' is used with reference to rights and
12 privileges, that term encompasses the attorney for
13 the juvenile as well.
14 (14) Juvenile court. -- Any district court exercising
15 jurisdiction pursuant to Chapter 7B of the General
16 Statutes.
17 (15) Juvenile court services. -- Any type of residential
18 or nonresidential program for juveniles who are
19 under the jurisdiction of the juvenile court which
20 provides services to a juvenile in the community
21 where the juvenile's family lives. Juvenile court
22 services may include family counseling,
23 restitution, victim-offender mediation, and other
24 appropriate services.
25 (16) Juvenile facilities. -- A State-operated training
26 school, detention facility, multipurpose group
27 home, or other residential institution for
28 committed delinquents previously operated by the
29 Department of Health and Human Services, or
30 authorized pursuant to Chapter 7B of the General
31 Statutes.
32 (17) Juvenile Crime Prevention Councils. -- Councils in
33 each county that are appointed by the boards of
34 county commissioners pursuant to G.S. 143B-550 to
35 develop plans and administer funds for
36 dispositional community service and delinquency
37 prevention and annually evaluate services and
38 programs.
39 (18) Post-release supervision. -- The supervision of a
40 juvenile who has been released after having been
41 committed to a facility of the Department of
42 Juvenile Justice.
43 (19) Probation. -- The status of a juvenile who has been
44 adjudicated delinquent, is subject to specified

1 conditions under the supervision of a court
2 counselor, and may be returned to the court for
3 violation of those conditions during the period of
4 probation.

5 (20) Programs. -- Any type of residential or
6 nonresidential program or service for youth that
7 may be developed by the Secretary as authorized by
8 this Article.

9 (21) Prosecutor. -- The district attorney or assistant
10 district attorney assigned by the district attorney
11 to juvenile proceedings.

12 (22) Secretary. -- The Secretary of the Department of
13 Juvenile Justice.

14 (23) Undisciplined Juvenile. --

15 a. A juvenile who, while less than 16 years of
16 age but at least 6 years of age, is unlawfully
17 absent from school; or is regularly
18 disobedient to and beyond the disciplinary
19 control of the juvenile's parent, guardian, or
20 custodian; or is regularly found in places
21 where it is unlawful for a juvenile to be; or
22 has run away from home; or

23 b. A juvenile who is 16 or 17 years of age and
24 who is regularly disobedient to and beyond the
25 disciplinary control of the juvenile's parent,
26 guardian, or custodian; or is regularly found
27 in places where it is unlawful for a juvenile
28 to be; or has run away from home.

29 § 143B-513. Department of Juvenile Justice -- duties.

30 (a) The Department of Juvenile Justice shall act to:

31 (1) Protect the public from acts of juvenile
32 delinquency;

33 (2) Provide services to juveniles to assist them to
34 become productive, responsible citizens;

35 (3) Provide for a statewide and uniform system of
36 juvenile probation and post-release supervision
37 that provides adequate and appropriate services to
38 certain children who are found to be within the
39 juvenile jurisdiction of the district court;

40 (4) Authorize an intake process for diversion of
41 selected juvenile offenders from the juvenile
42 justice system;

43 (5) Plan, develop, and coordinate comprehensive
44 multidisciplinary services and programs statewide

- 1 for prevention, early intervention, and
2 rehabilitation of juveniles;
- 3 (6) Implement training school programs that provide
4 appropriate mental health and substance abuse
5 treatment and care according to the needs of the
6 juveniles and provide quality educational programs,
7 including vocational and technical education in
8 coordination with other local and State services
9 and resources for juveniles; and
- 10 (7) Ensure that personnel responsible for the care,
11 supervision, and treatment of juveniles are
12 appropriately apprised of the requirements of this
13 Article and trained in specialized and cultural
14 diversity areas to comply with standards
15 established by Chapter 7B of the General Statutes.
- 16 (b) The Department may also provide consulting services and
17 technical assistance to courts, law enforcement agencies, and
18 other agencies, local governments, and public and private
19 organizations, and may develop or assist Juvenile Crime
20 Prevention Councils in developing community needs, assessments,
21 and action programs relating to prevention and treatment of
22 delinquent and undisciplined behavior.
- 23 (c) The Department shall annually collect and report budget
24 expense data for every program operated and contracted by the
25 Department. The budget and expense data shall conform to a
26 format approved by the Department and to any statutory
27 requirements and shall include information and data on all State-
28 operated and contracted programs for the purpose of comparing
29 programs. The Department shall submit an annual budget and
30 expense report to the Office of the Governor no later than
31 February 1 each year.
- 32 (d) The Department shall develop a cost-benefit model and
33 apply the model to each State-funded program. Program commitment
34 and recidivism rates shall be components of the model. In
35 developing the model, the Department shall consider the
36 recommendations of the State Advisory Board on Juvenile Justice
37 and Delinquency Prevention. The Department shall submit a report
38 ranking the State-funded programs to the Governor and the General
39 Assembly, on or before February 1 each year.
- 40 (e) Each programmatic, residential, and service contract or
41 agreement entered into by the Department shall include a
42 cooperation clause for purposes of complying with the
43 Department's quality assurance requirements, cost-accounting

1 requirements, recidivism rates, and the program outcome
2 evaluation programs.

3 "§ 143B-514. Department of Juvenile Justice -- functions and
4 organization.

5 (a) All authority, powers, duties, and functions, including
6 statutory, records, personnel, property, unexpended balances of
7 appropriations, allocations or other funds, including the
8 functions of budgeting and purchasing, of the Division of
9 Juvenile Services of the Administrative Office of the Courts are
10 transferred to and vested in the Department of Juvenile Justice
11 as if by a Type I Transfer as defined in G.S. 143A-6.

12 (b) All authority, powers, duties, and functions, including
13 statutory, records, personnel, property, unexpended balances of
14 appropriations, allocations or other funds, including the
15 functions of budgeting and purchasing, of the Division of Youth
16 Services of the Department of Health and Human Services are
17 transferred to and vested in the Department of Juvenile Justice
18 as if by a Type I Transfer as defined in G.S. 143A-6.

19 (c) All institutions previously operated by the Division of
20 Youth Services of the Department of Health and Human Services and
21 the present central office of the Division of Youth Services,
22 including land, buildings, equipment, supplies, personnel, or
23 other properties rented or controlled for youth development
24 purposes, shall be administered by the Department of Juvenile
25 Justice.

26 (d) All institutions previously operated by the Division of
27 Juvenile Services of the Administrative Office of the Courts and
28 the present central office of the Division of Juvenile Services,
29 including land, buildings, equipment, supplies, personnel, or
30 other properties rented or controlled for youth development
31 purposes, shall be administered by the Department of Juvenile
32 Justice.

33 "§ 143B-515. Secretary of the Department of Juvenile Justice --
34 powers and duties.

35 (a) The head of the Department of Juvenile Justice is the
36 Secretary of the Department of Juvenile Justice. The Secretary
37 shall have the powers and duties conferred by this Chapter,
38 delegated by the Governor, and conferred by the Constitution and
39 laws of this State. The Secretary shall be responsible for
40 effectively and efficiently organizing the Department of Juvenile
41 Justice to promote the policy of the State as set forth in this
42 Article and to promote public safety and to prevent the
43 commission of criminal offenses by juveniles in accord with that
44 policy.

- 1 **(b) The Secretary shall have the following powers and duties:**
2 **(1) To develop a sound admission or intake program to**
3 **youth services institutions, including the**
4 **requirement of a careful evaluation of the needs of**
5 **each child prior to acceptance and placement.**
6 **(2) To assure quality programs in youth services**
7 **institutions or youth services programs which shall**
8 **be designed to meet the needs of children in care**
9 **or receiving services.**
10 **(3) To have all other powers of a secretary in relation**
11 **to a division of youth services or youth services**
12 **institutions or youth services programs as provided**
13 **by the Executive Organization Act of 1973 as**
14 **amended and codified in Chapter 143B of the General**
15 **Statutes or as provided by any other appropriate**
16 **State law.**
17 **(4) To adopt rules and regulations to implement the**
18 **provisions of this Article and the responsibilities**
19 **of the Secretary and the Department of Juvenile**
20 **Justice under Chapter 7B of the General Statutes.**
21 **The Secretary may adopt rules applicable to local**
22 **human services agencies providing juvenile court**
23 **and delinquency prevention services for the purpose**
24 **of program evaluation, fiscal audits, and**
25 **collection of third-party payments.**
26 **(5) To designate the appropriate unit of the Department**
27 **of Juvenile Justice to be responsible for**
28 **coordination of State-level services in relation to**
29 **delinquency prevention and juvenile court services**
30 **so that any citizen may go to one place in State**
31 **government to receive services or access to**
32 **services.**
33 **(6) To arrange appropriate coordination and planning**
34 **within the child-serving agencies of the Department**
35 **of Juvenile Justice and promote interdepartmental**
36 **coordination.**
37 **(7) To assist local governments and private service**
38 **agencies in the development of juvenile court**
39 **services and delinquency prevention, and to provide**
40 **information on the availability of potential**
41 **funding sources and whatever assistance may be**
42 **requested in making application for needed funding.**
43 **(8) To approve yearly program evaluations and to make**
44 **recommendations to the General Assembly concerning**

- 1 continuation funding that might be supported by
2 that evaluation.
- 3 (9) To approve program evaluation standards by which
4 all programs developed under the provisions of this
5 Article may be objectively evaluated.
- 6 (10) To develop a formula for funding on a matching
7 basis for juvenile court and delinquency prevention
8 services as provided for in this Article. This
9 formula shall be based upon the county's or
10 counties' relative ability to fund community-based
11 programs for juveniles.
- 12 Local governments receiving State matching funds
13 for programs under the provisions of this Article
14 must maintain the same overall level of effort that
15 existed at the time of the filing of the county
16 assessment of youth needs with the Department.
- 17 (11) Assure that the Criminal Justice Information
18 Network Governing Board administer a comprehensive
19 juvenile justice information system to collect data
20 and information about delinquent juveniles for the
21 purpose of developing treatment and intervention
22 plans and allowing reliable assessment and
23 evaluation of the effectiveness of rehabilitative
24 and preventive services provided to delinquent
25 juveniles.
- 26 (12) Establish substance abuse testing for juveniles
27 adjudicated delinquent for substance abuse
28 offenses.
- 29 (c) Except as otherwise specifically provided in this Article
30 and in Article 1 of this Chapter, the functions, powers, duties,
31 and obligations of every agency or division in the Department of
32 Juvenile Justice shall be prescribed by the Secretary of the
33 Department of Juvenile Justice.
- 34 "§ 143B-516. Secretary of the Department of Juvenile Justice
35 requests for grants-in-aid from non-State agencies.
- 36 It is the intent of the General Assembly that non-State human
37 services agencies providing juvenile court and delinquency
38 prevention programs submit their appropriation requests for
39 grants-in-aid through the Secretary of the Department of Juvenile
40 Justice for recommendations to the Governor, the Advisory Budget
41 Commission, and the General Assembly and that agencies receiving
42 these grants, at the request of the Secretary of the Department
43 of Juvenile Justice, provide a postaudit of their operations that
44 has been done by a certified public accountant.

1 "§ 143B-517. Department of Juvenile Justice -- authority to
2 contract with other entities.

3 (a) The Department of Juvenile Justice may contract with any
4 governmental agency, person, association, or corporation for the
5 accomplishment of its duties and responsibilities provided that
6 the expenditure of funds pursuant to these contracts shall be for
7 the purposes for which the funds were appropriated and is not
8 otherwise prohibited by law.

9 (b) The Department may enter into contracts with and to act as
10 intermediary between any federal government agency and any county
11 of this State for the purpose of assisting the county to recover
12 monies expended by a county-funded financial assistance program;
13 and, as a condition of assistance, the county shall agree to hold
14 and save harmless the Department against any claims, loss, or
15 expense which the Department might incur under the contracts by
16 reason of any erroneous, unlawful, or tortious act or omission of
17 the county or its officials, agents, or employees.

18 "§ 143B-518. Department of Juvenile Justice; authority to assist
19 private nonprofit foundations.

20 The Secretary may provide appropriate services or allow
21 employees of the Department to assist any private nonprofit
22 foundation which works directly with services or programs of the
23 Department and whose sole purpose is to support the services and
24 programs of the Department. A Department employee shall be
25 allowed to work with a foundation no more than 20 hours in any
26 one month. These services are not subject to the provisions of
27 Chapter 150B of the General Statutes.

28 The board of directors of each private, nonprofit foundation
29 shall secure and pay for the services of the State Auditor's
30 Office or employ a certified public accountant to conduct an
31 annual audit of the financial accounts of the foundation. The
32 board of directors shall transmit to the Secretary of the
33 Department of Juvenile Justice a copy of the annual financial
34 audit report of the private nonprofit foundation.

35 "Part 2. Juvenile Facilities.

36 "§ 143B-520. Juvenile facilities.

37 The Department of Juvenile Justice shall be responsible for
38 administration of statewide programs to provide any committed
39 juvenile with appropriate treatment according to the juvenile's
40 needs, including the following programs or services: educational,
41 clinical and psychological, psychiatric, social, medical,
42 vocational, recreational, and others identified as appropriate by
43 the Secretary.

1 "§ 143B-521. Authority to provide necessary medical or surgical
2 care.

3 The Department may provide such medical and surgical treatment
4 as is necessary to preserve the life and health of juveniles
5 while in care, provided that no surgical operation may be
6 performed except as authorized in G.S. 148-22.2.

7 "§ 143B-522. Compensation to children in care.

8 Juveniles who have been committed to the Department may be
9 compensated for work or participation in training programs at
10 rates approved by the Secretary within available funds. The
11 Secretary may provide for a reasonable allowance to the juvenile
12 for incidental personal expenses, and any balance of juvenile's
13 earnings remaining at the time the juvenile is released from
14 custody shall be paid to the juvenile or the juvenile's parents
15 or guardians. The Department is authorized to accept grants or
16 funds from any source to compensate juveniles as provided under
17 this section.

18 "§ 143B-524. Visits and community activities.

19 The Department shall encourage visits by parents, guardians, or
20 custodians and responsible relatives of juveniles in care. The
21 Department shall also arrange a suitable program of home visits
22 for juveniles in care.

23 "§ 143B-525. Regional detention services.

24 The Department shall be responsible for juvenile detention
25 services, including the development of a statewide plan for
26 regional juvenile detention services that will offer juvenile
27 detention care of sufficient quality to meet State standards to
28 any juvenile requiring juvenile detention care within the State
29 in a detention facility as follows:

30 (1) The Department shall plan with the counties
31 operating a county detention facility to provide
32 regional juvenile detention services to surrounding
33 counties, except that the Department shall have
34 some discretion in defining the geographical
35 boundaries of the regions based on negotiations
36 with affected counties, distances, availability of
37 juvenile detention care that meets State standards,
38 and other appropriate variable factors.

39 (2) The Department shall plan for and administer five
40 or more regional detention homes, including careful
41 planning on location, architectural design,
42 construction, and administration of a program to
43 meet the needs of juveniles in juvenile detention
44 care. Both the physical facility and the program of

1 a regional detention home shall comply with State
2 standards established by the Department.

3 "§ 143B-526. State subsidy to county detention facilities.

4 The Department shall administer a State subsidy program to pay
5 a county that provides juvenile detention services and meets
6 State standards a certain per diem per juvenile. In general,
7 this per diem should be fifty percent (50%) of the total cost of
8 caring for a juvenile from within the county and 100 percent
9 (100%) of the total cost of caring for a juvenile from another
10 county. Any county placing a juvenile in a detention home in
11 another county shall pay fifty percent (50%) of the total cost of
12 caring for the child to the Department. The exact funding
13 formulas may be varied by the Department to operate within
14 existing State appropriations or other funds that may be
15 available to pay for juvenile detention care.

16 "§ 143B-527. Authority for implementation.

17 In order to allow for effective implementation of a statewide
18 regional approach to juvenile detention, the Department shall
19 have legal authority to do the following:

20 (1) To release or transfer a juvenile from a secure
21 custody facility to another secure custody facility
22 when necessary to appropriately administer the
23 juvenile's commitment. The Department shall notify
24 the court that committed the juvenile to the
25 Department, in writing, of its intent to release or
26 transfer the juvenile. If the court does not
27 respond within 10 days after receipt of the notice,
28 the release or transfer shall be deemed granted.

29 (2) To plan with counties operating county detention
30 homes to provide regional services and to upgrade
31 physical facilities to contract with counties for
32 services and care, and to pay State subsidies to
33 counties providing regional juvenile detention
34 services that meet State standards;

35 (3) To develop one or more pilot programs to
36 demonstrate quality juvenile detention care on a
37 regional basis that meet State standards;

38 (4) To develop a plan whereby law enforcement officers
39 or other appropriate employees of local government
40 shall be reimbursed by the State for the costs of
41 transportation of a juvenile to and from any
42 juvenile detention facility;

1 (5) To seek funding for juvenile detention services
2 from federal sources, and to accept gifts of funds
3 from public or private sources; and

4 (6) To transfer State funds appropriated for
5 institutions or other youth services programs to
6 develop a pilot program of juvenile detention care,
7 to purchase detention care in a county detention
8 facility that meets State standards, and to operate
9 a detention facility.

10 "Part 3. Juvenile Court Services.

11 "§ 143B-530. Juvenile court services.

12 The Department of Juvenile Justice shall be responsible for
13 administration of a statewide and uniform system of juvenile
14 probation and post-release supervision services in all district
15 court districts of the State. The Secretary shall be responsible
16 for planning, organizing, and administering juvenile probation
17 and post-release supervision services on a statewide basis to the
18 end that juvenile services will be uniform throughout the State
19 and of sufficient quality to meet the needs of the children under
20 supervision.

21 "§ 143B-531. Duties and powers of Secretary.

22 The Secretary shall have the following powers and duties as
23 they relate to juvenile court services:

24 (1) To plan for a statewide program of juvenile
25 probation and post-release supervision services.

26 (2) To appoint such personnel within the Department of
27 Juvenile Justice as may be necessary to administer
28 a statewide and uniform system of juvenile
29 probation and post-release supervision.

30 (3) To appoint the chief court counselor in each
31 district court district with the approval of the
32 chief district court judge of that district.

33 (4) To study the various issues related to
34 qualifications, salary ranges, appointment of
35 personnel on a merit basis, including chief court
36 counselors, court counselors, secretaries and other
37 appropriate personnel, at the State and district
38 levels in order to adopt appropriate policies and
39 procedures governing personnel.

40 (5) To develop a statewide plan for staff development
41 and training so that chief court counselors, court
42 counselors and other personnel responsible for
43 juvenile services may be appropriately trained and
44 qualified; such plan may include attendance at

1 appropriate professional meetings and opportunities
2 for educational leave for academic study.

3 (6) To develop, promulgate, and enforce such policies,
4 procedures, rules, and regulations as the Secretary
5 may find necessary and appropriate to implement a
6 statewide and uniform program of juvenile probation
7 and post-release supervision services.

8 "§ 143B-532. Duties and powers of chief court counselors.

9 The chief court counselor in each district court district
10 appointed as provided by this Article shall have the following
11 powers and duties:

12 (1) To appoint such court counselors, secretaries, and
13 other personnel as may be authorized by the
14 Department in accordance with the personnel
15 policies adopted by the Secretary.

16 (2) To supervise and direct the program of juvenile
17 probation and post-release supervision within the
18 district court district under the supervision of
19 the court according to the programs and rules.

20 (3) To provide in-service training for staff as
21 required by the Secretary.

22 (4) To keep any records and make any reports requested
23 by the Secretary in order to provide statewide data
24 and information about juvenile needs and services.

25 "§ 143B-533. Duties and powers of juvenile court counselors.

26 All juvenile court counselors providing services to judges
27 hearing juvenile cases shall have the following powers and
28 duties, as the court may require:

29 (1) To secure or arrange for such information
30 concerning a case as the court may require before,
31 during, or after the hearing.

32 (2) To prepare written reports for the use of the
33 court.

34 (3) To appear and testify at court hearings.

35 (4) To assume temporary custody of a juvenile when
36 directed by court order.

37 (5) To furnish each juvenile on probation and the
38 juvenile's parents, guardian, or custodian with a
39 written statement of the juvenile's conditions of
40 probation, and to consult with the juvenile's
41 parents, guardian, or custodian so that they may
42 help the juvenile comply with the juvenile's
43 probation.

- 1 (6) To keep informed concerning the conduct and
2 progress of any juvenile on probation or under
3 court supervision through home visits or
4 conferences with the parents, guardian, or
5 custodian and in other ways.
- 6 (7) To see that the conditions of probation are
7 complied with by the juvenile, or to bring any
8 juvenile who violates the juvenile's probation to
9 the attention of the court.
- 10 (8) To make periodic reports to the court concerning
11 the adjustment of any juvenile on probation or
12 under court supervision.
- 13 (9) To keep such records of the juvenile's work as the
14 court may require.
- 15 (10) To account for all funds collected from juveniles.
- 16 (11) To have all the powers of a peace officer in the
17 district.
- 18 (12) To provide supervision for a juvenile transferred
19 to the officer's supervision from another court or
20 another state, and to provide supervision for any
21 child released from an institution operated by the
22 Department of Correction when requested by the
23 Department to do so.
- 24 (13) To assist in the development of post-release
25 supervision and the supervision of juveniles.
- 26 (14) To have such other duties as the court may direct.
- 27 "Part 4. Comprehensive Juvenile Delinquency and Substance Abuse
28 Prevention Plan.
- 29 "§ 143B-540. Comprehensive Juvenile Delinquency and Substance
30 Abuse Prevention Plan.
- 31 (a) The Department shall prepare and develop a comprehensive
32 juvenile delinquency and substance abuse prevention plan and will
33 coordinate with county Juvenile Crime Prevention Councils, as
34 provided in G.S. 143B-550, for implementation of a continuum of
35 services and programs at the community level. The Department
36 shall ensure that localities are informed about best practices in
37 juvenile delinquency and substance abuse prevention. In
38 administering the plan, the Department and the Juvenile Crime
39 Prevention Councils shall adhere to proven effective principles.
- 40 (b) The Department shall ensure that the plan contains the
41 following:
- 42 (1) Identification of the risk factors at the
43 developmental stages of a juvenile's life that may
44 result in delinquent behavior.

- 1 (2) Identification of the protective factors that
2 families, schools, communities, and the State must
3 support to reduce the risk of juvenile delinquency.
- 4 (3) Programmatic concepts that are effective in
5 preventing juvenile delinquency and substance abuse
6 and that should be made available as basic services
7 in the communities, including:
- 8 a. Early intervention;
9 b. In-home training and community-based family
10 counseling and parent training;
11 c. Adolescent and family substance abuse
12 prevention services, including alcohol abuse
13 prevention services, and substance abuse
14 education;
15 d. Non-school hours activities, both before and
16 after school hours;
17 e. Law related education, and life and social
18 skills training programs;
19 f. Conflict resolution, problem solving, and
20 anger management; and
21 g. Personal advocacy, including mentoring
22 relationships, tutors or other caring adult
23 programs.
- 24 (c) Prior to the implementation of the Department's plan
25 prescribed in this section, the Department shall report to the
26 State Advisory Council on Juvenile Justice and Delinquency
27 Prevention, as established in G.S. 143B-560.
- 28 (d) The Department shall cooperate with all other affected
29 State agencies and entities in implementing this section.
- 30 "Part 5. Juvenile Crime Prevention Councils.
31 "§ 143B-550. Juvenile Crime Prevention Councils; legislative
32 intent.
- 33 (a) It is the intent of the General Assembly both to reduce the
34 number of juveniles committed by the courts for delinquency to
35 institutions operated by the Department of Juvenile Justice or
36 other State agencies and to prevent juveniles who are at risk
37 from becoming delinquent. The primary intent of this Article is
38 to provide an ongoing, comprehensive State/local partnership to
39 develop nonduplicative community-based alternatives to training
40 school and to provide community-based delinquency and substance
41 abuse prevention strategies and programs. Additionally, it is
42 the intent of the General Assembly to provide noninstitutional
43 dispositional alternatives that will protect the community and
44 the juvenile.

1 These programs and services shall be planned and organized at
2 the community level, and developed in partnership with the State.
3 These planning efforts shall include appropriate representation
4 from local government, local public and private agencies serving
5 juveniles and their families, local business leaders, citizens
6 with an interest in youth problems, youth representatives, and
7 others as may be appropriate in a particular community. The
8 planning bodies at the local level shall be the Juvenile Crime
9 Prevention Councils.

10 (b) The Juvenile Crime Prevention Councils shall ensure that
11 appropriate intermediate dispositional options are available and
12 shall prioritize funding, as established in G.S. 143B-515, for
13 dispositions of intermediate and community level sanctions for
14 court-adjudicated juveniles pursuant to minimum standards adopted
15 by the Department.

16 (c) At the local level, as a prerequisite for receiving
17 funding for juvenile court service and delinquency prevention
18 programs, the board of county commissioners of each county shall
19 appoint a Juvenile Crime Prevention Council. The Juvenile Crime
20 Prevention Council shall consist of not more than 25 members and
21 should include, if possible, the following:

- 22 (1) The local school superintendent(s), or that
23 person's designee(s);
- 24 (2) A chief of police in the county;
- 25 (3) The local sheriff, or that person's designee;
- 26 (4) The district attorney, or that person's designee;
- 27 (5) The chief court counselor, or that person's
28 designee;
- 29 (6) The Director of the Area Mental Health Authority,
30 or that person's designee;
- 31 (7) The director of the local department of social
32 services, or that person's designee;
- 33 (8) The county manager, or that person's designee;
- 34 (9) A substance abuse professional;
- 35 (10) A member of the faith community;
- 36 (11) A county commissioner;
- 37 (12) A youth representative under the age of 21;
- 38 (13) A juvenile defense attorney;
- 39 (14) A district court judge;
- 40 (15) A member of the business community;
- 41 (16) A public health professional;
- 42 (17) A representative from the United Way or other
43 nonprofit agency;

1 (18) A representative of a local parks and recreation
2 program; and

3 (19) Up to ~~six~~ five members of the public to be appointed
4 by the county board of commissioners.

5 The county shall modify the Council's membership as necessary
6 to ensure that current Council members reflect the racial and
7 socioeconomic diversity of the community and to minimize
8 potential conflicts of interest by members.

9 (d) The Council shall annually review the needs of troubled
10 juveniles, both those at risk of delinquency and those
11 adjudicated delinquent, within the county and the assets and
12 resources that are available to address the needs of those
13 juveniles. The Council shall develop and advertise a request for
14 proposal process, and submit a written plan of action for the
15 expenditure of juvenile sanction and prevention funds to the
16 county for its approval. Upon the county's authorization, the
17 plan shall be submitted to the Department for final approval and
18 subsequent implementation.

19 In addition to its annual review, the Council shall perform
20 the following functions on an ongoing basis:

21 (1) Conduct an ongoing community needs assessment in
22 order to identify resources and needs of juveniles
23 and develop appropriate solutions to meet these
24 needs;

25 (2) Prepare performance evaluations of prevention and
26 alternatives programs and services. The Council
27 shall evaluate each funded program as a condition
28 of continued funding;

29 (3) Increase public awareness of the causes of
30 delinquency and of strategies to reduce the
31 problem;

32 (4) Develop strategies to intervene and appropriately
33 respond to and treat the needs of juveniles at risk
34 of delinquency through appropriate risk assessment
35 instruments;

36 (5) Provide funds for services for treatment,
37 counseling, or rehabilitation for juveniles and
38 their families, including court-ordered parenting
39 responsibility classes; and

40 (6) Plan for the establishment of a permanent funding
41 stream for delinquency prevention.

42 (f) To meet the programming needs of delinquent and at-risk
43 youth in smaller, rural counties, Juvenile Crime Prevention
44 Councils shall examine the benefits of joint program development

1 between counties within the same judicial district. If two or
2 more counties determine that a multicounty initiative would be
3 beneficial, they may establish a multicounty Juvenile Crime
4 Prevention Council, with the membership consisting of the members
5 from each county represented.

6 (g) The Secretary shall develop a funding mechanism
7 for programs that meet the standards as developed under the
8 provisions of this Part. The Secretary shall ensure that the
9 guidelines for the State/local partnership's funding process
10 include the following requirements:

11 (1) Fund programs that demonstrate effectiveness by
12 preventing delinquency and recidivism. Programs that have
13 proven
14 to be
15 ineffe
16 ctive
17 shall
18 not be
19 funded

20 i
21 (2) Use a formula for the distribution of funds. -- A
22 funding formula shall be developed that ensures
23 that even the smallest counties will be able to
24 provide the basic prevention and alternatives
25 services to juveniles in their communities;

26 (3) Allow and encourage local flexibility. -- A vital
27 component of the State/local partnership
28 established by this section is local flexibility to
29 determine how best to allocate prevention and
30 alternatives funds; and

31 (4) Combine resources. -- Counties shall be allowed and
32 encouraged to combine resources and services.

33 The Secretary shall adopt rules to implement this section and
34 the Department shall provide technical assistance to Juvenile
35 Crime Prevention Councils and shall ensure that the Juvenile
36 Crime Prevention Councils evaluate all State funded programs and
37 services on an ongoing and regular basis.

38 "§ 143B-551. Purchase of care or services from programs meeting
39 State standards.

40 The Department of Juvenile Justice and any other appropriate
41 State or local agency may purchase care or services from public
42 or private agencies providing delinquency prevention programs or
43 juvenile court services, including parenting responsibility
44 classes. The programs shall meet the State standards as

1 authorized by G.S. 143B-550. As institutional populations are
2 reduced, the Department of Juvenile Justice may divert State
3 funds appropriated for institutional programs to purchase the
4 services pursuant to the provisions of the Executive Budget Act.

5 The Secretary of Juvenile Justice shall prepare an annual
6 report on the effectiveness and cost-benefit of the Department's
7 programs, which shall include the most current institutional
8 populations of juveniles being served by the various departments
9 of State government which shall include comparative costs of all
10 child-serving agencies. Such report shall be submitted to the
11 Governor, the General Assembly, and the various State departments
12 providing services to juveniles.

13 "Part 6. State Advisory Council on Juvenile Justice and
14 Delinquency Prevention.

15 "§ 143B-560. Findings.

16 The General Assembly finds that juveniles who come within the
17 jurisdiction of juvenile court also receive services from a
18 variety of other State agencies, including the Department of
19 Public Instruction, the Division of Social Services, the
20 Department of Administration, the Division of Child and Family
21 Services, and the Division of Mental Health, Developmental
22 Disabilities, and Substance Abuse Services. No oversight body
23 exists to review the operation of the juvenile justice system and
24 its ancillary components as a single entity and to ensure that
25 State agencies work together in a comprehensive and effective
26 way.

27 "§ 143B-561. Creation of Council; purpose; members; duties.

28 (a) Creation. -- There is created the State Advisory Council on
29 Juvenile Justice and Delinquency Prevention. The Council shall
30 be located within the Office of the Governor for organizational,
31 budgetary, and administrative purposes.

32 (b) Purpose. -- The purpose of the Council is to review and
33 advise the Department of Juvenile Justice in the development of a
34 comprehensive interagency plan to reduce juvenile delinquency and
35 substance abuse and to coordinate efforts among State agencies
36 providing services and supervision to juveniles who are at-risk
37 of delinquency and for juveniles who have been adjudicated of
38 delinquent and undisciplined behavior.

39 (c) Membership. -- The Council shall consist of 19 members as
40 follows:

41 (1) Four persons appointed by the Governor, one of whom
42 is a private citizen who has demonstrated an
43 interest and commitment to youth and juvenile
44 justice issues.

- 1 (2) Four persons appointed by the Chief Justice of the
2 Supreme Court.
- 3 (3) The following persons, or their designees, ex
4 officio:
- 5 a. The Governor.
6 b. The Chief Justice of the Supreme Court.
7 c. The President Pro Tempore of the Senate.
8 d. The Speaker of the House of Representatives.
9 e. The Director of the Administrative Office of
10 the Courts.
11 f. The Superintendent of Public Instruction.
12 g. The Secretary of the Department of
13 Administration.
14 h. The Secretary of the Department of Health and
15 Human Services.
16 i. The Secretary of the Department of Correction.
17 j. The Secretary of the Department of Crime
18 Control and Public Safety.
19 k. The Secretary of the Department of Juvenile
20 Justice.
- 21 (d) Terms. -- Members, other than ex-officio members, shall
22 serve for two-year terms, beginning October 1, 1998, with no
23 prohibition against being reappointed, except initial
24 appointments shall be for terms as follows:
- 25 (1) The Governor shall initially appoint two members
26 for a term of two years and two members for a term
27 of three years.
- 28 (2) The Chief Justice of the Supreme Court shall
29 initially appoint two members for a term of two
30 years and two members for a term of three years.
- 31 (e) Chair. -- The Governor and Chief Justice of the Supreme
32 Court shall serve as cochairs of the Council.
- 33 (f) Vacancies. -- A vacancy on the Council resulting from the
34 resignation of a member or otherwise shall be filled in the same
35 manner in which the original appointment was made and the term
36 shall be for the balance of the unexpired term.
- 37 (g) Compensation. -- The Council members shall receive no
38 salary as a result of serving on the Council but shall receive
39 per diem, subsistence, and travel expenses in accordance with the
40 provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.
- 41 (h) Removal. -- Members may be removed in accordance with G.S.
42 143B-13 as if that section applied to this Article.

1 (i) Meetings. -- The chair shall convene the Council.
2 Meetings shall be held as often as necessary, but not less than
3 four times a year.

4 (j) Quorum. -- A majority of the members of the Council shall
5 constitute a quorum for the transaction of business. The
6 affirmative vote of a majority of the members present at meetings
7 of the Council shall be necessary for action to be taken by the
8 Council.

9 "§ 143B-562. Powers and duties of the Council.

10 The Council shall have the following powers and duties:

11 (1) Advise the Department of Juvenile Justice in the
12 review of the State's juvenile justice planning,
13 the development of the community juvenile justice
14 councils, and the development of a formula for the
15 distribution of funds to community juvenile service
16 boards.

17 (2) Advise all State agencies serving juveniles for the
18 purpose of developing a consistent philosophy with
19 regard to providing services to youth and promoting
20 collaboration and the efficient and effective
21 delivery of services to youth and families through
22 State, local, and district programs and fully
23 address problems of collaboration across State
24 agencies with the goal of serving youth.

25 (3) Review and comment on juvenile justice, delinquency
26 prevention, and juvenile services grant
27 applications prepared for submission under any
28 federal grant program by any governmental entity of
29 the State.

30 (4) Review the juvenile justice system's operation and
31 prioritization of funding needs.

32 (5) Review the progress and accomplishment of State and
33 local juvenile justice, delinquency prevention, and
34 juvenile services projects.

35 (6) Develop recommendations concerning the
36 establishment of priorities and needed improvements
37 with respect to juvenile justice, delinquency
38 prevention, and juvenile services and report its
39 recommendations to the General Assembly on or
40 before March 1 each year.

41 (7) Review and comment on the proposed budget for the
42 Department of Juvenile Justice."

43 Section 2. (a) G.S. 7A-343.1 reads as rewritten:

1 "§ 7A-343.1. Distribution of copies of the appellate division
2 reports.

3 The Administrative Officer of the Courts shall, at the State's
4 expense distribute such number of copies of the appellate
5 division reports to federal, State departments and agencies, and
6 to educational institutions of instruction, as follows:

7		
8	Governor, Office of the	1
9	Lieutenant Governor, Office of the	1
10	Secretary of State, Department of the	2
11	State Auditor, Department of the	1
12	Treasurer, Department of the State	1
13	Superintendent of Public Instruction	1
14	Office of the Attorney General	11
15	State Bureau of Investigation	1
16	Agriculture and Consumer Services, Department of	1
17	Labor, Department of	1
18	Insurance, Department of	1
19	Budget Bureau, Department of Administration	1
20	Property Control, Department of Administration	1
21	State Planning, Department of Administration	1
22	Environment and Natural Resources, Department of	1
23	Revenue, Department of	1
24	Health and Human Services, Department of	1
25	<u>Juvenile Justice, Department of</u>	<u>1</u>
26	Commission for the Blind	1
27	Transportation, Department of	1
28	Motor Vehicles, Division of	1
29	Utilities Commission	8
30	Industrial Commission	11
31	State Personnel Commission	1
32	Office of State Personnel	1
33	Office of Administrative Hearings	2
34	Community Colleges, Department of	38
35	Employment Security Commission	1
36	Commission of Correction	1
37	Parole Commission	1
38	Archives and History, Division of	1
39	Crime Control and Public Safety, Department of	2
40	Cultural Resources, Department of	3
41	Legislative Building Library	2
42	Justices of the Supreme Court	1 ea.
43	Judges of the Court of Appeals	1 ea.
44	Judges of the Superior Court	1 ea.

1	Clerks of the Superior Court	1 ea.
2	District Attorneys	1 ea.
3	Emergency and Special Judges of the Superior Court	1 ea.
4	Supreme Court Library	AS MANY AS REQUESTED
5	Appellate Division Reporter	1
6	University of North Carolina, Chapel Hill	71
7	University of North Carolina, Charlotte	1
8	University of North Carolina, Greensboro	1
9	University of North Carolina, Asheville	1
10	North Carolina State University, Raleigh	1
11	Appalachian State University	1
12	East Carolina University	1
13	Fayetteville State University	1
14	North Carolina Central University	17
15	Western Carolina University	1
16	Duke University	17
17	Davidson College	2
18	Wake Forest University	25
19	Lenoir Rhyne College	1
20	Elon College	1
21	Campbell University	25
22	Federal, Out-of-State and Foreign Secretary of State	1
23	Secretary of Defense	1
24	Secretary of Health, Education and Welfare	1
25	Secretary of Housing and Urban Development	1
26	Secretary of Transportation	1
27	Attorney General	1
28	Department of Justice	1
29	Internal Revenue Service	1
30	Veterans' Administration	1
31	Library of Congress	5
32	Federal Judges resident in North Carolina	1 ea.
33	Marshal of the United States Supreme Court	1
34	Federal District Attorneys resident in North Carolina	1 ea.
35	Federal Clerks of Court resident in North Carolina	1 ea.
36	Supreme Court Library exchange list	1

37
 38 Each justice of the Supreme Court and judge of the Court of
 39 Appeals shall receive for ~~his~~ private use, one complete and up-
 40 to-date set of the appellate division reports. The copies of
 41 reports furnished each justice or judge as set out in the table
 42 above may be retained ~~by him~~ personally to enable ~~him~~ the justice
 43 or judge to keep up-to-date ~~his~~ the personal set of reports."

44 (b) G.S. 14-316.1 reads as rewritten:

1 "§ 14-316.1. Contributing to delinquency and neglect by parents
2 and others.

3 Any person who is at least 16 years old who knowingly or
4 willfully causes, encourages, or aids any juvenile within the
5 jurisdiction of the court to be in a place or condition, or to
6 commit an act whereby the juvenile could be adjudicated
7 delinquent, undisciplined, abused, or neglected as defined by
8 ~~G.S. 7A-517~~ G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a
9 Class 1 misdemeanor.

10 It is not necessary for the district court exercising juvenile
11 jurisdiction to make an adjudication that any juvenile is
12 delinquent, undisciplined, abused, or neglected in order to
13 prosecute a parent or any person, including an employee of the
14 Department of ~~Health and Human Services~~ Juvenile Justice under
15 this section. An adjudication that a juvenile is delinquent,
16 undisciplined, abused, or neglected shall not preclude a
17 subsequent prosecution of a parent or any other person including
18 an employee of the ~~Division of Youth Services~~ Department of
19 Juvenile Justice, who contributes to the delinquent,
20 undisciplined, abused, or neglected condition of any juvenile."

21 (c) G.S. 17C-3 reads as rewritten:

22 "§ 17C-3. North Carolina Criminal Justice Education and Training
23 Standards Commission established; members; terms; vacancies.

24 (a) There is established the North Carolina Criminal Justice
25 Education and Training Standards Commission, hereinafter called
26 "the Commission," in the Department of Justice. The Commission
27 shall be composed of 26 members as follows:

28 (1) Police Chiefs. -- Three police chiefs selected by
29 the North Carolina Association of Chiefs of Police
30 and one police chief appointed by the Governor.

31 (2) Police Officers. -- Three police officials
32 appointed by the North Carolina Police Executives
33 Association and two criminal justice officers
34 certified by the Commission as selected by the
35 North Carolina Law-Enforcement Officers'
36 Association.

37 (3) Departments. -- The Attorney General of the State
38 of North Carolina; the Secretary of the Department
39 of Crime Control and Public Safety; the Secretary
40 of the Department of ~~Health and Human Services;~~
41 Juvenile Justice; the Secretary of the Department
42 of Correction; the President of the Department of
43 Community Colleges.

- 1 (4) At-large Groups. -- One individual representing and
2 appointed by each of the following organizations:
3 one mayor selected by the League of Municipalities;
4 one law-enforcement training officer selected by
5 the North Carolina Law-Enforcement Training
6 Officers' Association; one criminal justice
7 professional selected by the North Carolina
8 Criminal Justice Association; one sworn law-
9 enforcement officer selected by the North State
10 Law-Enforcement Officers' Association; one member
11 selected by the North Carolina Law-Enforcement
12 Women's Association; and one District Attorney
13 selected by the North Carolina Association of
14 District Attorneys.
- 15 (5) Citizens and Others. -- The President of The
16 University of North Carolina; the Director of the
17 Institute of Government; and two citizens, one of
18 whom shall be selected by the Governor and one of
19 whom shall be selected by the Attorney General. The
20 General Assembly shall appoint two persons, one
21 upon the recommendation of the Speaker of the House
22 of Representatives and one upon the recommendation
23 of the President Pro Tempore of the Senate.
24 Appointments by the General Assembly shall be made
25 in accordance with G.S. 120-122. Appointments by
26 the General Assembly shall serve two-year terms to
27 conclude on June 30th in odd-numbered years.
- 28 (b) The members shall be appointed for staggered terms. The
29 initial appointments shall be made prior to September 1, 1983,
30 and the appointees shall hold office until July 1 of the year in
31 which their respective terms expire and until their successors
32 are appointed and qualified as provided hereafter:
- 33 For the terms of one year: one member from subdivision (1) of
34 subsection (a), serving as a police chief; three members from
35 subdivision (2) of subsection (a), one serving as a police
36 official, and two criminal justice officers; one member from
37 subdivision (4) of subsection (a), appointed by the North
38 Carolina Law-Enforcement Training Officers' Association; and two
39 members from subdivision (5) of subsection (a), one appointed by
40 the Governor and one appointed by the Attorney General.
- 41 For the terms of two years: one member from subdivision (1) of
42 subsection (a), serving as a police chief; one member from
43 subdivision (2) of subsection (a), serving as a police official;
44 and two members from subdivision (4) of subsection (a), one

1 appointed by the League of Municipalities and one appointed by
2 the North Carolina Association of District Attorneys.

3 For the terms of three years: two members from subdivision (1)
4 of subsection (a), one police chief appointed by the North
5 Carolina Association of Chiefs of Police and one police chief
6 appointed by the Governor; one member from subdivision (2) of
7 subsection (a), serving as a police official; and three members
8 from subdivision (4) of subsection (a), one appointed by the
9 North Carolina Law-Enforcement Women's Association, one appointed
10 by the North Carolina Criminal Justice Association, and one
11 appointed by the North State Law-Enforcement Officers'
12 Association.

13 Thereafter, as the term of each member expires, his successor
14 shall be appointed for a term of three years. Notwithstanding the
15 appointments for a term of years, each member shall serve at the
16 will of the appointing authority.

17 The Attorney General, the Secretary of the Department of Crime
18 Control and Public Safety, the Secretary of the Department of
19 ~~Health and Human Services~~, Juvenile Justice, the Secretary of the
20 Department of Correction, the President of The University of
21 North Carolina, the Director of the Institute of Government, and
22 the President of the Department of Community Colleges shall be
23 continuing members of the Commission during their tenure. These
24 members of the Commission shall serve ex officio and shall
25 perform their duties on the Commission in addition to the other
26 duties of their offices. The ex officio members may elect to
27 serve personally at any or all meetings of the Commission or may
28 designate, in writing, one member of their respective office,
29 department, university or agency to represent and vote for them
30 on the Commission at all meetings the ex officio members are
31 unable to attend.

32 Vacancies in the Commission occurring for any reason shall be
33 filled, for the unexpired term, by the authority making the
34 original appointment of the person causing the vacancy. A vacancy
35 may be created by removal of a Commission member by majority vote
36 of the Commission for misconduct, incompetence, or neglect of
37 duty. A Commission member may be removed only pursuant to a
38 hearing, after notice, at which the member subject to removal has
39 an opportunity to be heard."

40 (d) G.S. 20-79.5(a) reads as rewritten:

41 "(a) Plates. -- The State government officials listed in this
42 section are eligible for a special registration plate under G.S.
43 20-79.4. The plate shall bear the number designated in the
44 following table for the position held by the official.

	Position	Number on Plate
1		
2		
3	Governor	1
4	Lieutenant Governor	2
5	Speaker of the House of Representative	3
6	President Pro Tempore of the Senate	4
7	Secretary of State	5
8	State Auditor	6
9	State Treasurer	7
10	Superintendent of Public Instruction	8
11	Attorney General	9
12	Commissioner of Agriculture	10
13	Commissioner of Labor	11
14	Commissioner of Insurance	12
15	Speaker Pro Tempore of the House	13
16	Legislative Services Officer	14
17	Secretary of Administration	15
18	Secretary of Environment and Natural Resources	16
19	Secretary of Revenue	17
20	Secretary of Health and Human Services	18
21	Secretary of Commerce	19
22	Secretary of Correction	20
23	Secretary of Cultural Resources	21
24	Secretary of Crime Control and Public Safety	22
25	<u>Secretary of Juvenile Justice</u>	<u>23</u>
26	Governor's Staff	23-29 <u>24-29</u>
27	State Budget Officer	30
28	State Personnel Director	31
29	Advisory Budget Commission Nonlegislative Member	32-41
30	Chair of the State Board of Education	42
31	President of the U.N.C. System	43
32	Alcoholic Beverage Control Commission	44-46
33	Assistant Commissioners of Agriculture	47-48
34	Deputy Secretary of State	49
35	Deputy State Treasurer	50
36	Assistant State Treasurer	51
37	Deputy Commissioner for the Department of Labor	52
38	Chief Deputy for the Department of Insurance	53
39	Assistant Commissioner of Insurance	54
40	Deputies and Assistant to the Attorney General	55-65
41	Board of Economic Development Nonlegislative Member	66-88
42	State Ports Authority Nonlegislative Member	89-96
43	Utilities Commission Member	97-104
44	Post-Release Supervision and	

- 1 Parole Commission Member 105-109
2 State Board Member, Commission Member,
3 or State Employee Not Named in List 110-200".
4 (e) G.S. 66-58(b) reads as rewritten:
5 "(b) The provisions of subsection (a) of this section shall
6 not apply to:
7 (1) Counties and municipalities.
8 (2) The Department of Health and Human Services or the
9 Department of Agriculture and Consumer Services for
10 the sale of serums, vaccines, and other like
11 products.
12 (3) The Department of Administration, except that the
13 agency shall not exceed the authority granted in
14 the act creating the agency.
15 (4) The State hospitals for the mentally ill.
16 (5) The Department of Health and Human Services.
17 (6) The North Carolina School for the Blind at Raleigh.
18 (6a) The Department of Juvenile Justice.
19 (7) The North Carolina Schools for the Deaf.
20 (8) The Greater University of North Carolina with
21 regard to its utilities and other services now
22 operated by it nor to the sale of articles produced
23 incident to the operation of instructional
24 departments, articles incident to educational
25 research, articles of merchandise incident to
26 classroom work, meals, books, or to articles of
27 merchandise not exceeding twenty-five cents (25¢)
28 in value when sold to members of the educational
29 staff or staff auxiliary to education or to duly
30 enrolled students or occasionally to immediate
31 members of the families of members of the
32 educational staff or of duly enrolled students nor
33 to the sale of meals or merchandise to persons
34 attending meetings or conventions as invited guests
35 nor to the operation by the University of North
36 Carolina of an inn or hotel and dining and other
37 facilities usually connected with a hotel or inn,
38 nor to the hospital and Medical School of the
39 University of North Carolina, nor to the Coliseum
40 of North Carolina State University at Raleigh, and
41 the other schools and colleges for higher education
42 maintained or supported by the State, nor to the
43 Centennial Campus of North Carolina State
44 University at Raleigh, nor to the comprehensive

- 1 student health services or the comprehensive
2 student infirmaries maintained by the constituent
3 institutions of the University of North Carolina.
- 4 (9) The Department of Environment and Natural
5 Resources, except that the Department shall not
6 construct, maintain, operate or lease a hotel or
7 tourist inn in any park over which it has
8 jurisdiction. The North Carolina Wildlife Resources
9 Commission may sell wildlife memorabilia as a
10 service to members of the public interested in
11 wildlife conservation.
- 12 (10) Child-caring institutions or orphanages receiving
13 State aid.
- 14 (11) Highlands School in Macon County.
- 15 (12) The North Carolina State Fair.
- 16 (13) Rural electric memberships corporations.
- 17 (13a) State Farm Operations Commission.
- 18 (13b) The Department of Agriculture and Consumer
19 Services with regard to its lessees at
20 farmers' markets operated by the Department.
- 21 (13c) The Western North Carolina Agricultural
22 Center.
- 23 (14) Nothing herein contained shall be construed to
24 prohibit the engagement in any of the activities
25 described in subsection (a) hereof by a firm,
26 corporation or person who or which is a lessee of
27 space only of the State of North Carolina or any of
28 its departments or agencies; provided the leases
29 shall be awarded by the Department of
30 Administration to the highest bidder, as provided
31 by law in the case of State contracts and which
32 lease shall be for a term of not less than one year
33 and not more than five years.
- 34 (15) The State Department of Correction is authorized to
35 purchase and install automobile license tag plant
36 equipment for the purpose of manufacturing license
37 tags for the State and local governments and for
38 such other purposes as the Department may direct.
- 39 The Commissioner of Motor Vehicles, or such
40 other authority as may exercise the authority to
41 purchase automobile license tags is hereby directed
42 to purchase from, and to contract with, the State
43 Department of Correction for the State automobile
44 license tag requirements from year to year.

1 The price to be paid to the State Department of
2 Correction for the tags shall be fixed and agreed
3 upon by the Governor, the State Department of
4 Correction, and the Motor Vehicle Commissioner, or
5 such authority as may be authorized to purchase the
6 supplies.

- 7 (16) Laundry services performed by the Department of
8 Correction may be provided only for agencies and
9 instrumentalities of the State which are supported
10 by State funds and for county or municipally
11 controlled and supported hospitals presently being
12 served by the Department of Correction, or for
13 which services have been contracted or applied for
14 in writing, as of May 22, 1973. In addition to the
15 prior sentence, laundry services performed by the
16 Department of Correction may be provided for the
17 Governor Morehead School and the North Carolina
18 School for the Deaf.

19 The services shall be limited to wet-washing,
20 drying and ironing of flatwear or flat goods such
21 as towels, sheets and bedding, linens and those
22 uniforms prescribed for wear by the institutions
23 and further limited to only flat goods or apparel
24 owned, distributed or controlled entirely by the
25 institutions and shall not include processing by
26 any dry-cleaning methods; provided, however, those
27 garments and items presently being serviced by wet-
28 washing, drying and ironing may in the future, at
29 the election of the Department of Correction, be
30 processed by a dry-cleaning method.

- 31 (17) The North Carolina Global TransPark Authority or a
32 lessee of the Authority.

- 33 (18) The activities and products of private enterprise
34 carried on or manufactured within a State prison
35 facility pursuant to G.S. 148-70."

36 (f) G.S. 66-58(c) reads as rewritten:

37 "(c) The provisions of subsection (a) shall not prohibit:

- 38 (1) The sale of products of experiment stations or test
39 farms.
40 (2) The sale of learned journals, works of art, books
41 or publications of the Department of Cultural
42 Resources or other agencies, or the Supreme Court
43 Reports or Session Laws of the General Assembly.

- 1 (3) The business operation of endowment funds
2 established for the purpose of producing income for
3 educational purposes; for purposes of this section,
4 the phrase "operation of endowment funds" shall
5 include the operation by public postsecondary
6 educational institutions of campus stores, the
7 profits from which are used exclusively for
8 awarding scholarships to defray the expenses of
9 students attending the institution; provided, that
10 the operation of the stores must be approved by the
11 board of trustees of the institution, and the
12 merchandise sold shall be limited to educational
13 materials and supplies, gift items and
14 miscellaneous personal-use articles. Provided
15 further that sales at campus stores are limited to
16 employees of the institution and members of their
17 immediate families, to duly enrolled students of
18 the campus at which a campus store is located and
19 their immediate families, to duly enrolled students
20 of other campuses of the University of North
21 Carolina other than the campus at which the campus
22 store is located, to other campus stores and to
23 other persons who are on campus other than for the
24 purpose of purchasing merchandise from campus
25 stores. It is the intent of this subdivision that
26 campus stores be established and operated for the
27 purpose of assuring the availability of merchandise
28 described in this Article for sale to persons
29 enumerated herein and not for the purpose of
30 competing with stores operated in the communities
31 surrounding the campuses of the University of North
32 Carolina.
- 33 (4) The operation of lunch counters by the Department
34 of Health and Human Services as blind enterprises
35 of the type operated on January 1, 1951, in State
36 buildings in the City of Raleigh.
- 37 (5) The operation of a snack bar and cafeteria in the
38 State Legislative Building.
- 39 (6) The maintenance by the prison system authorities of
40 eating and sleeping facilities at units of the
41 State prison system for prisoners and for members
42 of the prison staff while on duty, or the
43 maintenance by the highway system authorities of
44 eating and sleeping facilities for working crews on

- 1 highway construction or maintenance when actually
2 engaged in such work on parts of the highway
3 system.
- 4 (7) The operation by penal, correctional or facilities
5 operated by the Department of Health and Human
6 ~~Services~~ Services, the Department of Juvenile
7 Justice, or by the Department of Agriculture and
8 Consumer Services, of dining rooms for the inmates
9 or clients or members of the staff while on duty
10 and for the accommodation of persons visiting the
11 inmates or clients, and other bona fide visitors.
- 12 (8) The sale by the Department of Agriculture and
13 Consumer Services of livestock, poultry and
14 publications in keeping with its present livestock
15 and farm program.
- 16 (9) The operation by the public schools of school
17 cafeterias.
- 18 (9a) The use of a public school bus or public school
19 activity bus for a purpose allowed under G.S. 115C-
20 242 or the use of a public school activity bus for
21 a purpose authorized by G.S. 115C-247.
- 22 (10) Sale by any State correctional or other institution
23 of farm, dairy, livestock or poultry products
24 raised or produced by it in its normal operations
25 as authorized by the act creating it.
- 26 (11) The sale of textbooks, library books, forms,
27 bulletins, and instructional supplies by the State
28 Board of Education, State Department of Public
29 Instruction, and local school authorities.
- 30 (12) The sale of North Carolina flags by or through the
31 auspices of the Department of Administration, to
32 the citizens of North Carolina.
- 33 (13) The operation by the Department of Correction of
34 forestry management programs on State-owned lands,
35 including the sale on the open market of timber cut
36 as a part of the management program.
- 37 (14) The operation by the Department of Correction of
38 facilities to manufacture and produce traffic and
39 street name signs for use on the public streets and
40 highways of the State.
- 41 (15) The operation by the Department of Correction of
42 facilities to manufacture and produce paint for use
43 on the public streets and highways of the State.

- 1 (16) The performance by the Department of Transportation
2 of dredging services for a unit of local
3 government.
- 4 (17) The sale by the State Board of Elections to
5 political committees and candidate committees of
6 computer software designed by or for the State
7 Board of Elections to provide a uniform system of
8 electronic filing of the campaign finance reports
9 required by Article 22A of Chapter 163 of the
10 General Statutes and to facilitate the State
11 Board's monitoring of compliance with that Article.
12 This computer software for electronic filing of
13 campaign finance reports shall not exceed a cost of
14 one hundred dollars (\$100.00) to any political
15 committee or candidate committee without the State
16 Board of Elections first notifying in writing the
17 Joint Legislative Commission on Governmental
18 Operations.
- 19 (18) The leasing of no more than 50 acres within the
20 North Carolina Zoological Park by the Department of
21 Environment and Natural Resources to the North
22 Carolina Zoological Society for the maintenance or
23 operation, pursuant to a contract or otherwise, of
24 an exhibition center, theater, conference center,
25 and associated restaurants and lodging facilities."
- 26 (g) G.S. 114-19.6 reads as rewritten:
27 "**§ 114-19.6. Criminal history record checks of employees of and**
28 **applicants for employment with the Department of Health and Human**
29 **Services, Services, and the Department of Juvenile Justice.**
- 30 (a) Definitions. -- As used in this section, the term:
31 (1) 'Covered person' means:
32 a. An applicant for employment or a current
33 employee in a position in the Department of
34 Health and Human Services or the Department of
35 Juvenile Justice who provides direct care for
36 a client, patient, student, resident or ward
37 of the Department; or
38 b. Supervises positions providing direct care as
39 outlined in sub-subdivision a. of this
40 subdivision.
- 41 (2) 'Criminal history' means a State or federal history
42 of conviction of a crime, whether a misdemeanor or
43 felony, that bears upon a covered person's fitness
44 for employment in the Department of Health and

1 ~~Human Services.~~ Services or the Department of
2 Juvenile Justice. The crimes include, but are not
3 limited to, criminal offenses as set forth in any
4 of the following Articles of Chapter 14 of the
5 General Statutes: Article 5, Counterfeiting and
6 Issuing Monetary Substitutes; Article 5A,
7 Endangering Executive and Legislative Officers;
8 Article 6, Homicide; Article 7A, Rape and Other Sex
9 Offenses; Article 8, Assaults; Article 10,
10 Kidnapping and Abduction; Article 13, Malicious
11 Injury or Damage by Use of Explosive or Incendiary
12 Device or Material; Article 14, Burglary and Other
13 Housebreakings; Article 15, Arson and Other
14 Burnings; Article 16, Larceny; Article 17, Robbery;
15 Article 18, Embezzlement; Article 19, False
16 Pretenses and Cheats; Article 19A, Obtaining
17 Property or Services by False or Fraudulent Use of
18 Credit Device or Other Means; Article 19B,
19 Financial Transaction Card Crime Act; Article 20,
20 Frauds; Article 21, Forgery; Article 26, Offenses
21 Against Public Morality and Decency; Article 26A,
22 Adult Establishments; Article 27, Prostitution;
23 Article 28, Perjury; Article 29, Bribery; Article
24 31, Misconduct in Public Office; Article 35,
25 Offenses Against the Public Peace; Article 36A,
26 Riots and Civil Disorders; Article 39, Protection
27 of Minors; Article 40, Protection of the Family;
28 Article 59, Public Intoxication; and Article 60,
29 Computer-Related Crime. The crimes also include
30 possession or sale of drugs in violation of the
31 North Carolina Controlled Substances Act, Article 5
32 of Chapter 90 of the General Statutes, and alcohol-
33 related offenses such as sale to underage persons
34 in violation of G.S. 18B-302, or driving while
35 impaired in violation of G.S. 20-138.1 through G.S.
36 20-138.5.

37 (b) When requested by the Department of Health and Human
38 ~~Services,~~ Services or the Department of Juvenile Justice, the
39 North Carolina Department of Justice may provide to the
40 Department of ~~Health and Human Services~~ a covered person's
41 criminal history from the State Repository of Criminal Histories.
42 Such requests shall not be due to a person's age, sex, race,
43 color, national origin, religion, creed, political affiliation,
44 or handicapping condition as defined by G.S. 168A-3. For requests

1 for a State criminal history record check only, the Department of
2 ~~Health and Human Services~~ shall provide to the Department of
3 Justice a form consenting to the check signed by the covered
4 person to be checked and any additional information required by
5 the Department of Justice. National criminal record checks are
6 authorized for covered applicants who have not resided in the
7 State of North Carolina during the past five years. For national
8 checks the Department of ~~Health and Human Services~~ shall provide
9 to the North Carolina Department of Justice the fingerprints of
10 the covered person to be checked, any additional information
11 required by the Department of Justice, and a form signed by the
12 covered person to be checked consenting to the check of the
13 criminal record and to the use of fingerprints and other
14 identifying information required by the State or National
15 Repositories. The fingerprints of the individual shall be
16 forwarded to the State Bureau of Investigation for a search of
17 the State criminal history record file and the State Bureau of
18 Investigation shall forward a set of fingerprints to the Federal
19 Bureau of Investigation for a national criminal history record
20 check. The Department of Health and Human Service and the
21 Department of Juvenile Justice shall keep all information
22 pursuant to this section confidential. The Department of Justice
23 shall charge a reasonable fee for conducting the checks of the
24 criminal history records authorized by this section.

25 (c) All releases of criminal history information to the
26 Department of Health and Human Services or the Department of
27 Juvenile Justice shall be subject to, and in compliance with,
28 rules governing the dissemination of criminal history record
29 checks as adopted by the North Carolina Division of Criminal
30 Information. All of the information the Department of ~~Health and~~
31 ~~Human Services~~ receives through the checking of the criminal
32 history is privileged information and for the exclusive use of
33 the ~~Department of Health and Human Services~~. Department.

34 (d) If the covered person's verified criminal history record
35 check reveals one or more convictions covered under subsection
36 (a) of this section, then the conviction shall constitute just
37 cause for not selecting the person for employment, or for
38 dismissing the person from current employment with the Department
39 of Health and Human ~~Services~~. Services or the Department of
40 Juvenile Justice. The conviction shall not automatically prohibit
41 employment; however, the following factors shall be considered by
42 the Department of ~~Health and Human Services~~ in determining
43 whether employment shall be denied:

44 (1) The level and seriousness of the crime;

- 1 (2) The date of the crime;
2 (3) The age of the person at the time of the
3 conviction;
4 (4) The circumstances surrounding the commission of the
5 crime, if known;
6 (5) The nexus between the criminal conduct of the
7 person and job duties of the person;
8 (6) The prison, jail, probation, parole,
9 rehabilitation, and employment records of the
10 person since the date the crime was committed; and
11 (7) The subsequent commission by the person of a crime
12 listed in subsection (a) of this section.

13 (e) The Department of Health and Human Services and the
14 Department of Juvenile Justice may deny employment to or dismiss
15 a covered person who refuses to consent to a criminal history
16 record check or use of fingerprints or other identifying
17 information required by the State or National Repositories of
18 Criminal Histories. Any such refusal shall constitute just cause
19 for the employment denial or the dismissal from employment.

20 (f) The Department of Health and Human Services and the
21 Department of Juvenile Justice may extend a conditional offer of
22 employment pending the results of a criminal history record check
23 authorized by this section."

24 (h) G.S. 115C-110 reads as rewritten:

25 "**§ 115C-110. Services mandatory; single-agency responsibility;**
26 **State and local plans; census and registration.**

27 (a) The Board shall cause to be provided by all local school
28 administrative units and by all other State and local
29 governmental agencies providing special education services or
30 having children with special needs in their care, custody,
31 management, jurisdiction, control, or programs, special education
32 and related services appropriate to all children with special
33 needs. In this regard, all local school administrative units and
34 all other State and local governmental agencies providing special
35 education and related services shall explore available local
36 resources and determine whether the services are currently being
37 offered by an existing public or private agency.

38 When a specified special education or related service is being
39 offered by a local public or private resource, any unit or agency
40 described above shall negotiate for the purchase of that service
41 or shall present full consideration of alternatives and its
42 recommendations to the Board. In this regard, a new or additional
43 program for special education or related services shall be
44 developed with the approval of the Board only when that service

1 is not being provided by existing public or private resources or
2 the service cannot be purchased from existing providers. Further,
3 the Board shall support and encourage joint and collaborative
4 special education planning and programming at local levels to
5 include local administrative units and the programs and agencies
6 of the Departments of Health and Human ~~Services~~ Services,
7 Juvenile Justice, and Correction.

8 The jurisdiction of the Board with respect to the design and
9 content of special education programs or related services for
10 children with special needs extends to and over the Department of
11 Health and Human ~~Services~~ Services, the Department of Juvenile
12 Justice, and the Department of Correction.

13 All provisions of this Article that are specifically applicable
14 to local school administrative units also are applicable to the
15 Department of Health and Human ~~Services~~ Services, the Department
16 of Juvenile Justice, and the Department of Correction and their
17 divisions and agencies; all duties, responsibilities, rights and
18 privileges specifically imposed on or granted to local school
19 administrative units by this Article also are imposed on or
20 granted to the Department of Health and Human ~~Services~~ Services,
21 the Department of Juvenile Justice, and the Department of
22 Correction and their divisions and agencies. However, with
23 respect to children with special needs who are residents or
24 patients of any state-operated or state-supported residential
25 treatment facility, including without limitation, a school for
26 the deaf, school for the blind, mental hospital or center, mental
27 retardation center, or in a facility operated by the Department
28 of Juvenile Justice, the Department of Correction or any of its
29 divisions and agencies, the Board shall have the power to
30 contract with the Department of Health and Human ~~Services~~
31 Services, the Department of Juvenile Justice, and the Department
32 of Correction for the provision of special education and related
33 services and the power to review, revise and approve ~~said~~ these
34 Departments' plans for special education and related services to
35 those residents.

36 The Departments of Health and Human ~~Services~~ Services, Juvenile
37 Justice, and Correction shall submit to the Board their plans for
38 the education of children with special needs in their care,
39 custody, or control. The Board shall have general supervision and
40 shall set standards, by rule or regulation, for the programs of
41 special education to be administered by it, by local educational
42 agencies, and by the Departments of Health and Human ~~Services~~
43 Services, Juvenile Justice, and Correction. The Board may grant
44 specific exemptions for programs administered by the Department

1 of Health and Human ~~Services~~ Services, the Department of Juvenile
2 Justice, or the Department of Correction when compliance by them
3 with the Board's standards would, in the Board's judgment, impose
4 undue hardship on ~~such~~ this Department and when other procedural
5 due process requirements, substantially equivalent to those of
6 G.S. 115C-116, are assured in programs of special education and
7 related services furnished to children with special needs served
8 by ~~such~~ this Department. Further, the Board shall recognize that
9 inpatient and residential special education programs within the
10 Departments of Health and Human ~~Services~~ Services, Juvenile
11 Justice, and Correction may require more program resources than
12 those necessary for optimal operation of ~~such~~ these programs in
13 local school administrative units.

14 Every State and local department, division, unit or agency
15 covered by this section is hereinafter referred to as a 'local
16 educational agency' unless the text of this Article otherwise
17 provides.

18 (b) The Board shall make and keep current a plan for the
19 implementation of the policy set forth in G.S. 115C-106(b). The
20 plan shall include:

- 21 (1) A census of the children with special needs in the
22 State, as required by subsection (j) of this
23 section;
- 24 (2) A procedure for diagnosis and evaluation of each
25 ~~such~~ child;
- 26 (3) An inventory of the personnel and facilities
27 available to provide special education for ~~such~~
28 these children;
- 29 (4) An analysis of the present distribution of
30 responsibility for special education between State
31 and local educational agencies, together with
32 recommendations for any necessary or desirable
33 changes in the distribution of responsibilities;
- 34 (5) Standards for the education of children with
35 special needs;
- 36 (6) Programs and procedures for the development and
37 implementation of a comprehensive system of
38 personnel development; and
- 39 (7) Any additional matters, including recommendations
40 for amendment of laws, changes in administrative
41 regulations, rules and practices and patterns of
42 special organization, and changes in levels and
43 patterns of education financial support.

1 (c) The Board shall annually submit amendments to or revisions
2 of the plan required by subsection (b) to the Governor and
3 General Assembly and make it available for public comment
4 pursuant to subdivision (1) and for public distribution no less
5 than 30 days before January 15 of each year. All such submissions
6 shall set forth in detail the progress made in the implementation
7 of the plan.

8 (d) The Board shall adopt rules ~~or regulations~~ covering:

9 (1) The qualifications of and standards for
10 certification of teachers, teacher assistants,
11 speech clinicians, school psychologists, and others
12 involved in the education and training of children
13 with special needs;

14 (2) Minimum standards for the individualized
15 educational program for all children with special
16 needs other than for the pregnant children, and for
17 the educational program for the pregnant children,
18 who receive special education and related services;
19 and

20 (3) ~~Such~~ Any other rules ~~or regulations~~ as may be
21 necessary or appropriate for carrying out the
22 purposes of this Article. Representatives from the
23 Departments of Health and Human ~~Services~~ Services,
24 Juvenile Justice, and Correction shall be involved
25 in the development of the standards outlined under
26 this subsection.

27 (e) On or before October 15, each local educational agency
28 shall report annually to the Board the extent to which it is then
29 providing special education for children with special needs. The
30 annual report also shall detail the means by which the local
31 educational agency proposes to secure full compliance with the
32 policy of this Article, including the following:

33 (1) A statement of the extent to which the required
34 education and services will be provided directly by
35 the agency;

36 (2) A statement of the extent to which standards in
37 force pursuant to G.S. 115C-110(b)(5) and (d)(2)
38 are being met by the agency; and

39 (3) The means by which the agency will contract to
40 provide, at levels meeting standards in force
41 pursuant to G.S. 115C-110(b)(5) and (d)(2), all
42 special education and related services not provided
43 directly by it or by the State.

1 (f) After submitting the report required by subsection (e),
2 the local educational agency also shall submit such supplemental
3 and additional reports as the Board may require to keep the local
4 educational agency's plan current.

5 (g) By ~~rule or regulation~~, rule, the Board shall prescribe due
6 dates not later than October 15 of each year, and all other
7 necessary or appropriate matters relating to ~~such~~ these annual
8 and supplemental and additional reports.

9 (h) The annual report shall be a two-year plan for providing
10 appropriate special education and related services to children
11 with special needs. The agency shall submit the plan to the Board
12 for its review, approval, modification, or disapproval. Unless
13 thereafter modified with approval of the Board, the plan shall be
14 adhered to by the local educational agency. The procedure for
15 approving, disapproving, establishing, and enforcing the plan
16 shall be the same as that set forth for the annual plan. The
17 long-range plan shall include such provisions as may be
18 appropriate for the following, without limitation:

19 (1) Establishment of classes, other programs of
20 instruction, curricula, facilities, equipment, and
21 special services for children with special needs;
22 and

23 (2) Utilization and professional development of
24 teachers and other personnel working with children
25 with special needs.

26 (i) Each local educational agency shall provide free
27 appropriate special education and related services in accordance
28 with the provisions of this Article for all children with special
29 needs who are residents of, or whose parents or guardians are
30 residents of, the agency's district, beginning with children aged
31 five. No matriculation or tuition fees or other fees or charges
32 shall be required or asked of children with special needs or
33 their parents or guardians except ~~such~~ those fees or charges as
34 are required uniformly of all public school pupils. The provision
35 of free appropriate special education within the facilities of
36 the Department of Health and Human ~~Services~~ and the Department of
37 Juvenile Justice shall not prevent ~~that~~ those Department from
38 charging for other services or treatment.

39 (j) The Board shall require an annual census of children with
40 special needs, subdivided for 'identified' and 'suspected'
41 children with special needs, to be taken in each school year.
42 Suspected children are those in the formal process of being
43 identified, evaluated or diagnosed as children with special
44 needs. The census shall be conducted annually and shall be

1 completed not later than October 15, and shall be submitted to
2 the Governor and General Assembly and be made available to the
3 public no later than January 15 annually.

4 In taking the census, the Board shall require the cooperation,
5 participation, and assistance of all local educational agencies
6 and all other State and local governmental departments and
7 agencies providing or required to provide special education
8 services to children with special needs, and those departments
9 and agencies shall cooperate and participate with and assist the
10 Board in conducting the census.

11 The census shall include the number of children identified and
12 suspected with special needs, their age, the nature of their
13 disability, their county or city of residence, their local school
14 administrative unit residence, whether they are being provided
15 special educational or related services and if so by what
16 department or agency, whether they are not being provided special
17 education or related services, the identity of each department or
18 agency having children with special needs in its care, custody,
19 management, jurisdiction, control, or programs, the number of
20 children with special needs being served by each department or
21 agency, and such other information or data as the Board shall
22 require. The census shall be of children with special needs
23 between the ages of three and 21, inclusive.

24 (k) The Department shall monitor the effectiveness of
25 individualized education programs in meeting the educational
26 needs of all children with special needs other than pregnant
27 children, and of educational programs in meeting the educational
28 needs of the pregnant children.

29 (l) The Board shall provide for procedures assuring that in
30 carrying out the requirements of this Article procedures are
31 established for consultation with individuals involved in or
32 concerned with the education of children with special needs,
33 including parents or guardians of such children, and there are
34 public hearings, adequate notice of such hearings, and an
35 opportunity for comment available to the general public prior to
36 the adoption of the policies, procedures, and rules or
37 regulations required by this Article.

38 (m) Children with special needs shall be educated in the least
39 restrictive appropriate setting, as defined by the State Board of
40 Education."

41 (i) G.S. 115C-111 reads as rewritten:

42 "§ 115C-111. Free appropriate education for all children with
43 special needs.

1 No child with special needs between the ages specified by G.S.
2 115C-109 shall be denied a free appropriate public education or
3 be prevented from attending the public schools of the local
4 educational agency in which he or his parents or legal guardian
5 resides or from which he receives services or from attending any
6 other public program of free appropriate public education because
7 he is a child with special needs. If it appears that a child
8 should receive a program of free appropriate public education in
9 a program operated by or under the supervision of the Department
10 of Health and Human ~~Services~~, Services or the Department of
11 Juvenile Justice, the local educational agency shall confer with
12 the appropriate Department of Health and Human Services or
13 Juvenile Justice staff for their participation and determination
14 of the appropriateness of placement in said program and
15 development of the child's individualized education program. The
16 individualized education program may then be challenged under the
17 due process provisions of G.S. 115C-116. Every child with special
18 needs shall be entitled to attend ~~such~~ these nonresidential
19 schools or programs and receive from them free appropriate public
20 education."

21 (j) G.S. 115C-113(f) reads as rewritten:

22 "(f) Each local educational agency shall prepare
23 individualized educational programs for all children found to be
24 children with special needs other than the pregnant children, and
25 educational programs prescribed in subsection (h) of this section
26 for the pregnant children. The individualized educational program
27 shall be developed in conformity with Public Law 94-142 and the
28 implementing regulations issued by the United States Department
29 of Education and shall be implemented in conformity with
30 timeliness set by that Department. The term "individualized
31 educational program" means a written statement for each such
32 child developed in any meeting by a representative of the local
33 educational agency who shall be qualified to provide, or
34 supervise the provision of, specially designed instruction to
35 meet the unique needs of such children, the teacher, the parents
36 or guardian of such child, and, whenever appropriate, such child,
37 which statement shall be based on rules developed by the Board.
38 Each local educational agency shall establish, or revise,
39 whichever is appropriate, the individualized educational program
40 of each child with special needs each school year and will then
41 review and, if appropriate revise, its provisions periodically,
42 but not less than annually. In the facilities and programs of the
43 Department of Health and Human ~~Services~~, Services and the
44 Department of Juvenile Justice, the individualized educational

1 program shall be planned in collaboration with those other
2 individuals responsible for the design of the total treatment or
3 habilitation plan or both; the resulting educational, treatment,
4 and habilitation plans shall be coordinated, integrated, and
5 internally consistent."

6 (k) G.S. 115C-113.1 reads as rewritten:

7 "§ 115C-113.1. Surrogate parents.

8 In the case of a child whose parent or guardian is unknown,
9 whose whereabouts cannot be determined after reasonable
10 investigation, or who is a ward of the State, the local
11 educational agency shall appoint a surrogate parent for the
12 child. The surrogate parent shall be appointed from a group of
13 persons approved by the Superintendent of Public ~~Instruction and~~
14 Instruction, the Secretary of Health and Human Services, and the
15 Secretary of the Department of Juvenile Justice, but in no case
16 shall the person appointed be an employee of the local
17 educational agency or directly involved in the education or care
18 of the child. The Superintendent shall ensure that local
19 educational agencies appoint a surrogate parent for every child
20 in need of a surrogate parent."

21 (1) G.S. 115C-115 reads as rewritten:

22 "§ 115C-115. Placements in private schools, out-of-state schools
23 and schools in other local educational agencies.

24 The board shall adopt rules and regulations to assure that:

25 (1) There be no cost to the parents or guardian for the
26 placement of a child in a private school, out-of-
27 state school or a school in another local education
28 agency if the child was so placed by the Board or
29 by the appropriate local educational agency as the
30 means of carrying out the requirement of this
31 Article or any other applicable law requiring the
32 provision of special education and related services
33 to children within the State.

34 (2) No child shall be placed by the Board or by the
35 local educational agency in a private or out-of-
36 state school unless the Board has determined that
37 the school meets standards that apply to State and
38 local educational agencies and that the child so
39 placed will have all the rights he would have if
40 served by a State or local educational agency.

41 (3) If the placement of the child in a private school,
42 out-of-state school or a school in another local
43 educational agency determined by the Superintendent
44 of Public Instruction to be the most cost-effective

1 way to provide an appropriate education to that
2 child and the child is not currently being educated
3 by the Department of Health and Human ~~Services~~
4 Services, the Department of Juvenile Justice, or
5 the Department of Correction, the State will bear a
6 portion of the cost of the placement of the child.
7 The local school administrative unit shall pay an
8 amount equal to what it receives per pupil from the
9 State Public School Fund and from other State and
10 federal funds for children with special needs for
11 that child. The State shall pay the full cost of
12 any remainder up to a maximum of fifty percent
13 (50%) of the total cost."

14 (m) G.S. 115C-121(b) reads as rewritten:

15 "(b) The Council shall consist of ~~18~~ 23 members to be appointed
16 as follows: five ex officio members; two members appointed by the
17 Governor; two members of the Senate appointed by the President
18 Pro Tempore; two members of the House of Representatives
19 appointed by the Speaker of the House; and 12 members appointed
20 by the State Board of Education. Of those members of the Council
21 appointed by the State Board one member shall be selected from
22 each congressional district within the State, and the members so
23 selected shall be composed of at least one person representing
24 each of the following: handicapped individuals, parents or
25 guardians of children with special needs, teachers of children
26 with special needs, and State and local education officials and
27 administrators of programs for children with special needs. The
28 Council shall designate a chairperson from among its members. The
29 designation of the chairperson is subject to the approval of the
30 State Board of Education. The board shall promulgate rules or
31 regulations to carry out this subsection.

32 Ex officio members of the Council shall be the following:

- 33 (1) The Secretary of the Department of Health and Human
34 Services or the Secretary's designee;
- 35 (1a) The Secretary of the Department of Juvenile Justice
36 or the Secretary's designee;
- 37 (2) The Secretary of the Department of Correction or
38 the Secretary's designee;
- 39 (3) A representative from The University of North
40 Carolina Planning Consortium for Children with
41 Special Needs; and
- 42 (4) The Superintendent of Public Instruction or the
43 Superintendent's designee.

1 The term of appointment for all members except those appointed
2 by the State Board of Education shall be for two years. The term
3 for members appointed by the State Board of Education shall be
4 for four years. No person shall serve more than two consecutive
5 four-year terms. The initial term of office of the person
6 appointed from the 12th Congressional District shall commence on
7 January 3, 1993, and expire on June 30, 1996.

8 Each Council member shall serve without pay, but shall receive
9 travel allowances and per diem in the same amount provided for
10 members of the North Carolina General Assembly."

11 (n) G.S. 115C-139(a) reads as rewritten:

12 "(a) The Board, any two or more local educational agencies and
13 any such agency and any State department, agency, or division
14 having responsibility for the education, treatment or
15 habilitation of children with special needs are authorized to
16 enter into interlocal cooperation undertakings pursuant to the
17 provisions of Chapter 160A, Article 20, Part 1 of the General
18 Statutes or into undertakings with a State agency such as the
19 Departments of Public Instruction, Health and Human ~~Services,~~
20 Juvenile Justice, or Correction, or their divisions, agencies, or
21 units, for the purpose of providing for the special education and
22 related services, treatment or habilitation of such children
23 within the jurisdiction of the agency or unit, and shall do so
24 when it itself is unable to provide the appropriate public
25 special education or related services for ~~such~~ these children. In
26 entering into such undertakings, the local agency and State
27 department, agency, or division shall also contract to provide
28 the special education or related services that are most
29 educationally appropriate to the children with special needs for
30 whose benefit the undertaking is made, and provide ~~such~~ these
31 services by or in the local agency unit or State department,
32 agency, or division located in the place most convenient to ~~such~~
33 these children."

34 (o) G.S. 115C-250(a) reads as rewritten:

35 "(a) The State Board of Education and local boards of
36 education may expend public funds for transportation of
37 handicapped children with special needs who are unable because of
38 their handicap to ride the regular school buses and who have been
39 placed in programs by a local school board as a part of its duty
40 to provide such children with a free appropriate education,
41 including its duty under G.S. 115C-115. At the option of the
42 local board of education with the concurrence of the State Board
43 of Education, funds appropriated to the State Board of Education
44 for contract transportation of exceptional children may be used

1 to purchase buses and minibuses as well as for the purposes
2 authorized in the budget. The State Board of Education shall
3 adopt rules and regulations concerning the construction and
4 equipment of these buses and minibuses.

5 The Department of Health and Human ~~Services~~ Services, the
6 Department of Juvenile Justice, and the Department of Correction
7 may also expend public funds for transportation of handicapped
8 children with special needs who are unable because of their
9 handicap to ride the regular school buses and who have been
10 placed in programs by one of these agencies as a part of that
11 agency's duty to provide such children with a free appropriate
12 public education.

13 If a local area mental health center places a child with
14 special needs in an educational program, the local area mental
15 health center shall pay for the transportation of the child, if
16 handicapped and unable because of the handicap to ride the
17 regular school buses, to the program."

18 (p) G.S. 115C-325(p) reads as rewritten:

19 "(p) Section Applicable to Certain Institutions. --
20 Notwithstanding any law or regulation to the contrary, this
21 section shall apply to all persons employed in teaching and
22 related educational classes in the schools and institutions of
23 the Departments of Health and Human ~~Services~~ Services, Juvenile
24 Justice, and Correction regardless of the age of the students."

25 (q) G.S. 115D-1 reads as rewritten:

26 "§ 115D-1. Statement of purpose.

27 The purposes of this Chapter are to provide for the
28 establishment, organization, and administration of a system of
29 educational institutions throughout the State offering courses of
30 instruction in one or more of the general areas of two-year
31 college parallel, technical, vocational, and adult education
32 programs, to serve as a legislative charter for such
33 institutions, and to authorize the levying of local taxes and the
34 issuing of local bonds for the support thereof. The major
35 purpose of each and every institution operating under the
36 provisions of this Chapter shall be and shall continue to be the
37 offering of vocational and technical education and training, and
38 of basic, high school level, academic education needed in order
39 to profit from vocational and technical education, for students
40 who are high school graduates or who are beyond the compulsory
41 age limit of the public school system and who have left the
42 public schools, provided, juveniles of any age committed to the
43 ~~Division of Youth Services of the Department of Health and Human~~
44 ~~Services~~ Department of Juvenile Justice by a court of competent

1 jurisdiction may, if approved by the director of the training
2 school to which they are assigned, take courses offered by
3 institutions of the system if they are otherwise qualified for
4 admission."

5 (r) G.S. 115D-5(b) reads as rewritten:

6 "(b) In order to make instruction as accessible as possible to
7 all citizens, the teaching of curricular courses and of
8 noncurricular extension courses at convenient locations away from
9 institution campuses as well as on campuses is authorized and
10 shall be encouraged. A pro rata portion of the established
11 regular tuition rate charged a full-time student shall be charged
12 a part-time student taking any curriculum course. In lieu of any
13 tuition charge, the State Board of Community Colleges shall
14 establish a uniform registration fee, or a schedule of uniform
15 registration fees, to be charged students enrolling in extension
16 courses for which instruction is financed primarily from State
17 funds; provided, however, that the State Board of Community
18 Colleges may provide by general and uniform regulations for
19 waiver of tuition and registration fees for persons not enrolled
20 in elementary or secondary schools taking courses leading to a
21 high school diploma or equivalent certificate, for training
22 courses for volunteer firemen, local fire department personnel,
23 volunteer rescue and lifesaving department personnel, local
24 rescue and lifesaving department personnel, Radio Emergency
25 Associated Citizens Team (REACT) members when the REACT team is
26 under contract to a county as an emergency response agency, local
27 law-enforcement officers, patients in State alcoholic
28 rehabilitation centers, all full-time custodial employees of the
29 Department of Correction, employees of the Department's Division
30 of Adult Probation and Parole and employees of the ~~Division of~~
31 ~~Youth Services of the Department of Health and Human Services~~
32 Department of Juvenile Justice required to be certified pursuant
33 to Chapter 17C of the General Statutes and the rules of the
34 Criminal Justice and Training Standards Commission, trainees
35 enrolled in courses conducted under the New and Expanding
36 Industry Program, clients of sheltered workshops, clients of
37 adult developmental activity programs, students in Health and
38 Human Services Development Programs, juveniles of any age
39 committed to the ~~Division of Youth Services of the Department of~~
40 ~~Health and Human Services~~ Department of Juvenile Justice by a
41 court of competent jurisdiction, prison inmates, and members of
42 the North Carolina State Defense Militia as defined in G.S. 127A-
43 5 and as administered pursuant to Article 5 of Chapter 127A of
44 the General Statutes. Provided further, tuition shall be waived

1 for senior citizens attending institutions operating pursuant to
2 this Chapter as set forth in Chapter 115B of the General
3 Statutes, Tuition Waiver for Senior Citizens. Provided further,
4 tuition shall also be waived for all courses taken by high school
5 students at community colleges in accordance with G.S. 115D-20(4)
6 and this section."

7 (s) G.S. 122C-3(13a) reads as rewritten:

8 "(13a) 'Eligible assaultive and violent children'
9 means children who are citizens of North
10 Carolina and:

11 a. Who suffer from emotional, mental, or
12 neurological handicaps that have been
13 accompanied by behavior that is characterized
14 as violent or assaultive; and

15 b. Who are involuntarily institutionalized or
16 otherwise placed in residential programs,
17 including:

18 1. Minors who are mentally ill as defined by
19 G.S. 122C-3(21) and who are admitted for
20 evaluation or treatment to a treatment
21 facility under Article 5 of Chapter 122C
22 of the General Statutes or are presented
23 for admission and denied due to their
24 behaviors or handicapping conditions;

25 2. Minors who are referred to an area mental
26 health, developmental disabilities, and
27 substance abuse authority pursuant to
28 ~~G.S. 7A-647(3)~~ G.S. 7B-903 for whom
29 residential treatment or placement is
30 recommended;

31 3. Minors who are placed in residential
32 programs as a condition of probation
33 pursuant to ~~G.S. 7A-649(8)~~; G.S. 7B-2504;

34 4. Minors who are ordered to a professional
35 residential treatment program pursuant to
36 ~~G.S. 7A-649(6)~~; G.S. 7B-2504; and

37 5. Minors committed to the custody of the
38 ~~Division of Youth Services Department of~~
39 Juvenile Justice, pursuant to ~~G.S.~~
40 ~~7A-649(10)~~; G.S. 7B-2504; and

41 c. For whom the State has not provided
42 appropriate treatment and educational
43 programs."

44 (t) G.S. 122C-113(b1) reads as rewritten:

1 "(b1) The Secretary shall cooperate with the State Board of
2 Education and the Department of Juvenile Justice in coordinating
3 the responsibilities of the Department of Health and Human
4 Services, the State Board of Education, the Department of
5 Juvenile Justice, and the Department of Public Instruction for
6 adolescent substance abuse programs. The Department of Health
7 and Human Services, through its Division of Mental Health,
8 Developmental Disabilities, and Substance Abuse Services, in
9 cooperation with the Department of Juvenile Justice, shall be
10 responsible for intervention and treatment in non-school based
11 programs. The State Board of Education and the Department of
12 Public ~~Instruction~~ Instruction, in consultation with the
13 Department of Juvenile Justice, shall have primary responsibility
14 for in-school education, identification, and intervention
15 services, including student assistance programs."

16 (u) G.S. 122C-117(a) reads as rewritten:

17 "(a) The area authority shall:

- 18 (1) Engage in comprehensive planning, budgeting,
19 implementing, and monitoring of community-based
20 mental health, developmental disabilities, and
21 substance abuse services;
- 22 (2) Provide services to clients in the catchment ~~area~~;
23 area, including clients committed to the custody of
24 the Department of Juvenile Justice;
- 25 (3) Determine the needs of the area authority's clients
26 and coordinate with the Secretary and with the
27 Secretary of the Department of Juvenile Justice the
28 provision of services to clients through area and
29 State facilities;
- 30 (4) Develop plans and budgets for the area authority
31 subject to the approval of the Secretary;
- 32 (5) Assure that the services provided by the area
33 authority meet the rules of the Commission and
34 Secretary;
- 35 (6) Comply with federal requirements as a condition of
36 receipt of federal grants; and
- 37 (7) Appoint an area director, chosen through a search
38 committee on which the Secretary of the Department
39 of Health and Human Services or the Secretary's
40 designee serves as a nonvoting member."

41 (v) G.S. 143-138(g) reads as rewritten:

42 "(g) Publication and Distribution of Code. -- The Building
43 Code Council shall cause to be printed, after adoption by the
44 Council, the North Carolina State Building Code and each

1 amendment thereto. It shall, at the State's expense, distribute
2 copies of the Code and each amendment to State and local
3 governmental officials, departments, agencies, and educational
4 institutions, as is set out in the table below. (Those marked by
5 an asterisk will receive copies only on written request to the
6 Council.)

7 OFFICIAL OR AGENCY	NUMBER OF COPIES
8 State Departments and Officials	
9 Governor.....	1
10 Lieutenant Governor.....	1
11 Auditor.....	1
12 Treasurer.....	1
13 Secretary of State.....	1
14 Superintendent of Public Instruction.....	1
15 Attorney General (Library).....	1
16 Commissioner of Agriculture.....	1
17 Commissioner of Labor.....	1
18 Commissioner of Insurance.....	1
19 Department of Environment and	
20 Natural Resources.....	1
21 Department of Health and Human Services.....	1
22 <u>Department of Juvenile Justice</u>	<u>1</u>
23 Board of Transportation.....	1
24 Utilities Commission.....	1
25 Department of Administration.....	1
26 Clerk of the Supreme Court.....	1
27 Clerk of the Court of Appeals.....	1
28 Clerk of the Superior Court.....	1 each
29 Department of Cultural Resources [State	
30 Library].....	5
31 Supreme Court Library.....	2
32 Legislative Library.....	1
33 Schools	
34 All state-supported colleges and universities	
35 in the State of North Carolina.....	*1 each
36 Local Officials	
37 Clerks of the Superior Courts.....	1 each
38 Chief Building Inspector of each incorporated	
39 municipality or county.....	1
40	

41 In addition, the Building Code Council shall make additional
42 copies available at such price as it shall deem reasonable to
43 members of the general public."

44 (w) G.S. 143B-138.1(a) reads as rewritten:

1 "(a) All functions, powers, duties, and obligations previously
2 vested in the following commissions, boards, councils,
3 committees, or subunits of the Department of Human Resources are
4 transferred to and vested in the Department of Health and Human
5 Services by a Type I transfer, as defined in G.S. 143A-6:

- 6 (1) Division of Aging.
- 7 (2) Division of Services for the Blind.
- 8 (3) Division of Medical Assistance.
- 9 (4) Division of Mental Health, Developmental
10 Disabilities, and Substance Abuse Services.
- 11 (5) Division of Social Services.
- 12 (6) Division of Facility Services.
- 13 (7) Division of Vocational Rehabilitation.
- 14 ~~(8) Division of Youth Services.~~
- 15 (9) Division of Services for the Deaf and the Blind.
- 16 (10) Office of Economic Opportunity.
- 17 (11) Division of Child Development.
- 18 (12) Office of Rural Health."
- 19 (x) G.S. 143B-150.7(b) reads as rewritten:

20 "(b) The Committee shall have 24 members appointed for
21 staggered four-year terms and until their successors are
22 appointed and qualify. The Governor shall have the power to
23 remove any member of the Committee from office in accordance with
24 the provisions of G.S. 143B-13. Members may succeed themselves
25 for one term and may be appointed again after being off the
26 Committee for one term. Six of the members shall be legislators
27 appointed by the General Assembly, three of whom shall be
28 recommended by the Speaker of the House of Representatives, and
29 three of whom shall be recommended by the President Pro Tempore
30 of the Senate. Two of the members shall be appointed by the
31 General Assembly from the public at large, one of whom shall be
32 recommended by the Speaker of the House of Representatives, and
33 one of whom shall be recommended by the President Pro Tempore of
34 the Senate. The remainder of the members shall be appointed by
35 the Governor as follows:

- 36 (1) ~~Five~~ Four members representing the Department of
37 Health and Human Services, one of whom shall be the
38 Assistant Secretary for Children and Family, one of
39 whom shall represent the Division of Social
40 Services, ~~one of whom shall represent the Division~~
41 ~~of Youth Services,~~ one of whom shall represent the
42 Division of Mental Health, Developmental
43 Disabilities, and Substance Abuse Services, and one

- 1 of whom shall represent the Division of Maternal
2 and Child Health;
- 3 (2a) One member representing the Department of Juvenile
4 Justice;
- 5 (2) Two members, one from each of the following: the
6 Administrative Office of the Courts and the
7 Department of Public Instruction;
- 8 (3) One member who represents the Juvenile Justice
9 Planning Committee of the Governor's Crime
10 Commission, and one member appointed at large;
- 11 (4) One member who is a district court judge certified
12 by the Administrative Office of the Courts to hear
13 juvenile cases;
- 14 (5) One member representing the schools of social work
15 of The University of North Carolina;
- 16 (6) Two members, one of whom is a provider of family
17 preservation services, and one of whom is a
18 consumer of family preservation services; and
- 19 (7) Three members who represent county-level
20 associations; one of whom represents the
21 Association of County Commissioners, one of whom
22 represents the Association of Directors of Social
23 Services, and one of whom represents the North
24 Carolina Council of Mental Health, Developmental
25 Disabilities, and Substance Abuse Services.

26 The Secretary of the Department of Health and Human Services
27 shall serve as the Chair of the Committee. The Secretary shall
28 appoint the cochair of the Committee for a two-year term on a
29 rotating basis from among the Committee members who represent the
30 ~~Division of Youth Services, Department of Juvenile Justice,~~ the
31 Division of Social Services, and the Division of Mental Health,
32 Developmental Disabilities, and Substance Abuse Services."

33 (y) G.S. 143B-152.6 reads as rewritten:
34 "§ 143B-152.6. Cooperation S.O.S. Program; cooperation of State
35 and local agencies.

36 All agencies of the State and local government, including the
37 Department of Juvenile Justice, departments of social services,
38 health departments, local mental health, mental retardation, and
39 substance abuse authorities, court personnel, law enforcement
40 agencies, The University of North Carolina, the community college
41 system, and cities and counties, shall cooperate with the
42 Department of Health and Human Services, and local nonprofit
43 corporations that receive grants in coordinating the program at
44 the State level and in implementing the program at the local

1 level. The Secretary of Health and Human Services, after
2 consultation with the Superintendent of Public Instruction, shall
3 develop a plan for ensuring the cooperation of State agencies and
4 local agencies, and encouraging the cooperation of private
5 entities, especially those receiving State funds, in the
6 coordination and implementation of the program."

7 (z) G.S. 143B-152.14 reads as rewritten:

8 "§ 143B-152.14. Cooperation Family Resource Center Grant
9 Program; cooperation of State and local agencies.

10 All agencies of the State and local government, including the
11 Department of Juvenile Justice, departments of social services,
12 health departments, local mental health, mental retardation, and
13 substance abuse authorities, court personnel, law enforcement
14 agencies, The University of North Carolina, the community college
15 system, and cities and counties, shall cooperate with the
16 Department of Health and Human Services, and local nonprofit
17 corporations that receive grants in coordinating the program at
18 the State level and in implementing the program at the local
19 level. The Secretary of Health and Human Services, after
20 consultation with the Superintendent of Public Instruction, shall
21 develop a plan for ensuring the cooperation of State agencies and
22 local agencies and encouraging the cooperation of private
23 entities, especially those receiving State funds, in the
24 coordination and implementation of the program."

25 (aa) G.S. 143B-153(2) reads as rewritten:

26 "(2) The Social Services Commission shall have the power
27 and duty to establish standards and adopt rules and
28 regulations:

29 a. For the programs of public assistance
30 established by federal legislation and by
31 Article 2 of Chapter 108A of the General
32 Statutes of the State of North Carolina with
33 the exception of the program of medical
34 assistance established by G.S. 108A-25(b);

35 b. To achieve maximum cooperation with other
36 agencies of the State and with agencies of
37 other states and of the federal government in
38 rendering services to strengthen and maintain
39 family life and to help recipients of public
40 assistance obtain self-support and self-care;

41 c. For the placement and supervision of dependent
42 children and delinquent children who are
43 placed in the custody of the Department of
44 Juvenile Justice, and payment of necessary

- 1 costs of foster home care for needy and
2 homeless children as provided by G.S. 108A-48;
3 and
4 d. For the payment of State funds to private
5 child-placing agencies as defined in G.S.
6 131D-10.2(4) and residential child care
7 facilities as defined in G.S. 131D-10.2(13)
8 for care and services provided to children who
9 are in the custody or placement responsibility
10 of a county department of social services."
11 (bb) G.S. 143B-417 reads as rewritten:
12 "§ 143B-417. North Carolina Internship Council -- creation;
13 powers and duties.
14 There is hereby created the North Carolina Internship Council
15 of the Department of Administration. The North Carolina
16 Internship Council shall have the following functions and duties:
17 (1) To determine the number of student interns to be
18 allocated to each of the following offices or
19 departments:
20 a. Office of the Governor
21 b. Department of Administration
22 c. Department of Correction
23 d. Department of Cultural Resources
24 e. Department of Revenue
25 f. Department of Transportation
26 g. Department of Environment and Natural
27 Resources
28 h. Department of Commerce
29 i. Department of Crime Control and Public Safety
30 j. Department of Health and Human Services
31 jl. Department of Juvenile Justice
32 k. Office of the Lieutenant Governor
33 l. Office of the Secretary of State
34 m. Office of the State Auditor
35 n. Office of the State Treasurer
36 o. Department of Public Instruction
37 p. Repealed by Session Laws 1985, c. 757, s. 162.
38 q. Department of Agriculture and Consumer
39 Services
40 r. Department of Labor
41 s. Department of Insurance
42 t. Office of the Speaker of the House of
43 Representatives

- 1 u. Justices of the Supreme Court and Judges of
2 the Court of Appeals
- 3 v. Department of Community Colleges
- 4 w. Office of State Personnel
- 5 x. Office of the Senate President Pro Tempore;
- 6 (2) To screen applications for student internships and
7 select from these applications the recipients of
8 student internships; and
- 9 (3) To determine the appropriateness of proposals for
10 projects for student interns submitted by the
11 offices and departments enumerated in (1)."
- 12 (cc) G.S. 143B-478 reads as rewritten:
- 13 "§ 143B-478. Governor's Crime Commission -- creation;
14 composition; terms; meetings, etc.
- 15 (a) There is hereby created the Governor's Crime Commission of
16 the Department of Crime Control and Public Safety. The Commission
17 shall consist of ~~34~~ 35 voting members and six nonvoting members.
18 The composition of the Commission shall be as follows:
- 19 (1) The voting members shall be:
- 20 a. The Governor, the Chief Justice of the Supreme
21 Court of North Carolina (or his alternate),
22 the Attorney General, the Director of the
23 Administrative Office of the Courts, the
24 Secretary of the Department of Health and
25 Human Services, the Secretary of the
26 Department of Juvenile Justice, the Secretary
27 of the Department of Correction, and the
28 Superintendent of Public Instruction;
- 29 b. A judge of superior court, a judge of district
30 court specializing in juvenile matters, a
31 chief district court judge, and a district
32 attorney;
- 33 c. A defense attorney, three sheriffs (one of
34 whom shall be from a "high crime area"), three
35 police executives (one of whom shall be from a
36 "high crime area"), six citizens (two with
37 knowledge of juvenile delinquency and the
38 public school system, two of whom shall be
39 under the age of 21 at the time of their
40 appointment, one representative of a 'private
41 juvenile delinquency program,' and one in the
42 discretion of the Governor), three county
43 commissioners or county officials, and three
44 mayors or municipal officials;

- 1 d. Two members of the North Carolina House of
2 Representatives and two members of the North
3 Carolina Senate.
- 4 (2) The nonvoting members shall be the Director of the
5 State Bureau of Investigation, the Secretary of the
6 Department of Crime Control and Public Safety, the
7 ~~Director of the Division of Youth Services of the~~
8 ~~Department of Health and Human Services, the~~
9 ~~Administrator for Juvenile Services of the~~
10 ~~Administrative Office of the Courts, Secretary of~~
11 the Department of Juvenile Justice, the Director of
12 the Division of Prisons and the Director of the
13 Division of Adult Probation and ~~Paroles~~, Parole.
- 14 (b) The membership of the Commission shall be selected as
15 follows:
- 16 (1) The following members shall serve by virtue of
17 their office: the Governor, the Chief Justice of
18 the Supreme Court, the Attorney General, the
19 Director of the Administrative Office of the
20 Courts, the Secretary of the Department of Health
21 and Human Services, the Secretary of the Department
22 of Juvenile Justice, the Secretary of the
23 Department of Correction, the Director of the State
24 Bureau of Investigation, the Secretary of the
25 Department of Crime Control and Public Safety, the
26 Director of the Division of Prisons, the Director
27 of the Division of Adult Probation and ~~Paroles~~,
28 Parole, ~~the Director of the Division of Youth~~
29 ~~Services, the Administrator for Juvenile Services~~
30 ~~of the Administrative Office of the Courts, the~~
31 Secretary of the Department of Juvenile Justice,
32 and the Superintendent of Public Instruction.
33 Should the Chief Justice of the Supreme Court
34 choose not to serve, his alternate shall be
35 selected by the Governor from a list submitted by
36 the Chief Justice which list must contain no less
37 than three nominees from the membership of the
38 Supreme Court.
- 39 (2) The following members shall be appointed by the
40 Governor: the district attorney, the defense
41 attorney, the three sheriffs, the three police
42 executives, the six citizens, the three county
43 commissioners or county officials, the three mayors
44 or municipal officials.

- 1 (3) The following members shall be appointed by the
2 Governor from a list submitted by the Chief Justice
3 of the Supreme Court, which list shall contain no
4 less than three nominees for each position and
5 which list must be submitted within 30 days after
6 the occurrence of any vacancy in the judicial
7 membership: the judge of superior court, the judge
8 of district court specializing in juvenile matters,
9 and the chief district court judge.
- 10 (4) The two members of the House of Representatives
11 provided by subdivision (a)(1)d. of this section
12 shall be appointed by the Speaker of the House of
13 Representatives and the two members of the Senate
14 provided by subdivision (a)(1)d. of this section
15 shall be appointed by the President Pro Tempore of
16 the Senate. These members shall perform the
17 advisory review of the State plan for the General
18 Assembly as permitted by section 206 of the Crime
19 Control Act of 1976 (Public Law 94-503).
- 20 (5) The Governor may serve as chairman, designating a
21 vice-chairman to serve at his pleasure, or he may
22 designate a chairman and vice-chairman both of whom
23 shall serve at his pleasure.
- 24 (c) The initial members of the Commission shall be those
25 appointed pursuant to subsection (b) above, which appointments
26 shall be made by March 1, 1977. The terms of the present members
27 of the Governor's Commission on Law and Order shall expire on
28 February 28, 1977. Effective March 1, 1977, the Governor shall
29 appoint members, other than those serving by virtue of their
30 office, to serve staggered terms; seven shall be appointed for
31 one-year terms, seven for two-year terms, and seven for three-
32 year terms. At the end of their respective terms of office their
33 successors shall be appointed for terms of three years and until
34 their successors are appointed and qualified. The Commission
35 members from the House and Senate shall serve two-year terms
36 effective March 1, of each odd-numbered year; and they shall not
37 be disqualified from Commission membership because of failure to
38 seek or attain reelection to the General Assembly, but
39 resignation or removal from office as a member of the General
40 Assembly shall constitute resignation or removal from the
41 Commission. Any other Commission member no longer serving in the
42 office from which he qualified for appointment shall be
43 disqualified from membership on the Commission. Any appointment
44 to fill a vacancy on the Commission created by the resignation,

1 dismissal, death, disability, or disqualification of a member
 2 shall be for the balance of the unexpired term.

3 (d) The Governor shall have the power to remove any member
 4 from the Commission for misfeasance, malfeasance or nonfeasance.

5 (e) The Commission shall meet quarterly and at other times at
 6 the call of the chairman or upon written request of at least
 7 eight of the members. A majority of the voting members shall
 8 constitute a quorum for the transaction of business."

9 (dd) G.S. 147-45 reads as rewritten:

10 "§ 147-45. Distribution of copies of State publications.

11 The Secretary of State shall, at the State's expense, as soon
 12 as possible after publication, provide such number of copies of
 13 the Session Laws and Senate and House Journals to federal, State,
 14 and local governmental officials, departments and agencies, and
 15 to educational institutions of instruction and exchange use, as
 16 is set out in the table below:

17	<hr/>		
18		Session	Assembly
19		Laws	Journals
20	Agency or Institution		
21	<hr/>		
22	Governor, Office of the	3	2
23	Lieutenant Governor, Office of the	1	1
24	Secretary of State, Department of the	3	3
25	Auditor, Department of the State	3	1
26	Treasurer, Department of the State	3	1
27	Local Government Commission	2	0
28	State Board of Education	1	0
29	Department of Public Instruction	3	1
30	Controller	1	0
31	Technical Assistance Centers	1 ea.	0
32	Department of Community Colleges	3	1
33	Justice, Department of		
34	Office of the Attorney General	25	3
35	Budget Bureau (Administration)	1	0
36	Property Control (Administration)	1	1
37	State Bureau of Investigation	1	0
38	Agriculture and Consumer Services,		
39	Department of	3	1
40	Labor, Department of	5	1
41	Insurance, Department of	5	1
42	Administration, Department of	1	1
43	Budget Bureau	2	1
44	Controller	1	0

1	Property Control	1	0	
2	Purchase and Contract	2	0	
3	Policy and Development	1	0	
4	Veterans Affairs Commission	1	0	
5	Environment and Natural Resources,			
6	Department of	6	0	
7	Wildlife Resources Commission	2	0	
8	Revenue, Department of	5	1	
9	Health and Human Services, Department of	6	0	
10	Mental Health, Developmental Disabilities,			
11	and Substance Abuse Services,			
12	Division of	1	0	
13	Social Services, Division of	3	0	
14	Facilities Services, Division of	1	0	
15	Youth Services, Division of	1	0	
16	Hospitals and Institutions	1 ea.	0	
17	<u>Juvenile Justice, Department of</u>	<u>3</u>	<u>0</u>	
18	Transportation, Department of	1	0	
19	Board of Transportation	3	0	
20	Motor Vehicles, Division of	1	0	
21	Commerce, Department of	1	0	
22	Economic Development, Division of	2	0	
23	State Ports Authority	1	0	
24	Alcoholic Beverage Control Commission,			
25	North Carolina	2	0	
26	Banking Commission	2	0	
27	Utilities Commission	8	1	
28	Industrial Commission	7	0	
29	Labor Force Development Council	1	0	
30	Milk Commission	5	0	
31	Employment Security Commission	1	1	
32	Correction, Department of	1	0	
33	Department of Correction	2	0	
34	Parole Commission	2	0	
35	State Prison	1	0	
36	Correctional Institutions	1 ea.	0	
37	Cultural Resources, Department of	1	0	
38	Archives and History, Division of	5	1	
39	State Library	5	5	
40	Publications Division	1	1	
41	Crime Control and Public Safety, Department of		2	1
42	North Carolina Crime Commission	1	0	
43	Adjutant General	2	0	
44	Elections, State Board of	2	0	

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

1 Office of Administrative Hearings	2	0
2 State Personnel Commission	1	0
3 Office of State Personnel	1	1
4 Legislative Branch		
5 State Senators	1 ea.	1 ea.
6 State Representatives	1 ea.	1 ea.
7 Principal Clerk -- Senate	1	1
8 Principal Clerk -- House	1	1
9 Reading Clerk -- Senate	1	1
10 Reading Clerk -- House	1	1
11 Sergeant at Arms -- House	1	1
12 Sergeant at Arms -- Senate	1	1
13 Enrolling Clerk	1	0
14 Engrossing Clerk	1	0
15 Indexer of the Laws	1	0
16 Legislative Building Library	35	15
17 Judicial System		
18 Justices of the Supreme Court	1 ea.	1 ea.
19 Judges of the Court of Appeals	1 ea.	1 ea.
20 Judges of the Superior Court	1 ea.	0
21 Emergency and Special Judges of the 22 Superior Court	1 ea.	0
23 District Court Judges	1 ea.	0
24 District Attorneys	1 ea.	0
25 Clerk of the Supreme Court	1	1
26 Clerk of the Court of Appeals	1	1
27 Administrative Office of the Courts	4	1
28 Supreme Court Library	AS MANY AS REQUESTED	
29 Colleges and Universities		
30 The University of North Carolina System		
31 Administrative Offices	3	0
32 University of North Carolina, 33 Chapel Hill	65	25
34 University of North Carolina, 35 Charlotte	3	1
36 University of North Carolina, 37 Greensboro	3	1
38 University of North Carolina, 39 Asheville	2	1
40 University of North Carolina, 41 Wilmington	2	1
42 North Carolina State University, 43 Raleigh	5	3
44 Appalachian State University	2	1

1	East Carolina University	3	2
2	Elizabeth City State University	2	1
3	Fayetteville State University	2	1
4	North Carolina Agricultural and		
5	Technical University	2	1
6	North Carolina Central University	5	5
7	Western Carolina University	2	1
8	University of North Carolina,		
9	Pembroke	2	1
10	Winston-Salem State University	2	1
11	North Carolina School of the Arts	1	1
12	Private Institutions		
13	Duke University	6	6
14	Davidson College	3	2
15	Wake Forest University	5	5
16	Lenoir Rhyne College	1	1
17	Elon College	1	1
18	Guilford College	1	1
19	Campbell University	5	5
20	Wingate College	1	1
21	Pfeiffer College	1	1
22	Barber Scotia College	1	1
23	Barton College	1	1
24	Shaw University	1	1
25	St. Augustine's College	1	1
26	J. C. Smith University	1	1
27	Belmont Abbey College	1	1
28	Bennett College	1	1
29	Catawba College	1	1
30	Gardner-Webb College	1	1
31	Greensboro College	1	1
32	High Point College	1	1
33	Livingstone College	1	1
34	Mars Hill College	1	1
35	Meredith College	1	1
36	Methodist College	1	1
37	North Carolina Wesleyan College	1	1
38	Queens College	1	1
39	Sacred Heart College	1	1
40	St. Andrews Presbyterian College	1	1
41	Salem College	1	1
42	Warren Wilson College	1	1
43	County and Local Officials		
44	Clerks of the Superior Court	1 ea.	1 ea.

1	Register of Deeds	1 ea.	1 ea.
2	Federal, Out-of-State and Foreign		
3	Secretary to the President	1	0
4	Secretary of State	1	1
5	Secretary of Defense	1	0
6	Secretary of Agriculture	1	0
7	Secretary of the Interior	1	0
8	Secretary of Labor	1	1
9	Secretary of Commerce	1	1
10	Secretary of the Treasury	1	0
11	Secretary of Health, Education and		
12	Welfare	1	0
13	Secretary of Housing and Urban		
14	Development	1	0
15	Secretary of Transportation	1	0
16	Attorney General	1	0
17	Postmaster General	1	0
18	Bureau of Census	1	0
19	Bureau of Public Roads	1	0
20	Department of Justice	1	0
21	Department of Internal Revenue	1	0
22	Veterans' Administration	1	0
23	Farm Credit Administration	1	0
24	Securities and Exchange Commission	1	0
25	Social Security Board	1	0
26	Environmental Protection Agency	1	0
27	Library of Congress	8	2
28	Federal Judges resident in North		
29	Carolina	1 ea.	0
30	Federal District Attorneys resident in		
31	North Carolina	1 ea.	0
32	Marshal of the United States		
33	Supreme Court	1	0
34	Federal Clerks of Court resident in		
35	North Carolina	1 ea.	0
36	Supreme Court Library exchange list	1 ea.	0
37	One copy of the Session Laws shall be furnished the head of any		
38	department of State government created in the future.		
39	State agencies, institutions, etc., not found in or covered by		
40	this list may, upon written request from their respective		
41	department head to the Secretary of State, and upon the		
42	discretion of the Secretary of State as to need, be issued copies		
43	of the Session Laws on a permanent loan basis with the		

1 understanding that should said copies be needed they will be
2 recalled."

3 PART II. JUVENILE CODE STATUTORY RECOMMENDATIONS.

4 Section 3. Subchapter XI, Articles 41 through 59 of
5 Chapter 7A of the General Statutes, the North Carolina Juvenile
6 Code, Articles 24B and 39 of Chapter 7A of the General Statutes,
7 Articles 2A, 4, 4A, and 10 of Chapter 110 of the General
8 Statutes, and Article 62 of Chapter 143 of the General Statutes
9 are repealed.

10 Section 4. The General Statutes are amended by adding a
11 new Chapter to read:

12 "Chapter 7B.

13 "Juvenile Code.

14 "SUBCHAPTER I. ABUSE, NEGLECT, DEPENDENCY.

15 "ARTICLE 1.

16 "Purposes; Definitions.

17 "§ 7B-100. Purpose.

18 This Subchapter shall be interpreted and construed so as to
19 implement the following purposes and policies:

20 (1) To provide procedures for the hearing of juvenile
21 cases that assure fairness and equity and that
22 protect the constitutional rights of juveniles and
23 parents;

24 (2) To develop a disposition in each juvenile case that
25 reflects consideration of the facts, the needs and
26 limitations of the juvenile, the strengths and
27 weaknesses of the family, and the protection of the
28 public safety;

29 (3) To provide for services for the protection of
30 juveniles by means that respect both the right to
31 family autonomy and juveniles' needs for safety,
32 continuity, and permanence; and

33 (4) To provide standards for the removal, when
34 necessary, of juveniles from their homes and for
35 the return of juveniles to their homes consistent
36 with preventing the unnecessary or inappropriate
37 separation of juveniles from their parents.

38 "§ 7B-101. Definitions.

39 As used in this Subchapter, unless the context clearly requires
40 otherwise, the following words have the listed meanings:

41 (1) Abused juveniles. -- Any juvenile less than 18
42 years of age whose parent, guardian, custodian, or
43 caretaker:

- 1 a. Inflicts or allows to be inflicted upon the
2 juvenile a serious physical injury by other
3 than accidental means;
- 4 b. Creates or allows to be created a substantial
5 risk of serious physical injury to the
6 juvenile by other than accidental means;
- 7 c. Uses or allows to be used upon the juvenile
8 cruel or grossly inappropriate procedures or
9 cruel or grossly inappropriate devices to
10 modify behavior;
- 11 d. Commits, permits, or encourages the commission
12 of a violation of the following laws by, with,
13 or upon the juvenile: first-degree rape, as
14 provided in G.S. 14-27.2; second degree rape
15 as provided in G.S. 14-27.3; first-degree
16 sexual offense, as provided in G.S. 14-27.4;
17 second degree sexual offense, as provided in
18 G.S. 14-27.5; sexual act by a custodian, as
19 provided in G.S. 14-27.7; crime against
20 nature, as provided in G.S. 14-177; incest, as
21 provided in G.S. 14-178 and G.S. 14-179;
22 preparation of obscene photographs, slides or
23 motion pictures of the juvenile, as provided
24 in G.S. 14-190.5; employing or permitting the
25 juvenile to assist in a violation of the
26 obscenity laws as provided in G.S. 14-190.6;
27 dissemination of obscene material to the
28 juvenile as provided in G.S. 14-190.7 and G.S.
29 14-190.8; displaying or disseminating material
30 harmful to the juvenile as provided in G.S.
31 14-190.14 and G.S. 14-190.15; first and second
32 degree sexual exploitation of the juvenile as
33 provided in G.S. 14-190.16 and G.S. 14-190.17;
34 promoting the prostitution of the juvenile as
35 provided in G.S. 14-190.18; and taking
36 indecent liberties with the juvenile, as
37 provided in G.S. 14-202.1, regardless of the
38 age of the parties;
- 39 e. Creates or allows to be created serious
40 emotional damage to the juvenile. Serious
41 emotional damage is evidenced by a juvenile's
42 severe anxiety, depression, withdrawal, or
43 aggressive behavior toward himself or others;
44 or

- 1 f. Encourages, directs, or approves of delinquent
2 acts involving moral turpitude committed by
3 the juvenile.
- 4 (2) Caretaker. -- Any person other than a parent,
5 guardian, or custodian who has responsibility for
6 the health and welfare of a juvenile in a
7 residential setting. A person responsible for a
8 juvenile's health and welfare means a stepparent,
9 foster parent, an adult member of the juvenile's
10 household, an adult relative entrusted with the
11 juvenile's care, or any person such as a house
12 parent or cottage parent who has primary
13 responsibility for supervising a juvenile's health
14 and welfare in a residential child care facility or
15 residential educational facility. 'Caretaker' also
16 means any person who has the responsibility for the
17 care of a juvenile in a child care facility as
18 defined in Article 7 of Chapter 110 of the General
19 Statutes and includes any person who has the
20 approval of the care provider to assume
21 responsibility for the juveniles under the care of
22 the care provider. Nothing in this subdivision
23 shall be construed to impose a legal duty of
24 support under Chapter 50 or Chapter 110 of the
25 General Statutes. The duty imposed upon a caretaker
26 as defined in this subdivision shall be for the
27 purpose of this Subchapter only.
- 28 (3) Clerk. -- Any clerk of superior court, acting
29 clerk, or assistant or deputy clerk.
- 30 (4) Community-based program. -- A program providing
31 nonresidential or residential treatment to a
32 juvenile in the community where the juvenile's
33 family lives. A community-based program may include
34 specialized foster care, family counseling, shelter
35 care, and other appropriate treatment.
- 36 (5) Court. -- The district court division of the
37 General Court of Justice.
- 38 (6) Custodian. -- The person or agency that has been
39 awarded legal custody of a juvenile by a court.
- 40 (7) Dependent juvenile. -- A juvenile in need of
41 assistance or placement because the juvenile has no
42 parent, guardian, or custodian responsible for the
43 juvenile's care or supervision or whose parent,
44 guardian, or custodian is unable to provide for the

- 1 care or supervision and lacks an appropriate
2 alternative child care arrangement.
- 3 (8) Director. -- The director of the county department
4 of social services in the county in which the
5 juvenile resides or is found, or the director's
6 representative as authorized in G.S. 108A-14.
- 7 (9) District. -- Any district court district as
8 established by G.S. 7A-133.
- 9 (10) In loco parentis. -- A person acting in loco
10 parentis means one, other than parents or legal
11 guardian, who has assumed the status and obligation
12 of a parent without being awarded the legal custody
13 of a juvenile by a court.
- 14 (11) Judge. -- Any district court judge.
- 15 (12) Judicial district. -- Any district court district
16 as established by G.S. 7A-133.
- 17 (13) Juvenile. -- A person who has not reached the
18 person's eighteenth birthday and is not married,
19 emancipated, or a member of the armed services of
20 the United States.
- 21 (14) Neglected juvenile. -- A juvenile who does not
22 receive proper care, supervision, or discipline
23 from the juvenile's parent, guardian, custodian, or
24 caretaker; or who has been abandoned; or who is not
25 provided necessary medical care; or who is not
26 provided necessary remedial care; or who lives in
27 an environment injurious to the juvenile's welfare;
28 or who has been placed for care or adoption in
29 violation of law. In determining whether a juvenile
30 is a neglected juvenile, it is relevant whether
31 that juvenile lives in a home where another
32 juvenile has been subjected to abuse or neglect by
33 an adult who regularly lives in the home.
- 34 (15) Petitioner. -- The individual who initiates court
35 action, whether by the filing of a petition or of a
36 motion for review alleging the matter for
37 adjudication.
- 38 (16) Prosecutor. -- The district attorney or assistant
39 district attorney assigned by the district attorney
40 to juvenile proceedings.
- 41 (17) Reasonable efforts. -- The diligent use of
42 preventive or reunification services by a
43 department of social services when a juvenile's
44 remaining at home or returning home is consistent

1 with achieving a safe, permanent home for the
2 juvenile within a reasonable period of time.

3 (18) Safe home. -- A home in which the juvenile is not
4 at substantial risk of physical or emotional abuse
5 or neglect.

6 (19) Shelter care. -- The temporary care of a juvenile
7 in a physically unrestricting facility pending
8 court disposition.

9 The singular includes the plural, the masculine singular
10 includes the feminine singular and masculine and feminine plural
11 unless otherwise specified.

12 "ARTICLE 2.

13 "Jurisdiction.

14 "§ 7B-200. Jurisdiction.

15 (a) The court has exclusive, original jurisdiction over any
16 case involving a juvenile who is alleged to be abused, neglected,
17 or dependent. This jurisdiction does not extend to cases
18 involving adult defendants alleged to be guilty of abuse or
19 neglect.

20 The court also has exclusive original jurisdiction of the
21 following proceedings:

22 (1) Proceedings under the Interstate Compact on the
23 Placement of Children set forth in Article 38 of
24 this Chapter;

25 (2) Proceedings involving judicial consent for
26 emergency surgical or medical treatment for a
27 juvenile when the juvenile's parent, guardian,
28 custodian, or other person standing in loco
29 parentis refuses to consent for treatment to be
30 rendered;

31 (3) Proceedings to determine whether a juvenile should
32 be emancipated;

33 (4) Proceedings to terminate parental rights;

34 (5) Proceedings to review the placement of a juvenile
35 in foster care pursuant to an agreement between the
36 juvenile's parents or guardian and a county
37 department of social services;

38 (6) Proceedings in which a person is alleged to have
39 obstructed or interfered with an investigation
40 required by G.S. 7B-302; and

41 (7) Proceedings involving consent for an abortion on an
42 unemancipated minor pursuant to Article 1A, Part 2
43 of Chapter 90 of the General Statutes.

1 (b) The court shall have jurisdiction over the parent of a
2 juvenile who has been adjudicated abused, neglected, or
3 dependent, as provided by G.S. 7B-904, provided the parent has
4 been properly served with summons pursuant to G.S. 7B-406.

5 "§ 7B-201. Retention of jurisdiction.

6 When the court obtains jurisdiction over a juvenile,
7 jurisdiction shall continue until terminated by order of the
8 court, until the juvenile reaches the age of 18 years, or is
9 otherwise emancipated.

10 "ARTICLE 3.

11 "Screening of Abuse and Neglect Complaints.

12 "§ 7B-300. Protective services.

13 The director of the department of social services in each
14 county of the State shall establish protective services for
15 juveniles alleged to be abused, neglected, or dependent.

16 Protective services shall include the investigation and
17 screening of complaints, casework, or other counseling services
18 to parents or other caretakers as provided by the director to
19 help the parents or other caretakers and the court to prevent
20 abuse or neglect, to improve the quality of child care, to be
21 more adequate parents or caretakers, and to preserve and
22 stabilize family life.

23 The provisions of this Article shall also apply to child care
24 facilities as defined in G.S. 110-86.

25 "§ 7B-301. Duty to report abuse, neglect, dependency, or death
26 due to maltreatment.

27 Any person or institution who has cause to suspect that any
28 juvenile is abused, neglected, or dependent, as defined by G.S.
29 7B-101, or has died as the result of maltreatment, shall report
30 the case of that juvenile to the director of the department of
31 social services in the county where the juvenile resides or is
32 found. The report may be made orally, by telephone, or in
33 writing. The report shall include information as is known to the
34 person making it including the name and address of the juvenile;
35 the name and address of the juvenile's parent, guardian, or
36 caretaker; the age of the juvenile; the names and ages of other
37 juveniles in the home; the present whereabouts of the juvenile if
38 not at the home address; the nature and extent of any injury or
39 condition resulting from abuse, neglect, or dependency; and any
40 other information which the person making the report believes
41 might be helpful in establishing the need for protective services
42 or court intervention. If the report is made orally or by
43 telephone, the person making the report shall give the person's
44 name, address, and telephone number. Refusal of the person

1 making the report to give a name shall not preclude the
2 department's investigation of the alleged abuse, neglect,
3 dependency, or death as a result of maltreatment.

4 Upon receipt of any report of sexual abuse of the juvenile in a
5 child care facility, the director shall notify the State Bureau
6 of Investigation within 24 hours or on the next workday. If
7 sexual abuse in a child care facility is not alleged in the
8 initial report, but during the course of the investigation there
9 is reason to suspect that sexual abuse has occurred, the director
10 shall immediately notify the State Bureau of Investigation. Upon
11 notification that sexual abuse may have occurred in a child care
12 facility, the State Bureau of Investigation may form a task force
13 to investigate the report.

14 "§ 7B-302. Investigation by director; access to confidential
15 information; notification of person making the report.

16 When a report of abuse, neglect, or dependency is received, the
17 director of the department of social services shall make a prompt
18 and thorough investigation in order to ascertain the facts of the
19 case, the extent of the abuse or neglect, and the risk of harm to
20 the juvenile, in order to determine whether protective services
21 should be provided or the complaint filed as a petition. When the
22 report alleges abuse, the director shall immediately, but no
23 later than 24 hours after receipt of the report, initiate the
24 investigation. When the report alleges neglect or dependency, the
25 director shall initiate the investigation within 72 hours
26 following receipt of the report. The investigation and evaluation
27 shall include a visit to the place where the juvenile resides.
28 All information received by the department of social services,
29 including the identity of the reporter, shall be held in
30 strictest confidence by the department.

31 When a report of suspected abuse, neglect, or dependency of a
32 juvenile is received, the director of the department of social
33 services shall immediately ascertain if other juveniles remain in
34 the home, and, if so, initiate an investigation in order to
35 determine whether they require protective services or whether
36 immediate removal of the juveniles from the home is necessary for
37 their protection.

38 If the investigation indicates that abuse, neglect, or
39 dependency has occurred, the director shall decide whether
40 immediate removal of the juvenile or any other juveniles in the
41 home is necessary for their protection. If immediate removal does
42 not seem necessary, the director shall immediately provide or
43 arrange for protective services. If the parent or other caretaker
44 refuses to accept the protective services provided or arranged by

1 the director, the director shall sign a complaint seeking to
2 invoke the jurisdiction of the court for the protection of the
3 juvenile or juveniles.

4 If immediate removal seems necessary for the protection of the
5 juvenile or other juveniles in the home, the director shall sign
6 a complaint which alleges the applicable facts to invoke the
7 jurisdiction of the court. Where the investigation shows that it
8 is warranted, a protective services worker may assume temporary
9 custody of the juvenile for the juvenile's protection pursuant to
10 Article 5 of this Chapter.

11 In performing any duties related to the investigation of the
12 complaint or the provision or arrangement for protective
13 services, the director may consult with any public or private
14 agencies or individuals, including the available State or local
15 law enforcement officers who shall assist in the investigation
16 and evaluation of the seriousness of any report of abuse,
17 neglect, or dependency when requested by the director. The
18 director or the director's representative may make a written
19 demand for any information or reports, whether or not
20 confidential, that may in the director's opinion be relevant to
21 the investigation of or the provision for protective services.
22 Upon the director's or the director's representative's request
23 and unless protected by the attorney-client privilege, any public
24 or private agency or individual shall provide access to and
25 copies of this confidential information and these records to the
26 extent permitted by federal law and regulations. If a custodian
27 of criminal investigative information or records believes that
28 release of the information will jeopardize the right of the State
29 to prosecute a defendant or the right of a defendant to receive a
30 fair trial or will undermine an ongoing or future investigation,
31 it may seek an order from a court of competent jurisdiction to
32 prevent disclosure of the information. In such an action, the
33 custodian of the records shall have the burden of showing by a
34 preponderance of the evidence that disclosure of the information
35 in question will jeopardize the right of the State to prosecute a
36 defendant or the right of a defendant to receive a fair trial or
37 will undermine an ongoing or future investigation. Actions
38 brought pursuant to this paragraph shall be set down for
39 immediate hearing, and subsequent proceedings in the actions
40 shall be accorded priority by the trial and appellate courts.

41 Within five working days after receipt of the report of abuse,
42 neglect, or dependency, the director shall give written notice to
43 the person making the report, unless requested by that person not
44 to give notice, as to whether the report was accepted for

1 investigation and whether the report was referred to the
2 appropriate State or local law enforcement agency.

3 Within five working days after completion of the protective
4 services investigation, the director shall give subsequent
5 written notice to the person making the report, unless requested
6 by that person not to give notice, as to whether there is a
7 finding of abuse, neglect, or dependency, whether the county
8 department of social services is taking action to protect the
9 juvenile, and what action it is taking, including whether or not
10 a petition was filed. The person making the report shall be
11 informed of procedures necessary to request a review by the
12 prosecutor of the director's decision not to file a petition. A
13 request for review by the prosecutor shall be made within five
14 working days of receipt of the second notification. The second
15 notification shall include notice that, if the person making the
16 report is not satisfied with the director's decision, the person
17 may request review of the decision by the prosecutor within five
18 working days of receipt. The person making the report may waive
19 the person's right to this notification, and no notification is
20 required if the person making the report does not identify
21 himself to the director.

22 "§ 7B-303. Interference with investigation.

23 (a) If any person obstructs or interferes with an
24 investigation required by G.S. 7B-302, the director may file a
25 petition naming said person as respondent and requesting an order
26 directing the respondent to cease such obstruction or
27 interference. The petition shall contain the name and date of
28 birth and address of the juvenile who is the subject of the
29 investigation, shall specifically describe the conduct alleged to
30 constitute obstruction of or interference with the investigation,
31 and shall be verified.

32 (b) For purposes of this section, obstruction of or
33 interference with an investigation means refusing to disclose the
34 whereabouts of the juvenile, refusing to allow the director to
35 have personal access to the juvenile, refusing to allow the
36 director to observe or interview the juvenile in private,
37 refusing to allow the director access to confidential information
38 and records upon request pursuant to G.S. 7B-302, refusing to
39 allow the director to arrange for an evaluation of the juvenile
40 by a physician or other expert, or other conduct that makes it
41 impossible for the director to carry out the duty to investigate.

42 (c) Upon filing of the petition, the court shall schedule a
43 hearing to be held not less than five days after service of the
44 petition and summons on the respondent. Service of the petition

1 and summons and notice of hearing shall be made as provided by
2 the Rules of Civil Procedure on the respondent; the juvenile's
3 parent, guardian, custodian, or caretaker; and any other person
4 determined by the court to be a necessary party. If at the
5 hearing on the petition the court finds by clear, cogent, and
6 convincing evidence that the respondent, without lawful excuse,
7 has obstructed or interfered with an investigation required by
8 G.S. 7B-302, the court may order the respondent to cease such
9 obstruction or interference. The burden of proof shall be on the
10 petitioner.

11 (d) If the director has reason to believe that the juvenile is
12 in need of immediate protection or assistance, the director shall
13 so allege in the petition and may seek an ex parte order from the
14 court. If the court, from the verified petition and any inquiry
15 the court makes of the director, finds probable cause to believe
16 both that the juvenile is at risk of immediate harm and that the
17 respondent is obstructing or interfering with the director's
18 ability to investigate to determine the juvenile's condition, the
19 court may enter an ex parte order directing the respondent to
20 cease such obstruction or interference. The order shall be
21 limited to provisions necessary to enable the director to conduct
22 an investigation sufficient to determine whether the juvenile is
23 in need of immediate protection or assistance. Within 10 days
24 after the entry of an ex parte order under this subsection, a
25 hearing shall be held to determine whether there is good cause
26 for the continuation of the order or the entry of a different
27 order. An order entered under this subsection shall be served on
28 the respondent along with a copy of the petition, summons, and
29 notice of hearing.

30 (e) The director may be required at a hearing under this
31 section to reveal the identity of any person who made a report of
32 suspected abuse, neglect, or dependency as required by G.S. 7B-
33 301.

34 (f) An order entered pursuant to this section is enforceable
35 by civil or criminal contempt as provided in Chapter 5A of the
36 General Statutes.

37 "§ 7B-304. Evaluation for court.

38 In all cases in which a petition is filed, the director of the
39 department of social services shall prepare a report for the
40 court containing a home placement plan and a treatment plan
41 deemed by the director to be appropriate to the needs of the
42 juvenile. The report shall be available to the court immediately
43 following the adjudicatory hearing.

44 "§ 7B-305. Request for review by prosecutor.

1 The person making the report shall have five working days, from
2 receipt of the decision of the director of the department of
3 social services not to petition the court, to notify the
4 prosecutor that the person is requesting a review. The prosecutor
5 shall notify the person making the report and the director of the
6 time and place for the review, and the director shall immediately
7 transmit to the prosecutor a copy of the investigation report.

8 "§ 7B-306. Review by prosecutor.

9 The prosecutor shall review the director's determination that a
10 petition should not be filed within 20 days after the person
11 making the report is notified. The review shall include
12 conferences with the person making the report, the protective
13 services worker, the juvenile, if practicable, and other persons
14 known to have pertinent information about the juvenile or the
15 juvenile's family. At the conclusion of the conferences, the
16 prosecutor may affirm the decision made by the director, may
17 request the appropriate local law enforcement agency to
18 investigate the allegations, or may direct the director to file a
19 petition.

20 "§ 7B-307. Duty of director to report evidence of abuse,
21 neglect; investigation by local law enforcement; notification of
22 Department of Health and Human Services and State Bureau of
23 Investigation.

24 (a) If the director finds evidence that a juvenile may have
25 been abused as defined by G.S. 7B-101, the director shall make an
26 immediate oral and subsequent written report of the findings to
27 the district attorney or the district attorney's designee and the
28 appropriate local law enforcement agency within 48 hours after
29 receipt of the report. The local law enforcement agency shall
30 immediately, but no later than 48 hours after receipt of the
31 information, initiate and coordinate a criminal investigation
32 with the protective services investigation being conducted by the
33 county department of social services. Upon completion of the
34 investigation, the district attorney shall determine whether
35 criminal prosecution is appropriate and may request the director
36 or the director's designee to appear before a magistrate.

37 If the director receives information that a juvenile may have
38 been physically harmed in violation of any criminal statute by
39 any person other than the juvenile's parent, guardian, custodian,
40 or caretaker, the director shall make an immediate oral and
41 subsequent written report of that information to the district
42 attorney or the district attorney's designee and to the
43 appropriate local law enforcement agency within 48 hours after
44 receipt of the information. The local law enforcement agency

1 shall immediately, but no later than 48 hours after receipt of
2 the information, initiate a criminal investigation. Upon
3 completion of the investigation, the district attorney shall
4 determine whether criminal prosecution is appropriate.

5 If the report received pursuant to G.S. 7B-301 involves abuse
6 or neglect of a juvenile in child care, the director shall notify
7 the Department of Health and Human Services within 24 hours or on
8 the next working day of receipt of the report.

9 (b) If the director finds evidence that a juvenile has been
10 abused or neglected as defined by G.S. 7B-101 in a child care
11 facility, the director shall immediately so notify the Department
12 of Health and Human Services and, in the case of sexual abuse,
13 the State Bureau of Investigation, in such a way as does not
14 violate the law guaranteeing the confidentiality of the records
15 of the department of social services.

16 (c) Upon completion of the investigation, the director shall
17 give the department written notification of the results of the
18 investigation required by G.S. 7B-302. Upon completion of an
19 investigation of sexual abuse in a child care facility, the
20 director shall also make written notification of the results of
21 the investigation to the State Bureau of Investigation.

22 The director of the department of social services shall submit
23 a report of alleged abuse, neglect, or dependency cases or child
24 fatalities that are the result of alleged maltreatment to the
25 central registry under the policies adopted by the Social
26 Services Commission.

27 "§ 7B-308. Authority of medical professionals in abuse cases.

28 (a) Any physician or administrator of a hospital, clinic, or
29 other medical facility to which a suspected abused juvenile is
30 brought for medical diagnosis or treatment shall have the right,
31 when authorized by the chief district court judge of the district
32 or the judge's designee, to retain physical custody of the
33 juvenile in the facility when the physician who examines the
34 juvenile certifies in writing that the juvenile who is suspected
35 of being abused should remain for medical treatment or that,
36 according to the juvenile's medical evaluation, it is unsafe for
37 the juvenile to return to the juvenile's parent, guardian,
38 custodian, or caretaker. This written certification must be
39 signed by the certifying physician and must include the time and
40 date that the judicial authority to retain custody is given.
41 Copies of the written certification must be appended to the
42 juvenile's medical and judicial records and another copy must be
43 given to the juvenile's parent, guardian, custodian, or
44 caretaker. The right to retain custody in the facility shall

1 exist for up to 12 hours from the time and date contained in the
2 written certification.

3 (b) Immediately upon receipt of judicial authority to retain
4 custody, the physician, the administrator, or that person's
5 designee shall so notify the director of social services for the
6 county in which the facility is located. The director shall treat
7 this notification as a report of suspected abuse and shall
8 immediately begin an investigation of the case.

9 (1) If the investigation reveals (i) that it is the
10 opinion of the certifying physician that the
11 juvenile is in need of medical treatment to cure or
12 alleviate physical distress, or to prevent the
13 juvenile from suffering serious physical injury,
14 and (ii) that it is the opinion of the physician
15 that the juvenile should for these reasons remain
16 in the custody of the facility for 12 hours, but
17 (iii) that the juvenile's parent, guardian,
18 custodian, or caretaker cannot be reached or, upon
19 request, will not consent to the treatment within
20 the facility, the director shall within the initial
21 12-hour period file a juvenile petition alleging
22 abuse and setting forth supporting allegations and
23 shall seek a nonsecure custody order. A petition
24 filed and a nonsecure custody order obtained in
25 accordance with this subdivision shall come on for
26 hearing under the regular provisions of this
27 Subchapter unless the director and the certifying
28 physician together voluntarily dismiss the
29 petition.

30 (2) In all cases except those described in subdivision
31 (1) above, the director shall conduct the
32 investigation and may initiate juvenile proceedings
33 and take all other steps authorized by the regular
34 provisions of this Subchapter. If the director
35 decides not to file a petition, the physician, the
36 administrator, or that person's designee may ask
37 the prosecutor to review this decision according to
38 the provisions of G.S. 7B-305 and G.S. 7B-306.

39 (c) If, upon hearing, the court determines that the juvenile
40 is found in a county other than the county of legal residence, in
41 accord with G.S. 153A-257, the juvenile may be transferred, in
42 accord with G.S. 7B-903(2), to the custody of the department of
43 social services in the county of residence.

1 (d) If the court, upon inquiry, determines that the medical
2 treatment rendered was necessary and appropriate, the cost of
3 that treatment may be charged to the parents, guardian,
4 custodian, or caretaker, or, if the parents are unable to pay, to
5 the county of residence in accordance with G.S. 7B-903 and G.S.
6 7B-904.

7 (e) Except as otherwise provided, a petition begun under this
8 section shall proceed in like manner with petitions begun under
9 G.S. 7B-302.

10 (f) The procedures in this section are in addition to, and not
11 in derogation of, the abuse and neglect reporting provisions of
12 G.S. 7B-301 and the temporary custody provisions of G.S. 7B-500.
13 Nothing in this section shall preclude a physician or
14 administrator and a director of social services from following
15 the procedures of G.S. 7B-301 and G.S. 7B-500 whenever these
16 procedures are more appropriate to the juvenile's circumstances.
17 "§ 7B-309. Immunity of persons reporting and cooperating in an
18 investigation.

19 Anyone who makes a report pursuant to this Article, cooperates
20 with the county department of social services in a protective
21 services inquiry or investigation, testifies in any judicial
22 proceeding resulting from a protective services report or
23 investigation, or otherwise participates in the program
24 authorized by this Article, is immune from any civil or criminal
25 liability that might otherwise be incurred or imposed for that
26 action provided that the person was acting in good faith. In any
27 proceeding involving liability, good faith is presumed.

28 "§ 7B-310. Privileges not grounds for failing to report or for
29 excluding evidence.

30 No privilege shall be grounds for any person or institution
31 failing to report that a juvenile may have been abused,
32 neglected, or dependent, even if the knowledge or suspicion is
33 acquired in an official professional capacity, except when the
34 knowledge or suspicion is gained by an attorney from that
35 attorney's client during representation only in the abuse,
36 neglect, or dependency case. No privilege, except the attorney-
37 client privilege, shall be grounds for excluding evidence of
38 abuse, neglect, or dependency in any judicial proceeding (civil,
39 criminal, or juvenile) in which a juvenile's abuse, neglect, or
40 dependency is in issue nor in any judicial proceeding resulting
41 from a report submitted under this Article, both as this
42 privilege relates to the competency of the witness and to the
43 exclusion of confidential communications.

44 "§ 7B-311. Central registry.

1 The Department of Health and Human Services shall maintain a
2 central registry of abuse, neglect, and dependency cases and
3 child fatalities that are the result of alleged maltreatment that
4 are reported under this Article in order to compile data for
5 appropriate study of the extent of abuse and neglect within the
6 State and to identify repeated abuses of the same juvenile or of
7 other juveniles in the same family. This data shall be furnished
8 by county directors of social services to the Department of
9 Health and Human Services and shall be confidential, subject to
10 policies adopted by the Social Services Commission providing for
11 its use for study and research and for other appropriate
12 disclosure. Data shall not be used at any hearing or court
13 proceeding unless based upon a final judgment of a court of law.

14 "ARTICLE 4.

15 "Venue; Petitions.

16 "§ 7B-400. Venue; pleading.

17 A proceeding in which a juvenile is alleged to be abused,
18 neglected, or dependent may be commenced in the district in which
19 the juvenile resides or is present. When a proceeding is
20 commenced in a district other than that of the juvenile's
21 residence, the court, on its own motion or upon motion of any
22 party, may transfer the proceeding to the court in the district
23 where the juvenile resides. A transfer under this subsection may
24 be made at any time.

25 "§ 7B-401. Pleading and process.

26 The pleading in an abuse, neglect, or dependency action is the
27 petition. The process in an abuse, neglect, or dependency action
28 is the summons.

29 "§ 7B-402. Petition.

30 (a) The petition shall contain the name, date of birth,
31 address of the juvenile, the name and last known address of the
32 juvenile's parent, guardian, or custodian and shall allege the
33 facts which invoke jurisdiction over the juvenile. The petition
34 may contain information on more than one juvenile when the
35 juveniles are from the same home and are before the court for the
36 same reason.

37 Sufficient copies of the petition shall be prepared so that
38 copies will be available for each juvenile, each parent if living
39 separate and apart, the guardian ad litem, the social worker, and
40 any person determined by the court to be a necessary party.

41 "§ 7B-403. Receipt of reports; filing of petition.

42 (a) All reports concerning a juvenile alleged to be abused,
43 neglected, or dependent shall be referred to the director of the
44 department of social services for screening. Thereafter, if it is

1 determined by the director that a report should be filed as a
2 petition, the petition shall be drawn by the director, verified
3 before an official authorized to administer oaths, and filed by
4 the clerk, recording the date of filing.

5 (b) A decision of the director of social services not to file
6 a report as a petition shall be reviewed by the prosecutor if
7 review is requested pursuant to G.S. 7B-305.

8 "§ 7B-404. Immediate need for petition when clerk's office is
9 closed.

10 (a) When the office of the clerk is closed, a magistrate may be
11 authorized by the chief district court judge to draw, verify, and
12 issue petitions as follows:

13 (1) When the director of the department of social
14 services requests a petition alleging a juvenile to
15 be abused, neglected, or dependent, or

16 (2) When the director of the department of social
17 services requests a petition alleging the
18 obstruction of or interference with an
19 investigation required by G.S. 7B-302.

20 (b) The authority of the magistrate under this section is
21 limited to emergency situations when a petition is required in
22 order to obtain a nonsecure custody order or an order under G.S.
23 7B-303. Any petition issued under this section shall be delivered
24 to the clerk's office for processing as soon as that office is
25 open for business.

26 "§ 7B-405. Commencement of action.

27 An action is commenced by the filing of a petition in the
28 clerk's office when that office is open, or by the issuance of a
29 juvenile petition by a magistrate when the clerk's office is
30 closed, which issuance shall constitute filing.

31 "§ 7B-406. Issuance of summons.

32 (a) Immediately after a petition has been filed alleging that a
33 juvenile is abused, neglected, or dependent, the clerk shall
34 issue a summons to the parent, guardian, custodian, or caretaker
35 requiring them to appear for a hearing at the time and place
36 stated in the summons. A copy of the petition shall be attached
37 to each summons.

38 (b) A summons shall be on a printed form supplied by the
39 Administrative Office of the Courts and shall include:

40 (1) Notice of the nature of the proceeding;

41 (2) Notice of any right to counsel and information
42 about how to seek the appointment of counsel prior
43 to a hearing;

- 1 (3) Notice that, if the court determines at the hearing
2 that the allegations of the petition are true, the
3 court will conduct a dispositional hearing to
4 consider the needs of the juvenile and enter an
5 order designed to meet those needs and the
6 objectives of the State; and
- 7 (4) Notice that the dispositional order or a subsequent
8 order:
- 9 a. May remove the juvenile from the custody of
10 the parent, guardian, or custodian.
- 11 b. May require that the juvenile receive medical,
12 psychiatric, psychological, or other treatment
13 and that the parent participate in the
14 treatment.
- 15 c. May require the parent to undergo psychiatric,
16 psychological, or other treatment or
17 counseling for the purpose of remedying the
18 behaviors or conditions that are alleged in
19 the petition or that contributed to the
20 removal of the juvenile from the custody of
21 the parent.
- 22 d. May order the parent to pay for treatment that
23 is ordered for the juvenile or the parent.
- 24 (c) The summons shall advise the parent that upon service,
25 jurisdiction over the parent is obtained and that failure to
26 comply with any order of the court pursuant to G.S. 7B-904 may
27 cause the court to issue a show cause order for contempt.
- 28 (d) A summons shall be directed to the person summoned to
29 appear and shall be delivered to any person authorized to serve
30 process.
- 31 "§ 7B-407. Service of summons.
- 32 The summons shall be personally served upon the parent,
33 guardian, custodian, or caretaker, and the juvenile or counsel or
34 guardian ad litem, not less than five days prior to the date of
35 the scheduled hearing. The time for service may be waived in the
36 discretion of the court.
- 37 If the parent, guardian, custodian, or caretaker entitled to
38 receive a summons cannot be found by a diligent effort, the court
39 may authorize service of the summons and petition by mail or by
40 publication. The cost of the service by publication shall be
41 advanced by the petitioner and may be charged as court costs as
42 the court may direct.
- 43 If the parent, guardian, custodian, or caretaker is personally
44 served as herein provided and fails without reasonable cause to

1 appear and to bring the juvenile before the court, the parent,
2 guardian, custodian, or caretaker may be proceeded against as for
3 contempt of court.

4 "ARTICLE 5.

5 "Temporary Custody; Nonsecure Custody; Custody Hearings.

6 "§ 7B-500. Taking a juvenile into temporary custody.

7 Temporary custody means the taking of physical custody and
8 providing personal care and supervision until a court order for
9 nonsecure custody can be obtained. A juvenile may be taken into
10 temporary custody without a court order by a law enforcement
11 officer or a department of social services worker if there are
12 reasonable grounds to believe that the juvenile is abused,
13 neglected, or dependent and that the juvenile would be injured or
14 could not be taken into custody if it were first necessary to
15 obtain a court order. If a department of social services worker
16 takes a juvenile into temporary custody under this section, the
17 worker may arrange for the placement, care, supervision, and
18 transportation of the juvenile.

19 "§ 7B-501. Duties of person taking juvenile into temporary
20 custody.

21 (a) A person who takes a juvenile into custody without a court
22 order under G.S. 7B-500 shall proceed as follows:

23 (1) Notify the juvenile's parent, guardian, custodian,
24 or caretaker that the juvenile has been taken into
25 temporary custody and advise the parent, guardian,
26 custodian, or caretaker of the right to be present
27 with the juvenile until a determination is made as
28 to the need for nonsecure custody. Failure to
29 notify the parent that the juvenile is in custody
30 shall not be grounds for release of the juvenile.

31 (2) Release the juvenile to the juvenile's parent,
32 guardian, custodian, or caretaker if the person
33 having the juvenile in temporary custody decides
34 that continued custody is unnecessary.

35 (3) The person having temporary custody shall
36 communicate with the director of the department of
37 social services who shall consider prehearing
38 diversion. If the decision is made to file a
39 petition, the director shall contact the judge or
40 person delegated authority pursuant to G.S. 7B-502
41 for a determination of the need for continued
42 custody.

43 (b) A juvenile taken into temporary custody under this Article
44 shall not be held for more than 12 hours, or for more than 24

1 hours if any of the 12 hours falls on a Saturday, Sunday, or
2 legal holiday, unless:

- 3 (1) A petition or motion for review has been filed by
4 the director of the department of social services,
5 and
6 (2) An order for nonsecure custody has been entered by
7 the court.

8 "§ 7B-502. Authority to issue custody orders; delegation.

9 In the case of any juvenile alleged to be within the
10 jurisdiction of the court, the court may order that the juvenile
11 be placed in nonsecure custody pursuant to criteria set out in
12 G.S. 7B-503 when custody of the juvenile is necessary.

13 Any district court judge shall have the authority to issue
14 nonsecure custody orders pursuant to G.S. 7B-503. The chief
15 district court judge may delegate the court's authority to
16 persons other than district court judges by administrative order
17 which shall be filed in the office of the clerk of superior
18 court. The administrative order shall specify which persons shall
19 be contacted for approval of a nonsecure custody order pursuant
20 to G.S. 7B-503.

21 "§ 7B-503. Criteria for nonsecure custody.

22 When a request is made for nonsecure custody, the court shall
23 first consider release of the juvenile to the juvenile's parent,
24 relative, guardian, custodian, or other responsible adult. An
25 order for nonsecure custody shall be made only when there is a
26 reasonable factual basis to believe the matters alleged in the
27 petition are true, and

- 28 (1) The juvenile has been abandoned; or
29 (2) The juvenile has suffered physical injury or sexual
30 abuse; or
31 (3) The juvenile is exposed to a substantial risk of
32 physical injury or sexual abuse because the parent,
33 guardian, custodian, or caretaker has created the
34 conditions likely to cause injury or abuse or has
35 failed to provide, or is unable to provide,
36 adequate supervision or protection; or
37 (4) The juvenile is in need of medical treatment to
38 cure, alleviate, or prevent suffering serious
39 physical harm which may result in death,
40 disfigurement, or substantial impairment of bodily
41 functions, and the juvenile's parent, guardian,
42 custodian, or caretaker is unwilling or unable to
43 provide or consent to the medical treatment; or

- 1 (5) The parent, guardian, custodian, or caretaker
2 consents to the nonsecure custody order; or
3 (6) The juvenile is a runaway and consents to nonsecure
4 custody.

5 A juvenile alleged to be abused, neglected, or dependent shall be
6 placed in nonsecure custody only when there is a reasonable
7 factual basis to believe that there is no other reasonable means
8 available to protect the juvenile. In no case shall a juvenile
9 alleged to be abused, neglected, or dependent be placed in secure
10 custody.

11 "§ 7B-504. Order for nonsecure custody.

12 The custody order shall be in writing and shall direct a law
13 enforcement officer or other authorized person to assume custody
14 of the juvenile and to make due return on the order. A copy of
15 the order shall be given to the juvenile's parent, guardian,
16 custodian, or caretaker by the official executing the order.

17 An officer receiving an order for custody which is complete and
18 regular on its face may execute it in accordance with its terms.
19 The officer is not required to inquire into the regularity or
20 continued validity of the order and shall not incur criminal or
21 civil liability for its due service.

22 "§ 7B-505. Place of nonsecure custody.

23 A juvenile meeting the criteria set out in G.S. 7B-503 may be
24 placed in nonsecure custody with the department of social
25 services or a person designated in the order for temporary
26 residential placement in:

- 27 (1) A licensed foster home or a home otherwise
28 authorized by law to provide such care; or
29 (2) A facility operated by the department of social
30 services; or
31 (3) Any other home or facility approved by the court
32 and designated in the order.

33 In placing a juvenile in nonsecure custody under this section,
34 the court shall first consider whether a relative of the juvenile
35 is willing and able to provide proper care and supervision of the
36 juvenile in a safe home. If the court finds that the relative is
37 willing and able to provide proper care and supervision in a safe
38 home, then the court shall order placement of the juvenile with
39 the relative. Prior to placement of a juvenile with a relative
40 outside of this State, the placement must be in accordance with
41 the Interstate Compact on the Placement of Children, Article 38
42 of this Chapter.

43 "§ 7B-506. Hearing to determine need for continued nonsecure
44 custody.

1 (a) No juvenile shall be held under a nonsecure custody order
2 for more than seven calendar days without a hearing on the merits
3 or a hearing to determine the need for continued custody. A
4 hearing on nonsecure custody conducted under this subsection may
5 be continued for up to 10 business days with the consent of the
6 juvenile's parent, guardian, custodian, or caretaker and, if
7 appointed, the juvenile's guardian ad litem. In addition, the
8 court may require the consent of additional parties or may
9 schedule the hearing on custody despite a party's consent to a
10 continuance. In every case in which an order has been entered by
11 an official exercising authority delegated pursuant to G.S. 7B-
12 502, a hearing to determine the need for continued custody shall
13 be conducted on the day of the next regularly scheduled session
14 of district court in the city or county where the order was
15 entered if such session precedes the expiration of the applicable
16 time period set forth in this subsection: Provided, that if such
17 session does not precede the expiration of the time period, the
18 hearing may be conducted at another regularly scheduled session
19 of district court in the district where the order was entered.

20 (b) At a hearing to determine the need for continued custody,
21 the court shall receive testimony and shall allow the guardian ad
22 litem, or juvenile, and the juvenile's parent, guardian,
23 custodian, or caretaker an opportunity to introduce evidence, to
24 be heard in the person's own behalf, and to examine witnesses.
25 The State shall bear the burden at every stage of the proceedings
26 to provide clear and convincing evidence that the juvenile's
27 placement in custody is necessary. The court shall not be bound
28 by the usual rules of evidence at such hearings.

29 (c) The court shall be bound by criteria set forth in G.S. 7B-
30 503 in determining whether continued custody is warranted.

31 (d) If the court determines that the juvenile meets the
32 criteria in G.S. 7B-503 and should continue in custody, the court
33 shall issue an order to that effect. The order shall be in
34 writing with appropriate findings of fact. The findings of fact
35 shall include the evidence relied upon in reaching the decision
36 and the purposes which continued custody is to achieve.

37 (e) If the court orders at the hearing required in subsection
38 (a) of this section that the juvenile remain in custody, a
39 subsequent hearing on continued custody shall be held within
40 seven business days of that hearing, excluding Saturdays,
41 Sundays, and legal holidays, and pending a hearing on the merits,
42 hearings thereafter shall be held at intervals of no more than 30
43 calendar days.

1 (f) Hearings conducted under subsection (e) of this section
2 may be waived only with the consent of the juvenile's parent,
3 guardian, custodian, or caretaker, and, if appointed, the
4 juvenile's guardian ad litem.

5 The court may require the consent of additional parties or
6 schedule a hearing despite a party's consent to waiver.

7 (g) Any order authorizing the continued custody of a juvenile
8 shall include findings as to whether reasonable efforts have been
9 made to prevent or eliminate the need for placement of the
10 juvenile in custody and may provide for services or other efforts
11 aimed at returning the juvenile promptly to a safe home. A
12 finding that reasonable efforts have not been made shall not
13 preclude the entry of an order authorizing continued custody when
14 the court finds that continued custody is necessary for the
15 protection of the juvenile. Where efforts to prevent the need for
16 the juvenile's placement were precluded by an immediate threat of
17 harm to the juvenile, the court may find that the placement of
18 the juvenile in the absence of such efforts was reasonable. If
19 the court finds through written findings of fact that efforts to
20 eliminate the need for placement of the juvenile in custody
21 clearly would be futile or would be inconsistent with the
22 juvenile's safety and need for a safe, permanent home within a
23 reasonable period of time, then the court shall specify in its
24 order that reunification efforts are not required or order that
25 reunification efforts cease.

26 (h) At each hearing to determine the need for continued
27 custody, the court shall:

28 (1) Inquire as to the identity and location of any
29 missing parent. The court shall include findings as
30 to the efforts undertaken to locate the missing
31 parent and to serve that parent. The order may
32 provide for specific efforts aimed at determining
33 the identity and location of any missing parent;

34 (2) Inquire as to whether a relative of the juvenile is
35 willing and able to provide proper care and
36 supervision of the juvenile in a safe home. If the
37 court finds that the relative is willing and able
38 to provide proper care and supervision in a safe
39 home, then the court shall order temporary
40 placement of the juvenile with the relative. Prior
41 to placement of a juvenile with a relative outside
42 of this State, the placement must be in accordance
43 with the Interstate Compact on the Placement of

1 Children set forth in Article 38 of this Chapter;
2 and
3 (3) Inquire as to whether there are other juveniles
4 remaining in the home from which the juvenile was
5 removed and, if there are, inquire as to the
6 specific findings of the investigation conducted
7 under G.S. 7B-302 and any actions taken or services
8 provided by the director for the protection of the
9 other juveniles.

10 "§ 7B-507. Telephonic communication authorized.

11 All communications, notices, orders, authorizations, and
12 requests authorized or required by G.S. 7B-501, 7B-503, and 7B-
13 504 may be made by telephone when other means of communication
14 are impractical. All written orders pursuant to telephonic
15 communication shall bear the name and the title of the person
16 communicating by telephone, the signature and the title of the
17 official entering the order, and the hour and the date of the
18 authorization.

19 "ARTICLE 6.

20 "Basic Rights.

21 "§ 7B-600. Appointment of guardian.

22 In any case when no parent appears in a hearing with the
23 juvenile or when the court finds it would be in the best
24 interests of the juvenile, the court may appoint a guardian of
25 the person for the juvenile. The guardian shall operate under the
26 supervision of the court with or without bond and shall file only
27 such reports as the court shall require. The guardian shall have
28 the care, custody, and control of the juvenile or may arrange a
29 suitable placement for the juvenile and may represent the
30 juvenile in legal actions before any court. The guardian may
31 consent to certain actions on the part of the juvenile in place
32 of the parent including (i) marriage, (ii) enlisting in the armed
33 forces, and (iii) enrollment in school. The guardian may also
34 consent to any necessary remedial, psychological, medical, or
35 surgical treatment for the juvenile. The authority of the
36 guardian shall continue until the guardianship is terminated by
37 court order, until the juvenile is emancipated pursuant to
38 Article 35 of Subchapter IV of this Chapter, or until the
39 juvenile reaches the age of majority.

40 "§ 7B-601. Appointment and duties of guardian ad litem.

41 (a) When in a petition a juvenile is alleged to be abused or
42 neglected, the court shall appoint a guardian ad litem to
43 represent the juvenile. When a juvenile is alleged to be
44 dependent, the court may appoint a guardian ad litem to represent

1 the juvenile. The guardian ad litem and attorney advocate have
2 standing to represent the juvenile in all actions under this
3 Subchapter where they have been appointed. The appointment shall
4 be made pursuant to the program established by Article 12 of this
5 Chapter unless representation is otherwise provided legally made.
6 The appointment shall terminate at the end of two years. The
7 court may reappoint the guardian ad litem pursuant to a showing
8 of good cause upon motion of any party, including the guardian ad
9 litem, or of the court. In every case where a nonattorney is
10 appointed as a guardian ad litem, an attorney shall be appointed
11 in the case in order to assure protection of the juvenile's legal
12 rights through the dispositional phase of the proceedings, and
13 after disposition when necessary to further the best interests of
14 the juvenile. The duties of the guardian ad litem program shall
15 be to make an investigation to determine the facts, the needs of
16 the juvenile, and the available resources within the family and
17 community to meet those needs; to facilitate, when appropriate,
18 the settlement of disputed issues; to offer evidence and examine
19 witnesses at adjudication; to explore options with the court at
20 the dispositional hearing; and to protect and promote the best
21 interests of the juvenile until formally relieved of the
22 responsibility by the court.

23 (b) The court may order the department of social services or
24 the guardian ad litem to conduct follow-up investigations to
25 ensure that the orders of the court are being properly executed
26 and to report to the court when the needs of the juvenile are not
27 being met. The court may also authorize the guardian ad litem to
28 accompany the juvenile to court in any criminal action wherein
29 the juvenile may be called on to testify in a matter relating to
30 abuse.

31 (c) The court may grant the guardian ad litem the authority to
32 demand any information or reports, whether or not confidential,
33 that may in the guardian ad litem's opinion be relevant to the
34 case. Neither the physician-patient privilege nor the husband-
35 wife privilege may be invoked to prevent the guardian ad litem
36 and the court from obtaining such information. The
37 confidentiality of the information or reports shall be respected
38 by the guardian ad litem and no disclosure of any information or
39 reports shall be made to anyone except by order of the court or
40 unless otherwise provided by law.

41 "§ 7B-602. Parent's right to counsel.

42 In cases where the juvenile petition alleges that a juvenile is
43 abused, neglected, or dependent, the parent has the right to
44 counsel and to appointed counsel in cases of indigency unless the

1 parent waives the right. In no case may the court appoint a
2 county attorney, prosecutor, or public defender.

3 "§ 7B-603. Payment of court-appointed attorney or guardian ad
4 litem.

5 An attorney or guardian ad litem appointed pursuant to G.S. 7B-
6 601 or G.S. 7B-602 pursuant to any other provision of the
7 Juvenile Code shall be paid a reasonable fee fixed by the court
8 in the same manner as fees for attorneys appointed in cases of
9 indigency or by direct engagement for specialized guardian ad
10 litem services through the Administrative Office of the Courts.
11 The court may require payment of the attorney or guardian ad
12 litem fee from a person other than the juvenile as provided in
13 G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the
14 parent or guardian be required to pay the fees for a court-
15 appointed attorney or guardian ad litem in an abuse, neglect, or
16 dependency proceeding unless the juvenile has been adjudicated to
17 be abused, neglected, or dependent, or, in a proceeding to
18 terminate parental rights, unless the parent's rights have been
19 terminated. A person who does not comply with the court's order
20 of payment may be punished for contempt as provided in G.S. 5A-
21 21.

22 "ARTICLE 7.

23 "Discovery.

24 "§ 7B-700. Regulation of discovery; protective orders.

25 (a) Upon written motion of a party and a finding of good cause,
26 the court may at any time order that discovery be denied,
27 restricted, or deferred.

28 (b) The court may permit a party seeking relief under
29 subsection (a) of this section to submit supporting affidavits or
30 statements to the court for in camera inspection. If, thereafter,
31 the court enters an order granting relief under subsection (a) of
32 this section, the material submitted in camera must be available
33 to the Court of Appeals in the event of an appeal.

34 "ARTICLE 8.

35 "Hearing Procedures.

36 "§ 7B-800. Amendment of petition.

37 The court may permit a petition to be amended when the
38 amendment does not change the nature of the offense alleged or
39 the conditions upon which the petition is based.

40 "§ 7B-801. Adjudicatory hearing.

41 The adjudicatory hearing shall be held in the district at such
42 time and place as the chief district court judge shall designate.
43 The court may exclude the public from the hearing unless the

1 juvenile moves that the hearing be open, which motion shall be
2 granted.

3 "§ 7B-802. Conduct of hearing.

4 The adjudicatory hearing shall be a judicial process designed
5 to adjudicate the existence or nonexistence of any of the
6 conditions alleged in a petition. In the adjudicatory hearing,
7 the court shall protect the rights of the juvenile and the
8 juvenile's parent to assure due process of law.

9 "§ 7B-803. Continuances.

10 The court may, for good cause, continue the hearing for as long
11 as is reasonably required to receive additional evidence,
12 reports, or assessments that the court has requested, or other
13 information needed in the best interests of the juvenile and to
14 allow for a reasonable time for the parties to conduct
15 expeditious discovery. Otherwise, continuances shall be granted
16 only in extraordinary circumstances when necessary for the proper
17 administration of justice or in the best interests of the
18 juvenile.

19 "§ 7B-804. Rules of evidence.

20 Where the juvenile is alleged to be abused, neglected, or
21 dependent, the rules of evidence in civil cases shall apply.

22 "§ 7B-805. Quantum of proof in adjudicatory hearing.

23 The allegations in a petition alleging abuse, neglect, or
24 dependence shall be proved by clear and convincing evidence.

25 "§ 7B-806. Record of proceedings.

26 All adjudicatory and dispositional hearings shall be recorded
27 by stenographic notes or by electronic or mechanical means.
28 Records shall be reduced to a written transcript only when timely
29 notice of appeal has been given. The court may order that other
30 hearings be recorded.

31 "§ 7B-807. Adjudication.

32 If the court finds that the allegations in the petition have
33 been proven by clear and convincing evidence, the court shall so
34 state. If the court finds that the allegations have not been
35 proven, the court shall dismiss the petition with prejudice and
36 the juvenile shall be released from nonsecure custody.

37 "§ 7B-808. Predisposition investigation and report.

38 The court shall proceed to the dispositional hearing upon
39 receipt of sufficient social, medical, psychiatric,
40 psychological, and educational information. No predisposition
41 report shall be submitted to or considered by the court prior to
42 the completion of the adjudicatory hearing. The court shall
43 permit the guardian ad litem or juvenile to inspect any
44 predisposition report to be considered by the court in making the

1 disposition unless the court determines that disclosure would
2 seriously harm the juvenile's treatment or rehabilitation or
3 would violate a promise of confidentiality. Opportunity to offer
4 evidence in rebuttal shall be afforded the guardian ad litem or
5 juvenile, and the juvenile's parent, guardian, custodian, or
6 caretaker at the dispositional hearing. The court may order
7 counsel not to disclose parts of the report to the guardian ad
8 litem or juvenile, or the juvenile's parent, guardian, custodian,
9 or caretaker if the court finds that disclosure would seriously
10 harm the treatment or rehabilitation of the juvenile or would
11 violate a promise of confidentiality given to a source of
12 information.

13 "ARTICLE 9.

14 "Dispositions.

15 "§ 7B-900. Purpose.

16 The purpose of dispositions in juvenile actions is to design an
17 appropriate plan to meet the needs of the juvenile and to achieve
18 the objectives of the State in exercising jurisdiction. If
19 possible, the initial approach should involve working with the
20 juvenile and the juvenile's family in their own home so that the
21 appropriate community resources may be involved in care,
22 supervision, and treatment according to the needs of the
23 juvenile. Thus, the court should arrange for appropriate
24 community-level services to be provided to the juvenile and the
25 juvenile's family in order to strengthen the home situation.

26 "§ 7B-901. Dispositional hearing.

27 The dispositional hearing may be informal and the court may
28 consider written reports or other evidence concerning the needs
29 of the juvenile. The juvenile and the juvenile's parent,
30 guardian, custodian, or caretaker shall have an opportunity to
31 present evidence, and they may advise the court concerning the
32 disposition they believe to be in the best interests of the
33 juvenile. The court may exclude the public from the hearing
34 unless the juvenile moves that the hearing be open, which motion
35 shall be granted.

36 "§ 7B-902. Consent judgment in abuse, neglect, or dependency
37 proceeding.

38 Nothing in this Article precludes the court from entering a
39 consent order or judgment on a petition for abuse, neglect, or
40 dependency when all parties are present, the juvenile is
41 represented by counsel, and all other parties are either
42 represented by counsel or have waived counsel, and sufficient
43 findings of fact are made by the court.

1 "§ 7B-903. Dispositional alternatives for abused, neglected, or
2 dependent juvenile.

3 The following alternatives for disposition shall be available
4 to any court exercising jurisdiction, and the court may combine
5 any of the applicable alternatives when the court finds the
6 disposition to be in the best interests of the juvenile:

7 (1) The court may dismiss the case or continue the case
8 in order to allow the parent or others to take
9 appropriate action.

10 (2) In the case of any juvenile who needs more adequate
11 care or supervision or who needs placement, the
12 court may:

13 a. Require that the juvenile be supervised in the
14 juvenile's own home by the department of
15 social services in the juvenile's county, or
16 by other personnel as may be available to the
17 court, subject to conditions applicable to the
18 parent, guardian, custodian, or caretaker as
19 the court may specify; or

20 b. Place the juvenile in the custody of a parent,
21 relative, private agency offering placement
22 services, or some other suitable person; or

23 c. Place the juvenile in the custody of the
24 department of social services in the county of
25 the juvenile's residence, or in the case of a
26 juvenile who has legal residence outside the
27 State, in the physical custody of the
28 department of social services in the county
29 where the juvenile is found so that agency may
30 return the juvenile to the responsible
31 authorities in the juvenile's home state. The
32 director may, unless otherwise ordered by the
33 court, arrange for, provide, or consent to,
34 needed routine or emergency medical or
35 surgical care or treatment. In the case where
36 the parent is unknown, unavailable, or unable
37 to act on behalf of the juvenile, the director
38 may, unless otherwise ordered by the court,
39 arrange for, provide, or consent to any
40 psychiatric, psychological, educational, or
41 other remedial evaluations or treatment for
42 the juvenile placed by a court or the court's
43 designee in the custody or physical custody of
44 a county department of social services under

1 the authority of this or any other Chapter of
2 the General Statutes. Prior to exercising this
3 authority, the director shall make reasonable
4 efforts to obtain consent from a parent or
5 guardian of the affected juvenile. If the
6 director cannot obtain such consent, the
7 director shall promptly notify the parent or
8 guardian that care or treatment has been
9 provided and shall give the parent frequent
10 status reports on the circumstances of the
11 juvenile. Upon request of a parent or guardian
12 of the affected juvenile, the results or
13 records of the aforementioned evaluations,
14 findings, or treatment shall be made available
15 to such parent or guardian by the director
16 unless prohibited by G.S. 122C-53(d).

17 (3) In any case, the court may order that the juvenile
18 be examined by a physician, psychiatrist,
19 psychologist, or other qualified expert as may be
20 needed for the court to determine the needs of the
21 juvenile:

22 a. Upon completion of the examination, the court
23 shall conduct a hearing to determine whether
24 the juvenile is in need of medical, surgical,
25 psychiatric, psychological, or other treatment
26 and who should pay the cost of the treatment.
27 The county manager, or such person who shall
28 be designated by the chairman of the county
29 commissioners, of the juvenile's residence
30 shall be notified of the hearing, and allowed
31 to be heard. If the court finds the juvenile
32 to be in need of medical, surgical,
33 psychiatric, psychological, or other
34 treatment, the court shall permit the parent
35 or other responsible persons to arrange for
36 treatment. If the parent declines or is unable
37 to make necessary arrangements, the court may
38 order the needed treatment, surgery, or care,
39 and the court may order the parent to pay the
40 cost of the care pursuant to G.S. 7B-904. If
41 the court finds the parent is unable to pay
42 the cost of treatment, the court shall order
43 the county to arrange for treatment of the
44 juvenile and to pay for the cost of the

1 treatment. The county department of social
2 services shall recommend the facility that
3 will provide the juvenile with treatment.
4 b. If the court believes, or if there is evidence
5 presented to the effect that the juvenile is
6 mentally ill or is developmentally disabled,
7 the court shall refer the juvenile to the area
8 mental health, developmental disabilities, and
9 substance abuse services director for
10 appropriate action. A juvenile shall not be
11 committed directly to a State hospital or
12 mental retardation center; and orders
13 purporting to commit a juvenile directly to a
14 State hospital or mental retardation center
15 except for an examination to determine
16 capacity to proceed shall be void and of no
17 effect. The area mental health, developmental
18 disabilities, and substance abuse director
19 shall be responsible for arranging an
20 interdisciplinary evaluation of the juvenile
21 and mobilizing resources to meet the
22 juvenile's needs. If institutionalization is
23 determined to be the best service for the
24 juvenile, admission shall be with the
25 voluntary consent of the parent or guardian.
26 If the parent, guardian, custodian, or
27 caretaker refuses to consent to a mental
28 hospital or retardation center admission after
29 such institutionalization is recommended by
30 the area mental health, developmental
31 disabilities, and substance abuse director,
32 the signature and consent of the court may be
33 substituted for that purpose. In all cases in
34 which a regional mental hospital refuses
35 admission to a juvenile referred for admission
36 by a court and an area mental health,
37 developmental disabilities, and substance
38 abuse director or discharges a juvenile
39 previously admitted on court referral prior to
40 completion of treatment, the hospital shall
41 submit to the court a written report setting
42 out the reasons for denial of admission or
43 discharge and setting out the juvenile's
44 diagnosis, indications of mental illness,

1 indications of need for treatment, and a
2 statement as to the location of any facility
3 known to have a treatment program for the
4 juvenile in question.

5 "§ 7B-904. Authority over parents of juvenile adjudicated as
6 abused, neglected, or dependent.

7 (a) If the court orders medical, surgical, psychiatric,
8 psychological, or other treatment pursuant to G.S. 7B-903, the
9 court may order the parent or other responsible parties to pay
10 the cost of the treatment or care ordered.

11 (b) At the dispositional hearing or a subsequent hearing in
12 the case of a juvenile who has been adjudicated abused,
13 neglected, or dependent, if the court finds that it is in the
14 best interests of the juvenile for the parent to be directly
15 involved in the juvenile's treatment, the court may order the
16 parent to participate in medical, psychiatric, psychological, or
17 other treatment of the juvenile. The cost of the treatment shall
18 be paid pursuant to G.S. 7B-903.

19 (c) At the dispositional hearing or a subsequent hearing in
20 the case of a juvenile who has been adjudicated abused,
21 neglected, or dependent, the court may determine whether the best
22 interests of the juvenile requires that the parent undergo
23 psychiatric, psychological, or other treatment or counseling
24 directed toward remediating or remedying behaviors or conditions
25 that led to or contributed to the juvenile's adjudication or to
26 the court's decision to remove custody of the juvenile from the
27 parent. If the court finds that the best interests of the
28 juvenile require the parent undergo treatment, it may order the
29 parent to comply with a plan of treatment approved by the court
30 or condition legal custody or physical placement of the juvenile
31 with the parent upon the parent's compliance with the plan of
32 treatment. The court may order the parent to pay the cost of
33 treatment ordered pursuant to this subsection. In cases in which
34 the court has conditioned legal custody or physical placement of
35 the juvenile with the parent upon the parent's compliance with a
36 plan of treatment, the court may charge the cost of the treatment
37 to the county of the juvenile's residence if the court finds the
38 parent is unable to pay the cost of the treatment. In all other
39 cases, if the court finds the parent is unable to pay the cost of
40 the treatment ordered pursuant to this subsection, the court may
41 order the parent to receive treatment currently available from
42 the area mental health program that serves the parent's catchment
43 area.

12 (d) Whenever legal custody of a juvenile is vested in someone
13 other than the juvenile's parent, after due notice to the parent
14 and after a hearing, the court may order that the parent pay a
15 reasonable sum that will cover, in whole or in part, the support
16 of the juvenile after the order is entered. If the court requires
17 the payment of child support, the amount of the payments shall be
18 determined as provided in G.S. 50-13.4(c). If the court places a
19 juvenile in the custody of a county department of social services
20 and if the court finds that the parent is unable to pay the cost
21 of the support required by the juvenile, the cost shall be paid
22 by the county department of social services in whose custody the
23 juvenile is placed, provided the juvenile is not receiving care
24 in an institution owned or operated by the State or federal
25 government or any subdivision thereof.
26 (e) Failure of a parent who is personally served to
27 participate in or comply with this section may result in a civil
28 proceeding for contempt.

"§ 7B-905. Dispositional order.

1 (a) The dispositional order shall be in writing and shall
2 contain appropriate findings of fact and conclusions of law. The
3 court shall state with particularity, both orally and in the
4 written order of disposition, the precise terms of the
5 disposition including the kind, duration, and the person who is
6 responsible for carrying out the disposition and the person or
7 agency in whom custody is vested.

8 (b) A dispositional order under which a juvenile is removed
9 from the custody of a parent or person standing in loco parentis
10 shall direct that the review hearing required by G.S. 7B-906 be
11 held within six months of the date of the juvenile's placement in
12 custody and, if practicable, shall set the date and time for the
13 review hearing.

14 (c) Any order directing placement of a juvenile in foster care
15 shall also contain:

16 (1) A finding that the juvenile's continuation in or
17 return to the juvenile's home would be contrary to
18 the juvenile's best interests; and

19 (2) Findings as to whether reasonable efforts have been
20 made to prevent or eliminate the need for placement
21 of the juvenile in foster care. A finding that
22 reasonable efforts were not made shall not preclude
23 entry of a dispositional order authorizing
24 placement in foster care when the court finds that
25 such placement is needed for protection of the
26 juvenile. When efforts to prevent the need for the
27 juvenile's placement are precluded by an immediate
28 threat of harm to the juvenile, the court may find
29 that placement of the juvenile in the absence of
30 such efforts is reasonable.

31 The order may provide for services or other efforts aimed at
32 returning the juvenile promptly to a safe home. If the court
33 finds through written findings of fact that efforts to eliminate
34 the need for placement of the juvenile in custody clearly would
35 be futile or would be inconsistent with the juvenile's safety and
36 need for a safe, permanent home within a reasonable period of
37 time, the court shall specify in its order that reunification
38 efforts are not required or order that reunification efforts
39 cease.

40 (d) An order that places a juvenile in the custody of a county
41 department of social services for placement shall specify that
42 the juvenile's placement and care are the responsibility of the
43 county department of social services and that the county

1 department is to provide or arrange for the foster care or other
2 placement of the juvenile.

3 "§ 7B-906. Review of custody order.

4 (a) In any case where custody is removed from a parent, the
5 court shall conduct a review within six months of the date the
6 order was entered, shall conduct a second review within six
7 months after the first review, and shall conduct subsequent
8 reviews at least every year thereafter. The director of social
9 services shall make timely requests to the clerk to calendar the
10 case at a session of court scheduled for the hearing of juvenile
11 matters within six months of the date the order was entered. The
12 director shall make timely requests for calendaring subsequent
13 reviews. The clerk shall give 15 days' notice of the review to
14 the parent or the person standing in loco parentis, the juvenile,
15 if 12 years of age or more, the guardian, foster parent,
16 custodian or agency with custody, the guardian ad litem, and any
17 other person the court may specify, indicating the court's
18 impending review.

19 (b) Notwithstanding other provisions of this Article, the
20 court may waive the holding of review hearings required by
21 subsection (a) of this section, may require written reports to
22 the court by the agency or person holding custody in lieu of
23 review hearings, or order that review hearings be held less often
24 than every 12 months, if the court finds by clear, cogent, and
25 convincing evidence that:

26 (1) The juvenile has resided with a relative or has
27 been in the custody of another suitable person for
28 a period of at least one year;

29 (2) The placement is stable and continuation of the
30 placement is in the juvenile's best interests;

31 (3) Neither the juvenile's best interests nor the
32 rights of any party require that review hearings be
33 held every 12 months;

34 (4) All parties are aware that the matter may be
35 brought before the court for review at any time by
36 the filing of a motion for review or on the court's
37 own motion; and

38 (5) The court order has designated the relative or
39 other suitable person as the juvenile's permanent
40 caretaker or guardian of the person.

41 The court may not waive or refuse to conduct a review hearing if
42 a party files a motion seeking the review.

43 (c) At every review hearing, the court shall consider
44 information from the department of social services, the juvenile,

1 the parent or person standing in loco parentis, the custodian,
2 the foster parent, the guardian ad litem, and any public or
3 private agency which will aid it in its review.

4 In each case the court shall consider the following criteria
5 and make written findings regarding those that are relevant:

- 6 (1) Services which have been offered to reunite the
7 family, or whether efforts to reunite the family
8 clearly would be futile or inconsistent with the
9 juvenile's safety and need for a safe, permanent
10 home within a reasonable period of time.
- 11 (2) Where the juvenile's return home is unlikely, the
12 efforts which have been made to evaluate or plan
13 for other methods of care.
- 14 (3) Goals of the foster care placement and the
15 appropriateness of the foster care plan.
- 16 (4) A new foster care plan, if continuation of care is
17 sought, that addresses the role the current foster
18 parent will play in the planning for the juvenile.
- 19 (5) Reports on the placements the juvenile has had and
20 any services offered to the juvenile and the
21 parent.
- 22 (6) When and if termination of parental rights should
23 be considered.
- 24 (7) Any other criteria the court deems necessary.

25 (d) The court, after making findings of fact, may appoint a
26 guardian of the person for the juvenile pursuant to G.S. 7B-600
27 or may make any disposition authorized by G.S. 7B-903, including
28 the authority to place the juvenile in the custody of either
29 parent or any relative found by the court to be suitable and
30 found by the court to be in the best interests of the juvenile.
31 If the juvenile is placed in or remains in the custody of the
32 department of social services, the court may authorize the
33 department to arrange and supervise a visitation plan. Except for
34 such visitation, the juvenile shall not be returned to the parent
35 or person standing in loco parentis without a hearing at which
36 the court finds sufficient facts to show that the juvenile will
37 receive proper care and supervision. The court may enter an order
38 continuing the placement under review or providing for a
39 different placement as is deemed to be in the best interests of
40 the juvenile. If at any time custody is restored to a parent, the
41 court shall be relieved of the duty to conduct periodic judicial
42 reviews of the placement.

43 (e) At a hearing designated by the court, but at least within
44 12 months after the juvenile's placement, a review hearing shall

1 be held under this section and designated as a permanency-
2 planning hearing. The purpose of the hearing shall be to develop
3 a plan to achieve a safe, permanent home for the juvenile within
4 a reasonable period of time. Notice of the hearing shall inform
5 the parties of the purpose of the hearing. At the conclusion of
6 the hearing, if the juvenile is not returned home, the court
7 shall make specific findings as to the best plan of care to
8 achieve a safe, permanent home for the juvenile within a
9 reasonable period of time and shall enter an order consistent
10 with those findings.

11 (f) The provisions of subsections (b), (c), and (d) of G.S.
12 7B-905 shall apply to any order entered under this section which
13 continues the foster care placement of a juvenile.

14 "§ 7B-907. Posttermination of parental rights' placement court
15 review.

16 (a) The purpose of each placement review is to ensure that
17 every reasonable effort is being made to provide for a permanent
18 placement plan for the juvenile who has been placed in the
19 custody of a county director or licensed child-placing agency,
20 which is consistent with the juvenile's best interests. At each
21 review hearing the court may consider information from the
22 department of social services, the licensed child-placing agency,
23 the guardian ad litem, the juvenile, the foster parent, and any
24 other person or agency the court determines is likely to aid in
25 the review.

26 (b) The court shall conduct a placement review not later than
27 six months from the date of the termination hearing when parental
28 rights have been terminated by a petition brought by any person
29 or agency designated in G.S. 7B-1102(2) through (5) and a county
30 director or licensed child-placing agency has custody of the
31 juvenile. The court shall conduct reviews every six months until
32 the juvenile is placed for adoption and the adoption petition is
33 filed by the adoptive parents:

34 (1) No more than 30 days and no less than 15 days prior
35 to each review, the clerk shall give notice of the
36 review to the juvenile if the juvenile is at least
37 12 years of age, the legal custodian of the
38 juvenile, the foster parent, the guardian ad litem,
39 if any, and any other person the court may specify.
40 Only the juvenile, if the juvenile is at least 12
41 years of age, the legal custodian of the juvenile,
42 the foster parent, and the guardian ad litem shall
43 attend the review hearings, except as otherwise
44 directed by the court.

1 (2) If a guardian ad litem for the juvenile has not
2 been appointed previously by the court in the
3 termination proceeding, the court, at the initial
4 six-month review hearing, may appoint a guardian ad
5 litem to represent the juvenile. The court may
6 continue the case for such time as is necessary for
7 the guardian ad litem to become familiar with the
8 facts of the case.

9 (c) The court shall consider at least the following in its
10 review:

11 (1) The adequacy of the plan developed by the county
12 department of social services or a licensed
13 child-placing agency for a permanent placement
14 relative to the juvenile's best interests and the
15 efforts of the department or agency to implement
16 such plan;

17 (2) Whether the juvenile has been listed for adoptive
18 placement with the North Carolina Adoption Resource
19 Exchange, the North Carolina Photo Adoption Listing
20 Service (PALS), or any other specialized adoption
21 agency; and

22 (3) The efforts previously made by the department or
23 agency to find a permanent home for the juvenile.

24 (d) The court, after making findings of fact, shall affirm the
25 county department's or child-placing agency's plans or require
26 specific additional steps which are necessary to accomplish a
27 permanent placement which is in the best interests of the
28 juvenile.

29 (e) If the juvenile has been placed for adoption prior to the
30 date scheduled for the review, written notice of said placement
31 shall be given to the clerk to be placed in the court file, and
32 the review hearing shall be cancelled with notice of said
33 cancellation given by the clerk to all persons previously
34 notified.

35 (f) The process of selection of specific adoptive parents
36 shall be the responsibility of and within the discretion of the
37 county department of social services or licensed child-placing
38 agency. The guardian ad litem may request information from and
39 consult with the county department or child-placing agency
40 concerning the selection process. If the guardian ad litem
41 requests information about the selection process, the county
42 shall provide the information within five days. Any issue of
43 abuse of discretion by the county department or child-placing
44 agency in the selection process must be raised by the guardian ad

1 litem within 10 days following the date the agency notifies the
2 court and the guardian ad litem in writing of the filing of the
3 adoption petition.

4 "§ 7B-908. Review of agency's plan for placement.

5 (a) The director of social services or the director of the
6 licensed private child-placing agency shall promptly notify the
7 clerk to calendar the case for review of the department's or
8 agency's plan for the juvenile at a session of court scheduled
9 for the hearing of juvenile matters in any case where:

10 (1) One parent has surrendered a juvenile for adoption
11 under the provisions of Part 7 of Article 3 of
12 Chapter 48 of the General Statutes and the
13 termination of parental rights proceedings have not
14 been instituted against the nonsurrendering parent
15 within six months of the surrender by the other
16 parent, or

17 (2) Both parents have surrendered a juvenile for
18 adoption under the provisions of Part 7 of Article
19 3 of Chapter 48 of the General Statutes and that
20 juvenile has not been placed for adoption within
21 six months from the date of the more recent
22 parental surrender.

23 (b) In any case where an adoption is dismissed or withdrawn
24 and the juvenile returns to foster care with a department of
25 social services or a licensed private child-placing agency, then
26 the department of social services or licensed child-placing
27 agency shall notify the clerk, within 30 days from the date the
28 juvenile returns to care, to calendar the case for review of the
29 agency's plan for the child at a session of court scheduled for
30 the hearing of juvenile matters.

31 (c) Notification of the court required under subsection (a) or
32 (b) of this section shall be by a petition for review. The
33 petition shall set forth the circumstances necessitating the
34 review under subsection (a) or (b) of this section. The review
35 shall be conducted within 30 days following the filing of the
36 petition for review unless the court shall otherwise direct. The
37 court shall conduct reviews every six months until the juvenile
38 is placed for adoption and the adoption petition is filed by the
39 adoptive parents. The initial review and all subsequent reviews
40 shall be conducted pursuant to G.S. 7B-907.

41 "§ 7B-909. Review of voluntary foster care placements.

42 (a) The court shall review the placement of any juvenile in
43 foster care made pursuant to a voluntary agreement between the
44 juvenile's parents or guardian and a county department of social

1 services and shall make findings from evidence presented at a
2 review hearing with regard to:

- 3 (1) The voluntariness of the placement;
4 (2) The appropriateness of the placement;
5 (3) Whether the placement is in the best interests of
6 the juvenile; and
7 (4) The services that have been or should be provided
8 to the parents, guardian, foster parents, and
9 juvenile, as the case may be, either (i) to improve
10 the placement or (ii) to eliminate the need for the
11 placement.

12 (b) The court may approve the continued placement of the
13 juvenile in foster care on a voluntary agreement basis,
14 disapprove the continuation of the voluntary placement, or direct
15 the department of social services to petition the court for legal
16 custody if the placement is to continue.

17 (c) An initial review hearing shall be held not more than 180
18 days after the juvenile's placement and shall be calendared by
19 the clerk for hearing within such period upon timely request by
20 the director of social services. Additional review hearings
21 shall be held at such times as the court shall deem appropriate
22 and shall direct, either upon its own motion or upon written
23 request of the parents, guardian, foster parents, or director of
24 social services. A juvenile placed under a voluntary agreement
25 between the juvenile's parent or guardian and the county
26 department of social services shall not remain in placement more
27 than 12 months without the filing of a petition alleging abuse,
28 neglect, or dependency.

29 (d) The clerk shall give at least 15 days' advance written
30 notice of the initial and subsequent review hearings to the
31 parents or guardian of the juvenile, to the juvenile if 12 or
32 more years of age, to the director of social services, and to any
33 other persons whom the court may specify.

34 "ARTICLE 10.

35 "Modification and Enforcement of Dispositional Orders; Appeals.

36 "§ 7B-1000. Authority to modify or vacate.

37 (a) Upon motion in the cause or petition, and after notice, the
38 court may conduct a review hearing to determine whether the order
39 of the court is in the best interests of the juvenile, and the
40 court may modify or vacate the order in light of changes in
41 circumstances or the needs of the juvenile.

42 (b) In any case where the court finds the juvenile to be
43 abused, neglected, or dependent, the jurisdiction of the court to
44 modify any order or disposition made in the case shall continue

1 during the minority of the juvenile, until terminated by order of
2 the court, or until the juvenile is otherwise emancipated.

3 "§ 7B-1001. Right to appeal.

4 Upon motion of a proper party as defined in G.S. 7B-1002,
5 review of any final order of the court in a juvenile matter under
6 this Article shall be before the Court of Appeals. Notice of
7 appeal shall be given in open court at the time of the hearing or
8 in writing within 10 days after entry of the order. However, if
9 no disposition is made within 60 days after entry of the order,
10 written notice of appeal may be given within 70 days after such
11 entry. A final order shall include:

- 12 (1) Any order finding absence of jurisdiction;
- 13 (2) Any order which in effect determines the action and
14 prevents a judgment from which appeal might be
15 taken;
- 16 (3) Any order of disposition after an adjudication that
17 a juvenile is abused, neglected, or dependent; or
- 18 (4) Any order modifying custodial rights.

19 "§ 7B-1002. Proper parties for appeal.

20 An appeal may be taken by the guardian ad litem, or juvenile,
21 the juvenile's parent, guardian, custodian, or caretaker, or the
22 petitioner. The State's appeal is limited to any final order.

23 "§ 7B-1003. Disposition pending appeal.

24 Pending disposition of an appeal, the return of the juvenile to
25 the custody of the parent, guardian, custodian, or caretaker of
26 the juvenile, with or without conditions, should issue in every
27 case unless the court orders otherwise. For compelling reasons
28 which must be stated in writing, the court may enter a temporary
29 order affecting the custody or placement of the juvenile as the
30 court finds to be in the best interests of the juvenile or the
31 State. The provisions of subsections (b), (c), and (d) of G.S.
32 7B-905 shall apply to any order entered under this section which
33 provides for the placement or continued placement of a juvenile
34 in foster care.

35 "§ 7B-1004. Disposition after appeal.

36 Upon the affirmation of the order of adjudication or
37 disposition of the court by the Court of Appeals or by the
38 Supreme Court in the event of an appeal, the court shall have
39 authority to modify or alter the original order of adjudication
40 or disposition as the court finds to be in the best interests of
41 the juvenile to reflect any adjustment made by the juvenile or
42 change in circumstances during the period of time the appeal was
43 pending. If the modifying order is entered ex parte, the court
44 shall give notice to interested parties to show cause within 10

1 days thereafter as to why the modifying order should be vacated
2 or altered.

3 "ARTICLE 11.

4 "Termination of Parental Rights.

5 "§ 7B-1100. Legislative intent; construction of Article.

6 The General Assembly hereby declares as a matter of legislative
7 policy with respect to termination of parental rights:

8 (1) The general purpose of this Article is to provide
9 judicial procedures for terminating the legal
10 relationship between a juvenile and the juvenile's
11 biological or legal parents when the parents have
12 demonstrated that they will not provide the degree
13 of care which promotes the healthy and orderly
14 physical and emotional well-being of the juvenile.

15 (2) It is the further purpose of this Article to
16 recognize the necessity for any juvenile to have a
17 permanent plan of care at the earliest possible
18 age, while at the same time recognizing the need to
19 protect all juveniles from the unnecessary
20 severance of a relationship with biological or
21 legal parents.

22 (3) Action which is in the best interests of the
23 juvenile should be taken in all cases where the
24 interests of the juvenile and those of the
25 juvenile's parents or other persons are in
26 conflict.

27 (4) This Article shall not be used to circumvent the
28 provisions of Chapter 50A of the General Statutes,
29 the Uniform Child Custody Jurisdiction Act.

30 "§ 7B-1101. Jurisdiction.

31 The court shall have exclusive original jurisdiction to hear
32 and determine any petition relating to termination of parental
33 rights to any juvenile who resides in, is found in, or is in the
34 legal or actual custody of a county department of social services
35 or licensed child-placing agency in the district at the time of
36 filing of the petition. The court shall have jurisdiction to
37 terminate the parental rights of any parent irrespective of the
38 age of the parent. The parent has the right to counsel and to
39 appointed counsel in cases of indigency unless the parent waives
40 the right. The fees of appointed counsel shall be borne by the
41 Administrative Office of the Courts. In addition to the right to
42 appointed counsel set forth above, a guardian ad litem shall be
43 appointed in accordance with the provisions of G.S. 1A-1, Rule
44 17, to represent a parent in the following cases:

- 1 (1) Where it is alleged that a parent's rights should
2 be terminated pursuant to G.S. 7B-1110(7); or
3 (2) Where the parent is under the age of 18 years.
4 The fees of the guardian ad litem shall be borne by the
5 Administrative Office of the Courts when the court finds that the
6 respondent is indigent. In other cases the fees of the court-
7 appointed guardian ad litem shall be a proper charge against the
8 respondent if the respondent does not secure private legal
9 counsel. Provided, that before exercising jurisdiction under this
10 Article, the court shall find that it would have jurisdiction to
11 make a child-custody determination under the provisions of G.S.
12 50A-3. Provided, further, that the clerk of superior court shall
13 have jurisdiction for adoptions under the provisions of G.S. 48-
14 2-100 and Chapter 48 of the General Statutes generally.
15 "§ 7B-1102. Who may petition.
16 A petition to terminate the parental rights of either or both
17 parents to his, her, or their minor juvenile may only be filed
18 by:
19 (1) Either parent seeking termination of the right of
20 the other parent; or
21 (2) Any person who has been judicially appointed as the
22 guardian of the person of the juvenile; or
23 (3) Any county department of social services,
24 consolidated county human services agency, or
25 licensed child-placing agency to whom custody of
26 the juvenile has been given by a court of competent
27 jurisdiction; or
28 (4) Any county department of social services,
29 consolidated county human services agency, or
30 licensed child-placing agency to which the juvenile
31 has been surrendered for adoption by one of the
32 parents or by the guardian of the person of the
33 juvenile, pursuant to G.S. 48-9(a)(1); or
34 (5) Any person with whom the juvenile has resided for a
35 continuous period of two years or more next
36 preceding the filing of the petition; or
37 (6) Any guardian ad litem appointed to represent the
38 minor juvenile pursuant to G.S. 7B-601 who has not
39 been relieved of this responsibility and who has
40 served in this capacity for at least one continuous
41 year; or
42 (7) Any person who has filed a petition for adoption
43 pursuant to Chapter 48 of the General Statutes.
44 "§ 7B-1103. Petition.

1 The petition shall be verified by the petitioner and shall be
2 entitled 'In Re (last name of juvenile)', a minor juvenile; and
3 shall set forth such of the following facts as are known; and
4 with respect to the facts which are unknown the petitioner shall
5 so state:

- 6 (1) The name of the juvenile as it appears on the
7 juvenile's birth certificate, the date and place of
8 birth, and the county where the juvenile is
9 presently residing.
- 10 (2) The name and address of the petitioner and facts
11 sufficient to identify the petitioner as one
12 entitled to petition under G.S. 7B-1102.
- 13 (3) The name and address of the parents of the
14 juvenile. If the name or address of one or both
15 parents is unknown to the petitioner, the
16 petitioner shall set forth with particularity the
17 petitioner's efforts to ascertain the identity or
18 whereabouts of the parent or parents. The
19 information may be contained in an affidavit
20 attached to the petition and incorporated therein
21 by reference.
- 22 (4) The name and address of any person appointed as
23 guardian of the person of the juvenile pursuant to
24 the provisions of Chapter 35A of the General
25 Statutes, or of G.S. 7B-600.
- 26 (5) The name and address of any person or agency to
27 whom custody of the juvenile has been given by a
28 court of this or any other state; and a copy of the
29 custody order shall be attached to the petition.
- 30 (6) Facts that are sufficient to warrant a
31 determination that one or more of the grounds for
32 terminating parental rights exist.
- 33 (7) That the petition has not been filed to circumvent
34 the provisions of Chapter 50A of the General
35 Statutes, the Uniform Child Custody Jurisdiction
36 Act.

37 "§ 7B-1104. Preliminary hearing; unknown parent.

- 38 (a) If either the name or identity of any parent whose parental
39 rights the petitioner seeks to terminate is not known to the
40 petitioner, the court shall, within 10 days from the date of
41 filing of the petition, or during the next term of court in the
42 county where the petition is filed if there is no court in the
43 county in that 10-day period, conduct a preliminary hearing to
44 ascertain the name or identity of such parent.

1 (b) The court may, in its discretion, inquire of any known
2 parent of the juvenile concerning the identity of the unknown
3 parent and may appoint a guardian ad litem for the unknown parent
4 to conduct a diligent search for the parent. Should the court
5 ascertain the name or identity of the parent, it shall enter a
6 finding to that effect; and the parent shall be summoned to
7 appear in accordance with G.S. 7B-1105.

8 (c) Notice of the preliminary hearing need be given only to the
9 petitioner who shall appear at the hearing; but the court may
10 cause summons to be issued to any person directing the person to
11 appear and testify.

12 (d) If the court is unable to ascertain the name or identity of
13 the unknown parent, the court shall order publication of notice
14 of the termination proceeding and shall specifically order the
15 place or places of publication and the contents of the notice
16 which the court concludes is most likely to identify the juvenile
17 to such unknown parent. The notice shall be published in a
18 newspaper qualified for legal advertising in accordance with G.S.
19 1-597 and G.S. 1-598 and published in the counties directed by
20 the court, once a week for three successive weeks. Provided,
21 further, the notice shall:

- 22 (1) Designate the court in which the petition is
23 pending;
- 24 (2) Be directed to 'the father (mother) (father and
25 mother) of a male (female) juvenile born on or
26 aboutin
27 (date)
28County,
29
30 (city)
31 respondent';
32 (State)
- 33 (3) Designate the docket number and title of the case
34 (the court may direct the actual name of the title
35 be eliminated and the words 'In Re Doe' substituted
36 therefor);
- 37 (4) State that a petition seeking to terminate the
38 parental rights of the respondent has been filed;
- 39 (5) Direct the respondent to answer the petition within
40 30 days after a date stated in the notice,
41 exclusive of such date, which date so stated shall
42 be the date of first publication of notice and be
43 substantially in the form as set forth in G.S.
44 1A-1, Rule 4(j1); and

1 (6) State that the respondent's parental rights to the
2 juvenile will be terminated upon failure to answer
3 the petition within the time prescribed.

4 Upon completion of the service, an affidavit of the publisher
5 shall be filed with the court.

6 (e) The court shall issue the order required by subsections (b)
7 and (d) of this section within 30 days from the date of the
8 preliminary hearing unless the court shall determine that
9 additional time for investigation is required.

10 (f) Upon the failure of the parent served by publication
11 pursuant to subsection (d) of this section to answer the petition
12 within the time prescribed, the court shall issue an order
13 terminating all parental rights of the unknown parent.

14 "§ 7B-1105. Issuance of summons.

15 (a) Except as provided in G.S. 7B-1104, upon the filing of the
16 petition, the court shall cause a summons to be issued. The
17 summons shall be directed to the following persons or agency, not
18 otherwise a party petitioner, who shall be named as respondents:

19 (1) The parents of the juvenile;

20 (2) Any person who has been judicially appointed as
21 guardian of the person of the juvenile;

22 (3) The custodian of the juvenile appointed by a court
23 of competent jurisdiction;

24 (4) Any county department of social services or
25 licensed child-placing agency to whom a juvenile
26 has been released by one parent pursuant to Part 7
27 of Article 3 of Chapter 48 of the General Statutes;
28 and

29 (5) The juvenile, if the juvenile is 12 years of age or
30 older at the time the petition is filed.

31 Provided, no summons need be directed to or served upon any
32 parent who has previously surrendered the juvenile to a county
33 department of social services or licensed child-placing agency
34 nor to any parent who has consented to the adoption of the
35 juvenile by the petitioner. The summons shall notify the
36 respondents to file a written answer within 30 days after service
37 of the summons and petition. Service of the summons shall be
38 completed as provided under the procedures established by G.S.
39 1A-1, Rule 4(j); but the parent of the juvenile shall not be
40 deemed to be under disability even though the parent is a minor.

41 (b) The summons shall be issued for the purpose of terminating
42 parental rights pursuant to the provisions of subsection (a) of
43 this section and shall include:

44 (1) The name of the minor juvenile;

- 1 (2) Notice that a written answer to the petition must
2 be filed with the clerk who signed the petition
3 within 30 days after service of the summons and a
4 copy of the petition, or the parent's rights may be
5 terminated;
6 (3) Notice that if they are indigent, the parents are
7 entitled to appointed counsel. The parents may
8 contact the clerk immediately to request counsel;
9 (4) Notice that this is a new case. Any attorney
10 appointed previously will not represent the parents
11 in this proceeding unless ordered by the court;
12 (5) Notice that the date, time, and place of the
13 hearing will be mailed by the clerk upon filing of
14 the answer or 30 days from the date of service if
15 no answer is filed; and
16 (6) Notice of the purpose of the hearing and notice
17 that the parents may attend the termination
18 hearing.

19 **"§ 7B-1106. Failure of respondents to answer.**

20 Upon the failure of the respondents to file written answer to
21 the petition with the court within 30 days after service of the
22 summons and petition, or within the time period established for a
23 defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by
24 publication, the court shall issue an order terminating all
25 parental and custodial rights of the respondent or respondents
26 with respect to the juvenile; provided the court shall order a
27 hearing on the petition and may examine the petitioner or others
28 on the facts alleged in the petition.

29 **"§ 7B-1107. Answer of respondents.**

30 (a) Any respondent may file a written answer to the petition.
31 The answer shall admit or deny the allegations of the petition
32 and shall set forth the name and address of the answering
33 respondent or the respondent's attorney.

34 (b) If an answer denies any material allegation of the
35 petition, the court shall appoint a guardian ad litem for the
36 juvenile to represent the best interests of the juvenile, unless
37 the petition was filed by the guardian ad litem pursuant to G.S.
38 7B-1102. A licensed attorney shall be appointed to assist those
39 guardians ad litem who are not attorneys licensed to practice in
40 North Carolina. The appointment, duties, and payment of the
41 guardian ad litem shall be the same as in G.S. 7B-601 and G.S.
42 7B-603. The court shall conduct a special hearing after notice of
43 not less than 10 days nor more than 30 days to the petitioner,
44 the answering respondent, and the guardian ad litem for the

1 juvenile to determine the issues raised by the petition and
2 answer. Notice of the hearing shall be deemed to have been given
3 upon the depositing thereof in the United States mail,
4 first-class postage prepaid, and addressed to the petitioner,
5 respondent, and guardian ad litem or their counsel of record, at
6 the addresses appearing in the petition and responsive pleading.

7 (c) In proceedings under this Article, the appointment of a
8 guardian ad litem shall not be required except, as provided
9 above, in cases in which an answer is filed denying material
10 allegations, or as required under G.S. 7B-1101; but the court
11 may, in its discretion, appoint a guardian ad litem for a
12 juvenile, either before or after determining the existence of
13 grounds for termination of parental rights, in order to assist
14 the court in determining the best interests of the juvenile.

15 (d) If a guardian ad litem has previously been appointed for
16 the juvenile under G.S. 7B-601, and the appointment of a guardian
17 ad litem could also be made under this section, the guardian ad
18 litem appointed under G.S. 7B-601, and any attorney appointed to
19 assist that guardian, shall also represent the juvenile in all
20 proceedings under this Article and shall have the duties and
21 payment of a guardian ad litem appointed under this section,
22 unless the court determines that the best interests of the
23 juvenile require otherwise.

24 "§ 7B-1108. Adjudicatory hearing on termination.

25 (a) The hearing on the termination of parental rights shall be
26 conducted by the court sitting without a jury. Reporting of the
27 hearing shall be as provided by G.S. 7A-198 for reporting civil
28 trials.

29 (b) The court shall inquire whether the juvenile's parents are
30 present at the hearing and, if so, whether they are represented
31 by counsel. If the parents are not represented by counsel, the
32 court shall inquire whether the parents desire counsel but are
33 indigent. In the event that the parents desire counsel but are
34 indigent as defined in G.S. 7A-450(a) and are unable to obtain
35 counsel to represent them, the court shall appoint counsel to
36 represent them. The court shall grant the parents such an
37 extension of time as is reasonable to permit their appointed
38 counsel to prepare their defense to the termination petition. In
39 the event that the parents do not desire counsel and are present
40 at the hearing, the court shall examine each parent and make
41 findings of fact sufficient to show that the waivers were knowing
42 and voluntary. This examination shall be reported as provided in
43 G.S. 7A-198.

1 (c) The court may, upon finding that reasonable cause exists,
2 order the juvenile to be examined by a psychiatrist, a licensed
3 clinical psychologist, a physician, a public or private agency,
4 or any other expert in order that the juvenile's psychological or
5 physical condition or needs may be ascertained or, in the case of
6 a parent whose ability to care for the juvenile is at issue, the
7 court may order a similar examination of any parent of the
8 juvenile.

9 (d) The court may for good cause shown continue the hearing for
10 such time as is required for receiving additional evidence, any
11 reports or assessments which the court has requested, or any
12 other information needed in the best interests of the juvenile.

13 (e) The court shall take evidence, find the facts, and shall
14 adjudicate the existence or nonexistence of any of the
15 circumstances set forth in G.S. 7B-1110 which authorize the
16 termination of parental rights of the respondent.

17 (f) All findings of fact shall be based on clear, cogent, and
18 convincing evidence. No husband-wife or physician-patient
19 privilege shall be grounds for excluding any evidence regarding
20 the existence or nonexistence of any circumstance authorizing the
21 termination of parental rights.

22 "§ 7B-1109. Disposition.

23 (a) Should the court determine that any one or more of the
24 conditions authorizing a termination of the parental rights of a
25 parent exist, the court shall issue an order terminating the
26 parental rights of such parent with respect to the juvenile
27 unless the court shall further determine that the best interests
28 of the juvenile require that the parental rights of the parent
29 not be terminated.

30 (b) Should the court conclude that, irrespective of the
31 existence of one or more circumstances authorizing termination of
32 parental rights, the best interests of the juvenile require that
33 rights should not be terminated, the court shall dismiss the
34 petition, but only after setting forth the facts and conclusions
35 upon which the dismissal is based.

36 (c) Should the court determine that circumstances authorizing
37 termination of parental rights do not exist, the court shall
38 dismiss the petition, making appropriate findings of fact and
39 conclusions.

40 (d) Counsel for the petitioner shall serve a copy of the
41 termination of parental rights order upon the guardian ad litem
42 for the juvenile, if any, and upon the juvenile if the
43 juvenile is 12 years of age or older.

44 (e) The court may tax the cost of the proceeding to any party.

1 "§ 7B-1110. Grounds for terminating parental rights.

2 The court may terminate the parental rights upon a finding of
3 one or more of the following:

- 4 (1) The parent has abused or neglected the juvenile.
5 The juvenile shall be deemed to be abused or
6 neglected if the court finds the juvenile to be an
7 abused juvenile within the meaning of G.S. 7B-101
8 or a neglected juvenile within the meaning of G.S.
9 7B-101.
- 10 (2) The parent has willfully left the juvenile in
11 foster care for more than 12 months without showing
12 to the satisfaction of the court that reasonable
13 progress under the circumstances has been made
14 within 12 months in correcting those conditions
15 which led to the removal of the juvenile.
16 Provided, however, that no parental rights shall be
17 terminated for the sole reason that the parents are
18 unable to care for the juvenile on account of
19 their poverty.
- 20 (3) The burden in such proceedings shall be upon the
21 petitioner to prove the facts justifying such
22 termination by clear and convincing evidence.
- 23 (4) The juvenile has been placed in the custody of a
24 county department of social services, a licensed
25 child-placing agency, a child-caring institution,
26 or a foster home, and the parent, for a continuous
27 period of six months next preceding the filing of
28 the petition, has willfully failed for such period
29 to pay a reasonable portion of the cost of care for
30 the juvenile although physically and financially
31 able to do so.
- 32 (5) One parent has been awarded custody of the
33 juvenile by judicial decree or has custody by
34 agreement of the parents, and the other parent
35 whose parental rights are sought to be terminated
36 has for a period of one year or more next preceding
37 the filing of the petition willfully failed without
38 justification to pay for the care, support, and
39 education of the juvenile, as required by said
40 decree or custody agreement.
- 41 (6) The father of a juvenile born out of wedlock has
42 not, prior to the filing of a petition to terminate
43 parental rights:

- 1 a. Established paternity judicially or by
2 affidavit which has been filed in a central
3 registry maintained by the Department of
4 Health and Human Services; provided, the court
5 shall inquire of the Department of Health and
6 Human Services as to whether such an affidavit
7 has been so filed and shall incorporate into
8 the case record the Department's certified
9 reply; or
- 10 b. Legitimated the juvenile pursuant to
11 provisions of G.S. 49-10 or filed a petition
12 for this specific purpose; or
- 13 c. Legitimated the juvenile by marriage to the
14 mother of the juvenile; or
- 15 d. Provided substantial financial support or
16 consistent care with respect to the juvenile
17 and mother.
- 18 (7) That the parent is incapable of providing for the
19 proper care and supervision of the juvenile, such
20 that the juvenile is a dependent juvenile within
21 the meaning of G.S. 7B-101, and that there is a
22 reasonable probability that such incapability will
23 continue for the foreseeable future. Incapability
24 under this subdivision may be the result of
25 substance abuse, mental retardation, mental
26 illness, organic brain syndrome, or any other
27 similar cause or condition.
- 28 (8) The parent has willfully abandoned the juvenile
29 for at least six consecutive months immediately
30 preceding the filing of the petition. For the
31 purpose of this subdivision, a juvenile may be
32 willfully abandoned by the juvenile's natural
33 father if the mother of the juvenile had been
34 willfully abandoned by and was living separate and
35 apart from the father at the time of the
36 juvenile's birth, although the father may not have
37 known of such birth; but in any event the juvenile
38 must be over the age of three months at the time of
39 the filing of the petition.
- 40 "§ 7B-1111. Effects of termination order.
- 41 An order terminating the parental rights completely and
42 permanently terminates all rights and obligations of the parent
43 to the juvenile and of the juvenile to the parent arising from
44 the parental relationship, except that the juvenile's right of

1 inheritance from the juvenile's parent shall not terminate until
2 a final order of adoption is issued. The parent is not thereafter
3 entitled to notice of proceedings to adopt the juvenile and may
4 not object thereto or otherwise participate therein:

5 (1) If the juvenile had been placed in the custody of
6 or released for adoption by one parent to a county
7 department of social services or licensed child-
8 placing agency and is in the custody of the agency
9 at the time of the filing of the petition,
10 including a petition filed pursuant to G.S. 7B-
11 1102(6), that agency shall, upon entry of the order
12 terminating parental rights, acquire all of the
13 rights for placement of the juvenile as the agency
14 would have acquired had the parent whose rights are
15 terminated released the juvenile to that agency
16 pursuant to the provisions of Part 7 of Article 3
17 of Chapter 48 of the General Statutes, including
18 the right to consent to the adoption of the
19 juvenile.

20 (2) Except as provided in subdivision (1) above, upon
21 entering an order terminating the parental rights
22 of one or both parents, the court may place the
23 juvenile in the custody of the petitioner, or some
24 other suitable person, or in the custody of the
25 department of social services or licensed child-
26 placing agency, as may appear to be in the best
27 interests of the juvenile.

28 "§ 7B-1112. Appeals; modification of order after affirmation.

29 Any juvenile, parent, guardian, custodian, caretaker, or
30 agency who is a party to a proceeding under this Article may
31 appeal from an adjudication or any order of disposition to the
32 Court of Appeals, provided that notice of appeal is given in open
33 court at the time of the hearing or in writing within 10 days
34 after the hearing. Pending disposition of an appeal, the court
35 may enter a temporary order affecting the custody or placement of
36 the juvenile as the court finds to be in the best interests of
37 the juvenile or the best interests of the State. Upon the
38 affirmation of the order of adjudication or disposition of the
39 court in a juvenile case by the Court of Appeals, or by the
40 Supreme Court in the event of an appeal, the court shall have
41 authority to modify or alter its original order of adjudication
42 or disposition as the court finds to be in the best interests of
43 the juvenile to reflect any adjustment made by the juvenile or
44 change in circumstances during the period of time the case on

1 appeal was pending, provided that if the modifying order be
2 entered ex parte, the court shall give notice to interested
3 parties to show cause, if any there be, within 10 days
4 thereafter, as to why the modifying order should be vacated or
5 altered.

6 "ARTICLE 12.

7 "Guardian ad Litem Program.

8 "§ 7B-1200. Office of Guardian ad Litem Services established.

9 There is established within the Administrative Office of the
10 Courts an Office of Guardian ad Litem Services to provide
11 services in accordance with G.S. 7B-601 to abused, neglected, or
12 dependent juveniles involved in judicial proceedings and to
13 assure that all participants in these proceedings are adequately
14 trained to carry out their responsibilities. Each local program
15 shall consist of volunteer guardians ad litem, at least one
16 program attorney, a program coordinator who is a paid State
17 employee, and any clerical staff as the Administrative Office of
18 the Courts in consultation with the local program deems
19 necessary. The Administrative Office of the Courts shall adopt
20 rules and regulations necessary and appropriate for the
21 administration of the program.

22 "§ 7B-1201. Implementation and administration.

23 (a) Local Programs. -- The Administrative Office of the Courts
24 shall, in cooperation with each chief district court judge and
25 other personnel in the district, implement and administer the
26 program mandated by this Article. Where a local program has not
27 yet been established in accordance with this Article, the
28 district court district shall operate a guardian ad litem program
29 approved by the Administrative Office of the Courts.

30 (b) Advisory Committee Established. -- The Director of the
31 Administrative Office of the Courts shall appoint a Guardian ad
32 Litem Advisory Committee consisting of at least five members to
33 advise the Office of Guardian ad Litem Services in matters
34 related to this program. The members of the Advisory Committee
35 shall receive the same per diem and reimbursement for travel
36 expenses as members of State boards and commissions generally.

37 "§ 7B-1202. Conflict of interest or impracticality of
38 implementation.

39 If a conflict of interest prohibits a local program from
40 providing representation to an abused, neglected, or dependent
41 juvenile, the court may appoint any member of the district bar to
42 represent the juvenile. If the Administrative Office of the
43 Courts determines that within a particular district court
44 district the implementation of a local program is impractical, or

1 priority of this State and to establish the Children's Trust Fund
2 as a means to that end.

3 "§ 7B-1301. Program on Prevention of Abuse and Neglect.

4 (a) The State Board of Education, through the Department of
5 Public Instruction, shall implement the Program on Prevention of
6 Abuse and Neglect. The Department of Public Instruction, subject
7 to the approval of the State Board of Education, shall provide
8 the staff and support services for implementing this program.

9 (b) In order to carry out the purposes of this Article:

10 (1) The Department of Public Instruction shall review
11 applications and make recommendations to the State
12 Board of Education concerning the awarding of
13 contracts under this Article.

14 (2) The State Board of Education shall contract with
15 public or private nonprofit organizations,
16 agencies, schools, or with qualified individuals to
17 operate community-based educational and service
18 programs designed to prevent the occurrence of
19 abuse and neglect. Every contract entered into by
20 the State Board of Education shall contain
21 provisions that at least twenty-five percent (25%)
22 of the total funding required for a program be
23 provided by the administering organization in the
24 form of in-kind or other services and that a
25 mechanism for evaluation of services provided under
26 the contract be included in the services to be
27 performed. In addition, every proposal to the
28 Department of Public Instruction for funding under
29 this Article shall include assurances that the
30 proposal has been forwarded to the local department
31 of social services for comment so that the
32 Department of Public Instruction may consider
33 coordination and duplication of effort on the local
34 level as criteria in making recommendations to the
35 State Board of Education.

36 (3) The State Board of Education, with the assistance
37 of the Department of Public Instruction, shall
38 develop appropriate guidelines and criteria for
39 awarding contracts under this Article. These
40 criteria shall include, but are not limited to:
41 documentation of need within the proposed
42 geographical impact area; diversity of geographical
43 areas of programs funded under this Article;
44 demonstrated effectiveness of the proposed strategy

1 or program for preventing abuse and neglect;
2 reasonableness of implementation plan for achieving
3 stated objectives; utilization of community
4 resources including volunteers; provision for an
5 evaluation component that will provide outcome
6 data; plan for dissemination of the program for
7 implementation in other communities; and potential
8 for future funding from private sources.

9 (4) The State Board of Education, with the assistance
10 of the Department of Public Instruction, shall
11 develop guidelines for regular monitoring of
12 contracts awarded under this Article in order to
13 maximize the investments in prevention programs by
14 the Children's Trust Fund and to establish
15 appropriate accountability measures for
16 administration of contracts.

17 (5) The State Board of Education shall develop a State
18 plan for the prevention of abuse and neglect for
19 submission to the Governor, the President of the
20 Senate, and the Speaker of the House of
21 Representatives.

22 (c) To assist in implementing this Article, the State Board of
23 Education may accept contributions, grants, or gifts in cash or
24 otherwise from persons, associations, or corporations. All moneys
25 received by the State Board of Education from contributions,
26 grants, or gifts and not through appropriation by the General
27 Assembly shall be deposited in the Children's Trust Fund.
28 Disbursements of the funds shall be on the authorization of the
29 State Board of Education or that Board's duly authorized
30 representative. In order to maintain an effective expenditure and
31 revenue control, the funds are subject in all respects to State
32 law and regulations, but no appropriation is required to permit
33 expenditure of the funds.

34 (d) Programs contracted for under this Article are intended to
35 prevent abuse and neglect of juveniles. Abuse and neglect
36 prevention programs are defined to be those programs and services
37 which impact on juveniles and families before any substantiated
38 incident of abuse or neglect has occurred. These programs may
39 include, but are not limited to:

40 (1) Community-based educational programs on prenatal
41 care, perinatal bonding, child development, basic
42 child care, care of children with special needs,
43 and coping with family stress; and

1 The following definitions apply in this Article:

2 (1) Additional Child Fatality. -- Any death of a child
3 that did not result from suspected abuse or neglect
4 and about which no report of abuse or neglect had
5 been made to the county department of social
6 services within the previous 12 months.

7 (2) Local Team. -- A Community Child Protection Team or
8 a Child Fatality Prevention Team.

9 (3) State Team. -- The North Carolina Child Fatality
10 Prevention Team.

11 (4) Task Force. -- The North Carolina Child Fatality
12 Task Force.

13 (5) Team Coordinator. -- The Child Fatality Prevention
14 Team Coordinator.

15 "§ 7B-1402. State Team -- creation; membership; vacancies.

16 (a) There is created the North Carolina Child Fatality
17 Prevention Team within the Department of Health and Human
18 Services for budgetary purposes only.

19 (b) The State Team shall be composed of the following 11
20 members of whom nine members are ex officio and two are
21 appointed:

22 (1) The Chief Medical Examiner, who shall chair the
23 State Team;

24 (2) The Attorney General;

25 (3) The Director of the Division of Social Services,
26 Department of Health and Human Services;

27 (4) The Director of the State Bureau of Investigation;

28 (5) The Director of the Division of Maternal and Child
29 Health of the Department of Health and Human
30 Services;

31 (6) The Superintendent of Public Instruction;

32 (7) The Director of the Division of Mental Health,
33 Developmental Disabilities, and Substance Abuse
34 Services, Department of Health and Human Services;

35 (8) The Director of the Administrative Office of the
36 Courts;

37 (9) The pediatrician appointed pursuant to G.S. 7B-
38 1402(b) to the Task Force;

39 (10) A public member, appointed by the Governor; and

40 (11) The Team Coordinator.

41 The ex officio members other than the Chief Medical Examiner
42 may designate a representative from their departments, divisions,
43 or offices to represent them on the State Team.

1 (c) All members of the State Team are voting members.
2 Vacancies in the appointed membership shall be filled by the
3 appointing officer who made the initial appointment.

4 "§ 7B-1403. State Team -- duties.

5 The State Team shall:

- 6 (1) Review current deaths of children when those deaths
7 are attributed to child abuse or neglect or when
8 the decedent was reported as an abused or neglected
9 juvenile pursuant to G.S. 7B-301 at any time before
10 death;
11 (2) Report to the Task Force during the existence of
12 the Task Force, in the format and at the time
13 required by the Task Force, on the State Team's
14 activities and its recommendations for changes to
15 any law, rule, and policy that would promote the
16 safety and well-being of children;
17 (3) Upon request of a Local Team, provide technical
18 assistance to the Team;
19 (4) Periodically assess the operations of the
20 multidisciplinary child fatality prevention system
21 and make recommendations for changes as needed;
22 (5) Work with the Team Coordinator to develop
23 guidelines for selecting child deaths to receive
24 detailed, multidisciplinary death reviews by Local
25 Teams that review cases of additional child
26 fatalities; and
27 (6) Receive reports of findings and recommendations
28 from Local Teams that review cases of additional
29 child fatalities and work with the Team Coordinator
30 to implement recommendations.

31 "§ 7B-1404. Community Child Protection Teams; Child Fatality
32 Prevention Teams; creation and duties.

33 (a) Community Child Protection Teams are established in every
34 county of the State. Each Community Child Protection Team shall:

- 35 (1) Review, in accordance with the procedures
36 established by the director of the county
37 department of social services under G.S. 7B-1409:
38 a. Selected active cases in which children are
39 being served by child protective services; and
40 b. Cases in which a child died as a result of
41 suspected abuse or neglect, and
42 1. A report of abuse or neglect has been
43 made about the child or the child's
44 family to the county department of social

1 services within the previous 12 months,
2 or
3 2. The child or the child's family was a
4 recipient of child protective services
5 within the previous 12 months.

6 (2) Submit annually to the board of county
7 commissioners recommendations, if any, and advocate
8 for system improvements and needed resources where
9 gaps and deficiencies may exist.

10 In addition, each Community Child Protection Team may review the
11 records of all additional child fatalities and report findings in
12 connection with these reviews to the Team Coordinator.

13 (b) Any Community Child Protection Team that determines it
14 will not review additional child fatalities shall notify the Team
15 Coordinator. In accordance with the plan established under G.S.
16 7B-1408(1), a separate Child Fatality Prevention Team shall be
17 established in that county to conduct these reviews. Each Child
18 Fatality Prevention Team shall:

19 (1) Review the records of all cases of additional child
20 fatalities.

21 (2) Submit annually to the board of county
22 commissioners recommendations, if any, and advocate
23 for system improvements and needed resources where
24 gaps and deficiencies may exist.

25 (3) Report findings in connection with these reviews to
26 the Team Coordinator.

27 (c) All reports to the Team Coordinator under this section
28 shall include:

29 (1) A listing of the system problems identified through
30 the review process and recommendations for
31 preventive actions;

32 (2) Any changes that resulted from the recommendations
33 made by the Local Team;

34 (3) Information about each death reviewed; and

35 (4) Any additional information requested by the Team
36 Coordinator.

37 **"§ 7B-1405. Local Teams; composition.**

38 (a) Each Local Team shall consist of representatives of public
39 and nonpublic agencies in the community that provide services to
40 children and their families and other individuals who represent
41 the community. No single team shall encompass a geographic or
42 governmental area larger than one county.

43 (b) Each Local Team shall consist of the following persons:

- 1 (1) The director of the county department of social
 - 2 services and a member of the director's staff;
 - 3 (2) A local law enforcement officer, appointed by the
 - 4 board of county commissioners;
 - 5 (3) An attorney from the district attorney's office,
 - 6 appointed by the district attorney;
 - 7 (4) The executive director of the local community
 - 8 action agency, as defined by the Department of
 - 9 Health and Human Services, or the executive
 - 10 director's designee;
 - 11 (5) The superintendent of each local school
 - 12 administrative unit located in the county, or the
 - 13 superintendent's designee;
 - 14 (6) A member of the county board of social services,
 - 15 appointed by the chair of that board;
 - 16 (7) A local mental health professional, appointed by
 - 17 the director of the area authority established
 - 18 under Chapter 122C of the General Statutes;
 - 19 (8) The local guardian ad litem coordinator, or the
 - 20 coordinator's designee;
 - 21 (9) The director of the local department of public
 - 22 health; and
 - 23 (10) A local health care provider, appointed by the
 - 24 local board of health.
- 25 (c) In addition, a Local Team that reviews the records of
- 26 additional child fatalities shall include the following four
- 27 additional members:
- 28 (1) An emergency medical services provider or
 - 29 firefighter, appointed by the board of county
 - 30 commissioners;
 - 31 (2) A district court judge, appointed by the chief
 - 32 district judge in that district;
 - 33 (3) A county medical examiner, appointed by the Chief
 - 34 Medical Examiner;
 - 35 (4) A representative of a local child care facility or
 - 36 Head Start program, appointed by the director of
 - 37 the county department of social services; and
 - 38 (5) A parent of a child who died before reaching the
 - 39 child's eighteenth birthday, to be appointed by the
 - 40 board of county commissioners.
- 41 (d) The Team Coordinator shall serve as an ex officio member
- 42 of each Local Team that reviews the records of additional child
- 43 fatalities. The board of county commissioners may appoint a
- 44 maximum of five additional members to represent county agencies

1 or the community at large to serve on any Local Team. Vacancies
2 on a Local Team shall be filled by the original appointing
3 authority.

4 (e) Each Local Team shall elect a member to serve as chair at
5 the Team's pleasure.

6 (f) Each Local Team shall meet at least four times each year.

7 (g) The director of the local department of social services
8 shall call the first meeting of the Community Child Protection
9 Team. The director of the local department of health, upon
10 consultation with the Team Coordinator, shall call the first
11 meeting of the Child Fatality Prevention Team. Thereafter, the
12 chair of each Local Team shall schedule the time and place of
13 meetings, in consultation with these directors, and shall prepare
14 the agenda. The chair shall schedule Team meetings no less often
15 than once per quarter and often enough to allow adequate review
16 of the cases selected for review. Within three months of
17 election, the chair shall participate in the appropriate training
18 developed under this Article.

19 "§ 7B-1406. Child Fatality Prevention Team Coordinator; duties.

20 The Child Fatality Prevention Team Coordinator shall serve as
21 liaison between the State Team and the Local Teams that review
22 records of additional child fatalities and shall provide
23 technical assistance to these Local Teams. The Team Coordinator
24 shall:

25 (1) Develop a plan to establish Local Teams that review
26 the records of additional child fatalities in each
27 county.

28 (2) Develop model operating procedures for these Local
29 Teams that address when public meetings should be
30 held, what items should be addressed in public
31 meetings, what information may be released in
32 written reports, and any other information the Team
33 Coordinator considers necessary.

34 (3) Provide structured training for these Local Teams
35 at the time of their establishment, and continuing
36 technical assistance thereafter.

37 (4) Provide statistical information on all child deaths
38 occurring in each county to the appropriate Local
39 Team, and assure that all child deaths in a county
40 are assessed through the multidisciplinary system.

41 (5) Monitor the work of these Local Teams.

42 (6) Receive reports of findings, and other reports that
43 the Team Coordinator may require, from these Local
44 Teams.

- 1 (7) Report the aggregated findings of these Local Teams
2 to each Local Team that reviews the records of
3 additional child fatalities and to the State Team.
4 (8) Evaluate the impact of local efforts to identify
5 problems and make changes.
- 6 "§ 7B-1407. Community Child Protection Teams; duties of the
7 director of the county department of social services.
8 In addition to any other duties as a member of the Community
9 Child Protection Team, and in connection with the reviews under
10 G.S. 7B-1406(a)(1), the director of the county department of
11 social services shall:
- 12 (1) Assure the development of written operating
13 procedures in connection with these reviews,
14 including frequency of meetings, confidentiality
15 policies, training of members, and duties and
16 responsibilities of members;
17 (2) Assure that the Team defines the categories of
18 cases that are subject to its review;
19 (3) Determine and initiate the cases for review;
20 (4) Bring for review any case requested by a Team
21 member;
22 (5) Provide staff support for these reviews;
23 (6) Maintain records, including minutes of all official
24 meetings, lists of participants for each meeting of
25 the Team, and signed confidentiality statements
26 required under G.S. 7B-1413, in compliance with
27 applicable rules and law; and
28 (7) Report quarterly to the county board of social
29 services, or as required by the board, on the
30 activities of the Team.
- 31 "§ 7B-1408. Local Teams; duties of the director of the local
32 department of health.
33 In addition to any other duties as a member of the Local Team
34 and in connection with reviews of additional child fatalities,
35 the director of the local department of health shall:
- 36 (1) Distribute copies of the written procedures
37 developed by the Team Coordinator under G.S. 7B-
38 1408 to the administrators of all agencies
39 represented on the Local Team and to all members of
40 the Local Team;
41 (2) Maintain records, including minutes of all official
42 meetings, lists of participants for each meeting of
43 the Local Team, and signed confidentiality

1 statements required under G.S. 7B-1413, in
2 compliance with applicable rules and law;
3 (3) Provide staff support for these reviews; and
4 (4) Report quarterly to the local board of health, or
5 as required by the board, on the activities of the
6 Local Team.

7 "§ 7B-1409. Community Child Protection Teams; responsibility for
8 training of team members.

9 The Division of Social Services, Department of Health and Human
10 Services, shall develop and make available, on an ongoing basis,
11 for the members of Local Teams that review active cases in which
12 children are being served by child protective services, training
13 materials that address the role and function of the Local Team,
14 confidentiality requirements, an overview of child protective
15 services law and policy, and Team record keeping.

16 "§ 7B-1410. Access to records.

17 (a) The State Team, the Local Teams, and the Task Force during
18 its existence, shall have access to all medical records, hospital
19 records, and records maintained by this State, any county, or any
20 local agency as necessary to carry out the purposes of this
21 Article, including police investigations data, medical examiner
22 investigative data, health records, mental health records, and
23 social services records. The State Team, the Task Force, and the
24 Local Teams shall not, as part of the reviews authorized under
25 this Article, contact, question, or interview the child, the
26 parent of the child, or any other family member of the child
27 whose record is being reviewed. Any member of a Local Team may
28 share, only in an official meeting of that Local Team, any
29 information available to that member that the Local Team needs to
30 carry out its duties.

31 (b) Meetings of the State Team and the Local Teams are not
32 subject to the provisions of Article 33C of Chapter 143 of the
33 General Statutes. However, the Local Teams may hold periodic
34 public meetings to discuss, in a general manner not revealing
35 confidential information about children and families, the
36 findings of their reviews and their recommendations for
37 preventive actions. Minutes of all public meetings, excluding
38 those of executive sessions, shall be kept in compliance with
39 Article 33C of Chapter 143 of the General Statutes. Any minutes
40 or any other information generated during any closed session
41 shall be sealed from public inspection.

42 (c) All otherwise confidential information and records
43 acquired by the State Team, the Local Teams, and the Task Force
44 during its existence, in the exercise of their duties are

1 confidential; are not subject to discovery or introduction into
2 evidence in any proceedings; and may only be disclosed as
3 necessary to carry out the purposes of the State Team, the Local
4 Teams, and the Task Force. In addition, all otherwise
5 confidential information and records created by a Local Team in
6 the exercise of its duties are confidential; are not subject to
7 discovery or introduction into evidence in any proceedings; and
8 may only be disclosed as necessary to carry out the purposes of
9 the Local Team. No member of the State Team, a Local Team, nor
10 any person who attends a meeting of the State Team or a Local
11 Team, may testify in any proceeding about what transpired at the
12 meeting, about information presented at the meeting, or about
13 opinions formed by the person as a result of the meetings. This
14 subsection shall not, however, prohibit a person from testifying
15 in a civil or criminal action about matters within that person's
16 independent knowledge.

17 (d) Each member of a Local Team and invited participant shall
18 sign a statement indicating an understanding of and adherence to
19 confidentiality requirements, including the possible civil or
20 criminal consequences of any breach of confidentiality.

21 (e) Cases receiving child protective services at the time of
22 review by a Local Team shall have an entry in the child's
23 protective services record to indicate that the case was received
24 by that Team. Additional entry into the record shall be at the
25 discretion of the director of the county department of social
26 services.

27 (f) The Social Services Commission shall adopt rules to
28 implement this section in connection with reviews conducted by
29 Community Child Protection Teams. The Health Services Commission
30 shall adopt rules to implement this section in connection with
31 Local Teams that review additional child fatalities. In
32 particular, these rules shall allow information generated by an
33 executive session of a Local Team to be accessible for
34 administrative or research purposes only.

35 "§ 7B-1411. Administration; funding.

36 (a) To the extent of funds available, the chairs of the Task
37 Force and State Team may hire staff or consultants to assist the
38 Task Force and the State Team in completing their duties.

39 (b) Members, staff, and consultants of the Task Force or State
40 Team shall receive travel and subsistence expenses in accordance
41 with the provisions of G.S. 138-5 or G.S. 138-6, as the case may
42 be, paid from funds appropriated to implement this Article and
43 within the limits of those funds.

1 (c) With the approval of the Legislative Services Commission,
2 legislative staff and space in the Legislative Building and the
3 Legislative Office Building may be made available to the Task
4 Force.

5 "SUBCHAPTER II. UNDISCIPLINED AND DELINQUENT JUVENILES.

6 "ARTICLE 15.

7 "Purposes; Definitions.

8 "§ 7B-1500. Purpose.

9 This Subchapter shall be interpreted and construed so as to
10 implement the following purposes and policies:

- 11 (1) To protect the public from acts of delinquency.
12 (2) To deter delinquency and crime, including patterns
13 of repeat offending:
14 a. By providing swift, effective dispositions
15 that emphasize the juvenile offender's
16 accountability for the juvenile's actions; and
17 b. By providing appropriate rehabilitative
18 services to juveniles and their families.
19 (3) To provide an effective system of intake services
20 for the screening and evaluation of complaints and,
21 in appropriate cases, where court intervention is
22 not necessary to ensure public safety, to refer
23 juveniles to community-based resources.
24 (4) To provide uniform procedures that assure fairness
25 and equity; that protect the constitutional rights
26 of juveniles, parents, and victims; and that
27 encourage the court and others involved with
28 juvenile offenders to proceed with all possible
29 speed in making and implementing determinations
30 required by this Subchapter.

31 "§ 7B-1501. Definitions.

32 In this Subchapter, unless the context clearly requires
33 otherwise, the following words have the listed meanings:

- 34 (1) Chief court counselor. -- The person responsible
35 for administration and supervision of juvenile
36 intake, probation, and post-release supervision in
37 each judicial district, operating under the
38 supervision of the Secretary of the Department of
39 Juvenile Justice.
40 (2) Clerk. -- Any clerk of superior court, acting
41 clerk, or assistant or deputy clerk.
42 (3) Community-based program. -- A program providing
43 nonresidential or residential treatment to a
44 juvenile under the jurisdiction of the juvenil

- 1 court in the community where the juvenile's family
2 lives. A community-based program may include
3 specialized foster care, family counseling, shelter
4 care, and other appropriate treatment.
- 5 (4) Court. -- The district court division of the
6 General Court of Justice.
- 7 (5) Court counselor. -- A person responsible for
8 probation and post-release supervision to juveniles
9 under the supervision of the chief court counselor.
- 10 (6) Custodian. -- The person or agency that has been
11 awarded legal custody of a juvenile by a court.
- 12 (7) Delinquent juvenile. -- Any juvenile who, while
13 less than 16 years of age but at least 6 years of
14 age, commits a crime or infraction under State law
15 or under an ordinance of local government,
16 including violation of the motor vehicle laws.
- 17 (8) Department. -- The North Carolina Department of
18 Juvenile Justice.
- 19 (9) Detention. -- The secure confinement of a juvenile
20 pursuant to a court order.
- 21 (10) Detention facility. -- A facility authorized to
22 provide secure confinement and care for juveniles.
23 Detention facilities include both State and locally
24 administered detention homes, centers, and
25 facilities.
- 26 (11) District. -- Any district court district as
27 established by G.S. 7A-133.
- 28 (12) Extended jurisdiction. -- Juvenile court
29 jurisdiction, pursuant to a court order, over a
30 person who is at least 18 years of age and has not
31 reached the person's nineteenth birthday.
- 32 (13) Holdover facility. -- A place in a jail which has
33 been approved by the Department of Health and Human
34 Services as meeting the State standards for
35 detention as required in G.S. 153A-221 providing
36 close supervision where the juvenile cannot
37 converse with, see, or be seen by the adult
38 population.
- 39 (14) House arrest. -- A requirement that the juvenile
40 remain at the juvenile's residence unless the court
41 or the juvenile court counselor authorizes the
42 juvenile to leave for specific purposes. The
43 juvenile may be required to wear a device that

- 1 permits the supervising agency to monitor
2 electronically the juvenile's compliance.
- 3 (15) In loco parentis. -- A person acting in loco
4 parentis means one, other than parents or legal
5 guardian, who has assumed the status and obligation
6 of a parent without being awarded the legal custody
7 of a juvenile by a court.
- 8 (16) Intake counselor. -- A person who screens and
9 evaluates a complaint alleging that a juvenile is
10 delinquent or undisciplined to determine whether
11 the complaint should be filed as a petition.
- 12 (17) Interstate Compact on Juveniles. -- An agreement
13 ratified by 50 states and the District of Columbia
14 providing a formal means of returning a juvenile,
15 who is an absconder, escapee, or runaway, to the
16 juvenile's home state, and codified in Article 28
17 of this Chapter.
- 18 (18) Judge. -- Any district court judge.
- 19 (19) Judicial district. -- Any district court district
20 as established by G.S. 7A-133.
- 21 (20) Juvenile. -- Except as provided in subdivisions
22 (7) and (28) of this section, any person who has
23 not reached the person's eighteenth birthday and is
24 not married, emancipated, or a member of the armed
25 services of the United States. Wherever the term
26 'juvenile' is used with reference to rights and
27 privileges, that term encompasses the attorney for
28 the juvenile as well.
- 29 (21) Juvenile court. -- Any district court exercising
30 jurisdiction pursuant to this Chapter.
- 31 (22) Petitioner. -- The individual who initiates court
32 action by the filing of a petition or a motion for
33 review alleging the matter for adjudication.
- 34 (23) Post-release supervision. -- The supervision of a
35 juvenile who has been returned to the community
36 after having been committed to a facility of the
37 Department of Juvenile Justice.
- 38 (24) Probation. -- The status of a juvenile who has been
39 adjudicated delinquent, is subject to specified
40 conditions under the supervision of a court
41 counselor, and may be returned to the court for
42 violation of those conditions during the period of
43 probation.

- 1 (25) Prosecutor. -- The district attorney or assistant
2 district attorney assigned by the district attorney
3 to juvenile proceedings.
4 (26) Secretary. -- The Secretary of the Department of
5 Juvenile Justice.
6 (27) Teen court program. -- A community resource for the
7 diversion of cases in which a juvenile has
8 allegedly committed certain offenses not involving
9 violence or personal injury for hearing by a jury
10 of the juvenile's peers, which may assign the
11 juvenile to counseling, restitution, curfews,
12 community service, or other rehabilitative
13 measures.
14 (28) Undisciplined juvenile. -- A juvenile who, while
15 less than 16 years of age but at least 6 years of
16 age, is unlawfully absent from school; or is
17 regularly disobedient to and beyond the
18 disciplinary control of the juvenile's parent,
19 guardian, or custodian; or is regularly found in
20 places where it is unlawful for a juvenile to be;
21 or has run away from home.
22 (29) Wilderness program. -- A rehabilitative residential
23 treatment program in a rural or outdoor setting.

24 The singular includes the plural, unless otherwise specified.

25 "ARTICLE 16.

26 "Jurisdiction.

27 "§ 7B-1600. Jurisdiction over undisciplined juveniles.

28 (a) The court has exclusive, original jurisdiction over any
29 case involving a juvenile who is alleged to be undisciplined. For
30 purposes of determining jurisdiction, the age of the juvenile at
31 the time of the alleged offense governs.

32 (b) When the court obtains jurisdiction over a juvenile under
33 this section, jurisdiction shall continue until terminated by
34 order of the court, the juvenile reaches the age of 18 years, or
35 the juvenile is emancipated.

36 (c) The court has jurisdiction over the parent, guardian, or
37 custodian of a juvenile who is under the jurisdiction of the
38 court pursuant to this section, if the parent, guardian, or
39 custodian has been served with a summons pursuant to G.S. 7B-
40 1805.

41 "§ 7B-1601. Jurisdiction over delinquent juveniles.

42 (a) The court has exclusive, original jurisdiction over any
43 case involving a juvenile who is alleged to be delinquent. For

1 purposes of determining jurisdiction, the age of the juvenile at
2 the time of the alleged offense governs.

3 (b) When the court obtains jurisdiction over a juvenile
4 alleged to be delinquent, jurisdiction shall continue until
5 terminated by order of the court or until the juvenile reaches
6 the age of 18 years, whichever occurs first, except as provided
7 otherwise in this Article.

8 (c) When delinquency proceedings cannot be concluded before the
9 juvenile reaches the age of 18 years, the court retains
10 jurisdiction for the sole purpose of conducting proceedings
11 pursuant to Article 22 of this Chapter and either transferring
12 the case to superior court for trial as an adult or dismissing
13 the petition.

14 (d) When the court has not obtained jurisdiction over a
15 juvenile before the juvenile reaches the age of 18, for a felony
16 and any related misdemeanors the juvenile allegedly committed on
17 or after the juvenile's thirteenth birthday and prior to the
18 juvenile's sixteenth birthday, the court has jurisdiction for the
19 sole purpose of conducting proceedings pursuant to Article 22 of
20 this Chapter and either transferring the case to superior court
21 for trial as an adult or dismissing the petition.

22 (e) The court has jurisdiction over delinquent juveniles in the
23 custody of the Department and over proceedings to determine
24 whether a juvenile who is under the post-release supervision of
25 the court counselor has violated the terms of the juvenile's
26 post-release supervision.

27 (f) The court has jurisdiction over the parent, guardian, or
28 custodian of a juvenile who is under the jurisdiction of the
29 court pursuant to this section if the parent, guardian, or
30 custodian has been served with a summons pursuant to G.S. 7B-
31 1805.

32 "§ 7B-1602. Extended jurisdiction over a delinquent juvenile
33 under certain circumstances.

34 If the court orders that jurisdiction be extended pursuant to
35 G.S. 7B-2513, jurisdiction over a juvenile shall continue after
36 the juvenile reaches the age of 18 years until (i) jurisdiction
37 is terminated by order of the court or (ii) the juvenile reaches
38 the age of 19 years, whichever occurs first.

39 "§ 7B-1603. Jurisdiction in certain circumstances.

40 The court has exclusive original jurisdiction of the following
41 proceedings:

42 (1) Proceedings under the Interstate Compact on the
43 Placement of Children set forth in Article 38 of
44 this Chapter;

1 (2) Proceedings involving judicial consent for
2 emergency surgical or medical treatment for a
3 juvenile when the juvenile's parent, guardian,
4 custodian, or other person standing in loco
5 parentis refuses to consent for treatment to be
6 rendered; and

7 (3) Proceedings to determine whether a juvenile should
8 be emancipated.

9 "§ 7B-1604. Limitations on juvenile court jurisdiction.

10 (a) Any juvenile, including a juvenile who is under the
11 jurisdiction of the court, who commits a criminal offense after
12 the juvenile's sixteenth birthday is subject to prosecution as an
13 adult. A juvenile who is emancipated shall be prosecuted as an
14 adult for the commission of a criminal offense.

15 (b) A juvenile who is transferred to and convicted in superior
16 court shall be prosecuted as an adult for any criminal offense
17 the juvenile commits after the superior court conviction.

18 "ARTICLE 17.

19 "Screening of Delinquency and Undisciplined Complaints.

20 "§ 7B-1700. Intake services.

21 The chief court counselor, under the direction of the
22 Secretary, shall establish intake services in each judicial
23 district of the State for all delinquency and undisciplined
24 cases.

25 The purpose of intake services shall be to determine from
26 available evidence whether there are reasonable grounds to
27 believe the facts alleged are true, to determine whether the
28 facts alleged constitute a delinquent or undisciplined offense
29 within the jurisdiction of the court, to determine whether the
30 facts alleged are sufficiently serious to warrant court action,
31 and to obtain assistance from community resources when court
32 referral is not necessary. The intake counselor shall not engage
33 in field investigations to substantiate complaints or to produce
34 supplementary evidence but may refer complainants to law
35 enforcement agencies for those purposes.

36 "§ 7B-1701. Preliminary inquiry.

37 When a complaint is received, the intake counselor shall make a
38 preliminary determination as to whether the juvenile is within
39 the jurisdiction of the court as a delinquent or undisciplined
40 juvenile. If the intake counselor finds that the facts contained
41 in the complaint do not state a case within the jurisdiction of
42 the court, that legal sufficiency has not been established, or
43 that the matters alleged are frivolous, the intake counselor,

1 without further inquiry, shall refuse authorization to file the
2 complaint as a petition.

3 When requested by the intake counselor, the prosecutor shall
4 assist in determining the sufficiency of evidence as it affects
5 the quantum of proof and the elements of offenses.

6 The intake counselor, without further inquiry, shall authorize
7 the complaint to be filed as a petition if the intake counselor
8 finds reasonable grounds to believe that the juvenile has
9 committed one of the following nondivertible offenses:

- 10 (1) Murder;
- 11 (2) First-degree rape or second degree rape;
- 12 (3) First-degree sexual offense or second degree sexual
13 offense;
- 14 (4) Arson;
- 15 (5) Any violation of Article 5, Chapter 90 of the
16 General Statutes that would constitute a felony if
17 committed by an adult;
- 18 (6) First degree burglary;
- 19 (7) Crime against nature; or
- 20 (8) Any felony which involves the willful infliction of
21 serious bodily injury upon another or which was
22 committed by use of a deadly weapon.

23 "§ 7B-1702. Evaluation.

24 Upon a finding of legal sufficiency, except in cases involving
25 nondivertible offenses set out in G.S. 7B-1701, the intake
26 counselor shall determine whether a complaint should be filed as
27 a petition, the juvenile diverted pursuant to G.S. 7B-1706, or
28 the case resolved without further action. In making the decision,
29 the counselor shall consider criteria provided by the Secretary.
30 The intake process shall include the following steps if
31 practicable:

- 32 (1) Interviews with the complainant and the victim if
33 someone other than the complainant;
- 34 (2) Interviews with the juvenile and the juvenile's
35 parent, guardian, or custodian;
- 36 (3) Interviews with persons known to have relevant
37 information about the juvenile or the juvenile's
38 family.

39 Interviews required by this section shall be conducted in person
40 unless it is necessary to conduct them by telephone.

41 "§ 7B-1703. Evaluation decision.

42 (a) The intake counselor shall complete evaluation of a
43 complaint within 15 days of receipt of the complaint, with an
44 extension for a maximum of 15 additional days at the discretion

1 of the chief court counselor. The intake counselor shall decide
2 within this time period whether a complaint shall be filed as a
3 juvenile petition.

4 (b) Except as provided in G.S. 7B-1706, if the intake
5 counselor determines that a complaint should be filed as a
6 petition, the counselor shall file the petition as soon as
7 practicable, but in any event within 15 days after the complaint
8 is received, with an extension for a maximum of 15 additional
9 days at the discretion of the chief court counselor. The intake
10 counselor shall assist the complainant when necessary with the
11 preparation and filing of the petition, shall include on it the
12 date and the words 'Approved for Filing', shall sign it, and
13 shall transmit it to the clerk of superior court.

14 (c) If the intake counselor determines that a petition should
15 not be filed, the intake counselor shall notify the complainant
16 immediately in writing with reasons for the decision and shall
17 include notice of the complainant's right to have the decision
18 reviewed by the prosecutor. The intake counselor shall sign the
19 complaint after indicating on it:

- 20 (1) The date of the determination;
21 (2) The words 'Not Approved for Filing'; and
22 (3) Whether the matter is 'Closed' or 'Diverted and
23 Retained'.

24 Except as provided in G.S. 7B-1706, any complaint not approved
25 for filing as a juvenile petition shall be destroyed by the
26 intake counselor after holding the complaint for a temporary
27 period to allow review as provided in G.S. 7B-1705.

28 "§ 7B-1704. Request for review by prosecutor.

29 The complainant has five calendar days, from receipt of the
30 intake counselor's decision not to approve the filing of a
31 petition, to request review by the prosecutor. The intake
32 counselor shall notify the prosecutor immediately of such request
33 and shall transmit to the prosecutor a copy of the complaint. The
34 prosecutor shall notify the complainant and the intake counselor
35 of the time and place for the review.

36 "§ 7B-1705. Review of determination that petition should not be
37 filed.

38 No later than 20 days after the complainant is notified, the
39 prosecutor shall review the intake counselor's determination that
40 a juvenile petition should not be filed. Review shall include
41 conferences with the complainant and the intake counselor. At the
42 conclusion of the review, the prosecutor shall: (i) affirm the
43 decision of the intake counselor or direct the filing of a

1 petition and (ii) notify the complainant of the prosecutor's
2 action.

3 "§ 7B-1706. Diversion plans and referral.

4 (a) Unless the offense is one in which a petition is required
5 by G.S. 7B-1701, upon a finding of legal sufficiency the intake
6 counselor may divert the juvenile pursuant to a diversion plan,
7 which may include referring the juvenile to any of the following
8 resources:

- 9 (1) An appropriate public or private resource;
- 10 (2) Restitution;
- 11 (3) Community service;
- 12 (4) Victim-offender mediation;
- 13 (5) Regimented physical training;
- 14 (6) Counseling;
- 15 (7) A teen court program, as set forth in subsection
16 (c) of this section.

17 As part of a diversion plan, the intake counselor may enter
18 into a diversion contract with the juvenile and the juvenile's
19 parent, guardian, or custodian.

20 (b) Unless the offense is one in which a petition is required
21 by G.S. 7B-1701, upon a finding of legal sufficiency the intake
22 counselor may enter into a diversion contract with the juvenile
23 and the parent, guardian, or custodian; provided, a diversion
24 contract requires the consent of the juvenile and the juvenile's
25 parent, guardian, or custodian. A diversion contract shall:

- 26 (1) State conditions by which the juvenile agrees to
27 abide and any actions the juvenile agrees to take;
- 28 (2) State conditions by which the parent, guardian, or
29 custodian agrees to abide and any actions the
30 parent, guardian, or custodian agrees to take;
- 31 (3) Describe the role of the court counselor in
32 relation to the juvenile and the parent, guardian,
33 or custodian;
- 34 (4) Specify the length of the contract, which shall not
35 exceed six months;
- 36 (5) Indicate that all parties understand and agree
37 that:
 - 38 a. The juvenile's violation of the contract may
39 result in the filing of the complaint as a
40 petition; and
 - 41 b. The juvenile's successful completion of the
42 contract shall preclude the filing of a
43 petition.

1 After a diversion contract is signed by the parties, the intake
2 counselor shall provide copies of the contract to the juvenile
3 and the juvenile's parent, guardian, or custodian. The intake
4 counselor shall notify any agency or other resource from which
5 the juvenile or the juvenile's parent, guardian, or custodian
6 will be seeking services or treatment pursuant to the terms of
7 the contract. At any time during the term of the contract if the
8 court counselor determines that the juvenile has failed to comply
9 substantially with the terms of the contract, the court counselor
10 may file the complaint as a petition. Unless the court counselor
11 has filed the complaint as a petition, the counselor shall close
12 the juvenile's file in regard to the diverted matter within six
13 months after the date of the contract.

14 (c) If a teen court program has been established in the
15 district, the intake counselor, upon a finding of legal
16 sufficiency, may refer any case in which a juvenile has allegedly
17 committed an offense that would be an infraction or misdemeanor
18 if committed by an adult to a teen court program. However, the
19 counselor shall not refer a case to a teen court program (i) if
20 the juvenile has been referred to a teen court program
21 previously, or (ii) if the juvenile is alleged to have committed
22 any of the following offenses:

- 23 (1) Driving while impaired under G.S. 20-138.1, 20-
24 138.2, 20-138.3, 20-138.5, or 20-138.7, or any
25 other motor vehicle violation;
26 (2) A Class A1 misdemeanor;
27 (3) An assault in which a weapon is used; or
28 (4) A controlled substance offense under Article 5 of
29 Chapter 90 of the General Statutes, other than
30 simple possession of a Schedule VI drug or alcohol.

31 (d) The intake counselor shall maintain diversion plans and
32 contracts entered into pursuant to this section to allow intake
33 counselors to determine when a juvenile has had a complaint
34 diverted previously. Diversion plans and contracts are not
35 public records under Chapter 132 of the General Statutes, shall
36 not be included in the clerk's record pursuant to G.S. 7B-3000,
37 and shall be withheld from public inspection or examination.
38 Diversion plans and contracts shall be destroyed when the
39 juvenile reaches the age of 18 years or when the juvenile is no
40 longer under the jurisdiction of the court, whichever is later.

41 (e) No later than 60 days after the intake counselor diverts a
42 juvenile, the intake counselor shall determine whether the
43 juvenile and the juvenile's parent, guardian, or custodian have
44 complied with the terms of the diversion plan or contract. In

1 making this determination, the intake counselor shall contact any
2 referral resources to determine whether the juvenile and the
3 juvenile's parent, guardian, or custodian complied with any
4 recommendations for treatment or services made by the resource.
5 If the juvenile and the juvenile's parent, guardian, or custodian
6 have not complied, the intake counselor shall reconsider the
7 decision to divert and may authorize the filing of the complaint
8 as a petition within 10 days after making the determination. If
9 the intake counselor does not file a petition, the intake
10 counselor may continue to monitor the case for up to six months
11 from the date of the diversion plan or contract. At any point
12 during that time period if the juvenile and the juvenile's
13 parent, guardian, or custodian fail to comply, the intake
14 counselor shall reconsider the decision to divert and may
15 authorize the filing of the complaint as a petition. After six
16 months, the intake counselor shall close the diversion plan or
17 contract file.

18 "ARTICLE 18.

19 "Venue; Petition; Summons.

20 "§ 7B-1800. Venue.

21 A proceeding in which a juvenile is alleged to be delinquent or
22 undisciplined shall be commenced and adjudicated in the district
23 in which the offense is alleged to have occurred. When a
24 proceeding is commenced in a district other than that of the
25 juvenile's residence, the court shall proceed to adjudication in
26 that district. After adjudication, these procedures shall be
27 available to the court:

- 28 (1) The court may transfer the proceeding to the court
29 in the district where the juvenile resides for
30 disposition.
- 31 (2) Where the proceeding is not transferred under
32 subdivision (1) of this section, the court shall
33 immediately notify the chief district judge in the
34 district in which the juvenile resides. If the
35 chief district judge requests a transfer within
36 five days after receipt of notification, the court
37 shall transfer the proceeding.
- 38 (3) Where the proceeding is not transferred under
39 subdivision (1) or (2), the court, upon motion of
40 the juvenile, shall transfer the proceeding to the
41 court in the district where the juvenile resides
42 for disposition. The court shall advise the
43 juvenile of the juvenile's right to transfer under
44 this section.

1 "§ 7B-1801. Pleading and process.

2 The pleading in a juvenile action is the petition. The process
3 in a juvenile action is the summons.

4 "§ 7B-1802. Petition.

5 The petition shall contain the name, date of birth, and address
6 of the juvenile and the name and last known address of the
7 juvenile's parent, guardian, or custodian. The petition shall
8 allege the facts which invoke jurisdiction over the juvenile.
9 The petition shall not contain information on more than one
10 juvenile.

11 A petition in which delinquency is alleged shall contain a
12 plain and concise statement, without allegations of an
13 evidentiary nature, asserting facts supporting every element of a
14 criminal offense and the juvenile's commission thereof with
15 sufficient precision clearly to apprise the juvenile of the
16 conduct which is the subject of the allegation.

17 Sufficient copies of the petition shall be prepared so that
18 copies will be available for the juvenile, for each parent if
19 living separate and apart, for the court counselor, for the
20 prosecutor, and for any person determined by the court to be a
21 necessary party.

22 "§ 7B-1803. Receipt of complaints; filing of petition.

23 (a) All complaints concerning a juvenile alleged to be
24 delinquent or undisciplined shall be referred to the intake
25 counselor for screening and evaluation. Thereafter, if the intake
26 counselor determines that a petition should be filed, the
27 petition shall be drawn by the intake counselor or the clerk,
28 signed by the complainant, and verified before an official
29 authorized to administer oaths. If the circumstances indicate a
30 need for immediate attachment of jurisdiction and if the intake
31 counselor is out of the county or otherwise unavailable to
32 receive a complaint and to draw a petition when it is needed, the
33 clerk shall assist the complainant in communicating the complaint
34 to the intake counselor by telephone and, with the approval of
35 the intake counselor, shall draw a petition and file it when
36 signed and verified. A copy of the complaint and petition shall
37 be transmitted to the intake counselor. Procedures for receiving
38 delinquency and undisciplined complaints and drawing petitions
39 thereon, consistent with this Article and Article 17 of this
40 Chapter shall be established by administrative order of the chief
41 judge in each judicial district.

42 (b) If review is requested pursuant to G.S. 7B-1704, the
43 prosecutor shall review a complaint and any decision of the
44 intake counselor not to authorize that the complaint be filed as

1 a petition. If the prosecutor, after review, authorizes a
2 complaint to be filed as a petition, the prosecutor shall prepare
3 the complaint to be filed by the clerk as a petition, recording
4 the day of filing.

5 "§ 7B-1804. Commencement of action.

6 (a) An action is commenced by the filing of a petition in the
7 clerk's office when that office is open, or by a magistrate's
8 acceptance of a petition for filing pursuant to subsection (b) of
9 this section when the clerk's office is closed.

10 (b) When the office of the clerk is closed and an intake
11 counselor requests a petition alleging a juvenile to be
12 delinquent or undisciplined, a magistrate may draw and verify the
13 petition and accept it for filing, which acceptance shall
14 constitute filing. The magistrate's authority under this
15 subsection is limited to emergency situations when a petition is
16 required in order to obtain a secure or nonsecure custody order.
17 Any petition accepted for filing under this subsection shall be
18 delivered to the clerk's office for processing as soon as that
19 office is open for business.

20 "§ 7B-1805. Issuance of summons.

21 (a) Immediately after a petition has been filed alleging that
22 a juvenile is undisciplined or delinquent, the clerk shall issue
23 a summons to the juvenile and to the parent, guardian, or
24 custodian requiring them to appear for a hearing at the time and
25 place stated in the summons. A copy of the petition shall be
26 attached to each summons.

27 (b) A summons shall be on a printed form supplied by the
28 Administrative Office of the Courts and shall include:

29 (1) Notice of the nature of the proceeding and the
30 purpose of the hearing scheduled on the summons.

31 (2) Notice of any right to counsel and information
32 about how to seek the appointment of counsel prior
33 to a hearing.

34 (3) Notice that, if the court determines at the
35 adjudicatory hearing that the allegations of the
36 petition are true, the court will conduct a
37 dispositional hearing and will have jurisdiction to
38 enter orders affecting substantial rights of the
39 juvenile and of the parent, guardian, or custodian,
40 including orders that:

41 a. Affect the juvenile's custody;

42 b. Impose conditions on the juvenile;

43 c. Require that the juvenile receive medical,
44 psychiatric, psychological, or other treatment

- 1 and that the parent, guardian, or custodian
2 participate in the treatment;
- 3 d. Require the parent, guardian, or custodian to
4 undergo psychiatric, psychological, or other
5 treatment or counseling;
- 6 e. Order the parent to pay for treatment that is
7 ordered for the juvenile or the parent; and
- 8 f. Order the parent to pay support for the
9 juvenile for any period the juvenile does not
10 reside with the parent or to pay attorneys'
11 fees or other expenses as ordered by the
12 court.
- 13 (4) Notice that the parent, guardian, or custodian
14 shall be required to attend scheduled hearings and
15 that failure without reasonable cause to attend may
16 result in proceedings for contempt of court.
- 17 (5) Notice that the parent, guardian, or custodian
18 shall be responsible for bringing the juvenile
19 before the court at any hearing the juvenile is
20 required to attend and that failure without
21 reasonable cause to bring the juvenile before the
22 court may result in proceedings for contempt of
23 court.
- 24 (c) The summons shall advise the parent, guardian, or
25 custodian that upon service, jurisdiction over the parent,
26 guardian, or custodian is obtained and that failure of the
27 parent, guardian, or custodian to appear or bring the juvenile
28 before the court without reasonable cause or to comply with any
29 order of the court pursuant to Article 27 of this Chapter may
30 cause the court to issue a show cause order for contempt. The
31 summons shall contain the following language in bold type:
32 **'TO THE PARENT(S), GUARDIAN(S), OR CUSTODIAN(S): YOUR FAILURE TO**
33 **APPEAR IN COURT FOR A SCHEDULED HEARING OR TO COMPLY WITH AN**
34 **ORDER OF THE COURT MAY RESULT IN A FINDING OF CONTEMPT. A PERSON**
35 **HELD IN CONTEMPT MAY BE AT A MINIMUM SUBJECTED TO CENSURE,**
36 **IMPRISONMENT UP TO 30 DAYS, A FINE NOT TO EXCEED \$500, OR A**
37 **COMBINATION OF THE THREE.'**
- 38 (d) A summons shall be directed to the person summoned to
39 appear and shall be delivered to any person authorized to serve
40 process.
- 41 **"§ 7B-1806. Service of summons.**
- 42 The summons and petition shall be personally served upon the
43 parent, the guardian, or custodian and the juvenile not less than

1 five days prior to the date of the scheduled hearing. The time
2 for service may be waived in the discretion of the court.

3 If the parent, guardian, or custodian entitled to receive a
4 summons cannot be found by a diligent effort, the court may
5 authorize service of the summons and petition by mail or by
6 publication. The cost of the service by publication shall be
7 advanced by the petitioner and may be charged as court costs as
8 the court may direct.

9 The court may issue a show cause order for contempt against a
10 parent, guardian, or custodian who is personally served and fails
11 without reasonable cause to appear and to bring the juvenile
12 before the court.

13 The provisions of G.S. 15A-301(a), (c), (d), and (e) relating
14 to criminal process apply to juvenile process; provided the
15 period of time for return of an unserved summons is 30 days.

16 "§ 7B-1806.1. Notice to parent and juvenile of scheduled
17 hearings.

18 The clerk shall give to all parties, including both parents of
19 the juvenile, five days written notice of the date and time of
20 all scheduled hearings unless the party is notified in open court
21 or the court orders otherwise.

22 "§ 7B-1807. First appearance for felony cases.

23 (a) A juvenile who is alleged in the petition to have
24 committed an offense that would be a felony if committed by an
25 adult shall be summoned to appear before the court for a first
26 appearance within 10 days of the filing of the petition. If the
27 juvenile is in secure or nonsecure custody, the first appearance
28 shall take place at the initial hearing required by G.S. 7B-1906.
29 Unless the juvenile is in secure or nonsecure custody, the court
30 may continue the first appearance to a time certain for good
31 cause.

32 (b) At the first appearance, the court shall:

33 (1) Inform the juvenile of the allegations set forth in
34 the petition;

35 (2) Determine whether the juvenile has retained counsel
36 or has been assigned counsel and, if the juvenile
37 is not represented by counsel, appoint counsel for
38 the juvenile;

39 (3) If applicable, inform the juvenile of the date of
40 the probable cause hearing, which shall be within
41 15 days of the first appearance; and

42 (4) Inform the parent, guardian, or custodian that the
43 parent, guardian, or custodian is required to
44 attend all hearings scheduled in the matter and may

1 be held in contempt of court for failure to attend
2 any scheduled hearing.

3 "ARTICLE 19.

4 "Temporary Custody; Secure and Nonsecure Custody;
5 Custody Hearings.

6 "§ 7B-1900. Taking a juvenile into temporary custody.

7 Temporary custody means the taking of physical custody and
8 providing personal care and supervision until a court order for
9 secure or nonsecure custody can be obtained. A juvenile may be
10 taken into temporary custody without a court order under the
11 following circumstances:

12 (1) By a law enforcement officer if grounds exist for
13 the arrest of an adult in identical circumstances
14 under G.S. 15A-401(b).

15 (2) By a law enforcement officer or a court counselor
16 if there are reasonable grounds to believe that the
17 juvenile is an undisciplined juvenile.

18 (3) By a law enforcement officer, by a court counselor,
19 by a member of the Black Mountain Center, Alcohol
20 Rehabilitation Center, and Juvenile Evaluation
21 Center Joint Security Force established pursuant to
22 G.S. 122C-421, or by personnel of the Department if
23 there are reasonable grounds to believe the
24 juvenile is an absconder from any residential
25 facility operated by the Department or from an
26 approved detention facility.

27 "§ 7B-1901. Duties of person taking juvenile into temporary
28 custody.

29 (a) A person who takes a juvenile into custody without a court
30 order under G.S. 7B-1900(1) or (2) shall proceed as follows:

31 (1) Notify the juvenile's parent, guardian, or
32 custodian that the juvenile has been taken into
33 temporary custody and advise the parent, guardian,
34 or custodian of the right to be present with the
35 juvenile until a determination is made as to the
36 need for secure or nonsecure custody. Failure to
37 notify the parent, guardian, or custodian that the
38 juvenile is in custody shall not be grounds for
39 release of the juvenile.

40 (2) Release the juvenile to the juvenile's parent,
41 guardian, or custodian if the person having the
42 juvenile in temporary custody decides that
43 continued custody is unnecessary. In the case of a
44 juvenile unlawfully absent from school, if

1 continued custody is unnecessary, the person having
2 temporary custody may deliver the juvenile to the
3 juvenile's school or, if the local city or county
4 government and the local school board adopt a
5 policy, to a place in the local school
6 administrative unit.

7 (3) If the juvenile is not released, request that a
8 petition be drawn pursuant to G.S. 7B-1803 or G.S.
9 7B-1804. Once the petition has been drawn and
10 verified, the person shall communicate with the
11 intake counselor. If the intake counselor approves
12 the filing of the petition, the intake counselor
13 shall contact the judge, or the person delegated
14 authority pursuant to G.S. 7B-1902 if other than
15 the intake counselor, for a determination of the
16 need for continued custody.

17 (b) A juvenile taken into temporary custody under this Article
18 shall not be held for more than 12 hours, or for more than 24
19 hours if any of the 12 hours falls on a Saturday, Sunday, or
20 legal holiday, unless a petition or motion for review has been
21 filed and an order for secure or nonsecure custody has been
22 entered.

23 (c) A person who takes a juvenile into custody under G.S. 7B-
24 1900(3), after receiving an order for secure custody, shall
25 transport the juvenile to the nearest approved facility providing
26 secure custody. The person then shall contact the administrator
27 of the facility from which the juvenile absconded, who shall be
28 responsible for returning the juvenile to that facility.

29 "§ 7B-1902. Authority to issue custody orders; delegation.

30 In the case of any juvenile alleged to be within the
31 jurisdiction of the court, when the court finds it necessary to
32 place the juvenile in custody, the court may order that the
33 juvenile be placed in secure or nonsecure custody pursuant to
34 criteria set out in G.S. 7B-1903.

35 Any district court judge may issue secure and nonsecure custody
36 orders pursuant to G.S. 7B-1903. The chief district court judge
37 may delegate the court's authority to the chief court counselor
38 or the chief court counselor's counseling staff by administrative
39 order filed in the office of the clerk of superior court. The
40 administrative order shall specify which persons may be contacted
41 for approval of a secure or nonsecure custody order. The chief
42 district court judge shall not delegate the court's authority to
43 detain or house juveniles in holdover facilities pursuant to G.S.
44 7B-1905 or G.S. 7B-2509.

1 "§ 7B-1903. Criteria for secure or nonsecure custody.

2 (a) When a request is made for nonsecure custody, the court
3 shall first consider release of the juvenile to the juvenile's
4 parent, guardian, custodian, or other responsible adult. An order
5 for nonsecure custody shall be made only when there is a
6 reasonable factual basis to believe the matters alleged in the
7 petition are true, and that:

8 (1) The juvenile is a runaway and consents to nonsecure
9 custody; or

10 (2) The juvenile meets one or more of the criteria for
11 secure custody, but the court finds it in the best
12 interests of the juvenile that the juvenile be
13 placed in a nonsecure placement.

14 (b) When a request is made for secure custody, the court may
15 order secure custody only where the court finds there is a
16 reasonable factual basis to believe that the juvenile committed
17 the offense as alleged in the petition, and that:

18 (1) The juvenile is charged with a felony and has
19 demonstrated that the juvenile is a danger to
20 property or persons;

21 (2) The juvenile is charged with a misdemeanor at least
22 one element of which is assault on a person;

23 (3) The juvenile has willfully failed to appear on a
24 pending delinquency charge or on charges of
25 violation of probation or post-release supervision,
26 providing the juvenile was properly notified;

27 (4) A delinquency charge is pending against the
28 juvenile, and there is reasonable cause to believe
29 the juvenile will not appear in court;

30 (5) The juvenile is an absconder from (i) any
31 residential facility operated by the Department or
32 any detention facility in this State or (ii) any
33 comparable facility in another state;

34 (6) There is reasonable cause to believe the juvenile
35 should be detained for the juvenile's own
36 protection because the juvenile has recently
37 suffered or attempted self-inflicted physical
38 injury. In such case, the juvenile must have been
39 refused admission by one appropriate hospital, and
40 the period of secure custody is limited to 24 hours
41 to determine the need for inpatient
42 hospitalization. If the juvenile is placed in
43 secure custody, the juvenile shall receive

- 1 continuous supervision and a physician shall be
2 notified immediately;
- 3 (7) The juvenile is alleged to be undisciplined by
4 virtue of the juvenile's being a runaway and is
5 inappropriate for nonsecure custody placement or
6 refuses nonsecure custody, and the court finds that
7 the juvenile needs secure custody for up to 24
8 hours, excluding Saturdays, Sundays, and State
9 holidays, or where circumstances require, for a
10 period not to exceed 72 hours to evaluate the
11 juvenile's need for medical or psychiatric
12 treatment or to facilitate reunion with the
13 juvenile's parents; or
- 14 (8) The juvenile is alleged to be undisciplined and has
15 willfully failed to appear in court after proper
16 notice; the juvenile shall be brought to court as
17 soon as possible and in no event should be held
18 more than 24 hours, excluding Saturdays, Sundays,
19 and State holidays or where circumstances require
20 for a period not to exceed 72 hours.
- 21 (c) When a juvenile has been adjudicated delinquent, the court
22 may order secure custody pending the dispositional hearing or
23 pending placement of the juvenile pursuant to G.S. 7B-2504.
- 24 (d) The court may order secure custody for a juvenile who is
25 alleged to have violated the conditions of the juvenile's
26 probation or post-release supervision, but only if the juvenile
27 is alleged to have committed acts that damage property or injure
28 persons.
- 29 (e) If the criteria for secure custody as set out in subsection
30 (b), (c), or (d) of this section are met, the court may enter an
31 order directing an officer or other authorized person to assume
32 custody of the juvenile and to take the juvenile to the place
33 designated in the order.
- 34 "§ 7B-1904. Order for secure or nonsecure custody.
35 The custody order shall be in writing and shall direct a law
36 enforcement officer or other authorized person to assume custody
37 of the juvenile and to make due return on the order. The
38 official executing the order shall give a copy of the order to
39 the juvenile's parent, guardian, or custodian. If the order is
40 for secure custody, copies of the petition and custody order
41 shall accompany the juvenile to the detention facility or
42 holdover facility of the jail. A message of the Division of
43 Criminal Information, State Bureau of Investigation, stating that
44 a juvenile petition and secure custody order relating to a

1 specified juvenile are on file in a particular county shall be
2 authority to detain the juvenile in secure custody until a copy
3 of the juvenile petition and secure custody order can be
4 forwarded to the juvenile detention facility. The copies of the
5 juvenile petition and secure custody order shall be transmitted
6 to the detention facility no later than 72 hours after the
7 initial detention of the juvenile.

8 An officer receiving an order for custody which is complete and
9 regular on its face may execute it in accordance with its terms
10 and need not inquire into its regularity or continued validity,
11 nor does the officer incur criminal or civil liability for its
12 execution.

13 "§ 7B-1905. Place of secure or nonsecure custody.

14 (a) A juvenile meeting the criteria set out in G.S. 7B-
15 1903(a), may be placed in nonsecure custody with a department of
16 social services or a person designated in the order for temporary
17 residential placement in:

18 (1) A licensed foster home or a home otherwise
19 authorized by law to provide such care;

20 (2) A facility operated by a department of social
21 services; or

22 (3) Any other home or facility approved by the court
23 and designated in the order.

24 In placing a juvenile in nonsecure custody, the court shall
25 first consider whether a relative of the juvenile is willing and
26 able to provide proper care and supervision of the juvenile. If
27 the court finds that the relative is willing and able to provide
28 proper care and supervision, the court shall order placement of
29 the juvenile with the relative. Placement of a juvenile outside
30 of this State shall be in accordance with the Interstate Compact
31 on the Placement of Children set forth in Article 38 of this
32 Chapter.

33 (b) A juvenile meeting the criteria set out in G.S. 7B-
34 1903(b), (c), or (d) may be temporarily detained in an approved
35 detention facility which shall be separate from any jail, lockup,
36 prison, or other adult penal institution, except as provided in
37 subsection (c) of this section. It shall be unlawful for a
38 county or any unit of government to operate a juvenile detention
39 facility unless the facility meets the standards and rules
40 adopted by the Department of Health and Human Services.

41 (c) A juvenile who has allegedly committed an offense that
42 would be a Class A, B1, B2, C, D, or E felony if committed by an
43 adult may be detained in secure custody in a holdover facility up
44 to 72 hours, if the court, based on information provided by the

1 court counselor, determines that no acceptable alternative
2 placement is available and the protection of the public requires
3 the juvenile be housed in a holdover facility.

4 "§ 7B-1906. Secure or nonsecure custody hearings.

5 (a) No juvenile shall be held under a secure custody order for
6 more than five calendar days or under a nonsecure custody order
7 for more than seven calendar days without a hearing on the merits
8 or an initial hearing to determine the need for continued
9 custody. A hearing conducted under this subsection may not be
10 continued or waived. In every case in which an order has been
11 entered by an official exercising authority delegated pursuant to
12 G.S. 7B-1902, a hearing to determine the need for continued
13 custody shall be conducted on the day of the next regularly
14 scheduled session of district court in the city or county where
15 the order was entered if the session precedes the expiration of
16 the applicable time period set forth in this subsection. If the
17 session does not precede the expiration of the time period, the
18 hearing may be conducted at another regularly scheduled session
19 of district court in the district where the order was entered.

20 (b) As long as the juvenile remains in secure or nonsecure
21 custody, further hearings to determine the need for continued
22 secure custody shall be held at intervals of no more than 10
23 calendar days. A subsequent hearing on continued nonsecure
24 custody shall be held within seven business days, excluding
25 Saturdays, Sundays, and legal holidays, of the initial hearing
26 required in subsection (a) of this section and hearings
27 thereafter shall be held at intervals of no more than 30 calendar
28 days. In the case of a juvenile alleged to be delinquent, further
29 hearings may be waived only with the consent of the juvenile,
30 through counsel for the juvenile.

31 (c) The court shall determine whether a juvenile who is
32 alleged to be delinquent has retained counsel or has been
33 assigned counsel; and, if the juvenile is not represented by
34 counsel, appoint counsel for the juvenile.

35 (d) At a hearing to determine the need for continued custody,
36 the court shall receive testimony and shall allow the juvenile
37 and the juvenile's parent, guardian, or custodian an opportunity
38 to introduce evidence, to be heard in their own behalf, and to
39 examine witnesses. The State shall bear the burden at every stage
40 of the proceedings to provide clear and convincing evidence that
41 restraints on the juvenile's liberty are necessary and that no
42 less intrusive alternative will suffice. The court shall not be
43 bound by the usual rules of evidence at the hearings.

1 (e) The court shall be bound by criteria set forth in G.S. 7B-
2 1903 in determining whether continued custody is warranted.

3 (f) The court may impose appropriate restrictions on the
4 liberty of a juvenile who is released from secure custody,
5 including:

6 (1) Release on the written promise of the juvenile's
7 parent, guardian, or custodian to produce the
8 juvenile in court for subsequent proceedings;

9 (2) Release into the care of a responsible person or
10 organization;

11 (3) Release conditioned on restrictions on activities,
12 associations, residence, or travel if reasonably
13 related to securing the juvenile's presence in
14 court; or

15 (4) Any other conditions reasonably related to securing
16 the juvenile's presence in court.

17 (g) If the court determines that the juvenile meets the
18 criteria in G.S. 7B-1903 and should continue in custody, the
19 court shall issue an order to that effect. The order shall be in
20 writing with appropriate findings of fact. The findings of fact
21 shall include the evidence relied upon in reaching the decision
22 and the purposes which continued custody is to achieve.

23 (h) The court may conduct a hearing to determine the need to
24 continue custody by audio and video transmission between the
25 court and the juvenile in which the parties can see and hear each
26 other. If the juvenile has counsel, the juvenile may communicate
27 fully and confidentially with the juvenile's attorney during the
28 proceeding. Prior to the use of audio and video transmission,
29 the procedures and type of equipment for audio and video
30 transmission shall be submitted to the Administrative Office of
31 the Courts by the chief district court judge and approved by the
32 Administrative Office of the Courts.

33 "§ 7B-1907. Telephonic communication authorized.

34 All communications, notices, orders, authorizations, and
35 requests authorized or required by G.S. 7B-1901, 7B-1903, and 7B-
36 1904 may be made by telephone when other means of communication
37 are impractical. All written orders pursuant to telephonic
38 communication shall bear the name and the title of the person
39 communicating by telephone, the signature and the title of the
40 official entering the order, and the hour and the date of the
41 authorization.

42 "ARTICLE 20.

43 "Basic Rights.

1 "§ 7B-2000. Juvenile's right to counsel; presumption of
2 indigence.

3 (a) A juvenile alleged to be within the jurisdiction of the
4 court has the right to be represented by counsel in all
5 proceedings. The court shall appoint counsel for the juvenile,
6 unless counsel is retained for the juvenile, in any proceeding in
7 which the juvenile is alleged to be (i) delinquent or (ii) in
8 contempt of court when alleged or adjudicated to be
9 undisciplined.

10 (b) All juveniles shall be conclusively presumed to be
11 indigent, and it shall not be necessary for the court to receive
12 from any juvenile an affidavit of indigency.

13 "§ 7B-2001. Appointment of guardian.

14 In any case when no parent, guardian, or custodian appears in a
15 hearing with the juvenile or when the court finds it would be in
16 the best interests of the juvenile, the court may appoint a
17 guardian of the person for the juvenile. The guardian shall
18 operate under the supervision of the court with or without bond
19 and shall file only such reports as the court shall require.
20 Unless the court orders otherwise, the guardian:

21 (1) Shall have the care, custody, and control of the
22 juvenile or may arrange a suitable placement for
23 the juvenile.

24 (2) May represent the juvenile in legal actions before
25 any court.

26 (3) May consent to certain actions on the part of the
27 juvenile in place of the parent, guardian, or
28 custodian, including (i) marriage, (ii) enlisting
29 in the armed forces, and (iii) enrollment in
30 school.

31 (4) May consent to any necessary remedial,
32 psychological, medical, or surgical treatment for
33 the juvenile.

34 The authority of the guardian shall continue until the
35 guardianship is terminated by court order, until the juvenile is
36 emancipated pursuant to Subchapter IV of this Chapter, or until
37 the juvenile reaches the age of majority, whichever occurs first.

38 "§ 7B-2002. Payment of court-appointed attorney.

39 An attorney appointed pursuant to G.S. 7B-2000 or pursuant to
40 any other provision of this Subchapter shall be paid a reasonable
41 fee fixed by the court in the same manner as fees for attorneys
42 appointed in cases of indigency through the Administrative Office
43 of the Courts. The court may require payment of the attorneys'
44 fees from a person other than the juvenile as provided in G.S.

1 7A-450.1, 7A-450.2, and 7A-450.3. A person who does not comply
2 with the court's order of payment may be found in civil contempt
3 as provided in G.S. 5A-21.

4 "ARTICLE 21.

5 "Law Enforcement Procedures in Delinquency Proceedings.

6 "§ 7B-2100. Role of the law enforcement officer.

7 A law enforcement officer who takes a juvenile into temporary
8 custody should select the most appropriate course of action to
9 the situation, the needs of the juvenile, and the protection of
10 the public safety. The officer may:

- 11 (1) Release the juvenile, with or without first
12 counseling the juvenile;
- 13 (2) Release the juvenile to the juvenile's parent,
14 guardian, or custodian;
- 15 (3) Refer the juvenile to community resources;
- 16 (4) Seek a petition; or
- 17 (5) Seek a petition and request a custody order.

18 "§ 7B-2101. Interrogation procedures.

19 (a) Any juvenile in custody must be advised prior to
20 questioning:

- 21 (1) That the juvenile has a right to remain silent;
- 22 (2) That any statement the juvenile does make can be
23 and may be used against the juvenile;
- 24 (3) That the juvenile has a right to have a parent,
25 guardian, or custodian present during questioning;
26 and
- 27 (4) That the juvenile has a right to consult with an
28 attorney and that one will be appointed for the
29 juvenile if the juvenile is not represented and
30 wants representation.

31 (b) When the juvenile is less than 14 years of age, no
32 in-custody admission or confession resulting from interrogation
33 may be admitted into evidence unless the confession or admission
34 was made in the presence of the juvenile's parent, guardian,
35 custodian, or attorney. If an attorney is not present, the
36 parent, guardian, or custodian as well as the juvenile must be
37 advised of the juvenile's rights as set out in subsection (a) of
38 this section; however, a parent, guardian, or custodian may not
39 waive any right on behalf of the juvenile.

40 (c) If the juvenile indicates in any manner and at any stage of
41 questioning pursuant to this section that the juvenile does not
42 wish to be questioned further, the officer shall cease
43 questioning.

1 (d) Before admitting into evidence any statement resulting from
2 custodial interrogation, the court shall find that the juvenile
3 knowingly, willingly, and understandingly waived the juvenile's
4 rights.

5 "§ 7B-2102. Fingerprinting and photographing juveniles.

6 (a) A law enforcement officer or agency may fingerprint and
7 photograph a juvenile in custody who is alleged to have committed
8 an offense that would be a felony if committed by an adult.

9 (b) If a law enforcement officer or agency does not take the
10 fingerprints or a photograph of the juvenile pursuant to
11 subsection (a) of this section or the fingerprints or photograph
12 have been destroyed pursuant to subsection (e) of this section, a
13 law enforcement officer or agency shall fingerprint and
14 photograph a juvenile who has been adjudicated delinquent if the
15 juvenile was 10 years of age or older at the time the juvenile
16 committed an offense that would be a felony if committed by an
17 adult.

18 (c) A law enforcement officer or agency who fingerprints or
19 photographs a juvenile pursuant to this section shall do so in a
20 proper format for transfer to the State Bureau of Investigation
21 and the Federal Bureau of Investigation. Fingerprints obtained
22 pursuant to this section shall be transferred to the State Bureau
23 of Investigation and placed in the Automated Fingerprint
24 Identification System (AFIS) to be used for all investigative and
25 comparison purposes. Photographs obtained pursuant to this
26 section shall be placed in a format approved by the State Bureau
27 of Investigation and may be used for all investigative or
28 comparison purposes. Fingerprints of a juvenile who has been
29 adjudicated delinquent for an offense that would be a Class A,
30 B1, B2, C, D, or E felony if committed by an adult, and who was
31 10 years of age or older at the time the juvenile committed the
32 offense, shall be transferred to the Federal Bureau of
33 Investigation to be used for all investigative or comparison
34 purposes.

35 (d) Fingerprints and photographs taken pursuant to this
36 section are not public records under Chapter 132 of the General
37 Statutes, shall not be included in the clerk's record pursuant to
38 G.S. 7B-3000, shall be withheld from public inspection or
39 examination, and shall not be eligible for expunction pursuant to
40 G.S. 7B-3200. Fingerprints and photographs taken pursuant to this
41 section shall be maintained separately from any juvenile record,
42 other than the electronic file maintained by the State Bureau of
43 Investigation.

1 (e) If a juvenile is fingerprinted and photographed pursuant to
2 subsection (a) of this section, the custodian of records shall
3 destroy all fingerprints and photographs at the earlier of the
4 following:

- 5 (1) The intake counselor or prosecutor does not file a
6 petition against the juvenile within one year of
7 fingerprinting and photographing the juvenile
8 pursuant to subsection (a) of this section;
9 (2) The court does not find probable cause pursuant to
10 G.S. 7B-2202; or
11 (3) The juvenile is not adjudicated delinquent of any
12 offense that would have been a felony or
13 misdemeanor if committed by an adult.

14 The chief court counselor shall notify the local custodian of
15 records, and the local custodian of records shall notify any
16 other record-holding agencies, when a decision is made not to
17 file a petition, the court does not find probable cause, or the
18 court does not adjudicate the juvenile delinquent.

19 "§ 7B-2103. Authority to issue nontestimonial identification
20 order where juvenile alleged to be delinquent.

21 Except as provided in G.S. 7B-2102, nontestimonial
22 identification procedures shall not be conducted on any juvenile
23 without a court order issued pursuant to this Article unless the
24 juvenile has been charged as an adult or transferred to superior
25 court for trial as an adult in which case procedures applicable
26 to adults, as set out in Articles 14 and 23 of Chapter 15A of the
27 General Statutes, shall apply. A nontestimonial identification
28 order authorized by this Article may be issued by any judge of
29 the district court or of the superior court upon request of a
30 prosecutor. As used in this Article, 'nontestimonial
31 identification' means identification by fingerprints, palm
32 prints, footprints, measurements, blood specimens, urine
33 specimens, saliva samples, hair samples, or other reasonable
34 physical examination, handwriting exemplars, voice samples,
35 photographs, and lineups or similar identification procedures
36 requiring the presence of a juvenile.

37 "§ 7B-2104. Time of application for nontestimonial
38 identification order.

39 A request for a nontestimonial identification order may be made
40 prior to taking a juvenile into custody or after custody and
41 prior to the adjudicatory hearing.

42 "§ 7B-2105. Grounds for nontestimonial identification order.

43 (a) Except as provided in subsection (b) of this section, a
44 nontestimonial identification order may issue only on affidavit

1 or affidavits sworn to before the court and establishing the
2 following grounds for the order:

- 3 (1) That there is probable cause to believe that an
4 offense has been committed that would be a felony
5 if committed by an adult;
6 (2) That there are reasonable grounds to suspect that
7 the juvenile named or described in the affidavit
8 committed the offense; and
9 (3) That the results of specific nontestimonial
10 identification procedures will be of material aid
11 in determining whether the juvenile named in the
12 affidavit committed the offense.

13 (b) A nontestimonial identification order to obtain a blood
14 specimen from a juvenile may issue only on affidavit or
15 affidavits sworn to before the court and establishing the
16 following grounds for the order:

- 17 (1) That there is probable cause to believe that an
18 offense has been committed that would be a felony
19 if committed by an adult;
20 (2) That there is probable cause to believe that the
21 juvenile named or described in the affidavit
22 committed the offense; and
23 (3) That there is probable cause to believe that
24 obtaining a blood specimen from the juvenile will
25 be of material aid in determining whether the
26 juvenile named in the affidavit committed the
27 offense.

28 "§ 7B-2106. Issuance of order.

29 Upon a showing that the grounds specified in G.S. 7B-2105
30 exist, the judge may issue an order following the same procedure
31 as in the case of adults under G.S. 15A-274, 15A-275, 15A-276,
32 15A-277, 15A-278, 15A-279, 15A-280, and 15A-282.

33 "§ 7B-2107. Nontestimonial identification order at request of
34 juvenile.

35 A juvenile in custody for or charged with an offense which if
36 committed by an adult would be a felony offense may request that
37 nontestimonial identification procedures be conducted. If it
38 appears that the results of specific nontestimonial
39 identification procedures will be of material aid to the
40 juvenile's defense, the judge to whom the request was directed
41 must order the State to conduct the identification procedures.

42 "§ 7B-2108. Destruction of records resulting from nontestimonial
43 identification procedures.

1 The results of any nontestimonial identification procedures
2 shall be retained or disposed of as follows:

- 3 (1) If a petition is not filed against a juvenile
4 within one year of the juvenile being the subject
5 of nontestimonial identification procedures, all
6 records of the evidence shall be destroyed.
- 7 (2) If the juvenile is not adjudicated delinquent or
8 convicted in superior court following transfer, all
9 records resulting from a nontestimonial order shall
10 be destroyed. Further, in the case of a juvenile
11 who is under 13 years of age and who is adjudicated
12 delinquent for an offense that would be less than a
13 felony if committed by an adult, all records shall
14 be destroyed.
- 15 (3) If a juvenile 13 years of age or older is
16 adjudicated delinquent for an offense that would be
17 a felony if committed by an adult, all records
18 resulting from a nontestimonial order may be
19 retained in the court file. Special precautions
20 shall be taken to ensure that these records will be
21 maintained in a manner and under sufficient
22 safeguards to limit their use to inspection by law
23 enforcement officers for comparison purposes in
24 the investigation of a crime.
- 25 (4) If the juvenile is transferred to and convicted in
26 superior court, all records resulting from
27 nontestimonial identification procedures shall be
28 processed as in the case of an adult.
- 29 (5) Any evidence seized pursuant to a nontestimonial
30 order shall be retained by law enforcement officers
31 until further order is entered by the court.
- 32 (6) Destruction of nontestimonial identification
33 records pursuant to this section shall be performed
34 by the law enforcement agency having possession of
35 the records. Following destruction, the law
36 enforcement agency shall make written certification
37 to the court of the destruction.

38 "§ 7B-2109. Penalty for willful violation.

39 Any person who willfully violates provisions of this Article
40 which prohibit conducting nontestimonial identification
41 procedures without an order issued by the court shall be guilty
42 of a Class 1 misdemeanor.

43 "ARTICLE 22.

44 "Probable Cause Hearing and Transfer Hearing.

1 "§ 7B-2200. Transfer of jurisdiction of juvenile to superior
2 court; direct filing in superior court.

3 After notice, hearing, and a finding of probable cause the
4 court may, upon motion of the prosecutor, the juvenile's
5 attorney, or upon its own motion, transfer jurisdiction over a
6 juvenile to superior court if the juvenile was 13 years of age or
7 older at the time the juvenile allegedly committed an offense
8 that would be a felony if committed by an adult. If the alleged
9 felony constitutes a Class A felony and the court finds probable
10 cause, the court shall transfer the case to the superior court
11 for trial as in the case of adults.

12 "§ 7B-2201. Fingerprinting juvenile transferred to superior
13 court.

14 When jurisdiction over a juvenile is transferred to the
15 superior court, the juvenile shall be fingerprinted and the
16 juvenile's fingerprints shall be sent to the State Bureau of
17 Investigation.

18 "§ 7B-2202. Probable cause hearing.

19 (a) The court shall conduct a hearing to determine probable
20 cause in all felony cases in which a juvenile was 13 years of age
21 or older when the offense was allegedly committed. The hearing
22 shall be conducted within 15 days of the date of the juvenile's
23 first appearance. The court may continue the hearing for good
24 cause.

25 (b) At the probable cause hearing:

- 26 (1) A prosecutor shall represent the State;
27 (2) The juvenile shall be represented by counsel;
28 (3) The juvenile may testify, call, and examine
29 witnesses, and present evidence; and
30 (4) Each witness shall testify under oath or
31 affirmation and be subject to cross-examination.

32 (c) The State shall by nonhearsay evidence, or by evidence
33 that satisfies an exception to the hearsay rule, show that there
34 is probable cause to believe that the offense charged has been
35 committed and that there is probable cause to believe that the
36 juvenile committed it, except:

- 37 (1) A report or copy of a report made by a physicist,
38 chemist, firearms identification expert,
39 fingerprint technician, or an expert or technician
40 in some other scientific, professional, or medical
41 field, concerning the results of an examination,
42 comparison, or test performed in connection with
43 the case in issue, when stated by that person in a

1 report made by the juvenile, is admissible in
2 evidence;

3 (2) If there is no serious contest, reliable hearsay is
4 admissible to prove value, ownership of property,
5 possession of property in a person other than the
6 juvenile, lack of consent of the owner, possessor,
7 or custodian of property to the breaking or
8 entering of premises, chain of custody, and
9 authenticity of signatures.

10 (d) Counsel for the juvenile may waive in writing the right to
11 the hearing and stipulate to a finding of probable cause.

12 (e) If probable cause is found and transfer to superior court
13 is not required by G.S. 7B-2200, upon motion of the prosecutor,
14 the juvenile's attorney, or upon its own motion, the court shall
15 either proceed to a transfer hearing or set a date for that
16 hearing. If the juvenile has not received notice of the
17 intention to seek a transfer at least five days prior to the
18 probable cause hearing, the court, at the request of the
19 juvenile, shall continue the transfer hearing.

20 (f) If the court does not find probable cause for a felony
21 offense, the court shall:

22 (1) Dismiss the proceeding, or

23 (2) If the court finds probable cause to believe that
24 the juvenile committed a lesser included offense
25 that would constitute a misdemeanor if committed by
26 an adult, either proceed to an adjudicatory hearing
27 or set a date for that hearing.

28 "§ 7B-2203. Transfer hearing.

29 (a) At the transfer hearing, the prosecutor and the juvenile
30 may be heard and may offer evidence, and the juvenile's attorney
31 may examine any court or probation records, or other records the
32 court may consider in determining whether to transfer the case.

33 (b) In the transfer hearing, the court shall determine whether
34 the protection of the public and the needs of the juvenile will
35 be served by transfer of the case to superior court and shall
36 consider the following factors:

37 (1) The age of the juvenile;

38 (2) The maturity of the juvenile;

39 (3) The intellectual functioning of the juvenile;

40 (4) The prior record of the juvenile;

41 (5) Prior attempts to rehabilitate the juvenile;

42 (6) Facilities or programs available to the court prior
43 to the expiration of the court's jurisdiction under
44 this Subchapter and the likelihood that the

- 1 (a) Statement of the Juvenile. -- Upon motion of a juvenile
2 alleged to be delinquent, the court shall order the petitioner:
- 3 (1) To permit the juvenile to inspect and copy any
4 relevant written or recorded statements within the
5 possession, custody, or control of the petitioner
6 made by the juvenile or any other party charged in
7 the same action; and
- 8 (2) To divulge, in written or recorded form, the
9 substance of any oral statement made by the
10 juvenile or any other party charged in the same
11 action.
- 12 (b) Names of Witnesses. -- Upon motion of the juvenile, the
13 court shall order the petitioner to furnish the names of persons
14 to be called as witnesses. A copy of the record of witnesses
15 under the age of 16 shall be provided by the petitioner to the
16 juvenile upon the juvenile's motion if accessible to the
17 petitioner.
- 18 (c) Documents and Tangible Objects. -- Upon motion of the
19 juvenile, the court shall order the petitioner to permit the
20 juvenile to inspect and copy books, papers, documents,
21 photographs, motion pictures, mechanical or electronic
22 recordings, tangible objects, or portions thereof:
- 23 (1) Which are within the possession, custody, or
24 control of the petitioner, the prosecutor, or any
25 law enforcement officer conducting an investigation
26 of the matter alleged; and
- 27 (2) Which are material to the preparation of the
28 defense, are intended for use by the petitioner as
29 evidence, or were obtained from or belong to the
30 juvenile.
- 31 (d) Reports of Examinations and Tests. -- Upon motion of a
32 juvenile, the court shall order the petitioner to permit the
33 juvenile to inspect and copy results of physical or mental
34 examinations or of tests, measurements, or experiments made in
35 connection with the case, within the possession, custody, or
36 control of the petitioner. In addition upon motion of a juvenile,
37 the court shall order the petitioner to permit the juvenile to
38 inspect, examine, and test, subject to appropriate safeguards,
39 any physical evidence or a sample of it or tests or experiments
40 made in connection with the evidence in the case if it is
41 available to the petitioner, the prosecutor, or any law
42 enforcement officer conducting an investigation of the matter
43 alleged and if the petitioner intends to offer the evidence at
44 trial.

1 (e) Except as provided in subsections (a) through (d) of this
2 section, this Article does not require the production of reports,
3 memoranda, or other internal documents made by the petitioner,
4 law enforcement officers, or other persons acting on behalf of
5 the petitioner in connection with the investigation or
6 prosecution of the case or of statements made by witnesses or the
7 petitioner to anyone acting on behalf of the petitioner.

8 (f) Nothing in this section prohibits a petitioner from making
9 voluntary disclosures in the interest of justice.

10 "§ 7B-2301. Disclosure of evidence by juvenile.

11 (a) Names of Witnesses. -- Upon motion of the petitioner, the
12 court shall order the juvenile to furnish to the petitioner the
13 names of persons to be called as witnesses.

14 (b) Documents and Tangible Objects. -- If the court grants any
15 relief sought by the juvenile under G.S. 7B-2300, upon motion of
16 the petitioner, the court shall order the juvenile to permit the
17 petitioner to inspect and copy books, papers, documents,
18 photographs, motion pictures, mechanical or electronic
19 recordings, tangible objects, or portions thereof which are
20 within the possession, custody, or control of the juvenile and
21 which the juvenile intends to introduce in evidence.

22 (c) Reports of Examinations and Tests. -- If the court grants
23 any relief sought by the juvenile under G.S. 7B-2300, upon motion
24 of the petitioner, the court shall order the juvenile to permit
25 the petitioner to inspect and copy results of physical or mental
26 examinations or of tests, measurements, or experiments made in
27 connection with the case within the possession and control of the
28 juvenile which the juvenile intends to introduce in evidence or
29 which were prepared by a witness whom the juvenile intends to
30 call if the results relate to the witness's testimony. In
31 addition, upon motion of a petitioner, the court shall order the
32 juvenile to permit the petitioner to inspect, examine, and test,
33 subject to appropriate safeguards, any physical evidence or a
34 sample of it if the juvenile intends to offer the evidence or
35 tests or experiments made in connection with the evidence in the
36 case.

37 "§ 7B-2302. Regulation of discovery; protective orders.

38 (a) Upon written motion of a party and a finding of good cause,
39 the court may at any time order that discovery or inspection be
40 denied, restricted, or deferred.

41 (b) The court may permit a party seeking relief under
42 subsection (a) of this section to submit supporting affidavits or
43 statements to the court for in camera inspection. If thereafter
44 the court enters an order granting relief under subsection (a) of

1 this section, the material submitted in camera must be available
2 to the Court of Appeals in the event of an appeal.

3 "§ 7B-2303. Continuing duty to disclose.

4 If a party, subject to compliance with an order issued pursuant
5 to this Article, discovers additional evidence prior to or during
6 the hearing or decides to use additional evidence, and if the
7 evidence is or may be subject to discovery or inspection under
8 this Article, the party shall promptly notify the other party of
9 the existence of the additional evidence or of the name of each
10 additional witness.

11 "ARTICLE 24.

12 "Hearing Procedures.

13 "§ 7B-2400. Amendment of petition.

14 The court may permit a petition to be amended when the
15 amendment does not change the nature of the offense alleged. If a
16 motion to amend is allowed, the juvenile shall be given a
17 reasonable opportunity to prepare a defense to the amended
18 allegations.

19 "§ 7B-2401. Determination of incapacity to proceed; evidence;
20 temporary commitment; temporary orders.

21 The provisions of G.S. 15A-1001, 15A-1002, and 15A-1003 apply
22 to all cases in which a juvenile is alleged to be delinquent. No
23 juvenile committed under this section may be placed in a
24 situation where the juvenile will come in contact with adults
25 committed for any purpose.

26 "§ 7B-2402. Open hearings.

27 All hearings authorized or required pursuant to this Subchapter
28 shall be open to the public unless the court closes the hearing
29 or part of the hearing for good cause, upon motion of a party or
30 its own motion.

31 "§ 7B-2403. Adjudicatory hearing.

32 The adjudicatory hearing shall be held within a reasonable time
33 in the district at the time and place the chief district judge
34 designates.

35 "§ 7B-2404. Participation of the prosecutor.

36 A prosecutor shall represent the State in contested delinquency
37 hearings including first appearance, detention, probable cause,
38 transfer, adjudicatory, dispositional, probation revocation,
39 post-release supervision, and extended jurisdiction hearings.

40 "§ 7B-2405. Conduct of the adjudicatory hearing.

41 The adjudicatory hearing shall be a judicial process designed
42 to determine whether the juvenile is undisciplined or delinquent.
43 In the adjudicatory hearing, the court shall protect the

1 following rights of the juvenile and the juvenile's parent,
2 guardian, or custodian to assure due process of law:

- 3 (1) The right to written notice of the facts alleged in
4 the petition;
- 5 (2) The right to counsel;
- 6 (3) The right to confront and cross-examine witnesses;
- 7 (4) The privilege against self-incrimination;
- 8 (5) The right of discovery; and
- 9 (6) All rights afforded adult offenders except the
10 right to bail, the right of self-representation,
11 and the right of trial by jury.

12 "§ 7B-2406. Continuances.

13 The court for good cause may continue the hearing for as long
14 as is reasonably required to receive additional evidence,
15 reports, or assessments that the court has requested, or other
16 information needed in the best interests of the juvenile and to
17 allow for a reasonable time for the parties to conduct
18 expeditious discovery. Otherwise, continuances shall be granted
19 only in extraordinary circumstances when necessary for the proper
20 administration of justice or in the best interests of the
21 juvenile.

22 "§ 7B-2407. When admissions by juvenile may be accepted.

23 (a) The court may accept an admission from a juvenile only
24 after first addressing the juvenile personally and:

- 25 (1) Informing the juvenile that the juvenile has a
26 right to remain silent and that any statement the
27 juvenile makes may be used against the juvenile;
- 28 (2) Determining that the juvenile understands the
29 nature of the charge;
- 30 (3) Informing the juvenile that the juvenile has a
31 right to deny the allegations;
- 32 (4) Informing the juvenile that by the juvenile's
33 admissions the juvenile waives the juvenile's right
34 to be confronted by the witnesses against the
35 juvenile;
- 36 (5) Determining that the juvenile is satisfied with the
37 juvenile's representation; and
- 38 (6) Informing the juvenile of the most restrictive
39 disposition on the charge.

40 (b) By inquiring of the prosecutor, the juvenile's attorney,
41 and the juvenile personally, the court shall determine whether
42 there were any prior discussions involving admissions, whether
43 the parties have entered into any arrangement with respect to the
44 admissions and the terms thereof, and whether any improper

1 pressure was exerted. The court may accept an admission from a
2 juvenile only after determining that the admission is a product
3 of informed choice.

4 (c) The court may accept an admission only after determining
5 that there is a factual basis for the admission. This
6 determination may be based upon any of the following information:
7 a statement of the facts by the prosecutor; a written statement
8 of the juvenile; sworn testimony which may include reliable
9 hearsay; or a statement of facts by the juvenile's attorney.

10 "§ 7B-2408. Rules of evidence.

11 If the juvenile denies the allegations of the petition, the
12 court shall proceed in accordance with the rules of evidence
13 applicable to criminal cases. In addition, no statement made by a
14 juvenile to the intake counselor during the preliminary inquiry
15 and evaluation process shall be admissible prior to the
16 dispositional hearing.

17 "§ 7B-2409. Quantum of proof in adjudicatory hearing.

18 The allegations of a petition alleging the juvenile is
19 delinquent shall be proved beyond a reasonable doubt. The
20 allegations in a petition alleging undisciplined behavior shall
21 be proved by clear and convincing evidence.

22 "§ 7B-2410. Record of proceedings.

23 All adjudicatory and dispositional hearings and hearings on
24 probable cause and transfer to superior court shall be recorded
25 by stenographic notes or by electronic or mechanical means.
26 Records shall be reduced to a written transcript only when timely
27 notice of appeal has been given. The court may order that other
28 hearings be recorded.

29 "§ 7B-2411. Adjudication.

30 If the court finds that the allegations in the petition have
31 been proved as provided in G.S. 7B-2409, the court shall so
32 state. If the court finds that the allegations have not been
33 proved, the court shall dismiss the petition with prejudice and
34 the juvenile shall be released from secure or nonsecure custody
35 if the juvenile is in custody.

36 "§ 7B-2412. Legal effect of adjudication of delinquency.

37 An adjudication that a juvenile is delinquent or commitment of
38 a juvenile to a facility of the Department shall neither be
39 considered conviction of any criminal offense nor cause the
40 juvenile to forfeit any citizenship rights.

41 "§ 7B-2413. Predisposition investigation and report.

42 The court shall proceed to the dispositional hearing upon
43 receipt of sufficient social, medical, psychiatric,
44 psychological, and educational information. No predisposition

1 report shall be submitted to or considered by the court prior to
2 the completion of the adjudicatory hearing. The court shall
3 permit the juvenile to inspect any predisposition report to be
4 considered by the court in making the disposition unless the
5 court determines that disclosure would seriously harm the
6 juvenile's treatment or rehabilitation or would violate a promise
7 of confidentiality. Opportunity to offer evidence in rebuttal
8 shall be afforded the juvenile and the juvenile's parent,
9 guardian, or custodian at the dispositional hearing. The court
10 may order counsel not to disclose parts of the report to the
11 juvenile or the juvenile's parent, guardian, or custodian if the
12 court finds that disclosure would seriously harm the treatment or
13 rehabilitation of the juvenile or would violate a promise of
14 confidentiality given to a source of information.

15 "§ 7B-2414. When jeopardy attaches.

16 Jeopardy attaches in an adjudicatory hearing when the court
17 begins to hear evidence.

18 "ARTICLE 25.

19 "Dispositions.

20 "§ 7B-2500. Purpose.

21 The purpose of dispositions in juvenile actions is to design an
22 appropriate plan to meet the needs of the juvenile and to achieve
23 the objectives of the State in exercising jurisdiction, including
24 the protection of the public. The court should develop a
25 disposition in each case that:

- 26 (1) Promotes public safety;
27 (2) Emphasizes accountability and responsibility of
28 both the parent, guardian, or custodian and the
29 juvenile for the juvenile's conduct; and
30 (3) Provides the appropriate consequences, treatment,
31 training, and rehabilitation to assist the juvenile
32 toward becoming a nonoffending, responsible, and
33 productive member of the community.

34 "§ 7B-2500.1. Dispositional hearing.

35 (a) The dispositional hearing may be informal, and the court
36 may consider written reports or other evidence concerning the
37 needs of the juvenile.

38 (b) The juvenile and the juvenile's parent, guardian, or
39 custodian shall have an opportunity to present evidence, and they
40 may advise the court concerning the disposition they believe to
41 be in the best interests of the juvenile.

42 (c) In choosing among statutorily permissible dispositions, the
43 court shall select the most appropriate disposition both in terms
44 of kind and duration for the delinquent juvenile. Within the

1 guidelines set forth in G.S. 7B-2505, the court shall select a
2 disposition that is designed to protect the public and to meet
3 the needs and best interests of the juvenile, based upon:

- 4 (1) The seriousness of the offense;
5 (2) The need to hold the juvenile accountable;
6 (3) The importance of protecting the public safety;
7 (4) The degree of culpability indicated by the
8 circumstances of the particular case; and
9 (5) The rehabilitative and treatment needs of the
10 juvenile.

11 (d) The court may dismiss the case, or continue the case for no
12 more than six months in order to allow the family an opportunity
13 to meet the needs of the juvenile through more adequate home
14 supervision, through placement in a private or specialized school
15 or agency, through placement with a relative, or through some
16 other plan approved by the court.

17 "§ 7B-2500.2. Evaluation and treatment of undisciplined and
18 delinquent juveniles.

19 (a) In any case, the court may order that the juvenile be
20 examined by a physician, psychiatrist, psychologist, or other
21 qualified expert as may be needed for the court to determine the
22 needs of the juvenile.

23 (b) Upon completion of the examination, the court shall conduct
24 a hearing to determine whether the juvenile is in need of
25 medical, surgical, psychiatric, psychological, or other
26 evaluation or treatment and who should pay the cost of the
27 evaluation or treatment. The county manager, or any other person
28 who is designated by the chair of the board of county
29 commissioners, of the county of the juvenile's residence shall be
30 notified of the hearing, and allowed to be heard. If the court
31 finds the juvenile to be in need of medical, surgical,
32 psychiatric, psychological, or other evaluation or treatment, the
33 court shall permit the parent, guardian, custodian, or other
34 responsible persons to arrange for evaluation or treatment. If
35 the parent, guardian, or custodian declines or is unable to make
36 necessary arrangements, the court may order the needed evaluation
37 or treatment, surgery, or care, and the court may order the
38 parent to pay the cost of the care pursuant to Article 27 of this
39 Chapter. If the court finds the parent is unable to pay the cost
40 of evaluation or treatment, the court shall order the county to
41 arrange for evaluation or treatment of the juvenile and to pay
42 for the cost of the evaluation or treatment. The county
43 department of social services shall recommend the facility that
44 will provide the juvenile with evaluation or treatment.

1 (c) If the court believes, or if there is evidence presented to
2 the effect that the juvenile is mentally ill or is
3 developmentally disabled, the court shall refer the juvenile to
4 the area mental health, developmental disabilities, and substance
5 abuse services director for appropriate action. A juvenile shall
6 not be committed directly to a State hospital or mental
7 retardation center; and orders purporting to commit a juvenile
8 directly to a State hospital or mental retardation center except
9 for an examination to determine capacity to proceed shall be void
10 and of no effect. The area mental health, developmental
11 disabilities, and substance abuse director shall be responsible
12 for arranging an interdisciplinary evaluation of the juvenile and
13 mobilizing resources to meet the juvenile's needs. If
14 institutionalization is determined to be the best service for the
15 juvenile, admission shall be with the voluntary consent of the
16 parent or guardian. If the parent, guardian, or custodian refuses
17 to consent to a mental hospital or retardation center admission
18 after such institutionalization is recommended by the area mental
19 health, developmental disabilities, and substance abuse director,
20 the signature and consent of the court may be substituted for
21 that purpose. In all cases in which a regional mental hospital
22 refuses admission to a juvenile referred for admission by the
23 court and an area mental health, developmental disabilities, and
24 substance abuse director or discharges a juvenile previously
25 admitted on court referral prior to completion of the juvenile's
26 treatment, the hospital shall submit to the court a written
27 report setting out the reasons for denial of admission or
28 discharge and setting out the juvenile's diagnosis, indications
29 of mental illness, indications of need for treatment, and a
30 statement as to the location of any facility known to have a
31 treatment program for the juvenile in question.

32 "§ 7B-2501. Dispositional alternatives for undisciplined
33 juveniles.

34 The following alternatives for disposition shall be available
35 to the court exercising jurisdiction over a juvenile who has been
36 adjudicated undisciplined. The court may combine any of the
37 applicable alternatives when the court finds it to be in the best
38 interests of the juvenile:

39 (1) In the case of any juvenile who needs more adequate
40 care or supervision or who needs placement, the
41 judge may:

42 a. Require that the juvenile be supervised in the
43 juvenile's own home by a department of social
44 services in the juvenile's county of

1 residence, a court counselor, or other
2 personnel as may be available to the court,
3 subject to conditions applicable to the
4 parent, guardian, or custodian or the juvenile
5 as the judge may specify; or
6 b. Place the juvenile in the custody of a parent,
7 guardian, custodian, relative, private agency
8 offering placement services, or some other
9 suitable person; or
10 c. Place the juvenile in the custody of a
11 department of social services in the county of
12 the juvenile's residence, or in the case of a
13 juvenile who has legal residence outside the
14 State, in the physical custody of a department
15 of social services in the county where the
16 juvenile is found so that agency may return
17 the juvenile to the responsible authorities in
18 the juvenile's home state. The director may,
19 unless otherwise ordered by the judge, arrange
20 for, provide, or consent to, needed routine or
21 emergency medical or surgical care or
22 treatment. In the case where the parent is
23 unknown, unavailable, or unable to act on
24 behalf of the child or children, the director
25 may, unless otherwise ordered by the judge,
26 arrange for, provide or consent to any
27 psychiatric, psychological, educational, or
28 other remedial evaluations or treatment for
29 the juvenile placed by a judge or the judge's
30 designee in the custody or physical custody of
31 a county department of social services under
32 the authority of this or any other Chapter of
33 the General Statutes. Prior to exercising this
34 authority, the director shall make reasonable
35 efforts to obtain consent from a parent or
36 guardian of the affected child. If the
37 director cannot obtain consent, the director
38 shall promptly notify the parent or guardian
39 that care or treatment has been provided and
40 shall give the parent or guardian frequent
41 status reports on the circumstances of the
42 child. Upon request of a parent or guardian of
43 the affected child, the results or records of
44 the aforementioned evaluations, findings, or

1 treatment shall be made available to the
2 parent or guardian by the director unless
3 prohibited by G.S. 122C-53(d).

4 (2) Place the juvenile under the protective supervision
5 of a court counselor for no more than one year.

6 (3) Excuse the juvenile from compliance with the
7 compulsory school attendance law when the court
8 finds that suitable alternative plans can be
9 arranged by the family through other community
10 resources for one of the following: an education
11 related to the needs or abilities of the juvenile
12 including vocational education or special
13 education; a suitable plan of supervision or
14 placement; or some other plan that the court finds
15 to be in the best interests of the juvenile.

16 "§ 7B-2502. Conditions of protective supervision for
17 undisciplined juveniles.

18 The court may place a juvenile on protective supervision
19 pursuant to G.S. 7B-2501 so that the court counselor may (i)
20 assist the juvenile in securing social, medical, and educational
21 services and (ii) visit and work with the family as a unit to
22 ensure the juvenile is provided proper supervision and care. The
23 court may impose any combination of the following conditions of
24 protective supervision that are related to the needs of the
25 juvenile, including:

26 (1) That the juvenile shall remain on good behavior and
27 not violate any laws;

28 (2) That the juvenile attend school regularly;

29 (3) That the juvenile maintain passing grades in up to
30 four courses during each grading period and meet
31 with the court counselor and a representative of
32 the school to make a plan for how to maintain those
33 passing grades;

34 (4) That the juvenile not associate with specified
35 persons or be in specified places;

36 (5) That the juvenile abide by a prescribed curfew;

37 (6) That the juvenile report to a court counselor as
38 often as required by a court counselor;

39 (7) That the juvenile be employed regularly if not
40 attending school; and

41 (8) That the juvenile satisfy any other conditions
42 determined appropriate by the court.

43 "§ 7B-2503. Contempt of court for undisciplined juveniles.

1 Upon motion of the court counselor or on the court's own
2 motion, the court may issue an order directing a juvenile who has
3 been adjudicated undisciplined to appear and show cause why the
4 juvenile should not be held in contempt for willfully failing to
5 comply with an order of the court. The first time the juvenile
6 is held in contempt, the court may order the juvenile confined in
7 an approved detention facility for a period not to exceed 24
8 hours. The second time the juvenile is held in contempt, the
9 court may order the juvenile confined in an approved detention
10 facility for a period not to exceed three days. The third time
11 and all subsequent times the juvenile is held in contempt, the
12 court may order the juvenile confined in an approved detention
13 facility for a period not to exceed five days.

14 "§ 7B-2504. Dispositional alternatives for delinquent juveniles.
15 The court exercising jurisdiction over a juvenile who has been
16 adjudicated delinquent may use the following alternatives in
17 accordance with the dispositional structure set forth in G.S. 7B-
18 2505:

- 19 (1) In the case of any juvenile who needs more adequate
20 care or supervision or who needs placement, the
21 judge may:
22 a. Require that a juvenile be supervised in the
23 juvenile's own home by the department of
24 social services in the juvenile's county, a
25 court counselor, or other personnel as may be
26 available to the court, subject to conditions
27 applicable to the parent, guardian, or
28 custodian or the juvenile as the judge may
29 specify; or
30 b. Place the juvenile in the custody of a parent,
31 guardian, custodian, relative, private agency
32 offering placement services, or some other
33 suitable person; or
34 c. Place the juvenile in the custody of the
35 department of social services in the county of
36 his residence, or in the case of a juvenile
37 who has legal residence outside the State, in
38 the physical custody of a department of social
39 services in the county where the juvenile is
40 found so that agency may return the juvenile
41 to the responsible authorities in the
42 juvenile's home state. The director may,
43 unless otherwise ordered by the judge, arrange
44 for, provide, or consent to, needed routine or

1 emergency medical or surgical care or
2 treatment. In the case where the parent is
3 unknown, unavailable, or unable to act on
4 behalf of the child or children, the director
5 may, unless otherwise ordered by the judge,
6 arrange for, provide, or consent to any
7 psychiatric, psychological, educational, or
8 other remedial evaluations or treatment for
9 the juvenile placed by a judge or his designee
10 in the custody or physical custody of a county
11 department of social services under the
12 authority of this or any other Chapter of the
13 General Statutes. Prior to exercising this
14 authority, the director shall make reasonable
15 efforts to obtain consent from a parent or
16 guardian of the affected child. If the
17 director cannot obtain such consent, the
18 director shall promptly notify the parent or
19 guardian that care or treatment has been
20 provided and shall give the parent or guardian
21 frequent status reports on the circumstances
22 of the child. Upon request of a parent or
23 guardian of the affected child, the results or
24 records of the aforementioned evaluations,
25 findings, or treatment shall be made available
26 to such parent or guardian by the director
27 unless prohibited by G.S. 122C-53(d).

28 (2) Excuse the juvenile from compliance with the
29 compulsory school attendance law when the court
30 finds that suitable alternative plans can be
31 arranged by the family through other community
32 resources for one of the following: an education
33 related to the needs or abilities of the juvenile
34 including vocational education or special
35 education; a suitable plan of supervision or
36 placement; or some other plan that the court finds
37 to be in the best interests of the juvenile.

38 (3) Order the juvenile to cooperate with a community-
39 based program, an intensive substance abuse
40 treatment program, or a residential or
41 nonresidential treatment program. Participation in
42 the programs shall not exceed 12 months.

43 (4) Require restitution, full or partial, up to five
44 hundred dollars (\$500.00), payable within a 12-

- 1 month period to any person who has suffered loss or
2 damage as a result of the offense committed by the
3 juvenile. The court may determine the amount,
4 terms, and conditions of the restitution. If the
5 juvenile participated with another person or
6 persons, all participants should be jointly and
7 severally responsible for the payment of
8 restitution; however, the court shall not require
9 the juvenile to make restitution if the juvenile
10 satisfies the court that the juvenile does not
11 have, and could not reasonably acquire, the means
12 to make restitution.
- 13 (5) Impose a fine related to the seriousness of the
14 juvenile's offense. If the juvenile has the ability
15 to pay the fine, it shall not exceed the maximum
16 fine for the offense if committed by an adult.
- 17 (6) Order the juvenile to perform up to 100 hours
18 supervised community service consistent with the
19 juvenile's age, skill, and ability, specifying the
20 nature of the work and the number of hours
21 required. The work shall be related to the
22 seriousness of the juvenile's offense and in no
23 event may the obligation to work exceed 12 months.
- 24 (7) Order the juvenile to participate in the victim-
25 offender reconciliation program.
- 26 (8) Place the juvenile on probation under the
27 supervision of a court counselor, as specified in
28 G.S. 7B-2506.
- 29 (9) Order that the juvenile shall not be licensed to
30 operate a motor vehicle in the State of North
31 Carolina for as long as the court retains
32 jurisdiction over the juvenile or for any shorter
33 period of time and notify the Division of Motor
34 Vehicles of that order.
- 35 (10) Impose a curfew upon the juvenile.
- 36 (11) Order the juvenile to cooperate with placement in a
37 residential treatment facility, an intensive
38 nonresidential treatment program, an intensive
39 substance abuse program, or in a group home other
40 than a multipurpose group home operated by a State
41 agency.
- 42 (12) Order the juvenile to cooperate with placement in a
43 wilderness program.

- 1 (13) Impose confinement on an intermittent basis in an
2 approved detention facility. Confinement shall be
3 limited to not more than five 24-hour periods, the
4 timing of which is determined by the court in its
5 discretion.
- 6 (14) Place the juvenile on intensive probation under the
7 supervision of a court counselor.
- 8 (15) Order the juvenile to cooperate with a supervised
9 day program requiring the juvenile to be present at
10 a specified place for all or part of every day or
11 of certain days. The court also may require the
12 juvenile to comply with any other reasonable
13 conditions specified in the dispositional order
14 that are designed to facilitate supervision.
- 15 (16) Order the juvenile to participate in a regimented
16 training program.
- 17 (17) Order the juvenile to submit to house arrest.
- 18 (18) Suspend imposition of a more severe, statutorily
19 permissible disposition with the provision that the
20 juvenile meet certain conditions agreed to by the
21 juvenile and specified in the dispositional order.
22 The conditions shall not exceed the allowable
23 dispositions for the level under which disposition
24 is being imposed.
- 25 (19) Order that the juvenile be confined in a secure
26 juvenile detention facility for a term of up to 14
27 24-hour periods, which confinement shall not be
28 imposed consecutively with intermittent confinement
29 pursuant to subdivision (13) of this section at the
30 same dispositional hearing.
- 31 (20) Order the residential placement of a juvenile in a
32 multipurpose group home operated by a State agency.
- 33 (21) Commit the juvenile to a facility of the Department
34 in accordance with G.S. 7B-2509 for a period of not
35 less than six months.
- 36 (22) Require restitution of more than five hundred
37 dollars (\$500.00), full or partial, payable within
38 a 12 month period to any person who has suffered
39 loss or damage as a result of an offense committed
40 by the juvenile. The court may determine the
41 amount, terms, and conditions of restitution. If
42 the juvenile participated with another person or
43 persons, all participants should be jointly and

- 1 severally responsible for the payment of the
2 restitution.
- 3 (23) Order the juvenile to perform supervised community
4 service of not less than 100 hours and not more
5 than 200 hours, consistent with the juvenile's age,
6 skill, and ability, specifying the nature of work
7 and the number of hours required. The work shall
8 be related to the seriousness of the juvenile's
9 offense.
- 10 "§ 7B-2504.1. Delinquency history levels.
- 11 (a) Generally. -- The delinquency history level for a
12 delinquent juvenile is determined by calculating the sum of the
13 points assigned to each of the juvenile's prior adjudications and
14 to the juvenile's probation status, if any, that the court finds
15 to have been proved in accordance with this section.
- 16 (b) Points. -- Points are assigned as follows:
- 17 (1) For each prior adjudication of a Class A through E
18 felony offense, 4 points.
- 19 (2) For each prior adjudication of a Class F through I
20 felony offense or Class A1 misdemeanor offense, 2
21 points.
- 22 (3) For each prior adjudication of a Class 1, 2, or 3
23 misdemeanor offense, 1 point.
- 24 (4) If the juvenile was on probation at the time of
25 offense, 2 points.
- 26 (c) Delinquency History Levels. -- The delinquency history
27 levels are:
- 28 (1) Low -- No more than 1 point.
- 29 (2) Medium -- At least 2, but not more than 3 points.
- 30 (3) High -- At least 4 points.
- 31 In determining the delinquency history level, the
32 classification of a prior offense is the classification assigned
33 to that offense at the time the juvenile committed the offense
34 for which disposition is being ordered.
- 35 (d) Multiple Prior Adjudications Obtained in One Court
36 Session. -- For purposes of determining the delinquency history
37 level, if a juvenile is adjudicated delinquent for more than one
38 offense in a single session of district court, only the
39 adjudication for the offense with the highest point total is
40 used.
- 41 (e) Classification of Prior Adjudications From Other
42 Jurisdictions. -- Except as otherwise provided in this
43 subsection, an adjudication occurring in a jurisdiction other
44 than North Carolina is classified as a Class I felony if the

1 jurisdiction in which the offense occurred classifies the offense
2 as a felony, or is classified as a Class 3 misdemeanor if the
3 jurisdiction in which the offense occurred classifies the offense
4 as a misdemeanor. If the juvenile proves by the preponderance of
5 the evidence that an offense classified as a felony in the other
6 jurisdiction is substantially similar to an offense that is a
7 misdemeanor in North Carolina, the conviction is treated as that
8 class of misdemeanor for assigning delinquency history level
9 points. If the State proves by the preponderance of the evidence
10 that an offense classified as either a misdemeanor or a felony in
11 the other jurisdiction is substantially similar to an offense in
12 North Carolina that is classified as a Class I felony or higher,
13 the conviction is treated as that class of felony for assigning
14 delinquency history level points. If the State proves by the
15 preponderance of the evidence that an offense classified as a
16 misdemeanor in the other jurisdiction is substantially similar to
17 an offense classified as a Class A1 misdemeanor in North
18 Carolina, the adjudication is treated as a Class A1 misdemeanor
19 for assigning delinquency history level points.

20 (f) Proof of Prior Adjudications. -- A prior adjudication
21 shall be proved by any of the following methods:

- 22 (1) Stipulation of the parties.
- 23 (2) An original or copy of the court record of the
24 prior adjudication.
- 25 (3) A copy of records maintained by the Division of
26 Criminal Information or by the Department.
- 27 (4) Any other method found by the court to be reliable.

28 The State bears the burden of proving, by a preponderance of
29 the evidence, that a prior adjudication exists and that the
30 juvenile before the court is the same person as the juvenile
31 named in the prior adjudication. The original or a copy of the
32 court records or a copy of the records maintained by the Division
33 of Criminal Information or of the Department, bearing the same
34 name as that by which the juvenile is charged, is prima facie
35 evidence that the juvenile named is the same person as the
36 juvenile before the court, and that the facts set out in the
37 record are true. For purposes of this subsection, 'a copy'
38 includes a paper writing containing a reproduction of a record
39 maintained electronically on a computer or other data processing
40 equipment, and a document produced by a facsimile machine. The
41 prosecutor shall make all feasible efforts to obtain and present
42 to the court the juvenile's full record. Evidence presented by
43 either party at trial may be utilized to prove prior
44 adjudications. If asked by the juvenile, the prosecutor shall

1 furnish the juvenile's prior adjudications to the juvenile within
2 a reasonable time sufficient to allow the juvenile to determine
3 if the record available to the prosecutor is accurate.

4 "§ 7B-2505. Dispositional limits for each class of offense and
5 delinquency history level.

6 (a) Offense Classification. -- The offense classifications are
7 as follows:

8 (1) Violent -- adjudication of a Class A through E
9 felony offense;

10 (2) Serious -- adjudication of a Class F through I
11 felony offense or a Class A1 misdemeanor;

12 (3) Minor -- adjudication of a Class 1, 2, or 3
13 misdemeanor.

14 (b) Delinquency History Levels. -- A delinquency history level
15 shall be determined for each delinquent juvenile as provided in
16 G.S. 7B-2504.1.

17 (c) Level 1 -- Community Disposition. -- A court exercising
18 jurisdiction over a juvenile who has been adjudicated delinquent
19 and for whom the dispositional chart in subsection (f) of this
20 section prescribes a Level 1 disposition may provide for
21 evaluation and treatment under G.S. 7B-2500.2 and for any of the
22 dispositional alternatives contained in subdivisions (1) through
23 (13) of G.S. 7B-2504. In determining which dispositional
24 alternative is appropriate, the court shall consider the needs of
25 the juvenile, the appropriate community resources available to
26 meet those needs, and the protection of the public.

27 (d) Level 2 -- Intermediate Disposition. -- A court exercising
28 jurisdiction over a juvenile who has been adjudicated delinquent
29 and for whom the dispositional chart in subsection (f) of this
30 section prescribes a Level 2 disposition may provide for
31 evaluation and treatment under G.S. 7B-2500.2 and for any of the
32 dispositional alternatives contained in subdivisions (1) through
33 (20) of G.S. 7B-2504, but shall provide for at least one of the
34 intermediate dispositions authorized in subdivisions (11), (12)
35 and (14) through (23) of G.S. 7B-2504. In determining which
36 dispositional alternative is appropriate, the court shall
37 consider the needs of the juvenile, the appropriate community
38 resources available to meet those needs, and the protection of
39 the public.

40 (e) Level 3 -- Commitment. -- A court exercising jurisdiction
41 over a juvenile who has been adjudicated delinquent and for whom
42 the dispositional chart in subsection (f) of this section
43 prescribes a Level 3 disposition shall commit the juvenile to a
44 facility of the Department in accordance with G.S. 7B-2504(21).

1 However, a court may impose a Level 2 disposition rather than a
2 Level 3 disposition if the court submits written findings on the
3 record that substantiate extraordinary needs on the part of the
4 offending juvenile.

5 (f) Dispositions for Each Class of Offense and Delinquency
6 History Level; Disposition Chart Described. -- The authorized
7 disposition for each class of offense and delinquency history
8 level is as specified in the chart below. Delinquency history
9 levels are indicated horizontally on the top of the chart.
10 Classes of offense are indicated vertically on the left side of
11 the chart. Each cell on the chart indicates which of the
12 dispositional levels described in subsections (c) through (e) of
13 this section are prescribed for that combination of offense
14 classification and delinquency history level:

<u>DELINQUENCY HISTORY</u>			
<u>OFFENSE</u>	<u>LOW</u>	<u>MEDIUM</u>	<u>HIGH</u>
<u>VIOLENT</u>	<u>Level 2 or 3</u>	<u>Level 3</u>	<u>Level 3</u>
<u>SERIOUS</u>	<u>Level 1 or 2</u>	<u>Level 2</u>	<u>Level 2 or 3</u>
<u>MINOR</u>	<u>Level 1</u>	<u>Level 1 or 2</u>	<u>Level 2.</u>

25 (g) A juvenile who has been adjudicated for a minor offense
26 shall not be committed to a Level 3 disposition unless the
27 juvenile has been adjudicated of four or more prior minor offenses
28 of which each adjudication occurred during a different session of
29 juvenile court.

30 (h) If a juvenile is adjudicated of more than one offense, the
31 court shall consolidate the offenses for disposition and impose a
32 single disposition for the consolidated offenses. The
33 disposition shall be specified for the class of offense and
34 delinquency history level of the most serious offense.

35 "§ 7B-2506. Conditions of probation; violation of probation.

36 (a) In any case where a juvenile is placed on probation
37 pursuant to G.S. 7B-2504(8), the court counselor shall have the
38 authority to visit the juvenile where the juvenile resides. The
39 court may impose conditions of probation that are related to the
40 needs of the juvenile and that are reasonably necessary to ensure
41 that the juvenile will lead a law-abiding life, including:

- 42 (1) That the juvenile shall remain on good behavior and
43 not violate any laws.
- 44 (2) That the juvenile attend school regularly.

- 1 (3) That the juvenile maintain passing grades in up to
2 four courses during each grading period and meet
3 with the court counselor and a representative of
4 the school to make a plan for how to maintain those
5 passing grades.
- 6 (4) That the juvenile not associate with specified
7 persons or be in specified places.
- 8 (5) That the juvenile:
- 9 a. Remain free of any controlled substance
10 included in any schedule of Article 5 of
11 Chapter 90 of the General Statutes, the
12 Controlled Substances Act;
- 13 b. Remain free of any alcoholic beverage
14 regulated under Chapter 18B of the General
15 Statutes; and
- 16 c. Submit to random drug testing.
- 17 (6) That the juvenile abide by a prescribed curfew.
- 18 (7) That the juvenile submit to a warrantless search at
19 reasonable times.
- 20 (8) That the juvenile possess no firearm, explosive
21 device, or other deadly weapon.
- 22 (9) That the juvenile report to a court counselor as
23 often as required by a court counselor.
- 24 (10) That the juvenile make specified financial
25 restitution or pay a fine in accordance with G.S.
26 7B-2504(4) and (5).
- 27 (11) That the juvenile be employed regularly if not
28 attending school.
- 29 (12) That the juvenile satisfy any other conditions
30 determined appropriate by the court.
- 31 (b) In addition to the regular conditions of probation
32 specified in subsection (a) of this section, the court may order
33 the juvenile to comply, if directed to comply by the chief court
34 counselor, with one or more of the following conditions:
- 35 (1) Perform up to 20 hours of community service;
36 (2) Submit to substance abuse monitoring and treatment;
37 (3) Cooperate with electronic monitoring;
38 (4) Cooperate with intensive supervision; and
39 (5) Participate in a life skills or an educational
40 skills program administered by the Department.
- 41 However, in no event shall the court counselor direct a juvenile
42 who is a level one offender to comply with electronic monitoring
43 or intensive supervision.

1 (c) An order of probation shall remain in force for a period
2 not to exceed one year from the date entered. Prior to
3 expiration of an order of probation, the court may extend it for
4 an additional period of one year after a hearing if the court
5 finds that the extension is necessary to protect the community or
6 to safeguard the welfare of the juvenile.

7 (d) If the juvenile violates the conditions of probation set
8 by the court, the court may elect to continue the original
9 conditions of probation, modify the conditions of probation, or,
10 except as provided in subsection (e) of this section, order a new
11 disposition at the next higher level on the disposition chart in
12 G.S. 7B-2505. In the court's discretion, part of the new
13 disposition may include an order of confinement in a secure
14 juvenile detention facility for up to twice the term authorized
15 by G.S. 7B-2505.

16 (e) A court shall not order a Level 3 disposition for a
17 violation of the conditions of probation by a juvenile
18 adjudicated delinquent for an offense classified as minor under
19 G.S. 7B-2505.

20 "§ 7B-2507. Probation review.

21 The court may review the progress of any juvenile on probation
22 at any time during the period of probation or at the end of
23 probation. Except as provided in G.S. 7B-2506, the conditions or
24 duration of probation may be modified only as provided in this
25 Subchapter and only after there is notice and a hearing. If a
26 juvenile violates the conditions of probation, the juvenile and
27 the juvenile's parent, guardian, or custodian after notice may be
28 required to appear before the court and the court may make any
29 disposition of the matter authorized by this Subchapter. At the
30 end of or at any time during probation, the court may terminate
31 probation by written order upon finding that there is no further
32 need for supervision. The finding and order terminating probation
33 may be entered in chambers in the absence of the juvenile and may
34 be based on a report from the court counselor or, at the election
35 of the court, the order may be entered with the juvenile present
36 after notice and a hearing.

37 "§ 7B-2508. Dispositional order.

38 The dispositional order shall be in writing and shall contain
39 appropriate findings of fact and conclusions of law. The court
40 shall state with particularity, both orally and in the written
41 order of disposition, the precise terms of the disposition
42 including the kind, duration, and the person who is responsible
43 for carrying out the disposition and the person or agency in whom
44 custody is vested.

1 "§ 7B-2509. Commitment of delinquent juvenile to Department.

2 (a) Pursuant to G.S. 7B-2504 and G.S. 7B-2505, the court may
3 commit a delinquent juvenile who is at least 10 years of age to a
4 facility of the Department for placement in one of the
5 residential facilities operated by the Department. Commitment
6 shall be for an indefinite term of at least six months. In no
7 event shall the term exceed the nineteenth birthday of the
8 juvenile.

9 (b) The court may commit a juvenile to a definite term of not
10 more than two years if the court finds that the juvenile is 14
11 years of age or older, has been previously adjudicated delinquent
12 for two or more felony offenses, and has been previously
13 committed to a residential facility operated by the Department.

14 (c) The chief court counselor shall have the responsibility
15 for transporting the juvenile to the residential facility
16 designated by the Department. The juvenile shall be accompanied
17 to the residential facility by a person of the same sex.

18 (d) The chief court counselor shall ensure that the records
19 requested by the Secretary or the Secretary's designee accompany
20 the juvenile upon transportation for admittance to a training
21 school or, if not obtainable at the time of admission, are sent
22 to the training school within 15 days of the admission. If
23 records requested by the Department for admission do not exist,
24 to the best knowledge of the chief court counselor, the chief
25 court counselor shall so stipulate in writing to the training
26 school. If such records do exist, but the chief court counselor
27 is unable to obtain copies of them, a district court may order
28 that the records from public agencies be made available to the
29 training school. Records that are confidential by law shall
30 remain confidential and the Department shall be bound by the
31 specific laws governing the confidentiality of these records. All
32 records shall be used in a manner consistent with the best
33 interests of the juvenile.

34 (e) A commitment order accompanied by information requested
35 by the Secretary shall be forwarded to the Department. The
36 Secretary shall place the juvenile in the residential facility
37 that would best provide for the juvenile's needs and shall notify
38 the committing court. The Secretary may assign a juvenile
39 committed for delinquency to any institution or other program of
40 the Department or licensed by the Department, which program is
41 appropriate to the needs of the juvenile.

42 (f) When the court commits a juvenile to a facility of the
43 Department, the Secretary shall prepare a plan for care or
44 treatment within 30 days after assuming custody of the juvenile.

1 (g) Commitment of a juvenile to a facility of the Department
2 does not terminate the court's continuing jurisdiction over the
3 juvenile and the juvenile's parent, guardian, or custodian.
4 Commitment of a juvenile to a facility of the Department
5 transfers only physical custody of the juvenile. Legal custody
6 remains with the parent, guardian, custodian, agency, or
7 institution in whom it was vested.

8 (h) Pending placement of a juvenile with the Department, the
9 court may house a juvenile who has been adjudicated delinquent
10 for an offense that would be a Class A, B1, B2, C, D, or E felony
11 if committed by an adult in a holdover facility up to 72 hours if
12 the court, based on the information provided by the court
13 counselor, determines that no acceptable alternative placement is
14 available and the protection of the public requires that the
15 juvenile be housed in a holdover facility.

16 "§ 7B-2510. Post-release supervision planning; release.

17 (a) The Secretary shall be responsible for evaluation of the
18 progress of each juvenile at least once every six months as long
19 as the juvenile remains in the care of the Department. If the
20 Secretary determines that a juvenile is ready for release, the
21 Secretary shall initiate a post-release supervision planning
22 process. The post-release supervision planning process shall be
23 defined by rules and regulations of the Department, but shall
24 include the following:

25 (1) Written notification shall be given to the court
26 that ordered commitment.

27 (2) A post-release supervision planning conference
28 shall be held involving as many as possible of the
29 following: the juvenile, the juvenile's parent,
30 guardian, or custodian, court counselors who have
31 supervised the juvenile on probation or will
32 supervise the juvenile on post-release supervision,
33 and staff of the facility that found the juvenile
34 ready for release. The planning conference shall
35 include personal contact and evaluation rather than
36 telephonic notification.

37 (3) The planning conference participants shall
38 consider, based on the individual needs of the
39 juvenile and pursuant to rules adopted by the
40 Department, placement of the juvenile in any
41 program under the auspices of the Department,
42 including the Community-Based Alternatives
43 programs, that, in the judgment of the Department,

1 may serve as a transitional placement, pending
2 release under G.S. 7B-2512.

3 (b) The Department shall develop the plan in writing and base
4 the terms on the needs of the juvenile and the protection of the
5 public. Every plan shall require the juvenile to complete at
6 least 90 days of post-release supervision.

7 (c) The Department shall release a juvenile under a plan of
8 post-release supervision at least 90 days prior to the later of:

9 (1) Completion of the juvenile's definite term of
10 commitment; or

11 (2) If the juvenile is committed for an indefinite
12 term, either on the juvenile's eighteenth birthday
13 if no motion for extended jurisdiction has been
14 filed pursuant to G.S. 7B-2513 or on the juvenile's
15 nineteenth birthday.

16 (d) Notwithstanding Articles 30 and 31 of Subchapter III of
17 this Chapter, before the court releases a juvenile who is serving
18 a commitment for a Class A or B1 felony to post-release
19 supervision, the Department shall notify, at least 45 days in
20 advance of the scheduled release date, by first-class mail at the
21 last known address:

22 (1) The juvenile;

23 (2) The juvenile's parent, guardian, or custodian;

24 (3) The district attorney of the district where the
25 juvenile was adjudicated;

26 (4) The head law enforcement agency that took the
27 juvenile into custody; and

28 (5) The victim and any of the victim's immediate family
29 members who have requested in writing to be
30 notified.

31 The notification shall include only the juvenile's name,
32 offense, date of commitment, and date of consideration for
33 release. A copy of the notice shall be placed in the juvenile's
34 file.

35 (e) The Department may release a juvenile under an indefinite
36 commitment to post-release supervision only after the juvenile
37 has been committed to a facility of the Department for a period
38 of at least six months.

39 (f) A juvenile committed to a facility of the Department for a
40 definite term shall receive credit toward that term for the time
41 the juvenile spends on post-release supervision.

42 "§ 7B-2511. Revocation of post-release supervision.

43 If a juvenile fails to complete the terms of post-release
44 supervision, the court counselor providing post-release

1 supervision may make a motion for review in the court in the
2 district where the juvenile has been residing during post-release
3 supervision. The court shall hold a hearing to determine whether
4 there has been a violation. With respect to any hearing pursuant
5 to this section, the juvenile:

- 6 (1) Shall have reasonable notice in writing of the
7 nature and content of the allegations in the
8 motion, including notice that the purpose of the
9 hearing is to determine whether the juvenile has
10 violated the terms of post-release supervision to
11 the extent that post-release supervision should be
12 revoked;
13 (2) Shall be represented by an attorney at the hearing;
14 (3) Shall have the right to confront and cross-examine
15 any persons who have made allegations against the
16 juvenile; and
17 (4) May admit, deny, or explain the violation alleged
18 and may present proof, including affidavits or
19 other evidence, in support of the juvenile's
20 contentions. A record of the proceeding shall be
21 made and preserved in the juvenile's record.

22 If the court determines that the juvenile has violated the
23 terms of post-release supervision, the court may revoke the post-
24 release supervision or make any other disposition authorized by
25 this Subchapter.

26 If the court revokes the post-release supervision, the chief
27 court counselor shall have the responsibility for returning the
28 juvenile to the facility specified by the Department. If the
29 court revokes a post-release supervision, the juvenile shall be
30 returned to a facility of the Department for an indefinite term
31 of at least six months, provided however, that no juvenile shall
32 remain committed to a Department facility past the juvenile's
33 eighteenth birthday, or the juvenile's nineteenth birthday if
34 jurisdiction has been extended pursuant to G.S. 7B-2513.

35 "§ 7B-2512. Final discharge.

36 (a) The Department shall release a juvenile only after the
37 juvenile completes post-release supervision or when the juvenile
38 is released to the Department of Correction pursuant to G.S. 15A-
39 1340.16B.

40 (b) Notwithstanding the provisions of this section, in no
41 event shall a juvenile remain committed to a facility of the
42 Department after the juvenile's eighteenth birthday except
43 pursuant to G.S. 7B-2513.

1 "§ 7B-2513. Extended jurisdiction under certain circumstances;
2 review hearing.

3 (a) By order of the court, juvenile court jurisdiction over a
4 juvenile may be extended past the age of 18 years until the
5 juvenile reaches the age of 19, if the juvenile is committed to a
6 juvenile facility for an offense that would be a Class A-E felony
7 if committed by an adult and the juvenile is within 45 days of
8 the juvenile's eighteenth birthday. The provisions of this
9 Subchapter shall apply to any person under the jurisdiction of
10 the juvenile court pursuant to this section, regardless of
11 whether the term 'person' or 'juvenile' is used in the provision.

12 (b) When the chief court counselor, or the Department if the
13 juvenile is committed to a facility of the Department, determines
14 a juvenile should remain under the jurisdiction of the court for
15 a period of time after the age of 18 years, the chief court
16 counselor or Department shall file a motion for a review hearing
17 in the judicial district where the juvenile was adjudicated.
18 This motion shall be filed at least 180 days prior to the
19 eighteenth birthday of the juvenile. The chief court counselor or
20 Department shall notify the juvenile, the juvenile's attorney,
21 and the juvenile's parent, guardian, or custodian in writing of
22 the date and time of the scheduled hearing at least 10 days prior
23 to the scheduled hearing date.

24 (c) Within 30 days after the motion is filed, the court shall
25 conduct a review hearing to determine whether the juvenile shall
26 remain under the jurisdiction of the court. The court counselor
27 and the prosecutor shall attend the hearing and, if the court
28 requests, present testimony or evidence as to whether the
29 juvenile continues to be in need of and can benefit from further
30 treatment or services.

31 (d) In determining whether to order that the juvenile remain
32 under the jurisdiction of the court, the court shall consider:

- 33 (1) The recommendation of the chief court counselor or
34 the Secretary based on the juvenile's progress;
35 (2) The likelihood that continued jurisdiction will
36 lead to further rehabilitation; and
37 (3) The protection of the public.

38 (e) If the court orders the juvenile remain under the
39 jurisdiction of the court and the juvenile is committed to a
40 facility of the Department, commitment shall be for a definite
41 term or an indefinite term not to exceed the nineteenth birthday
42 of the person.

43 (f) The Secretary shall modify the plan for care or treatment
44 of the juvenile prepared pursuant to G.S. 7B-2509.

1 "§ 7B-2514. Transfer authority of Governor.

2 The Governor may order transfer of any person less than 18
3 years of age from any jail or penal facility of the State to one
4 of the residential facilities operated by the Department in
5 appropriate circumstances, provided the Governor shall consult
6 with the Department concerning the feasibility of the transfer in
7 terms of available space, staff, and suitability of program.

8 When an inmate, committed to the Department of Correction, is
9 transferred by the Governor to a residential program operated by
10 the Department, the Department may release the juvenile based on
11 the needs of the juvenile and the best interests of the State.
12 Transfer shall not divest the probation or parole officer of the
13 officer's responsibility to supervise the inmate on release.

14 "ARTICLE 26.

15 "Modification and Enforcement of Dispositional Orders; Appeals.

16 "§ 7B-2600. Authority to modify or vacate.

17 (a) Upon motion in the cause or petition, and after notice, the
18 court may conduct a review hearing to determine whether the order
19 of the court is in the best interests of the juvenile, and the
20 court may modify or vacate the order in light of changes in
21 circumstances or the needs of the juvenile.

22 (b) In a case of delinquency, the court may reduce the nature
23 or the duration of the disposition on the basis that it was
24 imposed in an illegal manner or is unduly severe with reference
25 to the seriousness of the offense, the culpability of the
26 juvenile, or the dispositions given to juveniles convicted of
27 similar offenses.

28 (c) In any case where the court finds the juvenile to be
29 delinquent or undisciplined, the jurisdiction of the court to
30 modify any order or disposition made in the case shall continue
31 (i) during the minority of the juvenile, (ii) until the juvenile
32 reaches the age of 19 years, if the court has extended
33 jurisdiction, or (iii) until terminated by order of the court.

34 "§ 7B-2601. Request for modification for lack of suitable
35 services.

36 If the Secretary finds that any juvenile committed to the
37 Department's care is not suitable for its program, the Secretary
38 may make a motion in the cause so that the court may make an
39 alternative disposition that is consistent with G.S. 7B-2505.

40 "§ 7B-2602. Right to appeal transfer decisions.

41 (a) Any order transferring jurisdiction of the court in a
42 juvenile matter to the superior court pursuant to 7B-2203 is an
43 interlocutory order and is appealable to the superior court.

1 (b) Upon motion of a proper party as defined in G.S. 7B-2603,
2 the superior court may review any order transferring jurisdiction
3 of the court in a juvenile matter to the superior court. The
4 notice of appeal must be filed within ten days of the juvenile
5 court's decision to transfer. The clerk of superior court shall
6 provide the district attorney with a copy of the notice of
7 appeal. Within seven days after receipt of the notice of appeal
8 from the transfer decision, by either the district attorney or
9 the juvenile, the clerk of superior court shall forward the case
10 file to the superior court. The superior court shall, within 15
11 days, of receiving the case file from the juvenile court, review
12 the file and conduct a hearing to receive additional evidence on
13 the issue of transfer to determine if there has been substantial
14 compliance with 7B-2203. The superior court shall not rule on
15 whether the juvenile court had sufficient evidence to find
16 probable cause for the alleged offense. Upon making its
17 determination, the superior court shall enter an order either (i)
18 remanding the case to juvenile court or (ii) upholding the
19 transfer order. The superior court order shall be an
20 interlocutory order that may be appealed to the Court of Appeals.

21 "§ 7B-2603. Proper parties for appeal.

22 An appeal may be taken by the juvenile, the juvenile's parent,
23 guardian, or custodian, or the State or county agency. The
24 State's appeal is limited to the following orders in delinquency
25 or undisciplined cases:

26 (1) An order finding a State statute to be
27 unconstitutional; and

28 (2) Any order which terminates the prosecution of a
29 petition by upholding the defense of double
30 jeopardy, by holding that a cause of action is not
31 stated under a statute, or by granting a motion to
32 suppress.

33 "§ 7B-2604. Disposition pending appeal.

34 Pending disposition of an appeal, the release of the juvenile,
35 with or without conditions, should issue in every case unless the
36 court orders otherwise. For compelling reasons which must be
37 stated in writing, the court may enter a temporary order
38 affecting the custody or placement of the juvenile as the court
39 finds to be in the best interests of the juvenile or the State.

40 "§ 7B-2605. Disposition after appeal.

41 Upon the affirmation of the order of adjudication or
42 disposition of the court by the Court of Appeals or by the
43 Supreme Court in the event of an appeal, the court shall have
44 authority to modify or alter the original order of adjudication

1 or disposition as the court finds to be in the best interests of
2 the juvenile to reflect any adjustment made by the juvenile or
3 change in circumstances during the period of time the appeal was
4 pending. If the modifying order is entered ex parte, the court
5 shall give notice to interested parties to show cause within 10
6 days thereafter as to why the modifying order should be vacated
7 or altered. Upon the issuance of a transfer order of a juvenile
8 to the Superior Court jurisdiction, the juvenile shall be
9 entitled upon proper motion to review of the transfer order
10 before the Court of Appeals. Notice of appeal shall be given in
11 open court at the time of the hearing or in writing within five
12 days after the entry of the order. The Court of Appeals shall
13 review the transfer order and render a decision within sixty days
14 of filing the appeal.

15 "ARTICLE 27.

16 "Authority Over Parents of Juveniles
17 Adjudicated Delinquent or Undisciplined.

18 "§ 7B-2700. Appearance in court.

19 (a) The parent, guardian, or custodian of a juvenile under the
20 jurisdiction of the juvenile court shall attend the hearings of
21 which the parent, guardian, or custodian receives notice. The
22 court may excuse the appearance of either or both parents or the
23 guardian or custodian at subsequent hearings. Unless so excused,
24 the willful failure of a parent, guardian, or custodian to attend
25 a hearing of which the parent, guardian, or custodian has notice
26 shall be grounds for contempt. (b) No employer may discharge
27 or demote any employee because the employee is required to appear
28 in court during work hours pursuant to this section.

29 (c) Any employer who violates any provision of this section
30 shall be liable in a civil action for reasonable damages suffered
31 by an employee as a result of the violation, and an employee
32 discharged or demoted in violation of this section shall be
33 entitled to be reinstated to his former position. The burden of
34 proof shall be upon the employee.

35 (d) The statute of limitations for actions under this section
36 shall be one year pursuant to G.S. 1-54.

37 "§ 7B-2701. Parental responsibility classes.

38 The court may order the parent of a juvenile who has been
39 adjudicated undisciplined or delinquent to attend parental
40 responsibility classes if those classes are available in the
41 judicial district in which the parent resides.

42 "§ 7B-2702. Medical, surgical, psychiatric, or psychological
43 evaluation or treatment of juvenile or parent.

44 (a) If the court orders medical, surgical, psychiatric,
45 psychological, or other evaluation or treatment pursuant to G.S.

1 7B-2500.2, the court may order the parent or other responsible
2 parties to pay the cost of the treatment or care ordered.

3 (b) At the dispositional hearing or a subsequent hearing, if
4 the court finds that it is in the best interests of the juvenile
5 for the parent, guardian, or custodian to be directly involved in
6 the juvenile's evaluation or treatment, the court may order that
7 person to participate in medical, psychiatric, psychological, or
8 other evaluation or treatment of the juvenile. The cost of the
9 evaluation or treatment shall be paid pursuant to G.S. 7B-2500.2.

10 (c) At the dispositional hearing or a subsequent hearing, the
11 court may determine whether the best interests of the juvenile
12 require that the parent, guardian, or custodian undergo
13 psychiatric, psychological, or other evaluation or treatment or
14 counseling directed toward remedying behaviors or conditions that
15 led to or contributed to the juvenile's adjudication or to the
16 court's decision to remove custody of the juvenile from the
17 parent, guardian, or custodian. If the court finds that the best
18 interests of the juvenile require the parent, guardian, or
19 custodian undergo evaluation or treatment, it may order that
20 person to comply with a plan of evaluation or treatment approved
21 by the court or condition legal custody or physical placement of
22 the juvenile with the parent, guardian, or custodian upon that
23 person's compliance with the plan of evaluation or treatment.

24 (d) In cases in which the court has ordered the parent of the
25 juvenile, rather than a guardian or custodian, to comply with or
26 undergo evaluation or treatment, the court may order the parent
27 to pay the cost of evaluation or treatment ordered pursuant to
28 this subsection. In cases in which the court has conditioned
29 legal custody or physical placement of the juvenile with the
30 parent upon the parent's compliance with a plan of evaluation or
31 treatment, the court may charge the cost of the evaluation or
32 treatment to the county of the juvenile's residence if the court
33 finds the parent is unable to pay the cost of the evaluation or
34 treatment. In all other cases, if the court finds the parent is
35 unable to pay the cost of the evaluation or treatment ordered
36 pursuant to this subsection, the court may order the parent to
37 receive evaluation or treatment currently available from the area
38 mental health program that serves the parent's catchment area.

39 "§ 7B-2703. Compliance with orders of court.

40 (a) The court may order the parent, guardian, or custodian, to
41 the extent that person is able to do so, to provide
42 transportation for a juvenile to keep an appointment with a court
43 counselor or to comply with other orders of the court.

1 (b) The court may order a parent, guardian, or custodian to
2 cooperate with and assist the juvenile in complying with the
3 terms and conditions of probation or other orders of the court.

4 "§ 7B-2704. Payment of support or other expenses; assignment of
5 insurance coverage.

6 At the dispositional hearing or a subsequent hearing, if the
7 court finds that the parent is able to do so, the court may order
8 the parent to:

9 (1) Pay a reasonable sum that will cover in whole or in
10 part the support of the juvenile. If the court
11 requires the payment of child support, the amount
12 of the payments shall be determined as provided in
13 G.S. 50-13.4;

14 (2) Pay a fee for probation supervision or residential
15 facility costs;

16 (3) Assign private insurance coverage to cover medical
17 costs while the juvenile is in secure detention,
18 training school, or other out-of-home placement;
19 and

20 (4) Pay court-appointed attorneys' fees.

21 If the court places a juvenile in the custody of a county
22 department of social services and if the court finds that the
23 parent is unable to pay the cost of the support required by the
24 juvenile, the cost shall be paid by the county department of
25 social services in whose custody the juvenile is placed, provided
26 the juvenile is not receiving care in an institution owned or
27 operated by the State or federal government or any subdivision
28 thereof.

29 "§ 7B-2705. Contempt for failure to comply.

30 Upon motion of the court counselor or prosecutor or upon the
31 court's own motion, the court may issue an order directing the
32 parent, guardian, or custodian to appear and show cause why the
33 parent, guardian, or custodian should not be found or held in
34 civil or criminal contempt for willfully failing to comply with
35 an order of the court. Chapter 5A of the General Statutes shall
36 govern contempt proceedings initiated pursuant to this Article.

37 "ARTICLE 28.

38 "Interstate Compact on Juveniles.

39 "§ 7B-2800. Execution of Compact.

40 The Governor is hereby authorized and directed to execute a
41 Compact on behalf of this State with any other state or states
42 legally joining therein in the form substantially as follows: The
43 contracting states solemnly agree.

44 "§ 7B-2801. Findings and purposes.

1 Juveniles who are not under proper supervision and control, or
2 who have absconded, escaped, or run away, are likely to endanger
3 their own health, morals, and welfare, and the health, morals,
4 and welfare of others. The cooperation of the states party to
5 this Compact is therefore necessary to provide for the welfare
6 and protection of juveniles and of the public with respect to:

- 7 (1) Cooperative supervision of delinquent juveniles on
8 probation or parole;
- 9 (2) The return, from one state to another, of
10 delinquent juveniles who have escaped or absconded;
- 11 (3) The return, from one state to another, of
12 nondelinquent juveniles who have run away from
13 home; and
- 14 (4) Additional measures for the protection of juveniles
15 and of the public, which any two or more of the
16 party states may find desirable to undertake
17 cooperatively.

18 In carrying out the provisions of this Compact, the party
19 states shall be guided by the noncriminal, reformatory, and
20 protective policies which guide their laws concerning delinquent,
21 neglected, or dependent juveniles generally. It shall be the
22 policy of the states party to this Compact to cooperate and
23 observe their respective responsibilities for the prompt return
24 and acceptance of juveniles and delinquent juveniles who become
25 subject to the provisions of this Compact. The provisions of this
26 Compact shall be reasonably and liberally construed to accomplish
27 the foregoing purposes.

28 "§ 7B-2802. Existing rights and remedies.

29 All remedies and procedures provided by this Compact are in
30 addition to and not in substitution for other rights, remedies,
31 and procedures and are not in derogation of parental rights and
32 responsibilities.

33 "§ 7B-2803. Definitions.

34 For the purposes of this Compact, 'delinquent juvenile' means
35 any juvenile who has been adjudged delinquent and who, at the
36 time the provisions of this Compact are invoked, is still subject
37 to the jurisdiction of the court that has made adjudication or to
38 the jurisdiction or supervision of an agency or institution
39 pursuant to an order of the court; 'probation or parole' means
40 any kind of post-release supervision of juveniles authorized
41 under the laws of the states party hereto; 'court' means any
42 court having jurisdiction over delinquent, neglected, or
43 dependent children; 'state' means any state, territory, or
44 possession of the United States, the District of Columbia, and

1 the Commonwealth of Puerto Rico; and 'residence' or any variant
2 thereof means a place at which a home or regular place of abode
3 is maintained.

4 "§ 7B-2804. Return of runaways.

5 (a) The parent, guardian, person, or agency entitled to legal
6 custody of a juvenile who has not been adjudged delinquent but
7 who has run away without the consent of the parent, guardian,
8 person, or agency may petition the appropriate court in the
9 demanding state for the issuance of a requisition for the
10 juvenile's return. The petition shall state the name and age of
11 the juvenile, the name of the petitioner and the basis of
12 entitlement to the juvenile's custody, the circumstances of the
13 running away, the juvenile's location if known at the time
14 application is made, and any other facts that may tend to show
15 that the juvenile who has run away is endangering the juvenile's
16 own welfare or the welfare of others and is not an emancipated
17 minor. The petition shall be verified by affidavit, shall be
18 executed in duplicate, and shall be accompanied by two certified
19 copies of the document or documents on which the petitioner's
20 entitlement to the juvenile's custody is based, such as birth
21 certificates, letters of guardianship, or custody decrees. Any
22 further affidavits and other documents as may be deemed proper
23 may be submitted with the petition. The judge of the court to
24 which this application is made may hold a hearing thereon to
25 determine whether for the purposes of this Compact the petitioner
26 is entitled to the legal custody of the juvenile, whether or not
27 it appears that the juvenile has in fact run away without
28 consent, whether or not the juvenile is an emancipated minor, and
29 whether or not it is in the best interests of the juvenile to
30 compel the juvenile's return to the state. If the judge
31 determines, either with or without a hearing, that the juvenile
32 should be returned, the judge shall present to the appropriate
33 court or to the executive authority of the state where the
34 juvenile is alleged to be located a written requisition for the
35 return of the juvenile. The requisition shall set forth the name
36 and age of the juvenile, the determination of the court that the
37 juvenile has run away without the consent of a parent, guardian,
38 person, or agency entitled to legal custody, and that it is in
39 the best interests and for the protection of the juvenile that
40 the juvenile be returned. In the event that a proceeding for the
41 adjudication of the juvenile as a delinquent, neglected, or
42 dependent juvenile is pending in the court at the time when the
43 juvenile runs away, the court may issue a requisition for the
44 return of the juvenile upon its own motion, regardless of the

1 consent of the parent, guardian, person, or agency entitled to
2 legal custody, reciting therein the nature and circumstances of
3 the pending proceeding. The requisition shall in every case be
4 executed in duplicate and shall be signed by the judge. One copy
5 of the requisition shall be filed with the Compact Administrator
6 of the demanding state, there to remain on file subject to the
7 provisions of law governing records of the court. Upon the
8 receipt of a requisition demanding the return of a juvenile who
9 has run away, the court or the executive authority to whom the
10 requisition is addressed shall issue an order to any peace
11 officer or other appropriate person directing that person to take
12 into custody and detain the juvenile. The detention order must
13 substantially recite the facts necessary to the validity of its
14 issuance hereunder. No juvenile detained upon the order shall be
15 delivered over to the officer whom the court has appointed to
16 receive the juvenile unless the juvenile first is taken before a
17 judge of a court in the state, who shall inform the juvenile of
18 the demand made for the juvenile's return, and who may appoint
19 counsel or guardian ad litem for the juvenile. If the court finds
20 that the requisition is in order, the court shall deliver the
21 juvenile over to the officer appointed to receive the juvenile by
22 the court demanding the juvenile. The court, however, may fix a
23 reasonable time to be allowed for the purpose of testing the
24 legality of the proceeding.

25 Upon reasonable information that a person is a juvenile who has
26 run away from another state party to this Compact without the
27 consent of a parent, guardian, person, or agency entitled to
28 legal custody, the juvenile may be taken into custody without a
29 requisition and brought before a judge of the appropriate court
30 who may appoint counsel or guardian ad litem for the juvenile and
31 who shall determine after a hearing whether sufficient cause
32 exists to hold the person, subject to the order of the court, for
33 the juvenile's own protection and welfare, for such a time not
34 exceeding 90 days as will enable the return of the juvenile to
35 another state party to this Compact pursuant to a requisition for
36 return from a court of that state. If, at the time when a state
37 seeks the return of a juvenile who has run away, there is pending
38 in the state wherein the juvenile is found, any criminal charge,
39 or any proceeding to have the juvenile adjudicated a delinquent
40 juvenile for an act committed in the state, or if the juvenile is
41 suspected of having committed within the state a criminal offense
42 or an act of juvenile delinquency, the juvenile shall not be
43 returned without the consent of the state until discharged from
44 prosecution or other form of proceeding, imprisonment, detention,

1 or supervision for the offense or juvenile delinquency. The duly
2 accredited officers of any state party to this Compact, upon the
3 establishment of their authority and the identity of the juvenile
4 being returned, shall be permitted to transport the juvenile
5 through any and all states party to this Compact, without
6 interference. Upon return of the juvenile to the state from which
7 the juvenile ran away, the juvenile shall be subject to such
8 further proceedings as may be appropriate under the laws of that
9 state.

10 (b) The state to which the juvenile is returned under this
11 Article shall be responsible for payment of the transportation
12 costs of return.

13 (c) The term 'juvenile' as used in this Article means any
14 person who is a minor under the law of the state of residence of
15 the parent, guardian, person, or agency entitled to the legal
16 custody of the minor.

17 "§ 7B-2805. Return of escapees and absconders.

18 (a) The appropriate person or authority from whose probation or
19 parole supervision a delinquent juvenile has absconded or from
20 whose institutional custody a delinquent juvenile has escaped
21 shall present to the appropriate court or to the executive
22 authority of the state where the delinquent juvenile is alleged
23 to be located a written requisition for the return of the
24 delinquent juvenile. The requisition shall state the name and age
25 of the delinquent juvenile, the particulars of the juvenile's
26 adjudication as a delinquent juvenile, the circumstances of the
27 breach of the terms of probation or parole or of the juvenile's
28 escape from an institution or agency vested with legal custody or
29 supervision, and the location of the delinquent juvenile, if
30 known, at the time the requisition is made. The requisition shall
31 be verified by affidavit, shall be executed in duplicate, and
32 shall be accompanied by two certified copies of the judgment,
33 formal adjudication, or order of commitment which subjects the
34 delinquent juvenile to probation or parole or to the legal
35 custody of the institution or agency concerned. Any further
36 affidavits and documents as may be deemed proper may be submitted
37 with the requisition. One copy of the requisition shall be filed
38 with the Compact Administrator of the demanding state, there to
39 remain on file subject to the provisions of the law governing
40 records of the appropriate court. Upon the receipt of a
41 requisition demanding the return of a delinquent juvenile who has
42 absconded or escaped, the court or the executive authority to
43 whom the requisition is addressed shall issue an order to any
44 peace officer or other appropriate person directing the person to

1 take into custody and detain such delinquent juvenile. The
2 detention order must substantially recite the facts necessary to
3 the validity of its issuance hereunder. No delinquent juvenile
4 detained upon the order shall be delivered over to the officer
5 whom the appropriate person or authority demanding the juvenile
6 has appointed to receive the juvenile, unless the juvenile is
7 first taken forthwith before a judge of an appropriate court in
8 the state, who shall inform the juvenile of the demand made for
9 the return and who may appoint counsel or guardian ad litem for
10 the juvenile. If the judge of the court finds that the
11 requisition is in order, the judge shall deliver the delinquent
12 juvenile over to the officer whom the appropriate person or
13 authority demanding the juvenile appointed to receive the
14 juvenile. The judge, however, may fix a reasonable time to be
15 allowed for the purpose of testing the legality of the
16 proceeding.

17 Upon reasonable information that a person is a delinquent
18 juvenile who has absconded while on probation or parole, or
19 escaped from an institution or agency vested with legal custody
20 or supervision in any state party to this Compact, the person may
21 be taken into custody in any other state party to this Compact
22 without a requisition. But in that event, the juvenile shall be
23 taken forthwith before a judge of the appropriate court, who may
24 appoint counsel or guardian ad litem for the person and who shall
25 determine after a hearing, whether sufficient cause exists to
26 hold the person subject to the order of the court for a length of
27 time, not exceeding 90 days, as will enable detention of the
28 juvenile under a detention order issued on a requisition pursuant
29 to this Article. If, at the time when a state seeks the return of
30 a delinquent who has either absconded while on probation or
31 parole or escaped from an institution or agency vested with legal
32 custody or supervision, there is pending in the state wherein the
33 juvenile is detained any criminal charge or any proceeding to
34 have the juvenile adjudicated a delinquent juvenile for an act
35 committed in the state, or if the juvenile is suspected of having
36 committed a criminal offense or an act of juvenile delinquency
37 within the state, the juvenile shall not be returned without the
38 consent of the state until discharged from prosecution or other
39 form of proceeding, imprisonment, detention, or supervision for
40 the offense or juvenile delinquency. The duly accredited officers
41 of any state party to this Compact, upon the establishment of
42 their authority and the identity of the delinquent juvenile being
43 returned, shall be permitted to transport the delinquent juvenile
44 through any and all states party to this Compact, without

1 interference. Upon return to the state from which the juvenile
2 escaped or absconded, the delinquent juvenile shall be subject to
3 any further proceedings appropriate under the laws of that state.

4 (b) The state to which a delinquent juvenile is returned under
5 this Article shall be responsible for the payment of
6 transportation costs of the return.

7 "§ 7B-2806. Voluntary return procedure.

8 Any delinquent juvenile who has absconded while on probation or
9 parole, or escaped from an institution or agency vested with
10 legal custody or supervision in any state party to this Compact,
11 and any juvenile who has run away from any state party to this
12 Compact, who is taken into custody without a requisition in
13 another state party to this Compact under the provisions of G.S.
14 7B-2804(a) or G.S. 7B-2805(a), may consent to the immediate
15 return of the juvenile to the state from which the juvenile
16 absconded, escaped, or ran away. Consent shall be given by the
17 juvenile or delinquent juvenile and the juvenile's counsel or
18 guardian ad litem, if any, by executing or subscribing a writing
19 in the presence of a judge of the appropriate court, which states
20 that the juvenile or delinquent juvenile and the juvenile's
21 counsel or guardian ad litem, if any, consent to return of the
22 juvenile to the demanding state. Before consent is executed or
23 subscribed, however, the judge, in the presence of counsel or
24 guardian ad litem, if any, shall inform the juvenile or
25 delinquent juvenile of the juvenile's rights under this Compact.
26 When the consent has been duly executed, it shall be forwarded to
27 and filed with the Compact Administrator of the state in which
28 the court is located, and the judge shall direct the officer
29 having the juvenile or delinquent juvenile in custody to deliver
30 the juvenile to the duly accredited officer or officers of the
31 state demanding return of the juvenile and shall cause to be
32 delivered to the officer or officers a copy of the consent. The
33 court may, however, upon the request of the state to which the
34 juvenile or delinquent juvenile is being returned, order the
35 juvenile to return unaccompanied to the state and shall provide
36 the juvenile with a copy of the court order; in that event a copy
37 of the consent shall be forwarded to the Compact Administrator of
38 the state to which the juvenile or delinquent juvenile is ordered
39 to return.

40 "§ 7B-2807. Cooperative supervision of probationers and
41 parolees.

42 (a) That the duly constituted judicial and administrative
43 authorities of a state party to this Compact (herein called
44 'sending state') may permit any delinquent juvenile within such

1 state, placed on probation or parole, to reside in any other
2 state party to this Compact (herein called 'receiving state')
3 while on probation or parole, and the receiving state shall
4 accept the delinquent juvenile, if the parent, guardian, or
5 person entitled to the legal custody of the delinquent juvenile
6 is residing or undertakes to reside within the receiving state.
7 Before granting permission, opportunity shall be given to the
8 receiving state to make investigations as it deems necessary. The
9 authorities of the sending state shall send to the authorities of
10 the receiving state copies of pertinent court orders, social case
11 studies, and all other available information which may be of
12 value to and assist the receiving state in supervising a
13 probationer or parolee under this Compact. A receiving state, in
14 its discretion, may agree to accept supervision of a probationer
15 or parolee in cases where the parent, guardian, or person
16 entitled to the legal custody of the delinquent juvenile is not a
17 resident of the receiving state, and if so accepted, the sending
18 state may transfer the supervision accordingly.

19 (b) That each receiving state will assume the duties of
20 visitation and of supervision over any delinquent juvenile and in
21 the exercise of those duties will be governed by the same
22 standards of visitation and supervision that prevail for its own
23 delinquent juveniles released on probation or parole.

24 (c) That, after consultation between the appropriate
25 authorities of the sending state and of the receiving state as to
26 the desirability and necessity of returning the delinquent
27 juvenile, the duly accredited officers of a sending state may
28 enter a receiving state and there apprehend and retake any
29 delinquent juvenile on probation or parole. For that purpose, no
30 formalities will be required other than establishing the
31 authority of the officer and the identity of the delinquent
32 juvenile to be retaken and returned. The decision of the sending
33 state to retake a delinquent juvenile on probation or parole
34 shall be conclusive upon and not reviewable within the receiving
35 state, but if, at the time the sending state seeks to retake a
36 delinquent juvenile on probation or parole, there is pending
37 against the juvenile within the receiving state any criminal
38 charge or any proceeding to have the juvenile adjudicated a
39 delinquent juvenile for any act committed in the state or if the
40 juvenile is suspected of having committed within the state a
41 criminal offense or an act of juvenile delinquency, the juvenile
42 shall not be returned without the consent of the receiving state
43 until discharged from prosecution or other form of proceeding,
44 imprisonment, detention, or supervision for the offense or

1 juvenile delinquency. The duly accredited officers of the sending
2 state shall be permitted to transport delinquent juveniles being
3 so returned through any and all states party to this Compact
4 without interference.

5 (d) The sending state shall be responsible under this Article
6 for paying the costs of transporting any delinquent juvenile to
7 the receiving state or of returning any delinquent juvenile to
8 the sending state.

9 "§ 7B-2808. Responsibility for costs.

10 (a) The provisions of G.S. 7B-2804(b), 7B-2805(b), and 7B-
11 2807(d) shall not be construed to alter or affect any internal
12 relationship among the departments, agencies, and officers of and
13 in the government of a party state, or between a party state and
14 its subdivisions, as to the payment of costs or responsibilities
15 therefor.

16 (b) Nothing in this Compact shall be construed to prevent any
17 party state or subdivision thereof from asserting any right
18 against any person, agency, or other entity in regard to costs
19 for which such party state or subdivision thereof may be
20 responsible pursuant to G.S. 7B-2804(b), 7B-2805(b), and 7B-
21 2807(d).

22 "§ 7B-2809. Detention practices.

23 To every extent possible, it shall be the policy of states
24 party to this Compact that no juvenile or delinquent juvenile
25 shall be placed or detained in any prison, jail, or lockup, nor
26 be detained or transported in association with criminal, vicious,
27 or dissolute persons.

28 "§ 7B-2810. Supplementary agreements.

29 The duly constituted administrative authorities of a state
30 party to this Compact may enter into supplementary agreements
31 with any other state or states party hereto for the cooperative
32 care, treatment, and rehabilitation of delinquent juveniles
33 whenever they find that the agreements will improve the
34 facilities or programs available for care, treatment, and
35 rehabilitation. Care, treatment, and rehabilitation may be
36 provided in an institution located within any state entering into
37 a supplementary agreement. Supplementary agreements shall:

- 38 (1) Provide the rates to be paid for the care,
39 treatment, and custody of delinquent juveniles
40 taking into consideration the character of
41 facilities, services, and subsistence furnished;
42 (2) Provide that the delinquent juvenile shall be given
43 a court hearing prior to the juvenile being sent to
44 another state for care, treatment, and custody;

- 1 (3) Provide that the state receiving a delinquent
2 juvenile in one of its institutions shall act
3 solely as agent for the state sending the
4 delinquent juvenile;
5 (4) Provide that the sending state shall at all times
6 retain jurisdiction over delinquent juveniles sent
7 to an institution in another state;
8 (5) Provide for reasonable inspection of the
9 institutions by the sending state;
10 (6) Provide that the consent of the parent, guardian,
11 person, or agency entitled to the legal custody of
12 the delinquent juvenile shall be secured prior to
13 the juvenile being sent to another state; and
14 (7) Make provisions for any other matters and details
15 as shall be necessary to protect the rights and
16 equities of delinquent juveniles and of the
17 cooperating states.

18 "§ 7B-2811. Acceptance of federal and other aid.

19 Any state party to this Compact may accept any and all
20 donations, gifts, and grants of money, equipment, and services
21 from the federal or any local government, or any agency thereof
22 and from any person, firm, or corporation, for any of the
23 purposes and functions of this Compact, and may receive and
24 utilize, the same subject to the terms, conditions, and
25 regulations governing such donations, gifts, and grants.

26 "§ 7B-2812. Compact administrators.

27 The governor of each state party to this Compact shall
28 designate an officer who, acting jointly with like officers of
29 other party states, shall promulgate rules and regulations to
30 carry out more efficiently the terms and provisions of this
31 Compact.

32 "§ 7B-2813. Execution of Compact.

33 This Compact shall become operative immediately upon its
34 execution by any state as between it and any other state or
35 states so executing. When executed it shall have the full force
36 and effect of law within the state, the form of execution to be
37 in accordance with the laws of the executing state.

38 "§ 7B-2814. Renunciation.

39 This Compact shall continue in force and remain binding upon
40 each executing state until renounced by it. Renunciation of this
41 Compact shall be by the same authority which executed it, by
42 sending six months' notice in writing of its intention to
43 withdraw from the Compact to the other states party hereto. The
44 duties and obligations of a renouncing state under G.S. 7B-2807

1 hereof shall continue as to parolees and probationers residing
2 therein at the time of withdrawal until retaken or finally
3 discharged. Supplementary agreements entered into under G.S. 7B-
4 2810 hereof shall be subject to renunciation as provided by
5 supplementary agreements and shall not be subject to the six
6 months' renunciation notice of the present section.

7 "§ 7B-2815. Severability.

8 The provisions of this Compact shall be severable and if any
9 phrase, clause, sentence, or provision of this Compact is
10 declared to be contrary to the constitution of any participating
11 state or of the United States or the applicability thereof to any
12 government, agency, person, or circumstances is held invalid, the
13 validity of the remainder of this Compact and the applicability
14 thereof to any government, agency, person, or circumstances shall
15 not be affected thereby. If this Compact shall be held contrary
16 to the constitution of any state participating therein, the
17 Compact shall remain in full force and effect as to the remaining
18 states and in full force and effect as to the state affected as
19 to all severable matters.

20 "§ 7B-2816. Authority of Governor to designate Compact
21 Administrator.

22 Pursuant to said Compact, the Governor is hereby authorized and
23 empowered to designate an officer who shall be the Compact
24 Administrator and who, acting jointly with like officers of other
25 party states, shall adopt rules and regulations to carry out more
26 effectively the terms of the Compact. The Compact Administrator
27 shall serve subject to the pleasure of the Governor. The Compact
28 Administrator is hereby authorized, empowered, and directed to
29 cooperate with all departments, agencies, and officers of and in
30 the government of this State and its subdivisions in facilitating
31 the proper administration of the Compact or of any supplementary
32 agreement or agreements entered into by this State hereunder.

33 "§ 7B-2817. Authority of Compact Administrator to enter into
34 supplementary agreements.

35 The Compact Administrator is hereby authorized and empowered to
36 enter into supplementary agreements with appropriate officials of
37 other states pursuant to the Compact. In the event that the
38 supplementary agreement shall require or contemplate the use of
39 any institution or facility of this State or require or
40 contemplate the provision of any service by this State, the
41 supplementary agreement shall have no force or effect until
42 approved by the head of the department or agency under whose
43 jurisdiction said institution or facility is operated or whose

1 department or agency will be charged with the rendering of the
2 service.

3 "§ 7B-2818. Discharging financial obligations imposed by Compact
4 or agreement.

5 The Compact Administrator, subject to the approval of the
6 Director of the Budget, may make or arrange for any payments
7 necessary to discharge any financial obligations imposed upon
8 this State by the Compact or by any supplementary agreement
9 entered into thereunder.

10 "§ 7B-2819. Enforcement of Compact.

11 The courts, departments, agencies, and officers of this State
12 and subdivisions shall enforce this Compact and shall do all
13 things appropriate to the effectuation of its purposes and intent
14 which may be within their respective jurisdictions.

15 "§ 7B-2820. Additional procedure for returning runaways not
16 precluded.

17 In addition to any procedure provided in G.S. 7B-2804 and G.S.
18 7B-2806 of the Compact for the return of any runaway juvenile,
19 the particular states, the juvenile or the juvenile's parents,
20 the courts, or other legal custodian involved may agree upon and
21 adopt any other plan or procedure legally authorized under the
22 laws of this State and the other respective party states for the
23 return of any runaway juvenile.

24 "§ 7B-2821. Proceedings for return of runaways under G.S. 7B-2804
25 of Compact; 'juvenile' construed.

26 The judge of any court in North Carolina to which an
27 application is made for the return of a runaway under the
28 provisions of G.S. 7B-2804 of the Interstate Compact on Juveniles
29 shall hold a hearing thereon to determine whether for the
30 purposes of the Compact the petitioner is entitled to the legal
31 custody of the juvenile, whether or not it appears that the
32 juvenile has in fact run away without consent, whether or not the
33 juvenile is an emancipated minor and whether or not it is in the
34 best interests of the juvenile to compel the return of the
35 juvenile to the state. The judge of any court in North Carolina,
36 finding that a requisition for the return of a juvenile under the
37 provisions of G.S. 7B-2804 of the Compact is in order, shall upon
38 request fix a reasonable time to be allowed for the purpose of
39 testing the legality of the proceeding. The period of time for
40 holding a juvenile in custody under the provisions of G.S. 7B-
41 2804 of the Compact for the protection and welfare of the
42 juvenile, subject to the order of a court of this State, to
43 enable the juvenile's return to another state party to the
44 Compact pursuant to a requisition for return from a court of that

1 state, shall not exceed 30 days. In applying the provisions of
2 G.S. 7B-2804 of the Compact to secure the return of a runaway
3 from North Carolina, the courts of this State shall construe the
4 word 'juvenile' as used in this Article to mean any person who
5 has not reached the person's eighteenth birthday.

6 "§ 7B-2822. Interstate parole and probation hearing procedures
7 for juveniles.

8 Where supervision of a parolee or probationer is being
9 administered pursuant to the Interstate Compact on Juveniles, the
10 appropriate judicial or administrative authorities in this State
11 shall notify the Compact Administrator of the sending state
12 whenever, in their view, consideration should be given to
13 retaking or reincarceration for a parole or a probation
14 violation. Prior to giving of notification, a hearing shall be
15 held in accordance with this Article within a reasonable time,
16 unless the hearing is waived by the parolee or probationer. The
17 appropriate officer or officers of this State shall, as soon as
18 practicable, following termination of any hearing, report to the
19 sending state, furnish a copy of the hearing record, and make
20 recommendations regarding the disposition to be made of the
21 parolee or probationer by the sending state. Pending any
22 proceeding pursuant to this section, the appropriate officers of
23 this State may take custody of and detain the parolee or
24 probationer involved for a period not to exceed 10 days prior to
25 the hearing and, if it appears to the hearing officer or officers
26 that retaking or reincarceration is likely to follow, for a
27 reasonable period after the hearing or waiver as may be necessary
28 to arrange for retaking or the reincarceration.

29 "§ 7B-2823. Hearing officers.

30 Any hearing pursuant to this Article may be before the
31 Administrator of the Interstate Compact on Juveniles, a deputy of
32 the Administrator, or any other person authorized pursuant to the
33 juvenile laws of this State to hear cases of alleged juvenile
34 parole or probation violations, except that no hearing officer
35 shall be the person making the allegation of violation.

36 "§ 7B-2824. Due process at parole or probation violation hearing.

37 With respect to any hearing pursuant to this Article, the
38 parolee or probationer:

39 (1) Shall have reasonable notice in writing of the
40 nature and content of the allegations to be made,
41 including notice that the purpose of the hearing is
42 to determine whether there is probable cause to
43 believe that the parolee or probationer has

- 1 committed a violation that may lead to a revocation
2 of parole or probation;
3 (2) Shall be permitted to advise with any persons whose
4 assistance the parolee or probationer reasonably
5 desires, prior to the hearing;
6 (3) Shall have the right to confront and examine any
7 persons who have made allegations against the
8 parolee or probationer, unless the hearing officer
9 determines that confrontation would present a
10 substantial present or subsequent danger of harm to
11 the person or persons; and
12 (4) May admit, deny, or explain the violation alleged
13 and may present proof, including affidavits and
14 other evidence, in support of the parolee's or
15 probationer's contentions.

16 A record of the proceedings shall be made and preserved.

17 "§ 7B-2825. Effect of parole or probation violation hearing
18 outside State.

19 In any case of alleged parole or probation violation by a
20 person being supervised in another state pursuant to the
21 Interstate Compact on Juveniles, any appropriate judicial or
22 administrative officer or agency in another state is authorized
23 to hold a hearing on the alleged violation. Upon receipt of the
24 record of a parole or probation violation hearing held in another
25 state pursuant to a statute substantially similar to this
26 Article, such record shall have the same standing and effect as
27 though the proceeding of which it is a record was had before the
28 appropriate officer or officers in this State, and any
29 recommendations contained in or accompanying the record shall be
30 fully considered by the appropriate officer or officers of this
31 State in making disposition of the matter.

32 "§ 7B-2826. Amendment to Interstate Compact on Juveniles
33 concerning interstate rendition of juveniles alleged to be
34 delinquent.

35 (a) This amendment shall provide additional remedies and shall
36 be binding only as among and between those party states which
37 specifically execute the same.

38 (b) All provisions and procedures of G.S. 7B-2805 and G.S. 7B-
39 2806 of the Interstate Compact on Juveniles shall be construed to
40 apply to any juvenile charged with being a delinquent by reason
41 of a violation of any criminal law. Any juvenile, charged with
42 being a delinquent by reason of violating any criminal law, shall
43 be returned to the requesting state upon a requisition to the
44 state where the juvenile may be found. A petition in the case

1 shall be filed in a court of competent jurisdiction in the
2 requesting state where the violation of criminal law is alleged
3 to have been committed. The petition may be filed regardless of
4 whether the juvenile has left the state before or after the
5 filing of the petition. The requisition described in G.S. 7B-2805
6 of the Compact shall be forwarded by the judge of the court in
7 which the petition has been filed.

8 "§ 7B-2827. Out-of-State Confinement Amendment.

9 (a) The Out-of-State Confinement Amendment to the Interstate
10 Compact on Juveniles is hereby enacted into law and entered into
11 by this State with all other states legally joining therein in
12 the form substantially as follows:

13 (1) Whenever the fully constituted judicial or
14 administrative authorities in a sending state shall
15 determine that confinement of a probationer or
16 reconfinement of a parolee is necessary or
17 desirable, the officials may direct that the
18 confinement or reconfinement be in an appropriate
19 institution for delinquent juveniles within the
20 territory of the receiving state, the receiving
21 state to act in that regard solely as agent for the
22 sending state.

23 (2) Escapees and absconders who would otherwise be
24 returned pursuant to G.S. 7B-2805 of the Compact
25 may be confined or reconfinement in the receiving
26 state pursuant to this amendment. In any case in
27 which the information and allegations are required
28 to be made and furnished in a requisition pursuant
29 to G.S. 7B-2805, the sending state shall request
30 confinement or reconfinement in the receiving
31 state. Whenever applicable, detention orders, as
32 provided in G.S. 7B-2805, may be employed pursuant
33 to this paragraph preliminary to disposition of the
34 escapee or absconder.

35 (3) The confinement or reconfinement of a parolee,
36 probationer, escapee, or absconder pursuant to this
37 amendment shall require the concurrence of the
38 appropriate judicial or administrative authorities
39 of the receiving state.

40 (4) As used in this amendment: (i) 'sending state'
41 means a sending state as that term is used in G.S.
42 7B-2807 of the Compact or the state from which a
43 delinquent juvenile has escaped or absconded within
44 the meaning of G.S. 7B-2805 of the Compact; (ii)

- 1 'receiving state' means any state, other than the
2 sending state, in which a parolee, probationer,
3 escapee, or absconder may be found, provided that
4 the state is a party to this amendment.
- 5 (5) Every state which adopts this amendment shall
6 designate at least one of its institutions for
7 delinquent juveniles as a 'Compact Institution' and
8 shall confine persons therein as provided in
9 subdivision (1) of this subsection unless the
10 sending and receiving state in question shall make
11 specific contractual arrangements to the contrary.
12 All states party to this amendment shall have
13 access to 'Compact Institutions' at all reasonable
14 hours for the purpose of inspecting the facilities
15 thereof and for the purpose of visiting such of the
16 State's delinquents as may be confined in the
17 institution.
- 18 (6) Persons confined in 'Compact Institutions' pursuant
19 to the terms of this Compact shall at all times be
20 subject to the jurisdiction of the sending state
21 and may at any time be removed from the 'Compact
22 Institution' for transfer to an appropriate
23 institution within the sending state, for return to
24 probation or parole, for discharge, or for any
25 purpose permitted by the laws of the sending state.
- 26 (7) All persons who may be confined in a 'Compact
27 Institution' pursuant to the provisions of this
28 amendment shall be treated in a reasonable and
29 humane manner. The fact of confinement or
30 reconfinement in a receiving state shall not
31 deprive any person so confined or reconfined of any
32 rights which the person would have had if confined
33 or reconfined in an appropriate institution of the
34 sending state. No agreement to submit to
35 confinement or reconfinement pursuant to the terms
36 of this amendment may be construed as a waiver of
37 any rights which the delinquent would have had if
38 the person had been confined or reconfined in any
39 appropriate institution of the sending state,
40 except that the hearing or hearings, if any, to
41 which a parolee, probationer, escapee, or absconder
42 may be entitled (prior to confinement or
43 reconfinement) by the laws of the sending state may
44 be had before the appropriate judicial or

1 administrative officers of the receiving state. In
2 this event, said judicial and administrative
3 officers shall act as agents of the sending state
4 after consultation with appropriate officers of the
5 sending state.

6 (8) Any receiving state incurring costs or other
7 expenses under this amendment shall be reimbursed
8 in the amount of the costs or other expenses by the
9 sending state unless the states concerned shall
10 specifically otherwise agree. Any two or more
11 states party to this amendment may enter into
12 supplementary agreements determining a different
13 allocation of costs as among themselves.

14 (9) This amendment shall take initial effect when
15 entered into by any two or more states party to the
16 Compact and shall be effective as to those states
17 which have specifically enacted this amendment.
18 Rules and regulations necessary to effectuate the
19 terms of this amendment may be adopted by the
20 appropriate officers of those states which have
21 enacted this amendment.

22 (b) In addition to any institution in which the authorities of
23 this State may otherwise confine or order the confinement of a
24 delinquent juvenile, the authorities may, pursuant to the
25 Out-of-State Confinement Amendment to the Interstate Compact on
26 Juveniles, confine or order the confinement of a delinquent
27 juvenile in a Compact Institution within another party state.

28 "SUBCHAPTER III. JUVENILE RECORDS.

29 "ARTICLE 29.

30 "Records and Social Reports of Cases of Abuse,
31 Neglect, and Dependency.

32 "§ 7B-2900. Definitions.

33 The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this
34 Subchapter.

35 "§ 7B-2901. Confidentiality of records.

36 (a) The clerk shall maintain a complete record of all juvenile
37 cases filed in the clerk's office alleging abuse, neglect, or
38 dependency. The records shall be withheld from public inspection
39 and, except as provided in this subsection, may be examined only
40 by order of the court. The record shall include the summons,
41 petition, custody order, court order, written motions, the
42 electronic or mechanical recording of the hearing, and other
43 papers filed in the proceeding. The recording of the hearing
44 shall be reduced to a written transcript only when notice of

1 appeal has been timely given. After the time for appeal has
2 expired with no appeal having been filed, the recording of the
3 hearing may be erased or destroyed upon the written order of the
4 court.

5 (b) The Director of the Department of Social Services shall
6 maintain a record of the cases of juveniles under protective
7 custody by the Department or under placement by the court, which
8 shall include family background information; reports of social,
9 medical, psychiatric, or psychological information concerning a
10 juvenile or the juvenile's family; interviews with the juvenile's
11 family; or other information which the court finds should be
12 protected from public inspection in the best interests of the
13 juvenile. The records maintained pursuant to this subsection may
14 be examined only by order of the court except that the guardian
15 ad litem, or juvenile, shall have the right to examine them.

16 (c) In the case of a child victim, the court may order the
17 sharing of information among such public agencies as the court
18 deems necessary to reduce the trauma to the child victim.

19 (d) The court's entire record of a proceeding involving consent
20 for an abortion on an unemancipated minor under Article 1A, Part
21 2 of Chapter 90 of the General Statutes is not a matter of public
22 record, shall be maintained separately from any juvenile record,
23 shall be withheld from public inspection, and may be examined
24 only by order of the court, by the unemancipated minor, or by the
25 unemancipated minor's attorney or guardian ad litem.

26 "§ 7B-2902. Disclosure in child fatality or near fatality cases.

27 (a) The following definitions apply in this section:

28 (1) Child fatality. -- The death of a child from
29 suspected abuse, neglect, or maltreatment.

30 (2) Findings and information. -- A written summary, as
31 allowed by subsections (c) through (f) of this
32 section, of actions taken or services rendered by a
33 public agency following receipt of information that
34 a child might be in need of protection. The written
35 summary shall include any of the following
36 information the agency is able to provide:

37 a. The dates, outcomes, and results of any
38 actions taken or services rendered.

39 b. The results of any review by the State Child
40 Fatality Prevention Team, a local child
41 fatality prevention team, a local community
42 child protection team, the Child Fatality Task
43 Force, or any public agency.

- 1 c. Confirmation of the receipt of all reports,
2 accepted or not accepted by the county
3 department of social services, for
4 investigation of suspected child abuse,
5 neglect, or maltreatment, including
6 confirmation that investigations were
7 conducted, the results of the investigations,
8 a description of the conduct of the most
9 recent investigation and the services
10 rendered, and a statement of basis for the
11 department's decision.
- 12 (3) Near fatality. -- A case in which a physician
13 determines that a child is in serious or critical
14 condition as the result of sickness or injury
15 caused by suspected abuse, neglect, or
16 maltreatment.
- 17 (4) Public agency. -- Any agency of State government or
18 its subdivisions as defined in G.S. 132-1(a).
- 19 (b) Notwithstanding any other provision of law and subject to
20 the provisions of subsections (c) through (f) of this section, a
21 public agency shall disclose to the public, upon request, the
22 findings and information related to a child fatality or near
23 fatality if:
- 24 (1) A person is criminally charged with having caused
25 the child fatality or near fatality; or
- 26 (2) The district attorney has certified that a person
27 would be charged with having caused the child
28 fatality or near fatality but for that person's
29 prior death.
- 30 (c) Nothing herein shall be deemed to authorize access to the
31 confidential records in the custody of a public agency, or the
32 disclosure to the public of the substance or content of any
33 psychiatric, psychological, or therapeutic evaluations or like
34 materials or information pertaining to the child or the child's
35 family unless directly related to the cause of the child fatality
36 or near fatality, or the disclosure of information that would
37 reveal the identities of persons who provided information related
38 to the suspected abuse, neglect, or maltreatment of the child.
- 39 (d) Within five working days from the receipt of a request for
40 findings and information related to a child fatality or near
41 fatality, a public agency shall consult with the appropriate
42 district attorney and provide the findings and information unless
43 the agency has a reasonable belief that release of the
44 information:

- 1 (1) Is not authorized by subsections (a) and (b) of
2 this section;
- 3 (2) Is likely to cause mental or physical harm or
4 danger to a minor child residing in the deceased or
5 injured child's household;
- 6 (3) Is likely to jeopardize the State's ability to
7 prosecute the defendant;
- 8 (4) Is likely to jeopardize the defendant's right to a
9 fair trial;
- 10 (5) Is likely to undermine an ongoing or future
11 criminal investigation; or
- 12 (6) Is not authorized by federal law and regulations.
- 13 (e) Any person whose request is denied may apply to the
14 appropriate superior court for an order compelling disclosure of
15 the findings and information of the public agency. The
16 application shall set forth, with reasonable particularity,
17 factors supporting the application. The superior court shall have
18 jurisdiction to issue such orders. Actions brought pursuant to
19 this section shall be set down for immediate hearing, and
20 subsequent proceedings in such actions shall be accorded priority
21 by the appellate courts. After the court has reviewed the
22 specific findings and information, in camera, the court shall
23 issue an order compelling disclosure unless the court finds that
24 one or more of the circumstances in subsection (d) of this
25 section exist.
- 26 (f) Access to criminal investigative reports and criminal
27 intelligence information of public law enforcement agencies and
28 confidential information in the possession of the State Child
29 Fatality Prevention Team, the local teams, and the Child Fatality
30 Task Force, shall be governed by G.S. 132-1.4 and G.S. 7B-1413
31 respectively. Nothing herein shall be deemed to require the
32 disclosure or release of any information in the possession of a
33 district attorney.
- 34 (g) Any public agency or its employees acting in good faith in
35 disclosing or declining to disclose information pursuant to this
36 section shall be immune from any criminal or civil liability that
37 might otherwise be incurred or imposed for such action.
- 38 (h) Nothing herein shall be deemed to narrow or limit the
39 definition of 'public records' as set forth in G.S. 132-1(a).

40 "ARTICLE 30.

41 "Juvenile Records and Social Reports of
42 Delinquency and Undisciplined Cases.

43 "§ 7B-3000. Juvenile court records.

1 (a) The clerk shall maintain a complete record of all juvenile
2 cases filed in the clerk's office to be known as the juvenile
3 record. The record shall include the summons and petition, any
4 secure or nonsecure custody order, any electronic or mechanical
5 recording of hearings, and any written motions, orders, or papers
6 filed in the proceeding.

7 (b) All juvenile records shall be withheld from public
8 inspection and, except as provided in this subsection, may be
9 examined only by order of the court. Except as provided in
10 subsection (c) of this section, the following persons may examine
11 the juvenile's record and obtain copies of written parts of the
12 record without an order of the court:

- 13 (1) The juvenile and the juvenile's attorney;
14 (2) The juvenile's parent, guardian, or custodian, or
15 authorized representative;
16 (3) The prosecutor; and
17 (4) Court counselors.

18 Except as provided in subsection (c) of this section, law
19 enforcement officers sworn in this State may examine, but not
20 photocopy, the juvenile's record without an order of the court.

21 (c) The court may direct the clerk to 'seal' any portion of a
22 juvenile's record. The clerk shall secure any sealed portion of
23 a juvenile record in an envelope clearly marked 'SEALED: MAY BE
24 EXAMINED ONLY BY ORDER OF THE COURT', or with similar notice, and
25 shall permit examination or copying of sealed portions of a
26 juvenile's record only pursuant to a court order specifically
27 authorizing inspection or copying.

28 (d) Any portion of a juvenile's record consisting of an
29 electronic or mechanical recording of a hearing shall be
30 transcribed only when notice of appeal has been timely given and
31 shall be copied electronically or mechanically, only by order of
32 the court. After the time for appeal has expired with no appeal
33 having been filed, the court may enter a written order directing
34 the clerk to destroy the recording of the hearing.

35 (e) The juvenile's record of an adjudication of delinquency
36 for an offense that would be a felony if committed by an adult
37 may be used by law enforcement, the magistrate, and the
38 prosecutor for pretrial release and plea negotiating decisions.

39 (f) The juvenile's record of an adjudication of delinquency
40 for an offense that would be a Class A, B1, B2, C, D, or E felony
41 if committed by an adult may be used in a subsequent criminal
42 proceeding against the juvenile either under G.S. 8C-1, Rule
43 404(b), or to prove an aggravating factor at sentencing under
44 G.S. 15A-1340.4(a), G.S. 15A-1340.16(d), or G.S. 15A-2000(e). The

1 record may be so used only by order of the court in the
2 subsequent criminal proceeding, upon motion of the prosecutor,
3 after an in camera hearing to determine whether the record in
4 question is admissible.

5 (g) Except as provided in subsection (d) of this section, a
6 juvenile's record shall be destroyed only as authorized by G.S.
7 7B-3200 or by rules adopted by the Department of Juvenile
8 Justice.

9 "§ 7B-3001. Other records relating to juveniles.

10 (a) The chief court counselor shall maintain a record of all
11 cases of juveniles under supervision of court counselors, to be
12 known as the court counselor's record. The court counselor's
13 record shall include family background information; reports of
14 social, medical, psychiatric, or psychological information
15 concerning a juvenile or the juvenile's family; probation
16 reports; interviews with the juvenile's family; or other
17 information the court finds should be protected from public
18 inspection in the best interests of the juvenile.

19 (b) Unless jurisdiction of the juvenile has been transferred
20 to superior court, all law enforcement records and files
21 concerning a juvenile shall be kept separate from the records and
22 files of adults and shall be withheld from public inspection.
23 The following persons may examine and obtain copies of law
24 enforcement records and files concerning a juvenile without an
25 order of the court:

- 26 (1) The juvenile and the juvenile's attorney;
- 27 (2) The juvenile's parent, guardian, custodian, or
28 authorized representative;
- 29 (3) The district attorney or prosecutor;
- 30 (4) Court counselors; and
- 31 (5) Law enforcement officers sworn in this State.

32 Otherwise, the records and files may be examined or copied only
33 by order of the court.

34 (c) All records and files maintained by the Department
35 pursuant to this Chapter shall be withheld from public
36 inspection. The following persons may examine and obtain copies
37 of the Department records and files concerning a juvenile without
38 an order of the court:

- 39 (1) The juvenile and the juvenile's attorney;
- 40 (2) The juvenile's parent, guardian, custodian, or
41 authorized representative;
- 42 (3) Professionals in the agency who are directly
43 involved in the juvenile's case; and
- 44 (4) Court counselors.

1 Otherwise, the records and files may be examined or copied only
2 by order of the court. The court may inspect and order the
3 release of records maintained by the Department.

4 "ARTICLE 31.

5 "Disclosure of Juvenile Information.

6 "§ 7B-3100. Disclosure of information about juveniles.

7 (a) The chief district court judge in each district shall
8 designate by standing order certain agencies in the district as
9 'agencies authorized to share information'. Agencies so
10 designated shall share with one another, upon request,
11 information that is in their possession that is relevant to any
12 case in which a petition is filed alleging that a juvenile is
13 abused, neglected, dependent, undisciplined, or delinquent and
14 shall continue to do so until the juvenile is no longer subject
15 to the jurisdiction of juvenile court. Agencies that may be
16 designated as 'agencies authorized to share information' include
17 local mental health facilities, local health departments, local
18 departments of social services, local law enforcement agencies,
19 local school administrative units, the district's district
20 attorney's office, and the Office of Guardian ad Litem Services
21 of the Administrative Office of the Courts. Any information
22 shared among agencies pursuant to this section shall remain
23 confidential, shall be withheld from public inspection, shall be
24 used only for the protection of the juvenile, and shall be
25 released in accordance with the provisions of the Family
26 Educational and Privacy Rights Act as set forth in 20 USC §
27 1232g. Nothing in this section or any other provision of law
28 shall preclude any other necessary sharing of information among
29 agencies. Nothing herein shall be deemed to require the
30 disclosure or release of any information in the possession of a
31 district attorney.

32 (b) Disclosure of information concerning any juvenile under
33 investigation or alleged to be within the jurisdiction of the
34 court that would reveal the identity of that juvenile is
35 prohibited except that publication of pictures of runaways is
36 permitted with the permission of the parents.

37 "§ 7B-3101. Notification of schools when juveniles are alleged
38 or found to be delinquent.

39 (a) Notwithstanding G.S. 7B-3000, the juvenile court counselor
40 shall deliver verbal and written notification of the following
41 actions to the principal of the school that the juvenile attends:

42 (1) A petition is filed under G.S. 7B-1802 that alleges
43 delinquency for an offense that would be a felony
44 if committed by an adult;

- 1 (2) The court transfers jurisdiction over a juvenile to
2 superior court under G.S. 7B-2200;
3 (3) The court dismisses under G.S. 7B-2411 the petition
4 that alleges delinquency for an offense that would
5 be a felony if committed by an adult;
6 (4) The court issues a dispositional order under
7 Article 25 of Chapter 7B of the General Statutes
8 including, but not limited to, an order of
9 probation that requires school attendance,
10 concerning a juvenile alleged or found delinquent
11 for an offense that would be a felony if committed
12 by an adult; or
13 (5) The court modifies or vacates any order or
14 disposition under G.S. 7B-2600 concerning a
15 juvenile alleged or found delinquent for an offense
16 that would be a felony if committed by an adult.

17 Notification of the school principal in person or by telephone
18 shall be made before the beginning of the next school day.
19 Delivery shall be made as soon as practicable but at least within
20 five days of the action. Delivery shall be made in person or by
21 certified mail. Notification that a petition has been filed shall
22 describe the nature of the offense. Notification of a
23 dispositional order, a modified or vacated order, or a transfer
24 to superior court shall describe the court's action and any
25 applicable disposition requirements. As used in this subsection,
26 the term 'offense' shall not include any offense under Chapter 20
27 of the General Statutes.

28 (b) If the principal of the school the juvenile attends
29 returns any notification as required by G.S. 115C-404, and if the
30 juvenile court counselor learns that the juvenile is transferring
31 to another school, the juvenile court counselor shall deliver the
32 notification to the principal of the school to which the juvenile
33 is transferring. Delivery shall be made as soon as practicable
34 and shall be made in person or by certified mail.

35 (c) Principals shall handle any notification delivered under
36 this section in accordance with G.S. 115C-404.

37 (d) For the purpose of this section, 'school' means any public
38 or private school in the State that is authorized under Chapter
39 115C of the General Statutes.

40 "ARTICLE 32.

41 "Expunction of Juvenile Records.

42 "§ 7B-3200. Expunction of records of juveniles alleged or
43 adjudicated delinquent and undisciplined.

1 (a) Any person who has attained the age of 18 years may file a
2 petition in the court where the person was adjudicated
3 undisciplined for expunction of all records of that adjudication.

4 (b) Any person who has attained the age of 16 years may file a
5 petition in the court where the person was adjudicated delinquent
6 for expunction of all records of that adjudication provided:

7 (1) The offense for which the person was adjudicated
8 would have been a crime other than a Class A, B1,
9 B2, C, D, or E felony if committed by an adult.

10 (2) The person has not subsequently been adjudicated
11 delinquent or convicted as an adult of any felony
12 or misdemeanor other than a traffic violation under
13 the laws of the United States or the laws of this
14 State or any other state.

15 Records relating to an adjudication for an offense that would
16 be a Class A, B1, B2, C, D, or E felony if committed by an adult
17 shall not be expunged.

18 (c) The petition shall contain, but not be limited to, the
19 following:

20 (1) An affidavit by the petitioner that the petitioner
21 has been of good behavior since the adjudication
22 and, in the case of a petition based on a
23 delinquency adjudication, that the petitioner has
24 not subsequently been adjudicated delinquent or
25 convicted as an adult of any felony or misdemeanor
26 other than a traffic violation under the laws of
27 the United States, or the laws of this State or any
28 other state;

29 (2) Verified affidavits of two persons, who are not
30 related to the petitioner or to each other by blood
31 or marriage, that they know the character and
32 reputation of the petitioner in the community in
33 which the petitioner lives and that the
34 petitioner's character and reputation are good;

35 (3) A statement that the petition is a motion in the
36 cause in the case wherein the petitioner was
37 adjudicated delinquent or undisciplined.

38 The petition shall be served upon the district attorney in the
39 district wherein adjudication occurred. The district attorney
40 shall have 10 days thereafter in which to file any objection
41 thereto and shall be duly notified as to the date of the hearing
42 on the petition.

43 (d) If the court, after hearing, finds that the petitioner
44 satisfies the conditions set out in subsections (a) or (b) of

1 this section, the petitioner shall order and direct the clerk and
2 all law enforcement agencies to expunge their records of the
3 adjudication including all references to arrests, complaints,
4 referrals, petitions, and orders.

5 (e) The clerk shall forward a certified copy of the order to
6 the sheriff, chief of police, or other law enforcement agency.

7 (f) Records of a juvenile adjudicated delinquent or
8 undisciplined being maintained by the chief court counselor, an
9 intake counselor or a court counselor shall be retained or
10 disposed of as provided by the Department.

11 (g) Records of a juvenile adjudicated delinquent or
12 undisciplined being maintained by personnel at a residential
13 facility operated by the Department, shall be retained or
14 disposed of as provided by the Department.

15 (h) Any person who was alleged to be delinquent as a juvenile
16 and has attained the age of 16 years, or was alleged to be
17 undisciplined as a juvenile and has attained the age of 18 years,
18 may file a petition in the court in which the person was alleged
19 to be delinquent or undisciplined, for expunction of all juvenile
20 records of the juvenile having been alleged to be delinquent or
21 undisciplined if the court dismissed the juvenile petition
22 without an adjudication that the juvenile was delinquent or
23 undisciplined. The petition shall be served on the chief court
24 counselor in the district where the juvenile petition was filed.
25 The chief court counselor shall have 10 days thereafter in which
26 to file a written objection in the court. If no objection is
27 filed, the court may grant the petition without a hearing. If an
28 objection is filed or the court so directs, a hearing shall be
29 scheduled and the chief court counselor shall be notified as to
30 the date of the hearing. If the court finds at the hearing that
31 the petitioner satisfies the conditions specified herein, the
32 court shall order the clerk and the appropriate law enforcement
33 agencies to expunge their records of the allegations of
34 delinquent or undisciplined acts including all references to
35 arrests, complaints, referrals, juvenile petitions, and orders.
36 The clerk shall forward a certified copy of the order of
37 expunction to the sheriff, chief of police, or other appropriate
38 law enforcement agency, and to the chief court counselor, and
39 these specified officials shall immediately destroy all records
40 relating to the allegations that the juvenile was delinquent or
41 undisciplined.

42 "§ 7B-3201. Effect of expunction.

43 (a) Whenever a juvenile's record is expunged, with respect to
44 the matter in which the record was expunged, the juvenile who is

1 the subject of the record and the juvenile's parent may inform
2 any person or organization including employers, banks, credit
3 companies, insurance companies, and schools that the juvenile was
4 not arrested, did not appear before the court, and was not
5 adjudicated delinquent or undisciplined.

6 (b) Notwithstanding subsection (a) of this section, in any
7 delinquency case if the juvenile is the defendant and chooses to
8 testify or if the juvenile is not the defendant and is called as
9 a witness, the juvenile may be ordered to testify with respect to
10 whether the juvenile was adjudicated delinquent.

11 "§ 7B-3202. Notice of expunction.

12 Upon expunction of a juvenile's record, the clerk shall send a
13 written notice to the juvenile at the juvenile's last known
14 address informing the juvenile that the record has been expunged
15 and with respect to the matter involved, the juvenile may inform
16 any person that the juvenile has no record. The notice shall
17 inform the juvenile further that if the matter involved is a
18 delinquency record, the juvenile may inform any person that the
19 juvenile was not arrested or adjudicated delinquent except that
20 upon testifying in a delinquency proceeding, the juvenile may be
21 required by a court to disclose that the juvenile was adjudicated
22 delinquent.

23 "ARTICLE 33.

24 "Computation of Recidivism Rates.

25 "§ 7B-3300. Juvenile recidivism rates.

26 (a) On an annual basis, the Department of Juvenile Justice
27 shall compute the recidivism rate of juveniles who are
28 adjudicated delinquent for offenses that would be Class A, B1,
29 B2, C, D, or E felonies if committed by adults and who
30 subsequently are adjudicated delinquent or convicted and shall
31 report the statistics to the Joint Legislative Commission on
32 Governmental Operations by December 31 each year.

33 (b) The chief court counselor of each judicial district shall
34 forward to the Department relevant information, as determined by
35 the Department, regarding every juvenile who is adjudicated
36 delinquent for an offense that would be a Class A, B1, B2, C, D,
37 or E felony if committed by an adult for the purpose of computing
38 the statistics required by this section.

39 "SUBCHAPTER IV. PARENTAL AUTHORITY; EMANCIPATION.

40 "ARTICLE 34.

41 "Parental Authority Over Juveniles.

42 "§ 7B-3400. Juvenile under 18 subject to parents' control.

43 Notwithstanding any other provision of law, any juvenile under
44 18 years of age, except as provided in G.S. 7B-3401 and G.S. 7B-

1 3402, shall be subject to the supervision and control of the
2 juvenile's parents.

3 "§ 7B-3400.1. Definitions.

4 The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this
5 Subchapter.

6 "§ 7B-3401. Exceptions.

7 This Article shall not apply to any juvenile under the age of
8 18 who is married or who is serving in the armed forces of the
9 United States, or who has been emancipated.

10 "§ 7B-3402. No criminal liability created.

11 This Article shall not be interpreted to place any criminal
12 liability on a parent for any act of the parent's juvenile 16
13 years of age or older.

14 "§ 7B-3403. Enforcement.

15 The provisions of this Article may be enforced by the parent,
16 guardian, or person standing in loco parentis to the child by
17 filing a civil action in the district court of the county where
18 the child can be found or the county of the plaintiff's
19 residence. Upon the institution of such action by a verified
20 complaint, alleging that the defendant juvenile has left home or
21 has left the place where the juvenile has been residing and
22 refuses to return and comply with the direction and control of
23 the plaintiff, the court may issue an order directing the
24 juvenile personally to appear before the court at a specified
25 time to be heard in answer to the allegations of the plaintiff
26 and to comply with further orders of the court. Such orders shall
27 be served by the sheriff upon the juvenile and upon any other
28 person named as a party defendant in such action. At the time of
29 the issuance of the order directing the juvenile to appear, the
30 court may in the same order, or by separate order, order the
31 sheriff to enter any house, building, structure or conveyance for
32 the purpose of searching for the juvenile and serving the order
33 and for the purpose of taking custody of the person of the
34 juvenile in order to bring the juvenile before the court. Any
35 order issued at said hearing shall be treated as a mandatory
36 injunction and shall remain in full force and effect until the
37 juvenile reaches the age of 18, or until further orders of the
38 court. Within 30 days after the hearing on the original order,
39 the juvenile, or anyone acting in the juvenile's behalf, may file
40 a verified answer to the complaint. Upon the filing of an answer
41 by or on behalf of the juvenile, any district court judge holding
42 court in the county or district court district as defined in G.S.
43 7A-133 where the action was instituted shall have jurisdiction to
44 hear the matter, without a jury, and to make findings of fact,

1 conclusions of law, and render judgment thereon. Appeals from the
2 district court to the Court of Appeals shall be allowed as in
3 civil actions generally. The district court issuing the original
4 order or the district court hearing the matter after answer has
5 been filed shall also have authority to order that any person
6 named defendant in the order or judgment shall not harbor, keep,
7 or allow the defendant juvenile to remain on the person's
8 premises or in the person's home. Failure of any defendant to
9 comply with the terms of said order or judgment shall be
10 punishable as for contempt.

11 "ARTICLE 35.

12 "Emancipation.

13 "§ 7B-3500. Who may petition.

14 Any juvenile who is 16 years of age or older and who has
15 resided in the same county in North Carolina or on federal
16 territory within the boundaries of North Carolina for six months
17 next preceding the filing of the petition may petition the court
18 in that county for a judicial decree of emancipation.

19 "§ 7B-3501. Petition.

20 The petition shall be signed and verified by the petitioner and
21 shall contain the following information:

- 22 (1) The full name of the petitioner and the
23 petitioner's birth date, and state and county of
24 birth;
25 (2) A certified copy of the petitioner's birth
26 certificate;
27 (3) The name and last known address of the parent,
28 guardian, or custodian;
29 (4) The petitioner's address and length of residence at
30 that address;
31 (5) The petitioner's reasons for requesting
32 emancipation; and
33 (6) The petitioner's plan for meeting the petitioner's
34 needs and living expenses which plan may include a
35 statement of employment and wages earned that is
36 verified by the petitioner's employer.

37 "§ 7B-3502. Summons.

38 A copy of the filed petition along with a summons shall be
39 served upon the petitioner's parent, guardian, or custodian who
40 shall be named as respondents. The summons shall include the time
41 and place of the hearing and shall notify the respondents to file
42 written answer within 30 days after service of the summons and
43 petition. In the event that personal service cannot be obtained,
44 service shall be in accordance with G.S. 1A-1, Rule 4(j).

1 "§ 7B-3503. Hearing.

2 The court, sitting without a jury, shall permit all parties to
3 present evidence and to cross-examine witnesses. The petitioner
4 has the burden of showing by a preponderance of the evidence that
5 emancipation is in the petitioner's best interests. Upon finding
6 that reasonable cause exists, the court may order the juvenile to
7 be examined by a psychiatrist, a licensed clinical psychologist,
8 a physician, or any other expert to evaluate the juvenile's
9 mental or physical condition. The court may continue the hearing
10 and order investigation by a court counselor or by the county
11 department of social services to substantiate allegations of the
12 petitioner or respondents.

13 No husband-wife or physician-patient privilege shall be grounds
14 for excluding any evidence in the hearing.

15 "§ 7B-3504. Considerations for emancipation.

16 In determining the best interests of the petitioner and the
17 need for emancipation, the court shall review the following
18 considerations:

- 19 (1) The parental need for the earnings of the
20 petitioner;
21 (2) The petitioner's ability to function as an adult;
22 (3) The petitioner's need to contract as an adult or to
23 marry;
24 (4) The employment status of the petitioner and the
25 stability of the petitioner's living arrangements;
26 (5) The extent of family discord which may threaten
27 reconciliation of the petitioner with the
28 petitioner's family;
29 (6) The petitioner's rejection of parental supervision
30 or support; and
31 (7) The quality of parental supervision or support.

32 "§ 7B-3505. Final decree of emancipation.

33 After reviewing the considerations for emancipation, the court
34 may enter a decree of emancipation if the court determines:

- 35 (1) That all parties are properly before the court or
36 were duly served and failed to appear and that time
37 for filing an answer has expired; and
38 (2) That the petitioner has shown a proper and lawful
39 plan for adequately providing for the petitioner's
40 needs and living expenses; and
41 (3) That the petitioner is knowingly seeking
42 emancipation and fully understands the
43 ramifications of the act; and

1 "§ 7B-3600. Judicial authorization of emergency treatment;
2 procedure.

3 A juvenile in need of emergency treatment under Article 1A of
4 Chapter 90 of the General Statutes, whose physician is barred
5 from rendering necessary treatment by reason of parental refusal
6 to consent to treatment, may receive treatment with court
7 authorization under the following procedure:

8 (1) The physician shall sign a written statement
9 setting out:

- 10 a. The treatment to be rendered and the emergency
11 need for treatment;
12 b. The refusal of the parent, guardian, or person
13 standing in loco parentis to consent to the
14 treatment; and
15 c. The impossibility of contacting a second
16 physician for a concurring opinion on the need
17 for treatment in time to prevent immediate
18 harm to the juvenile.

19 (2) Upon examining the physician's written statement
20 prescribed in subdivision (1) of this section and
21 finding:

- 22 a. That the statement is in accordance with this
23 Article, and
24 b. That the proposed treatment is necessary to
25 prevent immediate harm to the juvenile.

26 The court may issue a written authorization for the
27 proposed treatment to be rendered.

28 (3) In acute emergencies in which time may not permit
29 implementation of the written procedure set out in
30 subdivisions (1) and (2) of this section, the court
31 may authorize treatment in person or by telephone
32 upon receiving the oral statement of a physician
33 satisfying the requirements of subdivision (1) of
34 this section and upon finding that the proposed
35 treatment is necessary to prevent immediate harm to
36 the juvenile.

37 (4) The court's authorization for treatment overriding
38 parental refusal to consent should not be given
39 without attempting to offer the parent an
40 opportunity to state the reasons for refusal;
41 however, failure of the court to hear the parent's
42 objections shall not invalidate judicial
43 authorization under this Article.

1 (5) The court's authorization for treatment under
2 subdivisions (1) and (2) of this section shall be
3 issued in duplicate. One copy shall be given to
4 the treating physician and the other copy shall be
5 attached to the physician's written statement and
6 filed as a juvenile proceeding in the office of the
7 clerk of court.

8 (6) The court's authorization for treatment under
9 subdivision (3) of this section shall be reduced to
10 writing as soon as possible, supported by the
11 physician's written statement as prescribed in
12 subdivision (1) of this section and shall be filed
13 as prescribed in subdivision (5) of this section.

14 The court's authorization for treatment under this Article shall
15 have the same effect as parental consent for treatment.

16 Following the court's authorization for treatment and after
17 giving notice to the juvenile's parent, the court shall conduct a
18 hearing in order to provide for payment for the treatment
19 rendered. The court may order the parent or other responsible
20 parties to pay the cost of treatment. If the court finds the
21 parent is unable to pay the cost of treatment, the cost shall be
22 a charge upon the county when so ordered.

23 This Article shall operate as a remedy in addition to the
24 provisions in G.S. 7B-903, 7B-2501, and 7B-2504.

25 "SUBCHAPTER V. PLACEMENT OF JUVENILES.

26 "ARTICLE 37.

27 "Placing or Adoption of Juvenile Delinquents or Dependents.

28 "§ 7B-3700. Consent required for bringing child into State for
29 placement or adoption.

30 (a) No person, agency, association, institution, or
31 corporation shall bring or send into the State any child for the
32 purpose of giving custody of the child to some person in the
33 State or procuring adoption by some person in the State without
34 first obtaining the written consent of the Department of Health
35 and Human Services.

36 (b) The person with whom a child is placed for either of the
37 purposes set out in subsection (a) of this section shall be
38 responsible for the child's proper care and training. The
39 Department of Health and Human Services or its agents shall have
40 the same right of visitation and supervision of the child and the
41 home in which it is placed as in the case of a child placed by
42 the Department or its agents as long as the child shall remain
43 within the State and until the child shall have reached the age
44 of 18 years or shall have been legally adopted.

1 "§ 7B-3701. Bond required.

2 The Social Services Commission may, in its discretion, require
3 of a person, agency, association, institution, or corporation
4 which brings or sends a child into the State with the written
5 consent of the Department of Health and Human Services, as
6 provided by G.S. 7B-3700, a continuing bond in a penal sum not in
7 excess of one thousand dollars (\$1,000) with such conditions as
8 may be prescribed and such sureties as may be approved by the
9 Department of Health and Human Services. Said bond shall be made
10 in favor of and filed with the Department of Health and Human
11 Services with the premium prepaid by the said person, agency,
12 association, institution or corporation desiring to place such
13 child in the State.

14 "§ 7B-3702. Consent required for removing child from State.

15 No child shall be taken or sent out of the State for the
16 purpose of placing the child in a foster home or in a child-
17 caring institution without first obtaining the written consent of
18 the Department of Health and Human Services. The foster home or
19 child-caring institution in which the child is placed shall
20 report to the Department of Health and Human Services at such
21 times as the Department of Health and Human Services may direct
22 as to the location and well-being of such child until the child
23 shall have reached the age of 18 years or shall have been legally
24 adopted.

25 "§ 7B-3703. Violation of Article a misdemeanor.

26 Every person acting for himself or for an agency who violates
27 any of the provisions of this Article or who shall intentionally
28 make any false statements to the Social Services Commission or
29 the Secretary or an employee thereof acting for the Department of
30 Health and Human Services in an official capacity in the placing
31 or adoption of juvenile delinquents or dependents shall, upon
32 conviction thereof, be guilty of a Class 2 misdemeanor.

33 "§ 7B-3704. Definitions.

34 The term 'Department' wherever used in this Article shall be
35 construed to mean the Department of Health and Human Services.

36 "§ 7B-3705. Application of Article.

37 None of the provisions of this Article shall apply when a child
38 is brought into or sent into, or taken out of, or sent out of the
39 State, by the guardian of the person of such child, or by a
40 parent, stepparent, grandparent, uncle or aunt of such child, or
41 by a brother, sister, half brother, or half sister of such child,
42 if such brother, sister, half brother, or half sister is 18 years
43 of age or older.

44

"ARTICLE 38.

1 "Interstate Compact on the Placement of Children.

2 "§ 7B-3800. Adoption of Compact.

3 The Interstate Compact on the Placement of Children is hereby
4 enacted into law and entered into with all other jurisdictions
5 legally joining therein in a form substantially as contained in
6 this Article. It is the intent of the General Assembly that
7 Article 4 of this Chapter shall govern interstate placements of
8 children between North Carolina and any other jurisdictions not a
9 party to this Compact. It is the intent of the General Assembly
10 that Chapter 48 of the General Statutes shall govern the adoption
11 of children within the boundaries of North Carolina.

12 Article I. Purpose and Policy.

13 It is the purpose and policy of the party states to cooperate
14 with each other in the interstate placement of children to the
15 end that:

16 (a) Each child requiring placement shall receive the maximum
17 opportunity to be placed in a suitable environment and with
18 persons or institutions having appropriate qualifications and
19 facilities to provide a necessary and desirable degree and type
20 of care.

21 (b) The appropriate authorities in a state where a child is to
22 be placed may have full opportunity to ascertain the
23 circumstances of the proposed placement, thereby promoting full
24 compliance with applicable requirements for the protection of the
25 child.

26 (c) The proper authorities of the state from which the
27 placement is made may obtain the most complete information on the
28 basis of which to evaluate a projected placement before it is
29 made.

30 (d) Appropriate jurisdictional arrangements for the care of
31 children will be promoted.

32 Article II. Definitions.

33 As used in this Compact:

34 (a) 'Child' means a person who, by reason of minority,
35 is legally subject to parental, guardianship or
36 similar control.

37 (b) 'Sending agency' means a party state officer or
38 employee thereof; a subdivision of a party state,
39 or officer or employee thereof; a court of a party
40 state; a person, corporation, association,
41 charitable agency or other entity which sends,
42 brings, or causes to be sent or brought any child
43 to another party state.

- 1 (c) 'Receiving state' means the state to which a child
2 is sent, brought, or caused to be sent or brought,
3 whether by public authorities or private persons or
4 agencies, and whether for placement with state or
5 local public authorities of [or] for placement with
6 private agencies or persons.
- 7 (d) 'Placement' means the arrangement for the care of a
8 child in a family free or boarding home or in a
9 child-caring agency or institution but does not
10 include any institution caring for the mentally
11 ill, mentally defective or epileptic or any
12 institution primarily educational in character, and
13 any hospital or other medical facility.
- 14 (e) 'Appropriate public authorities' as used in Article
15 III shall, with reference to this State, mean the
16 Department of Health and Human Services and said
17 agency shall receive and act with reference to
18 notices required by Article III.
- 19 (f) 'Appropriate authority in the receiving state' as
20 used in paragraph (a) of Article V shall, with
21 reference to this State, means the Secretary.
- 22 (g) 'Executive head' as used in Article VII means the
23 Governor.
- 24 Article III. Conditions for Placement.
- 25 (a) No sending agency shall send, bring, or cause to be sent
26 or brought into any other party state any child for placement in
27 foster care or as a preliminary to a possible adoption unless the
28 sending agency shall comply with each and every requirement set
29 forth in this Article and with the applicable laws of the
30 receiving state governing the placement of children therein.
- 31 (b) Prior to sending, bringing or causing any child to be sent
32 or brought into a receiving state for placement in foster care or
33 as a preliminary to a possible adoption, the sending agency shall
34 furnish the appropriate public authorities in the receiving state
35 written notice of the intention to send, bring, or place the
36 child in the receiving state. The notice shall contain:
- 37 (1) The name, date, and place of birth of the child.
38 (2) The identity and address or addresses of the
39 parents or legal guardian.
40 (3) The name and address of the person, agency or
41 institution to or with which the sending agency
42 proposes to send, bring, or place the child.

1 (4) A full statement of the reasons for such proposed
2 action and evidence of the authority pursuant to
3 which the placement is proposed to be made.

4 (c) Any public officer or agency in a receiving state which is
5 in receipt of a notice pursuant to paragraph (b) of this Article
6 may request of the sending agency, or any other appropriate
7 officer or agency of or in the sending agency's state, and shall
8 be entitled to receive therefrom, such supporting or additional
9 information as it may deem necessary under the circumstances to
10 carry out the purpose and policy of this Compact.

11 (d) The child shall not be sent, brought, or caused to be sent
12 or brought into the receiving state until the appropriate public
13 authorities in the receiving state shall notify the sending
14 agency, in writing, to the effect that the proposed placement
15 does not appear to be contrary to the interests of the child.

16 Article IV. Penalty for Illegal Placement.

17 The sending, bringing, or causing to be sent or brought into
18 any receiving state of a child in violation of the terms of this
19 Compact shall constitute a violation of the laws respecting the
20 placement of children of both the state in which the sending
21 agency is located or from which it sends or brings the child and
22 of the receiving state. Such violation may be punished or
23 subjected to penalty in either jurisdiction in accordance with
24 its laws. In addition to liability for any such punishment or
25 penalty, any such violation shall constitute full and sufficient
26 grounds for the suspension or revocation of any license, permit,
27 or other legal authorization held by the sending agency which
28 empowers or allows it to place, or care for children.

29 Article V. Retention of Jurisdiction.

30 (a) The sending agency shall retain jurisdiction over the
31 child sufficient to determine all matters in relation to the
32 custody, supervision, care, treatment, and disposition of the
33 child which it would have had if the child had remained in the
34 sending agency's state, until the child is adopted, reaches
35 majority, becomes self-supporting or is discharged with the
36 concurrence of the appropriate authority in the receiving state.
37 Such jurisdiction shall also include the power to effect or cause
38 the return of the child or its transfer to another location and
39 custody pursuant to law. The sending agency shall continue to
40 have financial responsibility for support and maintenance of the
41 child during the period of the placement. Nothing contained
42 herein shall defeat a claim of jurisdiction by a receiving state
43 sufficient to deal with an act of delinquency or crime committed
44 therein.

1 (b) When the sending agency is a public agency, it may enter
2 into an agreement with an authorized public or private agency in
3 the receiving state providing for the performance of one or more
4 services in respect of such case by the latter as agent for the
5 sending agency.

6 (c) Nothing in this Compact shall be construed to prevent a
7 private charitable agency authorized to place children in the
8 receiving state from performing services or acting as agent in
9 that state for a private charitable agency of the sending state;
10 nor to prevent the agency in the receiving state from discharging
11 financial responsibility for the support and maintenance of a
12 child who has been placed on behalf of the sending agency without
13 relieving the responsibility set forth in paragraph (a) hereof.

14 Article VI. Institutional Care of Delinquent Children.

15 A child adjudicated delinquent may be placed in an institution
16 in another party jurisdiction pursuant to this Compact but no
17 such placement shall be made unless the child is given a court
18 hearing on notice to the parent or guardian with opportunity to
19 be heard, prior to the child's being sent to such other party
20 jurisdiction for institutional care and the court finds that:

21 (1) Equivalent facilities for the child are not
22 available in the sending agency's jurisdiction; and

23 (2) Institutional care in the other jurisdiction is in
24 the best interests of the child and will not
25 produce undue hardship.

26 Article VII. Compact Administrator.

27 The executive head of each jurisdiction party to this Compact
28 shall designate an officer who shall be general coordinator of
29 activities under this Compact in the officer's jurisdiction and
30 who, acting jointly with like officers of other party
31 jurisdictions, shall have power to promulgate rules and
32 regulations to carry out more effectively the terms and
33 provisions of this Compact.

34 Article VIII. Limitations.

35 This Compact shall not apply to: (a) the sending or bringing of
36 a child into a receiving state by the child's parent, stepparent,
37 grandparent, adult brother or sister, adult uncle or aunt, or the
38 child's guardian and leaving the child with any such relative or
39 nonagency guardian in the receiving state. (b) Any placement,
40 sending or bringing of a child into a receiving state pursuant to
41 any other interstate compact to which both the state from which
42 the child is sent or brought and the receiving state are party,
43 or to any other agreement between said states which has the force
44 of law.

Article IX. Enactment and Withdrawal.

1 Article IX. Enactment and Withdrawal.
2 This Compact shall be open to joinder by any state, territory
3 or possession of the United States, the District of Columbia, the
4 Commonwealth of Puerto Rico, and, with the consent of Congress,
5 the government of Canada or any province thereof. It shall become
6 effective with respect to any such jurisdiction when such
7 jurisdiction has enacted the same into law. Withdrawal from this
8 Compact shall be by the enactment of a statute repealing the
9 same, but shall not take effect until two years after the
10 effective date of such statute and until written notice of the
11 withdrawal has been given by the withdrawing state to the
12 governor of each other party jurisdiction. Withdrawal of a party
13 state shall not affect the rights, duties and obligations under
14 this Compact of any sending agency therein with respect to a
15 placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

16 Article X. Construction and Severability.
17 The provisions of this Compact shall be liberally construed to
18 effectuate the purposes thereof. The provisions of this Compact
19 shall be severable and if any phrase, clause, sentence or
20 provision of this Compact is declared to be contrary to the
21 constitution of any party state or of the United States or the
22 applicability thereof to any government, agency, person or
23 circumstance is held invalid, the validity of the remainder of
24 this Compact and the applicability thereof to any government,
25 agency, person or circumstance shall not be affected thereby. If
26 this Compact shall be held contrary to the constitution of any
27 state party thereto, the Compact shall remain in full force and
28 effect as to the remaining states and in full force and effect as
29 to the state affected as to all severable matters.

"§ 7B-3801. Financial responsibility under Compact.

30 "§ 7B-3801. Financial responsibility under Compact.
31 Financial responsibility for any child placed pursuant to the
32 provisions of the Interstate Compact on the Placement of Children
33 shall be determined in accordance with the provisions of Article
34 V thereof in the first instance. However, in the event of partial
35 or complete default of performance thereunder, the provisions of
36 any other state laws fixing responsibility for the support of
37 children also may be invoked.

"§ 7B-3802. Agreements under Compact.

38 "§ 7B-3802. Agreements under Compact.
39 The officers and agencies of this State and its subdivisions
40 having authority to place children are hereby empowered to enter
41 into agreements with appropriate officers or agencies of or in
42 other party states pursuant to paragraph (b) of Article V of the
43 Interstate Compact on the Placement of Children. Any such
44 agreement which contains a financial commitment or imposes a

1 financial obligation on this State or subdivision or agency
2 thereof shall not be binding unless it has the approval in
3 writing of the Secretary of the Department of Health and Human
4 Services in the case of the State and of the county director of
5 social services in the case of a county or other subdivision of
6 the State.

7 "§ 7B-3803. Visitation, inspection or supervision.

8 Any requirements for visitation, inspection or supervision of
9 children, homes, institutions or other agencies in another party
10 state which may apply under the laws of this State shall be
11 deemed to be met if performed pursuant to an agreement entered
12 into by appropriate officers or agencies of this State or a
13 subdivision thereof as contemplated by paragraph (b) of Article V
14 of the Interstate Compact on the Placement of Children.

15 "§ 7B-3804. Compact to govern between party states.

16 The provisions of Article 37 of this Chapter shall not apply to
17 placements made pursuant to the Interstate Compact on the
18 Placement of Children.

19 "§ 7B-3805. Placement of delinquents.

20 Any court having jurisdiction to place delinquent children may
21 place such a child in an institution or in another state pursuant
22 to Article VI of the Interstate Compact on the Placement of
23 Children and shall retain jurisdiction as provided in Article V
24 thereof.

25 "§ 7B-3806. Compact Administrator.

26 The Governor is hereby authorized to appoint a Compact
27 Administrator in accordance with the terms of said Article VII."

28 Section 6. G.S. 115C-404 reads as rewritten:

29 "§ 115C-404. Use of juvenile court information.

30 (a) Written notifications received in accordance with G.S.
31 ~~7A-675.1~~ G.S. 7B-3101 and information gained from examination of
32 juvenile records in accordance with G.S. 7B-3100 are confidential
33 records, are not public records as defined under G.S.132-1, and
34 shall not be made part of the student's official record under
35 G.S. 115C-402. Immediately upon receipt, the principal shall
36 maintain these documents in a safe, locked record storage that is
37 separate from the student's other school records. ~~The principal~~
38 ~~shall maintain these documents until the principal receives~~
39 ~~notification that the judge dismissed the petition under G.S.~~
40 ~~7A-637, the judge transferred jurisdiction over the student to~~
41 ~~superior court under G.S. 7A-608, or the judge granted the~~
42 ~~student's petition for expunction of the records. At that time,~~
43 ~~the~~ The principal shall shred, burn, or otherwise destroy the
44 documents received in accordance with G.S. 7B-3100 to protect the

1 ~~confidentiality of this information.~~ the information when the
2 principal receives notification that the court dismissed the
3 petition under G.S. 7B-2411, the court transferred jurisdiction
4 over the student to superior court under G.S. 7B-2200, or the
5 court granted the student's petition for expunction of the
6 records. The principal shall shred, burn, or otherwise destroy
7 all information gained from examination of juvenile records in
8 accordance with G.S. 7B-3100 when the principal finds that the
9 school no longer needs the information to protect the safety of
10 or to improve the educational opportunities for the student or
11 others. In no case shall the principal make a copy of these
12 documents.

13 (b) Documents received under this section ~~may~~ shall be used
14 only to protect the safety of or to improve the education
15 opportunities for the student or others. Information gained in
16 accordance with G.S. 7B-3100 shall not be the sole basis for a
17 decision to suspend or expel a student. Upon receipt of each
18 document, the principal shall share the document with those
19 individuals who have (i) direct guidance, teaching, or
20 supervisory responsibility for the student, and (ii) a specific
21 need to know in order to protect the safety of the student or
22 others. Those individuals shall indicate in writing that they
23 have read the document and that they agree to maintain its
24 confidentiality. Failure to maintain the confidentiality of these
25 documents as required by this section is grounds for the
26 dismissal of an employee who is not a career employee and is
27 grounds for dismissal of an employee who is a career employee, in
28 accordance with G.S. 115C-325(e)(1)i.

29 (c) If the student graduates, withdraws from school, is
30 suspended for the remainder of the school year, is expelled, or
31 transfers to another school, the principal shall return ~~the~~ all
32 documents not destroyed in accordance with subsection (a) of this
33 section to the juvenile court counselor and, if applicable, shall
34 provide the counselor with the name and address of the school to
35 which the student is transferring."

36 Section 7. G.S. 143-661(a) reads as rewritten:

37 "(a) The Criminal Justice Information Network Governing Board
38 is established within the Department of Justice, State Bureau of
39 Investigation, to operate the State's Criminal Justice
40 Information Network, the purpose of which shall be to provide the
41 governmental and technical information systems infrastructure
42 necessary for accomplishing State and local governmental public
43 safety and justice functions in the most effective manner by
44 appropriately and efficiently sharing criminal justice and

1 juvenile justice information among law enforcement, judicial, and
2 corrections agencies. The Board is established within the
3 Department of Justice, State Bureau of Investigation, for
4 organizational and budgetary purposes only and the Board shall
5 exercise all of its statutory powers in this Article independent
6 of control by the Department of Justice."

7 Section 8. (a) G.S. 164-36 reads as rewritten:
8 "§ 164-36. Powers and duties.

9 (a) Sentences established for violations of the State's
10 criminal laws should be based on the established purposes of our
11 criminal justice and corrections systems. The Commission shall
12 evaluate sentencing laws and policies in relationship to both the
13 stated purposes of the criminal justice and corrections systems
14 and the availability of sentencing options. The Commission shall
15 make recommendations to the General Assembly for the modification
16 of sentencing laws and policies, and for the addition, deletion,
17 or expansion of sentencing options as necessary to achieve policy
18 goals. The Commission shall make a report of its recommendations,
19 including any recommended legislation, to the General Assembly
20 annually.

21 (b) Dispositions established for violations by juveniles of the
22 State's criminal laws should be based on the established purposes
23 set forth in Chapter 7B of the General Statutes. The Commission
24 shall evaluate dispositional laws and policies in relationship to
25 both the stated purposes of Chapter 7B of the General Statutes
26 and the availability of dispositional alternatives. The
27 Commission shall make recommendations to the General Assembly for
28 the modification of dispositional laws and policies, and for the
29 addition, deletion, or expansion of dispositional alternatives as
30 necessary to achieve policy goals. The Commission shall make a
31 report of its recommendations, including any recommended
32 legislation, to the General Assembly annually."

33 (b) G.S. 164-40 reads as rewritten:

34 "§ 164-40. Correction population simulation ~~model~~, model;
35 Department of Juvenile Justice facilities population simulation
36 model.

37 (a) The Commission shall develop a correctional population
38 simulation model, and shall have first priority to apply the
39 model to a given fact situation, or theoretical change in the
40 sentencing laws, when requested to do so by the Chairman, the
41 Executive Director, or the Commission as a whole.

42 The Executive Director or the Chairman shall make the model
43 available to respond to inquiries by any State legislator, or by

1 the Secretary of the Department of Correction, in second priority
2 to the work of the Commission.

3 (b) The Commission shall develop a Department of Juvenile
4 Justice facilities population simulation model, and shall have
5 first priority to apply the model to a given fact situation, or
6 theoretical change in the dispositional laws set forth in Chapter
7 7B of the General Statutes, when requested to do so by the
8 Chairman, the Executive Director, or the Commission as a whole.
9 The Executive Director or the Chairman shall make the model
10 available to respond to inquiries by any State legislator, or by
11 the Secretary of the Department of Juvenile Justice, in second
12 priority to the work of the Commission."

13 (c) G.S. 164-42.1 reads as rewritten:
14 "§ 164-42.1. Policy recommendations.

15 (a) Using the studies of the Special Committee on Prisons, the
16 Governor's Crime Commission, and other analyses, including
17 testimony from representatives of the bodies that conducted the
18 analyses, the Commission shall:

- 19 (1) Determine the long-range needs of the criminal
20 justice and corrections systems and recommend
21 policy priorities for those systems;
- 22 (2) Determine the long-range information needs of the
23 criminal justice and corrections systems and
24 acquire that information as it becomes available;
- 25 (3) Identify critical problems in the criminal justice
26 and corrections systems and recommend strategies to
27 solve those problems;
- 28 (4) Assess the cost-effectiveness of the use of State
29 and local funds in the criminal justice and
30 corrections systems;
- 31 (5) Recommend the goals, priorities, and standards for
32 the allocation of criminal justice and corrections
33 funds;
- 34 (6) Recommend means to improve the deterrent and
35 rehabilitative capabilities of the criminal justice
36 and corrections systems;
- 37 (7) Propose plans, programs, and legislation for
38 improving the effectiveness of the criminal justice
39 and corrections systems;
- 40 (8) Determine the sentencing structures for parole
41 decisions;
- 42 (9) Examine the impact of mandatory sentence lengths as
43 opposed to the deterrent effect of minimum
44 mandatory terms of imprisonment;

- 1 (10) Examine good time and gain time practices;
- 2 (11) Study the value of presentence reports;
- 3 (12) Consider the rehabilitative potential of the
- 4 offender and the appropriate rehabilitative
- 5 placement;
- 6 (13) Examine the impact of imprisonment on families of
- 7 offenders;
- 8 (14) Examine the impact of imprisonment on the ability
- 9 of the offender to make restitution; ~~and~~
- 10 (15) Study the need for an amendment to Article XI,
- 11 Section 1 of the State Constitution to include
- 12 restitution, restraints on liberty, work programs,
- 13 or other punishments to the list of punishments
- 14 allowed under that section; and
- 15 (16) Study the costs and consequences of criminal
- 16 behavior in North Carolina and consider the value
- 17 of preventing crimes by using incarceration to
- 18 deter both prospective criminals and convicted
- 19 criminals from future crimes.

20 (b) Using the studies and analyses available, including
21 testimony from representatives of the bodies that conducted the
22 analyses, the Commission shall:

- 23 (1) Determine the long-range needs of the juvenile
24 justice system and recommend policy priorities for
25 that system;
- 26 (2) Determine the long-range information needs of the
27 juvenile justice system and acquire that
28 information as it becomes available;
- 29 (3) Identify critical problems in the juvenile justice
30 system and recommend strategies to solve those
31 problems;
- 32 (4) Assess the cost-effectiveness of the use of State
33 and local funds in the juvenile justice system; and
- 34 (5) Recommend the goals, priorities, and standards for
35 the allocation of juvenile justice funds."

36 (d) G.S. 164-43 reads as rewritten:

37 "§ 164-43. Priority of duties; reports; continuing duties.

38 (a) The Commission shall have two primary duties, and other
39 secondary duties essential to accomplishing the primary ones. The
40 Commission may establish subcommittees or advisory committees
41 composed of Commission members to accomplish duties imposed by
42 this Article.

43 It is the legislative intent that the Commission attach
44 priority to accomplish the following primary duties:

- 1 (1) The classification of criminal offenses as
2 described in G.S. 164-41 and the formulation of
3 sentencing structures as described in G.S. 164-42;
4 and
- 5 (2) The formulation of proposals and recommendations as
6 described in G.S. 164-42.1 and G.S. 164-42.2.
- 7 (b) The Commission shall report its findings and
8 recommendations to the 1991 General Assembly, 1991 Regular
9 Session. The report shall describe the status of the Commission's
10 work, and shall include any completed policy recommendations.
- 11 (c) The Commission shall report on its progress in formulating
12 recommendations for the classification and ranges of punishment
13 for felonies and misdemeanors, required by G.S. 164-41, and
14 sentencing structures, established pursuant to G.S. 164-42, to
15 the 1991 General Assembly, 1992 Regular Session, and shall make a
16 final report on these recommendations no later than 30 days after
17 the convening of the 1993 Session of the General Assembly.
- 18 (d) Once the primary duties of the Commission have been
19 accomplished, it shall have the continuing duty to monitor and
20 review the criminal justice and corrections systems and the
21 juvenile justice system in this State to ensure that ~~sentencing~~
22 ~~remains~~ sentences and dispositions remain uniform and consistent,
23 and that the goals and policies established by the State are
24 being implemented by sentencing and dispositional practices, and
25 it shall recommend methods by which this ongoing work may be
26 accomplished and by which the correctional population simulation
27 model and the Department of Juvenile Justice facilities
28 population simulation model developed pursuant to G.S. 164-40
29 shall continue to be used by the State.
- 30 (e) Upon adoption of a system for the classification of
31 offenses formulated pursuant to G.S. 164-41, the Commission or
32 its successor shall review all proposed legislation which creates
33 a new criminal offense, changes the classification of an offense,
34 or changes the range of punishment or dispositional level for a
35 particular classification, and shall make recommendations to the
36 General Assembly.
- 37 (f) In the case of a new criminal offense, the Commission or
38 its successor shall determine whether the proposal places the
39 offense in the correct classification, based upon the
40 considerations and principles set out in G.S. 164-41. If the
41 proposal does not assign the offense to a classification, it
42 shall be the duty of the Commission or its successor to recommend
43 the proper classification placement.

1 (g) In the case of proposed changes in the classification of
2 an offense or changes in the range of punishment or dispositional
3 level for a classification, the Commission or its successor shall
4 determine whether such a proposed change is consistent with the
5 considerations and principles set out in G.S. 164-41, and shall
6 report its findings to the General Assembly.

7 (h) The Commission or its successor shall meet within 10 days
8 after the last day for filing general bills in the General
9 Assembly for the purpose of reviewing bills as described in
10 subsections (e), (f), and (g). The Commission or its successor
11 shall include in its report on a bill an analysis based on an
12 application of the correctional population simulation model or
13 the Department of Juvenile Justice facilities population
14 simulation model to the provisions of the bill."

15 (e) G.S. 164-44 reads as rewritten:

16 "§ 164-44. Statistical information; financial or other aid.

17 (a) The Commission shall have the secondary duty of
18 collecting, developing, and maintaining statistical data relating
19 to ~~sentencing and corrections~~ sentencing, corrections, and
20 juvenile justice so that the primary duties of the Commission
21 will be formulated using data that is valid, accurate, and
22 relevant to this State. All State agencies shall provide data as
23 it is requested by the Commission. All meetings of the Commission
24 shall be open to the public and the information presented to the
25 Commission shall be available to any State agency or member of
26 the General Assembly.

27 (b) The Commission shall have the authority to apply for,
28 accept, and use any gifts, grants, or financial or other aid, in
29 any form, from the federal government or any agency or
30 instrumentality thereof, or from the State or from any other
31 source including private associations, foundations, or
32 corporations to accomplish any of the duties set out in this
33 Chapter."

34 **PART III. REGISTRATION OF CERTAIN JUVENILES.**

35 Section 9. Effective October 1, 1999, Article 25 of
36 Chapter 7B of the General Statutes is amended by adding a new
37 section to read:

38 "§ 7B-2505.1. Registration of certain delinquent juveniles.

39 In any case in which a juvenile, who was at least eleven years
40 of age at the time of the offense, is adjudicated delinquent for
41 committing a violation of G.S. 14-27.2 (first-degree rape), G.S.
42 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sexual
43 offense), G.S. 14-27.5 (second degree sexual offense), or G.S.
44 14-27.6 (attempted rape or sexual offense), the judge, upon a

1 finding that the juvenile is a danger to the community, may order
2 that the juvenile register in accordance with Part 4 of Article
3 27A of Chapter 14 of the General Statutes."

4 **PART IV. PREVENTION STATUTORY RECOMMENDATIONS EDUCATING CHILDREN**
5 **EXPELLED FROM SCHOOL**

6 "Section 10. G.S. 115C-47 is amended by adding the following new
7 subdivision to read:

8 '(32a) To Develop Guidelines for Alternative Learning
9 Programs. -- Local boards of education are
10 encouraged to establish alternative learning
11 programs. If these programs are established,
12 local boards of education shall adopt
13 guidelines for assigning students to them.
14 These guidelines shall include (i) a
15 description of the programs and services to be
16 provided, (ii) a process for ensuring that an
17 assignment is appropriate for the student and
18 that the student's parents are involved in the
19 decision, and (iii) strategies for providing
20 alternative learning programs, when feasible
21 and appropriate, for students who are subject
22 to long-term suspension or expulsion. In
23 developing these guidelines, local boards are
24 encouraged to consider the State Board's
25 guidelines developed under G.S. 115C-12(24).
26 Upon adoption of guidelines under this
27 subdivision, local boards are encouraged to
28 incorporate them in their safe school plans
29 developed under G.S. 105.47."

30 **PART V. CONFORMING STATUTORY CHANGES**

31 Section 11. (a) G.S. 8-53.1 reads as rewritten:

32 **"§ 8-53.1. Physician-patient privilege waived in child abuse.**

33 Notwithstanding the provisions of G.S. 8-53, the
34 physician-patient privilege shall not be ground for excluding
35 evidence regarding the abuse or neglect of a child under the age
36 of 16 years or regarding an illness of or injuries to such child
37 or the cause thereof in any judicial proceeding related to a
38 report pursuant to the North Carolina Juvenile Code, ~~Subchapter~~
39 ~~XI~~ ~~of~~ Chapter ~~7A~~ 7B of the General Statutes of North Carolina."

40 (b) G.S. 8-53.3 reads as rewritten:

41 **"§ 8-53.3. Communications between psychologist and client or**
42 **patient.**

43 No person, duly authorized as a licensed psychologist or
44 licensed psychological associate, nor any of his or her employees

1 or associates, shall be required to disclose any information
2 which he or she may have acquired in the practice of psychology
3 and which information was necessary to enable him or her to
4 practice psychology. Any resident or presiding judge in the
5 district in which the action is pending may, subject to G.S.
6 8-53.6, compel disclosure, either at the trial or prior thereto,
7 if in his or her opinion disclosure is necessary to a proper
8 administration of justice. If the case is in district court the
9 judge shall be a district court judge, and if the case is in
10 superior court the judge shall be a superior court judge.

11 Notwithstanding the provisions of this section, the
12 psychologist-client or patient privilege shall not be grounds for
13 failure to report suspected child abuse or neglect to the
14 appropriate county department of social services, or for failure
15 to report a disabled adult suspected to be in need of protective
16 services to the appropriate county department of social services.
17 Notwithstanding the provisions of this section, the psychologist-
18 client or patient privilege shall not be grounds for excluding
19 evidence regarding the abuse or neglect of a child, or an illness
20 of or injuries to a child, or the cause thereof, or for excluding
21 evidence regarding the abuse, neglect, or exploitation of a
22 disabled adult, or an illness of or injuries to a disabled adult,
23 or the cause thereof, in any judicial proceeding related to a
24 report pursuant to the Child Abuse Reporting Law, ~~Article 44 of~~
25 ~~Chapter 7A,~~ Article 3 of Chapter 7B of the General Statutes, or
26 to the Protection of the Abused, Neglected, or Exploited Disabled
27 Adult Act, Article 6 of Chapter 108A of the General Statutes."

28 (c) G.S. 8-57.1 reads as rewritten:

29 "**§ 8-57.1. Husband-wife privilege waived in child abuse.**

30 Notwithstanding the provisions of G.S. 8-56 and G.S. 8-57, the
31 husband-wife privilege shall not be ground for excluding evidence
32 regarding the abuse or neglect of a child under the age of 16
33 years or regarding an illness of or injuries to such child or the
34 cause thereof in any judicial proceeding related to a report
35 pursuant to the Child Abuse Reporting Law, ~~Article 8 of Chapter~~
36 ~~110~~ Article 3 of Chapter 7B of the General Statutes of North
37 Carolina."

38 (d) G.S. 14-208.6B reads as rewritten:

39 "**§ 14-208.6B. Registration requirements for juveniles transferred**
40 **to and convicted in superior court.**

41 A juvenile transferred to superior court pursuant to ~~G.S.~~
42 ~~7A-608~~ G.S. 7B-2200 who is convicted of a sexually violent
43 offense or an offense against a minor as defined in G.S. 14-208.6

1 shall register in accordance with this Article just as an adult
2 convicted of the same offense must register."

3 (e) G.S. 15A-502(c) reads as rewritten:

4 "(c) This section does not authorize the taking of photographs
5 or fingerprints of a juvenile alleged to be delinquent except
6 under ~~G.S. 7A-596 through 7A-601 and 7A-603.~~ Article 21 of
7 Chapter 7B of the General Statutes."

8 (f) G.S. 35A-1371 reads as rewritten:

9 "§ 35A-1371. Jurisdiction; limits.

10 Notwithstanding the provisions of Subchapter II of this
11 Chapter, the clerk of superior court shall have original
12 jurisdiction for the appointment of a standby guardian for a
13 minor child under this Article. Provided that the clerk shall
14 have no jurisdiction, no standby guardian may be appointed under
15 this Article, and no designation may become effective under this
16 Article when a district court has assumed jurisdiction over the
17 minor child in an action under Chapter 50 of the General Statutes
18 or in an abuse, neglect, or dependency proceeding under
19 ~~Subchapter XI of Chapter 7A~~ Subchapter I of Chapter 7B of the
20 General Statutes, or when a court in another state has assumed
21 such jurisdiction under a comparable statute."

22 (g) G.S. 48-2-102(b) reads as rewritten:

23 "(b) If an adoptee is also the subject of a pending proceeding
24 under ~~Subchapter XI of Chapter 7A~~ Chapter 7B of the General
25 Statutes, then the district court having jurisdiction under
26 Chapter ~~7A~~ 7B shall retain jurisdiction until the final order of
27 adoption is entered. The district court may waive jurisdiction
28 for good cause."

29 (h) G.S. 48-3-201(d) reads as rewritten:

30 "(d) An agency having legal and physical custody of a minor
31 may place the minor for adoption at any time after a
32 relinquishment is executed by anyone as permitted by G.S. 48-3-
33 701. The agency may place the minor for adoption even if other
34 consents are required before an adoption can be granted, unless
35 an individual whose consent is required notifies the agency in
36 writing of the individual's objections before the placement. The
37 agency shall act promptly after accepting a relinquishment to
38 obtain all other necessary consents, relinquishments, or
39 terminations of any guardian's authority pursuant to Chapter 35A
40 of the General Statutes or parental rights pursuant to ~~Article~~
41 ~~24B of Chapter 7A~~ Article 11 of Chapter 7B of the General
42 Statutes."

43 (i) G.S. 48-2-304(c) reads as rewritten:

- 1 "(c) A petition to adopt a minor under Article 3 of this
2 Chapter shall also state:
- 3 (1) A description of the source of placement and the
4 date of placement of the adoptee with the
5 petitioner; and
- 6 (2) That the provisions of the Interstate Compact on
7 the Placement of Children, ~~G.S. 110-57.1, et seq.,~~
8 Article 38 of Chapter 7B of the General Statutes,
9 were followed if the adoptee was brought into this
10 State from another state for purposes of adoption."
- 11 (j) G.S. 48-2-603 reads as rewritten:
- 12 "§ 48-2-603. Hearing on, or disposition of, petition to adopt a
13 minor.
- 14 (a) At the hearing on, or disposition of, a petition to adopt
15 a minor, the court shall grant the petition upon finding by a
16 preponderance of the evidence that the adoption will serve the
17 best interest of the adoptee, and that:
- 18 (1) At least 90 days have elapsed since the filing of
19 the petition for adoption, unless the court for
20 cause waives this requirement;
- 21 (2) The adoptee has been in the physical custody of the
22 petitioner for at least 90 days, unless the court
23 for cause waives this requirement;
- 24 (3) Notice of the filing of the petition has been
25 served on any person entitled to receive notice
26 under Part 4 of this Article;
- 27 (4) Each necessary consent, relinquishment, waiver, or
28 judicial order terminating parental rights, has
29 been obtained and filed with the court and the time
30 for revocation has expired;
- 31 (5) Any assessment required by this Chapter has been
32 filed with and considered by the court;
- 33 (6) If applicable, the requirements of the Interstate
34 Compact on the Placement of Children, ~~G.S.~~
35 ~~110-57.1, et seq.,~~ Article 38 of Chapter 7B of the
36 General Statutes, have been met;
- 37 (7) Any motion to dismiss the proceeding has been
38 denied;
- 39 (8) Each petitioner is a suitable adoptive parent;
- 40 (9) Any accounting and affidavit required under G.S.
41 48-2-602 has been reviewed by the court, and the
42 court has denied, modified, or ordered
43 reimbursement of any payment or disbursement that
44 violates Article 10 or is unreasonable when

- 1 compared with the expenses customarily incurred in
2 connection with an adoption;
- 3 (10) The petitioner has received information about the
4 adoptee and the adoptee's biological family if
5 required by G.S. 48-3-205; and
- 6 (11) There has been substantial compliance with the
7 provisions of this Chapter.
- 8 (b) If the Court finds a violation of this Chapter pursuant to
9 Article 10 or of the Interstate Compact on the Placement of
10 Children, ~~G.S. 110-57.1, et seq.~~, Article 38 of Chapter 7B of the
11 General Statutes, but determines that in every other respect
12 there has been substantial compliance with the provisions of this
13 Chapter, and the adoption will serve the best interest of the
14 adoptee, the court shall:
- 15 (1) Grant the petition to adopt; and
16 (2) Impose the sanctions provided by this Chapter
17 against any individual or entity who has committed
18 a prohibited act or report the violations to the
19 appropriate legal authorities.
- 20 (c) The court on its own motion may continue the hearing for
21 further evidence."
- 22 (j1) G.S. 48-2-305(7) reads as rewritten:
23 "(7) Any signed copy of the form required by the
24 Interstate Compact on the Placement of Children,
25 ~~G.S. 110-57.1, et seq.~~, Article 38 of Chapter 7B of
26 the General Statutes, authorizing a minor to come
27 into this State;"
- 28 (k) G.S. 48-3-207 reads as rewritten:
29 "§ 48-3-207. Interstate placements.
30 An interstate placement of a minor for purposes of adoption
31 shall comply with the Interstate Compact on the Placement of
32 Children, ~~G.S. 110-57.1 et seq.~~ Article 38 of Chapter 7B of the
33 General Statutes."
- 34 (1) G.S. 48-3-603(a)(1) reads as rewritten:
35 " (1) An individual whose parental rights and duties
36 have been terminated under ~~Article 24B of~~
37 ~~Chapter 7A~~ Article 11 of Chapter 7B of the
38 General Statutes or by a court of competent
39 jurisdiction in another state;"
- 40 (m) G.S. 50-13.1(f) reads as rewritten:
41 "(f) Neither the mediator nor any party or other person
42 involved in mediation sessions under this section shall be
43 competent to testify to communications made during or in
44 furtherance of such mediation sessions; provided, there is no

1 privilege as to communications made in furtherance of a crime or
2 fraud. Nothing in this subsection shall be construed as
3 permitting an individual to obtain immunity from prosecution for
4 criminal conduct or as excusing an individual from the reporting
5 requirements of ~~G.S. 7A-543~~ Article 3 of Chapter 7B of the
6 General Statutes or G.S. 108A-102."

7 (n) G.S. 50A-25 reads as rewritten:

8 "§ 50A-25. Emergency orders.

9 Nothing in this Chapter shall be interpreted to limit the
10 authority of the court to issue an interlocutory order under the
11 provisions of G.S. 50-13.5(d)(2); or a secure or nonsecure
12 custody order under the provisions of ~~G.S. 7A-573~~, G.S. 7B-502."

13 (o) G.S. 50B-6 reads as rewritten:

14 "§ 50B-6. Construction of Chapter.

15 This Chapter shall not be construed as granting a status to any
16 person for any purpose other than those expressly stated herein.
17 This Chapter shall not be construed as relieving any person or
18 institution of the duty to report to the department of social
19 services, as required by ~~G.S. 7A-543~~, G.S. 7B-301, if the person
20 or institution has cause to suspect that a juvenile is abused or
21 neglected."

22 (p) G.S. 51-2(a) reads as rewritten:

23 "(a) All unmarried persons of 18 years, or older, may lawfully
24 marry, except as hereinafter forbidden. In addition, persons over
25 16 years of age and under 18 years of age may marry, and the
26 register of deeds may issue a license for such marriage, only
27 after there shall have been filed with the register of deeds a
28 written consent to such marriage, said consent having been signed
29 by the appropriate person as follows:

30 (1) By the father if the male or female child applying
31 to marry resides with his or her father, but not
32 with his or her mother;

33 (2) By the mother if the male or female child applying
34 to marry resides with his or her mother, but not
35 with his or her father;

36 (3) By either the mother or father, without preference,
37 if the male or female child applying to marry
38 resides with his or her mother and father;

39 (4) By a person, agency, or institution having legal
40 custody, standing in loco parentis, or serving as
41 guardian of such male or female child applying to
42 marry.

43 Such written consent shall not be required for an emancipated
44 minor if a certificate of emancipation issued pursuant to Article

1 ~~56 of Chapter 7A~~ 35 of Chapter 7B of the General Statutes or a
2 certified copy of a final decree or certificate of emancipation
3 from this or any other jurisdiction is filed with the register of
4 deeds."

5 (q) G.S. 90-21.6(1) reads as rewritten:

6 "(1) 'Unemancipated minor' or 'minor' means any person
7 under the age of 18 who has not been married or has
8 not been emancipated pursuant to Article ~~56 of~~
9 Chapter 7A 35 of Chapter 7B of the General
10 Statutes."

11 (r) G.S. 90-21.8(f) reads as rewritten:

12 "(f) The court shall make written findings of fact and
13 conclusions of law supporting its decision and shall order that a
14 confidential record of the evidence be maintained. If the court
15 finds that the minor has been a victim of incest, whether
16 felonious or misdemeanor, it shall advise the Director of the
17 Department of Social Services of its findings for further action
18 pursuant to Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the
19 General Statutes."

20 (s) G.S. 108A-14(a)(11) reads as rewritten:

21 "(11) To investigate reports of child abuse and
22 neglect and to take appropriate action to
23 protect such children pursuant to the Child
24 Abuse Reporting Law, ~~Article 44 of Chapter 7A;~~
25 Article 3 of Chapter 7B of the General
26 Statutes;"

27 (t) G.S. 110-102 reads as rewritten:

28 "§ 110-102. Information for parents.

29 The Secretary shall provide to each operator of a child care
30 facility a summary of this Article for the parents, guardian, or
31 full-time custodian of each child receiving child care in the
32 facility to be distributed by the operator. The summary shall
33 include the name and address of the Secretary and the address of
34 the Commission. The summary shall also include a statement
35 regarding the mandatory duty prescribed in ~~G.S. 7A-543~~ G.S. 7B-
36 301 of any person suspecting child abuse or neglect has taken
37 place in child care, or elsewhere, to report to the county
38 Department of Social Services. The statement shall include the
39 definitions of child abuse and neglect described in the Juvenile
40 Code in ~~G.S. 7A-517~~ 7B-101 and of child abuse described in the
41 Criminal Code in G.S. 14-318.2 and G.S. 14-318.4. The statement
42 shall stress that this reporting law does not require that the
43 person reporting reveal the person's identity."

44 (u) G.S. 110-105.2(a) reads as rewritten:

1 "(a) For purposes of this Article, child abuse and neglect, as
2 defined in ~~G.S. 7A-517~~ G.S. 7B-101 and in G.S. 14-318.2 and G.S.
3 14-318.4, occurring in child care facilities, are violations of
4 the licensure standards and of the licensure law."

5 (v) G.S. 110-147 reads as rewritten:

6 "**§ 110-147. Purpose.**

7 It is the expressed intent of this Article to make the
8 prevention of child abuse and neglect as defined in ~~G.S. 7A-517~~,
9 G.S. 7B-101, a priority of this State and to establish the
10 Children's Trust Fund as a means to that end."

11 (w) G.S. 114-15.3 reads as rewritten:

12 "**§ 114-15.3. Investigations of child sexual abuse in child care.**

13 The Director of the Bureau may form a task force to investigate
14 and gather evidence following a notification by the director of a
15 county department of social services, pursuant to ~~G.S. 7A-543~~,
16 G.S. 7B-301, that child sexual abuse may have occurred in a child
17 care facility."

18 (x) G.S. 115C-378 reads as rewritten:

19 "**§ 115C-378. Children required to attend.**

20 Every parent, guardian or other person in this State having
21 charge or control of a child between the ages of seven and 16
22 years shall cause such child to attend school continuously for a
23 period equal to the time which the public school to which the
24 child is assigned shall be in session. Every parent, guardian, or
25 other person in this State having charge or control of a child
26 under age seven who is enrolled in a public school in grades
27 kindergarten through two shall also cause such child to attend
28 school continuously for a period equal to the time which the
29 public school to which the child is assigned shall be in session
30 unless the child has withdrawn from school. No person shall
31 encourage, entice or counsel any such child to be unlawfully
32 absent from school. The parent, guardian, or custodian of a child
33 shall notify the school of the reason for each known absence of
34 the child, in accordance with local school policy.

35 The principal, superintendent, or teacher who is in charge of
36 such school shall have the right to excuse a child temporarily
37 from attendance on account of sickness or other unavoidable cause
38 which does not constitute unlawful absence as defined by the
39 State Board of Education. The term 'school' as used herein is
40 defined to embrace all public schools and such nonpublic schools
41 as have teachers and curricula that are approved by the State
42 Board of Education.

43 All nonpublic schools receiving and instructing children of a
44 compulsory school age shall be required to keep such records of

1 attendance and render such reports of the attendance of such
2 children and maintain such minimum curriculum standards as are
3 required of public schools; and attendance upon such schools, if
4 the school refuses or neglects to keep such records or to render
5 such reports, shall not be accepted in lieu of attendance upon
6 the public school of the district to which the child shall be
7 assigned: Provided, that instruction in a nonpublic school shall
8 not be regarded as meeting the requirements of the law unless the
9 courses of instruction run concurrently with the term of the
10 public school in the district and extend for at least as long a
11 term.

12 The principal or his designee shall notify the parent,
13 guardian, or custodian of his child's excessive absences after
14 the child has accumulated three unexcused absences in a school
15 year. After not more than six unexcused absences, the principal
16 shall notify the parent, guardian, or custodian by mail that he
17 may be in violation of the Compulsory Attendance Law and may be
18 prosecuted if the absences cannot be justified under the
19 established attendance policies of the State and local boards of
20 education. Once the parents are notified, the school attendance
21 counselor shall work with the child and his family to analyze the
22 causes of the absences and determine steps, including adjustment
23 of the school program or obtaining supplemental services, to
24 eliminate the problem. The attendance counselor may request that
25 a law-enforcement officer accompany him if he believes that a
26 home visit is necessary.

27 After 10 accumulated unexcused absences in a school year the
28 principal shall review any report or investigation prepared under
29 G.S. 115C-381 and shall confer with the student and his parent,
30 guardian, or custodian if possible to determine whether the
31 parent, guardian, or custodian has received notification pursuant
32 to this section and made a good faith effort to comply with the
33 law. If the principal determines that parent, guardian, or
34 custodian has not, he shall notify the district attorney. If he
35 determines that parent, guardian, or custodian has, he may file a
36 complaint with the juvenile intake counselor ~~under G.S. 7A-561~~
37 pursuant to Chapter 7B of the General Statutes that the child is
38 habitually absent from school without a valid excuse. Evidence
39 that shows that the parents, guardian, or custodian were notified
40 and that the child has accumulated 10 absences which cannot be
41 justified under the established attendance policies of the local
42 board shall establish a prima facie case that the child's parent,
43 guardian, or custodian is responsible for the absences."

44 (y) G.S. 115C-400 reads as rewritten:

1 "§ 115C-400. School personnel to report child abuse.

2 Any person who has cause to suspect child abuse or neglect has
3 a duty to report the case of the child to the Director of Social
4 Services of the county, as provided in ~~G.S. 7A-543 to 7A-552.~~
5 Article 3 of Chapter 7B of the General Statutes."

6 (z) G.S. 115C-404(a) reads as rewritten:

7 "(a) Written notifications received in accordance with ~~G.S.~~
8 ~~7A-675.1~~ Article 31 of Chapter 7B of the General Statutes are
9 confidential records, are not public records as defined under
10 G.S.132-1, and shall not be made part of the student's official
11 record under G.S. 115C-402. Immediately upon receipt, the
12 principal shall maintain these documents in a safe, locked record
13 storage that is separate from the student's other school records.
14 The principal shall maintain these documents until the principal
15 receives notification that the judge dismissed the ~~petition under~~
16 ~~G.S. 7A-637,~~ petition, the judge transferred jurisdiction over
17 the student to superior ~~court under G.S. 7A-608,~~ court, or the
18 judge granted the student's petition for expunction of the
19 ~~records.~~ records pursuant to Chapter 7B of the General Statutes.
20 At that time, the principal shall shred, burn, or otherwise
21 destroy the documents to protect the confidentiality of this
22 information. In no case shall the principal make a copy of these
23 documents."

24 (aa) G.S. 122C-54(h) reads as rewritten:

25 "(h) A facility shall disclose confidential information for
26 purposes of complying with ~~Article 44 of Chapter 7A~~ 3 of Chapter
27 7B of the General Statutes and Article 6 of Chapter 108A of the
28 General Statutes, or as required by other State or federal law."

29 (bb) G.S. 122C-66(e) reads as rewritten:

30 "(e) The duty imposed by this section is in addition to any
31 duty imposed by G.S. ~~7A-543~~ 7B-301 or G.S. 108A-102."

32 (cc) G.S. 122C-223(c) reads as rewritten:

33 "(c) If the legally responsible person cannot be located
34 within 72 hours of admission, the responsible professional shall
35 initiate proceedings for juvenile protective services as
36 described in ~~Article 44 of Chapter 7A~~ 3 of Chapter 7B of the
37 General Statutes in either the minor's county of residence or in
38 the county in which the facility is located."

39 (dd) G.S. 122C-421(a) reads as rewritten:

40 "(a) The Secretary may designate one or more special police
41 officers who shall make up a joint security force to enforce the
42 law of North Carolina and any ordinance or regulation adopted
43 pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the
44 authority granted the Department by any other law on the

1 territory of the Black Mountain Center, the Alcohol
2 Rehabilitation Center, and the Juvenile Evaluation Center, all in
3 Buncombe County. After taking the oath of office for law
4 enforcement officers as set out in G.S. 11-11, these special
5 police officers have the same powers as peace officers now vested
6 in sheriffs within the territory embraced by the named centers.
7 These special police officers shall also have the power
8 prescribed by ~~G.S. 7A-571(a)(4)~~ G.S. 7B-1900 outside the
9 territory embraced by the named centers but within the confines
10 of Buncombe County. These special police officers may arrest
11 persons outside the territory of the named centers but within the
12 confines of Buncombe County when the person arrested has
13 committed a criminal offense within that territory, for which the
14 officers could have arrested the person within that territory,
15 and the arrest is made during the person's immediate and
16 continuous flight from that territory."

17 (ee) G.S. 131D-10.2(3) reads as rewritten:

18 "(3) 'Child' means an individual less than 18 years of
19 age, who has not been emancipated under the
20 provisions of ~~Article 56 of Chapter 7A~~ Article 35
21 of Chapter 7B of the General Statutes."

22 (ff) G.S. 131D-10.4(3) reads as rewritten:

23 "(3) Secure detention facilities as specified in Article
24 ~~5 of Chapter 134A~~ 40 of Chapter 7B of the General
25 Statutes;"

26 (gg) G.S. 132-1.4(1) reads as rewritten:

27 "(1) Records of investigations of alleged child abuse shall be
28 governed by ~~G.S. 7A-675~~ Article 29 of Chapter 7B of the General
29 Statutes."

30 (hh) G.S. 143-576(1) reads as rewritten:

31 "(1) Review current deaths of children when those deaths
32 are attributed to child abuse or neglect or when
33 the decedent was reported as an abused or neglected
34 juvenile pursuant to ~~G.S. 7A-543~~ G.S. 7B-301 at any
35 time before death;"

36 (ii) G.S. 143B-168.14(a)(3) reads as rewritten:

37 "(3) Each local partnership shall adopt procedures to
38 ensure that all personnel who provide services to
39 young children and their families under this Part
40 know and understand their responsibility to report
41 suspected child abuse, neglect, or dependency, as
42 defined in ~~G.S. 7A-517~~ G.S. 7B-101."

43 (jj) G.S. 143B-496 reads as rewritten:

44 "§ 143B-496. Definitions.

1 For the purpose of this Part:

- 2 (1) 'Missing child' means a juvenile as defined in G.S.
3 ~~7A-517(20)~~ 7B-101 whose location has not been
4 determined, who has been reported as missing to a
5 law-enforcement agency, and whose parent's,
6 spouse's, guardian's or legal custodian's temporary
7 or permanent residence is in North Carolina or is
8 believed to be in North Carolina.
- 9 (2) 'Missing person' means any individual who is 18
10 years of age or older, whose temporary or permanent
11 residence is in North Carolina, or is believed to
12 be in North Carolina, whose location has not been
13 determined, and who has been reported as missing to
14 a law-enforcement agency.
- 15 (3) 'Missing person report' is a report prepared on a
16 prescribed form for transmitting information about
17 a missing person or a missing child to an
18 appropriate law-enforcement agency."

19 (kk) G.S. 153A-221.1 reads as rewritten:

20 "§ 153A-221.1. Standards and inspections.

21 The legal responsibility of the Secretary of Health and Human
22 Services and the Social Services Commission for State services to
23 county juvenile detention homes under this Article is hereby
24 confirmed and shall include the following: development of State
25 standards under the prescribed procedures; inspection;
26 consultation; technical assistance; and training. Further, the
27 legal responsibility of the Department of Health and Human
28 Services is hereby expanded to give said Department the same
29 legal responsibility as to the State-administered regional
30 detention homes which shall be developed by the State Department
31 of Correction as provided by ~~G.S. 134A-37~~, G.S. 7B-4008.

32 The Secretary of Health and Human Services shall develop new
33 standards which shall be applicable to county detention homes and
34 regional detention homes as defined by ~~G.S. 134-36~~ Article 40 of
35 Chapter 7B of the General Statutes in line with the
36 recommendations of the report entitled Juvenile Detention in
37 North Carolina: A Study Report (January, 1973) where practicable,
38 and such new standards shall become effective not later than July
39 1, 1977.

40 The Secretary of Health and Human Services shall also develop
41 standards under which a local jail may be approved as a holdover
42 facility for not more than five calendar days pending placement
43 in a juvenile detention home which meets State standards,
44 providing the local jail is so arranged that any child placed in

1 the holdover facility cannot converse with, see, or be seen by
2 the adult population of the jail while in the holdover facility.
3 The personnel responsible for the administration of a jail with
4 an approved holdover facility shall provide close supervision of
5 any child placed in the holdover facility for the protection of
6 the child."

7 Section 12. Effective October 1, 1999, G.S. 14-208.31
8 reads as rewritten:

9 "**§ 14-208.31. File with Police Information Network.**

10 (a) The Division shall include the registration information in
11 the Police Information Network as set forth in G.S. 114-10.1.

12 (b) The Division shall maintain the registration information
13 permanently even after the registrant's reporting requirement
14 expires; however, the records shall remain confidential in
15 accordance with ~~G.S. 7A-675~~, Article 32 of Chapter 7B of the
16 General Statutes."

17 Sec. 13.1 G,S, 7A-302 reads as rewritten:

18 "**§7A-302. Counties and municipalities responsible for physical**
19 **facilities.**

20 In each county in which a district court has been established,
21 courtrooms, office space for juvenile court counselors and support
22 staff as assigned by the Department of Juvenile Justice, and related
23 judicial facilities (including furniture), as defined in this
24 Subchapter, shall be provided by the county, except that courtrooms
25 and related judicial facilities may, with the approval of the
26 Administrative Officer of the Courts, after consultation with county
27 and municipal authorities, be provided by a municipality in the
28 county. To assist a county or municipality in meeting the expense of
29 providing courtrooms and related judicial facilities, a part of the
30 costs of court, known as the "facilities fee," collected for the State
31 by the clerk of superior court, shall be remitted to the county or
32 municipality providing the facilities.

33 **PART VI. UNCODIFIED RECOMMENDATIONS.**

34 Section 13. The Department of Justice shall revise the
35 Division of Criminal Information's juvenile arrest form that is
36 used by State and local law enforcement agencies to provide more
37 realistic reporting options and case disposition information.
38 The Department of Justice shall rename the "Juvenile Arrest" form
39 the "Juvenile Contact Report", with instructions to law
40 enforcement "Use to Record the Handling of Juveniles Who Commit
41 Criminal Offenses" and shall amend the report based on the form
42 included with Recommendation 51 of the March 10, 1998, final
43 report of the Governor's Commission on Juvenile Crime and
44 Justice.

45 Section 14. (a) The Department of Justice shall develop
46 and administer minority sensitivity training for all law

1 enforcement personnel throughout the State. The Department shall
2 ensure that all persons who work with minority juveniles in the
3 juvenile justice system are taught how to communicate effectively
4 with minority juveniles and how to recognize and address the
5 needs of those juveniles. The Department shall also advise all
6 law enforcement and professionals who work within the juvenile
7 justice system of ways to improve the treatment of minority
8 juveniles so that all juveniles receive equal treatment. The
9 Department shall conduct the minority sensitivity training
10 annually and, prior to the training each year, shall assess
11 whether minorities are receiving fair and equal treatment in the
12 juvenile justice system with regard to the administration of
13 predisposition procedures, of diversion methods, of dispositional
14 alternatives, and of treatment and post-release supervision
15 plans.

16 (b) The Department of Juvenile Justice shall ensure
17 that all juvenile court counselors and other Department personnel
18 receive the minority sensitivity training specified in subsection
19 (a) of this section. The Chief Justice of the North Carolina
20 Supreme Court shall consider ensuring that all judges who hear
21 cases under the jurisdiction of the juvenile court receive
22 minority sensitivity training.

23 Section 15. The Legislative Research Commission may
24 study the recommendations of the Court Improvement Project
25 regarding the statutory procedures and mandates of Subchapter I.
26 of Chapter 7B of the General Statutes, the Juvenile Code. The
27 study may include a review of the effectiveness of the juvenile
28 justice system with regard to the disposition of abuse, neglect,
29 and dependency cases and may consider whether the recommendations
30 of the Court Improvement Project will improve the procedures and
31 disposition of those cases. The Legislative Research Commission
32 may report its findings, recommendations, and any legislative
33 proposals to the 1999 General Assembly on or before December 1,
34 1999.

35 Section 16. (a) The State Board of Education shall study
36 the feasibility and advisability of delaying the start of the
37 school day in order to provide students with constructive
38 projects and tasks during late afternoon hours of the school
39 week. If the Board recommends that the school day be delayed,
40 the Board shall consider whether the local school administrative
41 units should provide supervision of students whose working
42 parents do not have early morning child care available.

43 (b) The State Board of Education shall report its
44 findings, recommendations, and any legislative proposals to the

1 Joint Legislative Education Oversight Committee on or before
2 April 1, 1999.

3 Section 17. (a) The Criminal Justice Information Network
4 Governing Board created pursuant to Section 23.3 of Chapter 18 of
5 the Session Laws of the 1996 Second Extra Session shall develop a
6 comprehensive juvenile justice information system. The Board
7 shall develop a system to collect data and information about
8 every juvenile who is alleged to be delinquent from the time a
9 complaint is filed against the juvenile, including:

- 10 (1) Fingerprints and photographs taken of the juvenile;
- 11 (2) Diversion agreements or plans entered into by the
12 juvenile;
- 13 (3) Community services provided to the juvenile and any
14 participation of the juvenile in community-based
15 programs;
- 16 (4) Court orders or dispositions of the juvenile; and
- 17 (5) Plans for care or treatment or for post-release
18 supervision prepared by the Department of Juvenile
19 Justice.

20 The system shall allow for information and data on juveniles to
21 be kept in a form to be shared among appropriate agencies to
22 develop treatment and intervention plans based on specific data
23 and to allow reliable assessment and evaluation of the
24 effectiveness of rehabilitative and preventive services provided
25 to delinquent juveniles.

26 (b) The Criminal Justice Information Network Governing
27 Board shall also study the most appropriate methods and
28 procedures for obtaining, retaining, and releasing fingerprints
29 and photographs of juveniles alleged to be delinquent, including:

- 30 (1) How to identify fingerprints and photographs of
31 juveniles, including the use of social security
32 numbers;
- 33 (2) How long fingerprints and photographs of juveniles
34 should be maintained in the criminal justice
35 information system;
- 36 (3) The extent to which juvenile fingerprints and
37 photographs are kept confidential;
- 38 (4) The circumstances or conditions under which
39 juvenile fingerprints and photographs should be
40 disseminated;
- 41 (5) Whether juvenile fingerprints and photographs
42 should be kept separate from adult records and
43 files; and

1 (6) When the juvenile fingerprints and photographs
2 should be destroyed.

3 (c) The Criminal Justice Information Network Governing
4 Board shall consider the issue of expunction of juvenile records,
5 including the appropriate length of time juvenile records should
6 be available to law enforcement, prosecutors, and service
7 providers and under what limitations and conditions records
8 should be expunged.

9 (d) The Criminal Justice Information Network Governing
10 Board shall report to the Chairs of the Senate and House
11 Appropriations Subcommittees on Justice and Public Safety and to
12 the Fiscal Research Division of the General Assembly on the
13 proposed system and any findings, recommendations, and
14 legislative proposals from its study on or before April 1, 1999.

15 Section 18. (a) The Department of Juvenile Justice shall
16 develop a cost-effective plan to establish statewide community-
17 based dispositional alternatives for juveniles who are
18 adjudicated delinquent. The plan shall include a funding strategy
19 to encourage communities to provide local resources, services,
20 and treatment options to meet the physical, emotional, and mental
21 needs of juveniles and their families. In developing the plan,
22 the Department shall consider the following community-based
23 alternatives:

- 24 (1) Home-based family counseling with family support
25 groups that can provide required intervention
26 services;
- 27 (2) After-school activity programs for middle school
28 juveniles targeted at potential at-risk juveniles
29 during the time when most juvenile crimes occur;
- 30 (3) Inpatient and outpatient substance abuse and sex
31 offender treatment programs;
- 32 (4) Intensive supervision of high-risk juveniles;and
- 33 (5) Group homes with psychological treatment and
34 programs for juveniles who do not pose a threat to
35 the public but who need long term intervention
36 services.

37 In addition, in developing the plan, the Department shall
38 recommend which judicial districts with high crime rates should
39 have non-residential day reporting centers to provide intensive
40 supervision.

41 (b) The Department shall report to the Chairs of the
42 Senate and House Appropriations Subcommittees on Justice and
43 Public Safety and to the Fiscal Research Division of the General
44 Assembly on the proposed plan, the cost of the plan, and on any

1 legislative proposals required to implement the plan on or before
2 April 1, 1999.

3 Section 19. (a) The Administrative Office of the Courts
4 shall establish pilot programs for the holding of family court
5 within district court districts to be chosen by the
6 Administrative Office of the Courts. Each pilot program shall be
7 conducted following the guidelines for the establishment of
8 family courts contained in the report of the Commission for the
9 Future of Justice and the Courts in North Carolina and shall be
10 assigned to hear all matters involving intrafamily rights,
11 relationships, and obligations, and all juvenile justice matters,
12 including:

- 13 (1) Child abuse, neglect, and dependency;
- 14 (2) Delinquent and undisciplined juvenile matters;
- 15 (3) Emancipation of minors and termination of
16 parental rights;
- 17 (4) Divorce;
- 18 (5) Annulment;
- 19 (6) Equitable distribution;
- 20 (7) Alimony and postseparation support;
- 21 (8) Child custody;
- 22 (9) Child support;
- 23 (10) Paternity;
- 24 (11) Adoption;
- 25 (12) Domestic violence civil restraining orders;
- 26 (13) Abortion consent waivers;
- 27 (14) Adult protective services; and
- 28 (15) Guardianship, involuntary commitment, and
29 voluntary admissions to mental health
30 facilities.

31 (b) The Administrative Office of the Courts shall
32 report to the Chairs of the Senate and House Appropriations
33 Subcommittees on Justice and Public Safety and to the Fiscal
34 Research Division of the General Assembly by March 1, 1999, on
35 the success of the pilot programs in bringing consistency,
36 efficiency, and fairness to the resolution of family matters and
37 on the impact of the programs on caseloads in the district court
38 division.

39 Section 20. (a) The Department of Juvenile Justice
40 shall ensure that existing programs made available through a
41 number of entities, both at the State and at the local level,
42 that provide screenings that can provide adequate identification
43 of delinquency risk factors, continue to be used in a consistent,
44 coordinated, and cost-effective way so as to enable delinquency

1 prevention programs and services to be utilized in a consistent,
2 coordinated, and cost-effective way.

3 (b) In implementing this section, the Department shall
4 cooperate with all affected State and local public and private
5 entities, including local education agencies, local health
6 departments, developmental evaluation centers, local departments
7 of social services, the Divisions of Women and Children's Health,
8 of Social Services, and Mental Health, Developmental
9 Disabilities, and Substance Abuse Services of the Department of
10 Health and Human Services, law enforcement agencies, and
11 nonprofit agencies.

12 (c) The Department shall report to the General Assembly
13 by April 1, 1999, on its implementation of this section. This
14 report shall include an evaluation of the screenings and
15 prevention programs, an identification of any bars in the law or
16 in any agency's policy that preclude effective cooperation,
17 together with any legislative and rule recommendations that are
18 needed, recommendations as to any new screening or prevention
19 programs and services that are needed, and a detailed cost
20 analysis of these recommendations.

21 Section 21. (a) The Department of Juvenile Justice, in
22 cooperation with the Department of Public Instruction, shall
23 study more effective and efficient ways to:

- 24 (1) Coordinate case management of delinquency and
25 undisciplined cases;
- 26 (2) Provide services to juveniles who are in need of
27 treatment, counseling, or rehabilitation and to the
28 families of those juveniles, including court-
29 ordered parenting responsibility classes; and
- 30 (3) Provide the maximum protection to the public and to
31 local school administrative units, in particular,
32 through the sharing of information between agencies
33 that work with juveniles who are delinquent or
34 undisciplined and increased accountability of those
35 juveniles and their parents.

36 The study shall include a review of all the agencies, councils,
37 and programs that provide services to juveniles, including the
38 Center for the Prevention of School Violence, School Resource
39 Officers, the Guardian ad Litem Program of the Administrative
40 Office of the Courts, the Department of Social Services, the
41 Department of Administration, the Division of Child and Family
42 Services, the Division of Mental Health, Developmental
43 Disabilities, and Substance Abuse Services, and the Willie M.
44 Program, and whether the agencies, councils, or programs should

1 be eliminated, consolidated, or incorporated within the
2 Department of Juvenile Justice. In determining whether to
3 incorporate any of the above-listed programs or agencies in the
4 new department, the Department of Juvenile Justice and the
5 Department of Public Instruction shall consider the funding
6 mechanisms of those programs and agencies in an effort to operate
7 the Department of Juvenile Justice in a cost-effective and
8 efficient manner.

9 (b) The Department of Juvenile Justice in cooperation
10 with the Department of Public Instruction, shall develop
11 proposed rules, forms, and policies required to establish the
12 Department of Juvenile Justice and to implement the objectives
13 and mandates of Article 12 of Chapter 143B of the General
14 Statutes, as enacted by this act.

15 (c) On or before April 1, 1999, the Department of
16 Juvenile Justice and the Department of Public Instruction shall
17 report their findings and recommendations, including any
18 legislative proposals and funding requirements that are required
19 to implement Article 12 of Chapter 143B of the General Statutes,
20 as enacted by this act to the 1999 General Assembly.

21 **PART VII. DEPARTMENT OF JUVENILE JUSTICE STUDY AND REPORT.**

22 Section 22. The Department of Juvenile Justice shall
23 use funds within its budget to evaluate the effectiveness of the
24 reform measures implemented pursuant to the provisions of this
25 act. The Department shall report the results of the evaluation
26 and any recommended legislative amendments to Chapter 7B of the
27 General Statutes to the Joint Legislative Commission on
28 Governmental Operations by April 1, 2001.

29 Section 22A. The Department of Juvenile Justice, in
30 cooperation with the N.C. Sentencing and Policy Advisory
31 Commission, shall study blended sentencing and direct filing in
32 certain juvenile cases. The study shall include, among other
33 issues, consideration of whether North Carolina should adopt a
34 criminal-inclusive model of blended sentencing whereby (i) a
35 presiding superior court judge may simultaneously impose a
36 juvenile disposition and an adult criminal disposition upon a
37 juvenile transferred to superior court, and (ii) execution of the
38 adult criminal disposition is suspended during imposition of the
39 juvenile disposition and pending a violation or re-offense by the
40 juvenile. The study shall examine various models of blended
41 sentencing, and may include a comprehensive survey of other
42 states that have adopted variations of blended sentencing. The
43 study shall also examine whether a prosecutor should have the
44 authority to directly charge a juvenile as an adult in the case

1 of 15-year-olds who have committed Class A-E felonies. The
2 Legislative Research Commission shall report the results of the
3 study, including any legislative recommendations, to the 2001
4 General Assembly.

5 Section 22B. The Department of Juvenile Justice, in
6 cooperation with the Department of Health and Human Services
7 shall study the funding process for juvenile delinquency and
8 substance abuse prevention programs provided for in this act.
9 The study shall consider whether the process should be designed
10 in such a way that funds are allocated to a program for a
11 specific juvenile being served by the program, and whether the
12 allocated funding should then follow that juvenile. The
13 Department shall also consider whether a county should continue
14 to fund services for a juvenile who has been receiving
15 delinquency prevention services and is subsequently adjudicated
16 delinquent and committed to training school, and whether, if
17 still appropriate to reduce the recidivism risk, the county
18 should send the program dollars to the training school. The
19 Department shall report its findings and recommendations, by
20 April 1, 1999, to the Fiscal Research Division of the General
21 Assembly and to the Chairmen of the House and Senate
22 Appropriations Committees and to the Chairmen of the
23 Appropriations Subcommittees on Human Resources.

24 **PART VIII. DEPARTMENT TRANSITIONAL PERIOD.**

25 Section 23. Beginning October 1, 1998, the Department of
26 Juvenile Justice shall perform all functions and duties of the
27 Division of Youth Services of the Department of Health and Human
28 Services and of the Division of Juvenile Services of the
29 Administrative Office of the Courts and shall have all powers and
30 authority vested in those Divisions pursuant to the General
31 Statutes, notwithstanding that Section 4 of this act amends the
32 applicable sections of the General Statutes to revise statutory
33 references to "Division of Youth Services", "Division of Juvenile
34 Services", "Juvenile Services Division", "Administrative Office
35 of the Courts", "Director of Youth Services", and "Administrator
36 of Juvenile Services", effective July 1, 1999.

37 All juveniles in the custody or placement responsibility
38 of the Division of Youth Services of the Department of Health and
39 Human Resources, as of October 1, 1998, are hereby transferred
40 effective on that date to the custody or placement responsibility
41 of the Department of Juvenile Justice. All juveniles under the
42 supervision of the Division of Juvenile Services of the
43 Administrative Office of the Courts and all juveniles for whom a
44 juvenile petition is pending as of October 1, 1998 are hereby

1 transferred effective on at date to the supervision or
2 administrative responsibility of the Department of Juvenile
3 Justice. Effective October 1, 1998, all employees of the Division
4 of Youth Services of the Department of Health and Human Resources
5 and the Division of Juvenile Services of the Administrative
6 Office of the Courts are transferred to the Department of
7 Juvenile Justice. Effective October 1, 1998, all unexpended
8 funds budgeted and all personal property, including all furniture
9 and equipment, of the Division of Youth Services of the
10 Department of Health and Human Resources and the Division of
11 Juvenile Services of the Administrative Office of the Courts are
12 transferred to the Department of Juvenile Justice."

13 **PART IX. FACILITIES CONSTRUCTION.**

14 Section 24. (a) The Office of State Construction of
15 the Department of Administration may contract for and supervise
16 all aspects of administration, technical assistance, design,
17 construction, or demolition of any juvenile facilities authorized
18 for the 1998-99 fiscal year, including renovation of existing
19 adult facilities to juvenile facilities.

20 The facilities authorized for the 1998-99 fiscal year
21 shall be constructed in accordance with the provisions of general
22 law applicable to the construction of State facilities. If the
23 Secretary of Administration, after consultation with the
24 Secretary of the Department of Juvenile Justice, finds that the
25 delivery of juvenile facilities must be expedited for good cause,
26 the Office of State Construction of the Department of
27 Administration shall be exempt from the following statutes and
28 rules implementing those statutes, to the extent necessary to
29 expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131,
30 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-
31 66, 133-1.1(g), and 143-408.1 through 143-408.7.

32 Prior to exercising the exemptions allowable under this
33 section, the Secretary of Administration shall give reasonable
34 notice in writing of the Department's intent to exercise the
35 exemptions to the Speaker of the House, the President Pro Tempore
36 of the Senate, the Chairs of the House and Senate Appropriations
37 Committees, the Joint Legislative Commission on Governmental
38 Operations, and the Fiscal Research Division. The written notice
39 shall contain at least the following information: (i) the
40 specific statutory requirement or requirements from which the
41 Department intends to exempt itself; (ii) the reason the
42 exemption is necessary to expedite delivery of juvenile
43 facilities; (iii) the way in which the Department anticipates the
44 exemption will expedite the delivery of facilities; and (iv) a

1 brief summary of the proposed contract for the project which is
2 to be exempted.

3 The Office of State Construction of the Department of
4 Administration shall have a verifiable ten percent (10%) goal for
5 participation by minority and women-owned businesses. All
6 contracts for the design, construction, or demolition of juvenile
7 facilities shall include a penalty for failure to complete the
8 work by a specified date.

9 The Office of State Construction of the Department of
10 Administration shall consult the Department of Juvenile Justice
11 on these projects to the extent that such involvement relates to
12 the Department's program needs and to its responsibility for the
13 care of the population of the facility.

14 (b) The Office of State Construction of the Department
15 of Administration shall provide a report by May 1, 1999, to the
16 Chairs of the Senate and House Appropriations Committees, the
17 Joint Legislative Commission on Governmental Operations, and the
18 Fiscal Research Division as to any changes in projects and
19 allocations authorized for the 1998-99 fiscal year. The report
20 shall include information on which contractors have been
21 selected, what contracts have been entered into, the projected
22 and actual occupancy dates of facilities contracted for, the
23 number of beds to be constructed on each project, the location of
24 each project, and the projected and actual cost of each project.

25 **PART IX-A. LOSE CONTROL LOSE YOUR LICENSE.**

26 Section 26. Subsection (n) of G.S. 20-11, as amended by
27 Session Law 1997-507, reads as rewritten:

28 (n) Driving Eligibility Certificate. -- A person who desires
29 to obtain a permit or license issued under this section and who
30 does not have a high school diploma or its equivalent must have a
31 driving eligibility certificate. A driving eligibility
32 certificate must meet the following conditions:

33 (1) The person who is required to sign the certificate
34 under subdivision (4) of this subsection must show
35 that ~~he or she has determined that one of the~~
36 following requirements ~~is~~ are met:

37 a. He or she has determined that:

38 1. The person is currently enrolled in
39 school and is making progress toward
40 obtaining a high school diploma or its
41 ~~equivalent.~~ equivalent;

42 b. 2. A substantial hardship would be placed on
43 the person or the person's family if the

- 1 person does not receive a ~~certificate-~~
2 certificate; or
3 ~~6-~~ 3. The person cannot make progress toward
4 obtaining a high school diploma or its
5 ~~equivalent-~~ equivalent; and
6 b. He or she has also determined that:
7 1. The person has not been suspended for
8 more than ten days since July 1 prior to
9 the school year the person was enrolled
10 in the sixth grade for any of the
11 following:
12 i. Possession or sale of alcohol or a
13 controlled substance on school
14 property.
15 ii. Possession or use of a weapon or
16 firearm on school property.
17 iii. Assault on a teach or other school
18 personnel; or
19 2. The person has been suspended for more
20 than ten days since July 1 prior to the
21 school year the person was enrolled in
22 the sixth grade for any of the reasons
23 set forth in sub-subdivision b.1. of this
24 subsection, and the person has displayed
25 exemplary student behavior, or attended
26 and successfully completed a drug or
27 alcohol treatment or counseling program,
28 as appropriate, as determined in
29 accordance with rules adopted by the
30 State Board of Education pursuant to G.S.
31 115C-12(28) or the Secretary of
32 Administration pursuant to G.S. 115C-566,
33 as applicable.
34 (2) It must be on a form approved by the Division.
35 (3) It must be dated within 30 days of the date the
36 person applies for a permit or license issuable
37 under this section.
38 (4) It must be signed by the applicable person named
39 below:
40 a. The principal, or the principal's designee, of
41 the public school in which the person is
42 enrolled.

- 1 b. The administrator, or the administrator's
2 designee, of the nonpublic school in which the
3 person is enrolled.
- 4 c. The person who provides the academic
5 instruction in the home school in which the
6 person is enrolled.
- 7 d. The designee of the board of directors of the
8 charter school in which the person is
9 enrolled.
- 10 e. The president, or the president's designee, of
11 the community college in which the person is
12 enrolled.

13 Notwithstanding any other law, the decision concerning whether
14 a driving eligibility certificate was properly issued or
15 improperly denied shall be appealed only as provided under the
16 rules adopted in accordance with ~~G.S. 115C-12(27)~~, G.S. 115C-
17 12(28), G.S. 115D-5(a3), or G.S. 115C-566, whichever is
18 applicable, and may not be appealed under this Chapter.'

19 Section 27. G.S. 20-13.2, as amended by Session Law
20 1997-507, reads as rewritten:

21 '(c1) The Division ~~must~~ shall revoke the permit or license of
22 a person under the age of 18 if the proper school authority
23 notifies the Division that the person no longer meets the
24 requirements for a driving eligibility certificate under G.S. 20-
25 11(n). Notwithstanding subsection (d) of this section, the
26 length of revocations ~~must~~ shall last for the following periods:

27 (1) If the person is under the age of 18 and the
28 revocation is because of ineligibility for a
29 driving eligibility certificate pursuant to G.S.
30 20-11(n)(1)a., until the person's eighteenth
31 birthday or birthday.

32 (2) If the revocation is because of ineligibility for a
33 driving eligibility certificate pursuant to G.S.
34 20-11(n)(1)b., and if:

35 a. The person is under the age of 16 at the time
36 of the disqualifying offense, then the
37 revocation shall be until the person's
38 eighteenth birthday.

39 b. The person is 16 years of age or older at the
40 time of the disqualifying offense, then the
41 revocation shall be for a period of one year.

42 ~~until the division restores the permit or license under this~~
43 ~~subsection.~~

1 ~~The~~ For a person whose permit or license was revoked due to
2 ineligibility for a driving eligibility certificate pursuant to
3 G.S. 20-11(n)(1)a., the Division ~~must~~ shall restore a person's
4 permit or license before the person's eighteenth birthday, if the
5 person submits to the Division one of the following:

- 6 (1) A high school diploma or its equivalent.
7 (2) A driving eligibility certificate as required under
8 G.S. 20-11(n).

9 For a person whose permit or license was revoked due to
10 ineligibility for a driving eligibility certificate pursuant to
11 G.S. 20-11(n)(1)b., the Division shall restore a person's permit
12 or license before the end of the revocation period, if the person
13 submits to the Division a driving eligibility certificate as
14 required under G.S. 20-11(n).

15 Notwithstanding any other law, the decision concerning whether
16 a driving eligibility certificate was properly issued or
17 improperly denied shall be appealed only as provided under the
18 rules adopted in accordance with ~~G.S. 115C-12(27)~~, G.S. 115C-
19 12(28), G.S. 115D-5(a3), or G.S. 115C-566, whichever is
20 applicable, and may not be appealed under this Chapter.'

21 Section 28. G.S. 115C-12(28), as amended by Session Law
22 1997-507, reads as rewritten:

23 '(28) Duty to Develop Rules for Issuance of Driving
24 Eligibility Certificates. -- The State Board
25 of Education shall issue rules defining what
26 is equivalent to a high school diploma for the
27 purposes of G.S. 20-11 and G.S. 20-13.2. These
28 rules shall apply to all educational programs
29 offered in the State by public schools,
30 charter schools, nonpublic schools, or
31 community colleges.

32 The State Board also shall issue rules for
33 the procedures a person who is or was enrolled
34 in a public school, in a charter school, or in
35 a nonpublic school accredited by the Board
36 must follow and the requirements that person
37 must meet to obtain a driving eligibility
38 certificate.

39 The person required under G.S. 20-11(n) to
40 sign the driving eligibility certificate must
41 provide the certificate if ~~he or she~~
42 ~~determines that one of~~ the following
43 requirements ~~is~~ are met:

- 44 a. He or she determines that:

1 certificate. The State Board also shall
2 develop policies as to when it is appropriate
3 to notify the Division of Motor Vehicles that
4 a person who is or was enrolled in a public
5 school, in a charter school, or in a nonpublic
6 school accredited by the Board no longer meets
7 the requirements for a driving eligibility
8 certificate.

9 For a person whose permit or license was
10 denied or revoked due to ineligibility for a
11 driving eligibility certificate pursuant to
12 G.S. 20-11(n)(1)b., these rules shall provide
13 for the optional issuance of a driving
14 eligibility certificate, after six months from
15 the date the person would otherwise be
16 eligible for a driving eligibility
17 certificate, if the person meets one of the
18 following:

- 19 1. Displays exemplary student behavior.
20 2. Attends and successfully completes a drug
21 or alcohol treatment or counseling
22 program, as appropriate.'

23 Section 29. G.S. 115C-566, as amended by Session Law
24 1997-507, reads as rewritten:

25 '§ 115C-566. Driving eligibility certificates; requirements.

26 The Secretary of Administration, upon consideration of the
27 advice of the Division of Nonpublic Education in the Office of
28 the Governor and representatives of nonpublic schools, shall
29 issue rules for the procedures a person who is or was enrolled in
30 a home school or in a nonpublic school that is not accredited by
31 the State Board of Education must follow and the requirements
32 that person must meet to obtain a driving eligibility
33 certificate. The person required under G.S. 20-11(n) to sign the
34 driving eligibility certificate must provide the certificate if
35 ~~he or she determines that one of the following requirements is~~
36 are met:

37 (1) He or she determines that:

38 a. The person seeking the certificate is
39 currently enrolled in school and is making
40 progress toward obtaining a high school
41 diploma or its ~~equivalent~~ equivalent;

42 ~~(2)~~ b. A substantial hardship would be placed on the
43 person seeking the certificate or the person's

- 1 family if the person does not receive the
2 ~~certificate~~ certificate; or
- 3 ~~(3)~~ c. The person seeking the certificate cannot make
4 progress toward obtaining a high school
5 diploma or its ~~equivalent~~ equivalent; and
- 6 (2) He or she also determines that:
- 7 a. The person has not been suspended for more
8 than ten days for any of the following:
- 9 1. Possession or sale of alcohol or a
10 controlled substance on school property.
- 11 2. Possession or use of a weapon or firearm
12 on school property.
- 13 3. Assault on a teacher or other school
14 personnel; or
- 15 b. The person has been suspended for more than
16 ten days since July 1 prior to the school year
17 the person was enrolled in the sixth grade for
18 any of the reasons set forth in sub-
19 subdivision a. of this subdivision, and the
20 person has displayed exemplary student
21 behavior or attended and successfully
22 completed a drug or alcohol treatment or
23 counseling program, as appropriate, as
24 determined in accordance with rules adopted by
25 the Secretary of Administration pursuant to
26 this section.

27 The rules shall provide for an appeal to an appropriate
28 educational entity by a person who is denied a driving
29 eligibility certificate. The Division of Nonpublic Education also
30 shall develop policies as to when it is appropriate to notify the
31 Division of Motor Vehicles that a person who is or was enrolled
32 in a home school or in a nonpublic school that is not accredited
33 by the State Board of Education no longer meets the requirements
34 for a driving eligibility certificate.

35 For a person whose permit or license was denied or revoked due
36 to ineligibility for a driving eligibility certificate pursuant
37 to G.S. 20-11(n)(1)b., these rules shall provide for the optional
38 issuance of a driving eligibility certificate, after six months
39 from the date the person would otherwise be eligible for a
40 driving eligibility certificate, if the person meets one of the
41 following:

- 42 (1) Displays exemplary student behavior.

1 (2) Attends and successfully completes a drug or
2 alcohol treatment or counseling program, as
3 appropriate.'

4 Section 30. This Part becomes effective August 1, 1998.
5 This Part does not apply to any person who held a valid North
6 Carolina limited learner's permit issued before December 1, 1997,
7 who held a valid North Carolina learner's permit issued before
8 December 1, 1997, or who was a provisional licensee and held a
9 valid North Carolina drivers license issued before December 1,
10 1997."

11 **PART X. APPROPRIATIONS.**

12 Section 31. There is established in the Office of State
13 Budget and Management a reserve fund entitled the "Juvenile
14 Justice Reserve Fund" to provide funds to implement the
15 provisions of Part I through Part IX of this act. There is
16 appropriated from the General Fund to the Office of State Budget
17 and Management the sum of forty-two million four hundred thousand
18 dollars (\$42,400,000) for the 1998-99 fiscal year for the
19 Juvenile Justice Reserve Fund. The Office of State Budget and
20 Management shall report to the Joint Legislative Commission on
21 Governmental Operations on the intended use of the funds prior to
22 expenditure of any funds from the Juvenile Justice Reserve Fund.

23 **PART XI. SEVERABILITY CLAUSE.**

24 Section 31. If any section or provision of this act is
25 declared unconstitutional or invalid by the courts, it does not
26 affect the validity of this act as a whole or any part other than
27 the part so declared to be unconstitutional or invalid.

28 **PART XII. EFFECTIVE DATES.**

29 Section 33. (a) Sections 1, 2, 19, 21 through 23 of this
30 act become effective October 1, 1998.

31 (b) Sections 3 through 8, Sections 10 through 12, and
32 Sections 14, 15, and 18 of this act become effective July 1,
33 1999.

34 (c) Sections 9 and 13 of this act become effective
35 October 1, 1999.

36 (d) The remainder of this act becomes effective July 1,
37 1998.

38

FISCAL ANALYSIS MEMORANDUM**DATE:** June 12, 1998**TO:** Senator Eric Reeves**FROM:** Jim Johnson
Fiscal Research Division**RE:** Amendment to the Juvenile Justice Reform Act**FISCAL IMPACT**

	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
REVENUES	\$52,500	\$52,500	\$52,500	\$52,500	\$52,500
EXPENDITURES	\$47,580	\$0	\$0	\$0	\$0

POSITIONS: No additional positions**PRINCIPAL DEPARTMENT(S) &****PROGRAM(S) AFFECTED:** State Board of Education, Department of Public Instruction, Department of Transportation, Division of Motor Vehicles, Local School districts**EFFECTIVE DATE:** August 1, 1998**BILL SUMMARY:** The proposed amendment to Juvenile Justice Reform Act requires that a child who possesses or sells alcohol, possesses or uses a weapon on school property, or who assaults a school employee will not be eligible to obtain a drivers license or will lose their North Carolina drivers license.**ASSUMPTIONS AND METHODOLOGY:**

1. Assume an that 1,800 students will have their drivers license revoked because of the commission of the offenses set out in the amendment. Based upon 1,773 students in the 1996-97 school year who fell in the these three offense categories.
2. DMV costs will be for additional programing beyond the costs incurred with the 1997 No Dropout/No Drivers License legislation.
3. Assume 1,500 license restorations per year.
4. Some cost will be incurred by local school systems in personnel time necessary to report the information to the Division of Motor Vehicles. These costs cannot be identified.
5. No additional costs will be incurred by the Department of Public Instruction, other than some the distribution of forms to local school system that will be used to certify to the Division of Motor Vehicles when and if the child is reenrolled in school.

TECHNICAL CONSIDERATIONS:

The effective date of the amendment may need to be modified to accommodate the lead-time necessary for the State Board of Education, DPI, the Division of Motor Vehicles, and local school systems to adopt procedures and implement the necessary software changes.



INSTITUTE OF GOVERNMENT

Memo

The University
of North Carolina
at Chapel Hill

To: Representative Chuck Neely
From: Janet Mason
Date: June 16, 1998
Subject: House Bill 1373—Direct Filing and Blended Sentencing

CB# 3330 Knapp Building
Chapel Hill, NC 27599-3330
919 966-5381
919 962-0654 (Fax)

At the Judiciary II Committee meeting on June 11, a number of issues relating to the provisions for direct filing and blended sentencing in House Bill 1373 were mentioned. You asked me to prepare a list of those issues and, with others, to provide information about possible approaches to addressing them. Following is a summary of the issues. My colleagues Jim Drennan and Bob Farb have contributed to it. Marcia Morey has reviewed it, and I sent copies of it to Susan Hayes and Beth Barnes. I will work with them to respond to the second part of your request.

I am faxing this to our legislative office in order to get it to you today, but I will also mail you a copy.

DIRECT FILING

Background

In general, "direct filing" refers to the authority of a prosecutor to charge a juvenile as an adult without proceeding first through any juvenile court process. It represents one of the three major ways that states can provide for the prosecution of juveniles as adults. North Carolina currently does not provide for direct filing, but relies instead on the other two methods, by (1) providing by statute that all juveniles will be prosecuted as adults for offenses committed while they are sixteen or seventeen years old and (2) authorizing (or, in cases of first-degree murder, requiring) the district court to transfer a juvenile's case to superior court for trial as an adult if the court finds probable cause to believe that the juvenile committed a felony while age thirteen, fourteen, or fifteen.

House Bill 1373, in G.S. 7B-2200(b), provides as follows:

... [T]he prosecutor may file charges in superior court against a juvenile who was 15 years of age at the time the juvenile allegedly committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

The Juvenile Code committee of the Governor's Commission on Juvenile Crime and Justice discussed, but did not recommend, direct filing. The full commission recommended direct filing, as provided in the bill, but made clear that this recommendation was contingent on the inclusion of blended sentencing in the legislation.

Issues

1. *How would a prosecutor "file charges"? What does "direct filing" mean in the context of North Carolina criminal procedure?*

In North Carolina, in cases of persons who are sixteen or older, felony charges come about in one of two ways: (a) based on a sworn statement, the magistrate finds probable cause and issues a warrant charging the person with a felony or (b) the prosecutor submits a bill of indictment to the grand jury and seeks to have the person indicted. The latter is the only sense in which prosecutors in North Carolina are authorized to "file" felony charges. In many districts, of course, grand juries meet only infrequently.

- If the bill refers to the prosecutor's authority to submit a bill of indictment to a grand jury, do juvenile procedures apply until that occurs? If so, in some cases, a juvenile probable cause and transfer hearing may have taken place before the grand jury meets.
- If the bill refers to some other means by which the prosecutor may "file charges," that would represent a new procedure that needs to be fully developed.
- Or, does the bill mean that juvenile procedures apply until the district court makes a finding of probable cause, at which point the prosecutor rather than the judge decides whether the case should be transferred to superior court?

To some extent, the statement of other issues relating to "direct filing" depends on what that term means.

2. *Coordination among law enforcement, intake counselors, and prosecutors*
 - a. How does law enforcement proceed when a 15-year-old is taken into custody for an A-E felony?
 - b. If the juvenile needs to be kept in custody, does the officer communicate with the intake counselor, the prosecutor, or both?
 - c. If the intake counselor approves the filing of a juvenile petition so that an order for secure custody can be obtained, what happens if the prosecutor later elects to “file charges directly” in superior court?
3. *Discretion of prosecutor*
 - a. Is there a risk that prosecutors will “directly file” when they have insufficient evidence to support charging an A-E felony?
 - b. Is it reasonable to establish statutory criteria for judges to apply in deciding whether to transfer a case, but not to provide criteria for prosecutors to apply in deciding whether to “direct file”?
 - c. At what point in a case can the prosecutor exercise discretion to “direct file”?
4. *Rights of the juvenile*
 - a. Are the juvenile’s rights comparable to those of a juvenile whose case is transferred to superior court or to those of a sixteen- or seventeen-year-old who is charged initially as an adult?
 - b. When the prosecutor “directly files,” is the juvenile held in a juvenile detention facility (like a juvenile whose case is transferred) or in jail?
 - c. Is there any right to review of the prosecutor’s decision to “direct file”?
 - d. At what point would the juvenile’s name and other information about the case be public?

Purpose

- If a purpose of providing for “direct filing” is to expedite the handling of the case, the bill’s time limits for the holding of probable cause and transfer hearings address that issue to some extent. It could be addressed further by providing for expedited appeals from transfer orders.
- Are there other purposes that “direct filing” is intended to serve?

BLENDING SENTENCING

Background

“Blended sentencing” refers to the court’s ability to subject a person who is either adjudicated delinquent or convicted as an adult to both an adult sentence and a juvenile disposition. A variety of approaches to blended sentencing exist in other states; none currently exists in North Carolina. (Under current law, a juvenile may be under both a juvenile disposition and an adult sentence, but not for the same offense. A sixteen-year-old, for example, may be on probation or in training school for an offense he or she committed before age sixteen. If that juvenile commits a new offense, he or she will be prosecuted and sentenced as an adult for that new offense.)

The Sentencing/Disposition committee of the Governor’s Commission on Juvenile Crime and Justice discussed, but did not recommend, blended sentencing. The full commission recommended blended sentencing in the form reflected in Section 5 of the bill, by adding a provision (new G.S. 15A-1340.16B) to the adult structured sentencing statute. This form of blended sentencing does not affect the district court’s authority in juvenile cases, although it might influence a district court judge’s decision about whether to transfer a case to superior court. It gives the superior court authority, when a defendant is convicted for a felony offense that he or she committed while under age sixteen, to suspend an adult sentence on the condition that the defendant successfully complete both the conditions of adult probation and any juvenile disposition that the court finds appropriate. If the defendant did not complete the conditions successfully, the suspended active sentence could be activated.

Adult sentencing has two basic components—imprisonment and probation, and all probation is performed in lieu of serving an active sentence. Adult defendants may have their probation modified, but they may not be resentenced for the same offense. In a juvenile proceeding, there is no suspended sentence; however, a juvenile who does not comply with the terms of probation or other disposition order may have another, more stringent disposition imposed. The bill contemplates that the adult rules govern in cases of blended sentencing.

The differences between the adult sentencing system and the juvenile disposition system raise some questions about how blended sentence would be implemented. A number of these are not answered by the current language in the bill.

Issues

1. *Consistency with structured sentencing*

- Some juveniles tried as adults will have prison sentences imposed that will expire well past their 18th or 19th birthdays. Many of those involve sentences that cannot be suspended for persons sixteen or older. Is it the intent of blended sentencing to override this aspect of structured sentencing for defendants who committed offenses before they were sixteen?
- Proposed G.S. 15A-1340.16B(c) provides that the court shall consider the juvenile’s age and needs, and available resources, in determining whether to

suspend the active sentence. Are there other factors that need to be considered and, if so, should they be included in the statute? Possibilities include the seriousness of the offense, the defendant's prior juvenile record, the harm caused by the offense, the need for public safety, etc. In other contexts in which the court suspends a sentence that is otherwise required to be activated, the court must make findings (substantial assistance in drug trafficking cases, G.S. 90-95(h)(5); extraordinary mitigation, G.S. 15A-1340.13(g)). Should that be the case for blended sentencing? If so, what findings should be required?

2. *Training school issues*

- In the bill, G.S. 15A-1340.16B(b) contemplates that the Department of Juvenile Justice may confine a defendant under blended sentencing. Does it mean that the defendant sentenced under the blended sentencing rules may have as a condition of adult probation a condition that he or she be committed to training school? If so, on what terms? Does the six-month minimum apply? Does the two-year maximum for definite commitments apply? Does the Department of Juvenile Justice have the power to release a defendant sentenced under blended sentencing?
- If a defendant sentenced under blended sentencing is committed to the Department of Juvenile Justice for placement in training school, does the defendant receive jail credit if he or she ultimately has to serve the active sentence in an adult facility?
- May the period of commitment in training school exceed the length of the suspended sentence in adult court?
- The draft contemplates that the defendant may be held in training school until his or her 19th birthday. Normally, juveniles are not kept past their 18th birthdays without a court review of the need to keep them another year. What procedure would apply under blended sentencing—application to the court? which court? by whom? by court order without application? when—at sentencing or during probation?

3. *Supervision and administration issues*

- The bill requires that both a probation officer and a juvenile court counselor be assigned to supervise and monitor the juvenile's progress. What are these people's roles in relation to each other and to the juvenile? Who is responsible for supervision of the juvenile? Are probation violation proceedings initiated by the court counselor, by the probation officer, or by either?
- The bill says that the court "shall consider the dispositional report" of the chief court counselor." When a case is transferred to superior court, however, the court counselor has no further responsibility in the case and would not be preparing a dispositional report. Would the superior court order the court counselor to prepare such a report? If so, when? Would a pre-sentencing report also be prepared?
- The bill limits the judge to the conditions spelled out in G.S. 7B-2504. May the report consider and the judge order the conditions in G.S. 7B-2506 as well?
- An adult probation officer has certain powers to order a defendant to do things that the court has not ordered, if the defendant has committed a violation of the

probation. G.S. 15A-1343.2. The bill gives court counselors similar authority in juvenile cases, but allows the court counselor to make the decision regardless of whether a violation has occurred. G.S. 7B-2506(b). In adult cases, the rule applies unless the judge specifically exempts the defendant from the rule; in juvenile cases, the rule applies only if the court includes delegation to the court counselor in the dispositional order. Which rule applies in a blended sentencing case?

- A juvenile may be placed under supervision of a court counselor for no more than two years. Adults may be placed under adult probation supervision for five years. May the superior court order a period of supervision by a court counselor for more than two years?

4. *Other Issues*

- If the defendant, though charged with a felony, pleads to or is convicted of only a misdemeanor, blended sentencing does not appear to be available.
- Are there any felonies (first-degree murder?) for which blended sentencing should not be available?
- Substantial training may be required to give superior court judges sufficient understanding of juvenile dispositions and resources; to give adult probation officers greater awareness of juvenile dispositions; and to give court counselors sufficient understanding of superior court procedures.

Purpose

What is the purpose of blended sentencing?

1. *To begin to build an adult record for juvenile offenders who commit serious crimes?*
This purpose might be achieved through records provisions, without involving the superior court.
2. *To provide a check on the district court judge's decision to transfer a juvenile to the adult court (and, if direct filing is enacted, on the prosecutor's decision to charge the juvenile directly as an adult)?*
It might be possible to provide a check on transfer decisions through expedited appeals of transfer orders and tightened standards for the transfer decision.
3. *To make available to young offenders in the adult system the benefit of juvenile services?*
It might be possible to provide juvenile services to young persons in the adult system
 - a. by rewriting G.S. 7B-2514 (Transfer authority of the Governor) to deal more adequately with when, how, and under what conditions a person in an adult jail or penal facility may be transferred to a residential facility of the Department of Juvenile Justice; and/or
 - b. by adding to the structured sentencing law a new category of special conditions of probation that reflect appropriate juvenile services or dispositional provisions that are not already available under adult probation.
4. *Some other purpose?*

SPECIAL REPORT



The Herald-Sun/JOE WEISS

A RARE SUCCESS: A Durham police officer searches a suspect in a car theft on East Pettigrew Street in early March. The youth — and three other juveniles — were

nabbed after the stolen vehicle crashed. Police complain that juvenile confidentiality laws handcuff their investigations into crimes committed by youths.

Confidentiality: Outdated code of juvenile justice stymies police

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

A recent rash of car thefts by youngsters with a penchant for joy riding has Durham police working harder than if adults were stealing the autos.

The officers have no fingerprints or photos on file to connect any of the young criminals to the stolen cars. Authorities are not allowed to collect the information on the juveniles.

That means police must use their own eyewitness accounts as they patrol the streets to charge the youths, or catch them literally behind the wheel.

The officers blame a confidentiality law for juveniles, which prevents even police from seeing photos, fingerprints or other information about youths' previous crimes. The law makes it harder to arrest and convict young criminals, complain officers, who want the law changed.

Some savvy juveniles are so aware of the investigative shortcomings they avoid middle-school yearbook pictures because they know police will try to use the

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photos for identification.

And while the confidentiality law is meant to protect juveniles — to ensure they get a chance at a fresh, record-free start as adults — critics feel the law puts the public at risk.

"We can maintain confidentiality and do so in a way that protects the public," said John Schwade, a child psychologist

who works with juvenile offenders at C.A. Dillon Training School in Butner. "Certainly, it would be in the public interest to show a victim a picture, and have them say, 'Yeah, that was the person who said they were going to kill me!'"

Officers and others advocate mug shot and fingerprint

please see **SYSTEM/A10**

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The Herald-Sun/BERNARD THOMAS

FRUSTRATIONS BUILD: Durham police youth investigator Jackie Vann has strong suspicions that four juveniles caught in a stolen car are responsible for a rash of earlier auto thefts, but says that with-

out access to physical evidence — fingerprints and mug shots — officers are faced with a nearly impossible task trying to prove it in court. Police want juvenile confidentiality laws rewritten.

SYSTEM FROM A1

files of young criminals just for their own investigative use. Now, they have nothing.

Others believe the public should know about juveniles who murder or rape or commit some other serious crime.

"There's no record, and if you have a case where there is physical evidence, it doesn't do you any good unless you have the fingerprints on file, even if it's just for law enforcement use," said Michael Kantorowski, a detective with the Durham Police Department's youth division. "Especially with the serious things, law enforcement has to have access to that information."

In other states, judges are opening juvenile courts to the press and public. Police applaud the moves.

But in Durham, the dearth of mug shots sometimes hinders or destroys otherwise solid cases as the reliability of eyewitness accounts comes under scrutiny in court.

In one case, a woman was raped in her home and recognized a local youth as the culprit.

The police could use only her testimony to say it was him because juveniles cannot participate in lineups. Officers did not have a photo for her to use to identify him and there were no fingerprints because of the confidentiality rule.

The youth, 15, would have been like a ghost if the woman had not known him and her testimony had not been so solid, said Jackie Vann, the Durham police youth investigator who worked the case.

"She could describe him to a T, but we didn't have a picture," Vann said. "It hurt our case, but we didn't lose it. Her testimony was good enough."

A reform of juvenile laws several years ago took a step toward resolving some law enforcement complaints. Judges now may use a juvenile's past convictions for some serious felonies after a child

becomes an adult or is bound over to Superior Court.

But police say that change — and another that allows juveniles as young as 13 to be charged as adults for serious crimes — is not enough.

The law also makes it difficult to pin several crimes on the same youth, Kantorowski said, because a juvenile usually is only charged with the crime he is caught committing.

"It's all the same kids doing the same things," he said. "This is the trouble. It appears to be the same kids doing the same things."

The confidentiality rule is meant to keep a juvenile's identity secret, so that after he serves time in training school — or even probation for a minor crime such as shoplifting — he has a fresh start, without a criminal record trailing him into adulthood.

Other programs, such as Teen Court, are designed to settle cases without creating a juvenile record in the first place.

In Teen Court, juveniles' peers argue the cases — usually minor thefts or fights — while adults guide the process.

Despite the obstacles they cite, Durham police have made four arrests in the spate of auto thefts. But the investigations, and many others involving juveniles, have been more cumbersome than they should be, Vann said.

Police arrested the four juveniles behind the wheel, and they probably are responsible for most of the other thefts, Vann said. But there is no physical evidence.

"You could have seen him in other cars, [but you're not 100 percent sure], and you have nothing you can stick it to him on," she said. "They don't have fingerprints on file, and so that's basically a stolen car they get away with. You can only bust them for one at a time."

JUVENILE JUSTICE

Critics, reformers cite lack of homes, juvenile offenders within their walls

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

Many young lawbreakers fear the Durham Youth Home door: — not when it locks behind them, but when it opens to let them out.

On the other side of security and structure, real life pulsates with the pressures, the drugs, the poverty and the people who pushed the teens into their predicaments.

"A lot of people find safety in the Youth Home," said Marcia Morey, a Durham juvenile prosecutor.

But for Curtis — a 15-year-old murderer who turned 16 in jail awaiting trial — life outside the home held everything he cherished: freedom, more drinking and drugs and the camaraderie of his West End

1994 breakout

In June 1994, he and five other juveniles overpowered a guard, stole keys and escaped.

The rest were captured quickly. But Curtis spent 92 days on the outside, partying and getting high — until a neighbor tipped police that he was sleeping in a car outside his mother's Gerard Street home.

Yet other juveniles who could have fled through the open door stood frozen, refusing to leave. They just wanted to get their sentences over with, they later told authorities.

In the end, they were just children afraid to step

out. The Youth Home may have represented a second chance for them, or even a fifth chance — or maybe just some relief from the outside world.

At the 15-bed home, inmates go to school, and attentive adults

for many of the home — the only one in North Carolina completely funded by a county — stands as a sterling example of what works and could work on a wider scale. It's a middle ground for juvenile delinquents, a place and punishment somewhere between harsh training schools for more violent offenders and the go-easy approach of probation and treatment.

Critics and would-be reformers of the juvenile-justice system say there are not enough youth homes, or enough juveniles inside them.

Choice is lost

Too few teens, the critics say, get a chance to look at the door and wonder if they would leave if it were left open.

Too few are allowed the choice to change their lives as they await trial, to take classes in the structured atmosphere.

Too many are sent home to await trial — in effect put back on the streets — although judges, prosecutors and even defense attorneys agree some of the teens should be locked up in places like the Youth Home.

But its few beds usually are full. Instead, juveniles are either sent home or to one of seven state-run centers. Usually it's home — to wait for weeks before they hear anything from the courts.

Sheriffs' departments are frustrated at having to haul juveniles all over the state to find empty beds — over the time demands and questions of who picks up the tab.

Critics see it as a musical-chairs system with far more juveniles deserving jail time — in whatever form — than there are beds.

In Mecklenburg County, two juvenile courts run all week, every week. Though Mecklenburg has the largest juvenile population in North Carolina, a state-run detention center — like a county jail for juveniles — offers only 24 beds.

"Some kids do need to be in detention, and sometimes that's available and sometimes it isn't," said Judy Adams, assistant clerk of Mecklenburg County Superior Court.

Because the children often are sent home, the juvenile-justice system has created a sense of invincibility among young offenders, say juvenile prosecutors, court counselors, police and judges.

Whatever the petty crime, the teens think they'll face no real punishment — only the inconvenience of juvenile-court appearances and probation

Recidivism

Harsher punishments, even when they are handed down, often don't work, either.

Statistics show that four out of five inmates released from training school commit another crime.

Many probation officers (called court counselors in juvenile court) say it's often too late to help by the time they see many of the 13-, 14- and 15-year-olds they monitor — who may have raped, murdered or seriously hurt someone.

In late March, a Charlotte judge ordered three juveniles into detention while they awaited trial for assaults and other charges. Instead, they went home to mother. Not one juvenile detention bed in the state was available.

Children a judge deemed dangerous were allowed back on the street. It's a problem in most urban areas of North Carolina.

Juvenile murderers and rapists are never sent home. But those who commit the in-between crimes — car thefts, assaults, larcenies — many times go unpunished because of too few beds and resources.

A look at training schools

The youth homes and detention beds are only the first layer in a North Carolina juvenile system many say is broken.

Some, including Gov. Jim Hunt, point to training schools — where young criminals serve longer sentences — as dangerous or inadequate. Others say the schools are training grounds for adult crime, since statistics show 80 percent break the law again.

Old state statistics don't track the youths after they turn 16 because they technically no longer are juveniles. That, Morey said, creates a false picture about training schools and their ability to rehabilitate.

"He'll be released at 16, and the very next day, he commits murder, and it's not counted [as a repeat offense because he's

JUVENILE INJUSTICE

Sunday: Do young criminals get too many 'second' chances? A look inside a juvenile-justice system overwhelmed by youth crime.

Monday: A child's first crime. A joy ride at 13 launches a criminal career.

Tuesday: Experts say truancy is the gateway to youth crime.

Wednesday: Laws wrist-slap parents who ignore their lawbreaking child.

Thursday: What led a 15-year-old to murder?

►Today: No more beds. Youth detention centers run out of space.

Saturday: A teen murderer looks back with regrets.

Sunday: A Boston program wins acclaim as a national model of controlling youth crime.

technically an adult," Morey said.

The state says repeat offenses after training school are under 12 percent, she said. "But what they don't tell you is a lot of these kids get out at 16, and we don't track them."

Some who work with training school inmates say locking up the teens only works with the cooperation of every segment of society.

Training schools are easy targets when, in reality, the problem is much more complex than pointing a finger in one direction, said John Schwade, a staff psychologist at C.A. Dillon Training School in Butner.

It's like giving a diabetic emergency insulin at the hospital, releasing him, then blaming the emergency room when he goes home and doesn't get his shots, Schwade said.

That's not the hospital's fault. And it's not the training school's fault when 80 percent of the parents don't come to planning sessions with their children, he said, or when families or peers push a child back into crime.

"There is no after care. That's the biggest worry," Schwade said.

Family pressure to deal

One training-school inmate earned his high-school diploma while locked up and was accepted into a four-year college, Schwade said. But his drug-dealing family pressured him back into the business, he said.

"He was afraid his family would be upset," Schwade said. "He didn't go. That's what we're up against."

When police arrested Curtis Barnette several months after the murder, the court identified him as possibly mentally ill and dangerous. A judge ordered him to Dorothea Dix Hospital for evaluation, then to the Youth Home to await trial.

Before he killed, Curtis never had had a long stay in detention, despite his extensive juvenile record and numerous court appearances.

No one ever gave him the "insulin," but he also may not have accepted it, either. His mother and a teacher who took a special interest in him tried to force the "insulin needle" in, but Curtis skipped school, sold drugs and roamed the streets.

When he saw the open Youth Home door in June 1994, he ran.

Four years after his escape, Curtis ponders his three months on the lam. Officially, the charge was leaving the Youth Home "without posting bond."

But it was really a jail break, and a bold one.

"I was the same," he says. "I was still stupid, just getting high and going to these little clubs and whatnot."

He opens a white, cardboard folder and gingerly removes a group photo of him and his friends someone snapped while he was on the run — stashed by his buddies in different homes.

His mother has the same photo in her apartment — a brightly dressed, smiling Curtis striking a party pose with his friends.

A fatal encounter

Five months before the photo was taken, Curtis — high and drunk — settled an argument on a West End street corner with three shots from a sawed-off .22-caliber rifle. Eric Donell Brown, 25, died with three bullets in him, one in the eye.

Today, Curtis doesn't smile so much. He is more reflective, sober and doing his time at Polk Youth Institution in Butner.

And he knows there won't likely be another open door — not until 2004, the earliest he could be paroled.

Tomorrow: A regretful Curtis comes to terms with the possibility of spending the rest of his life behind bars.

Violent trend baffles even crime experts

Retired homicide detective still puzzled why teen killed for car

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

A Durham homicide detective retired with the vision of Mary Haddon and her violent death burned into his mind.

He couldn't shake the image of the dead 90-year-old woman and the young age of her attacker, who bludgeoned her with a gardening tool because he wanted to steal her car.



GRAY

It was a new brand of crime that Durham, in 1992, could not take — a 13-year-old beating an elderly woman for nothing more than a short joyride in her car.

Haddon was eating breakfast one early morning when Gregory Gibson, a recent middle school graduate, broke through a window after walking from a friend's party. He chose her house at

random.

The postman and neighbors all looked out for Haddon, making sure she was healthy and OK. On the morning she was found dead, a newspaper deliveryman noticed two papers stacked on her front porch and grew concerned. He discovered the broken window beside the front door, then her body.

Police found Haddon's car only a few blocks from her home.

News of the crime and capture of a 13-year-old rocked a community long accustomed to crime and violence, but never to murder from someone so young.

Back in 1993, when he retired, detective Jerry Wilkerson asked the same question many in Durham had on their mind: "Over a car. Why kill somebody over a car?"

Even with his own experience investigating murders, he couldn't come up with an answer that made sense.

More pain, confusion

In the years since Wilkerson asked his question, Durham and the country have felt more of the pain and confusion young killers inflict on societies trying to answer the big "why."

Ironically, Wilkerson may have

answered his own anguished question: "Over a car." Gibson wanted a car and killing Haddon was a way to get it.

Other homicides seem even more meaningless. Last New Year's Eve, police say, three

teen-agers shot and killed a taxi driver for his pocket change.

Many juvenile murderers kill for something they can't have and see violence as an acceptable way to get it, experts say.



HADDON

It's like a temper tantrum by a spoiled child — only one capable of killing.

"It's very utilitarian," said John Schwade, a psychologist who works with the most violent youth at C.A. Dillon Training School in Butner. "Some of these kids have learned from the earliest years that you do what you can to get what you want. When somebody kills, there are a lot of immediate rewards. They get something from you, or they stop you from hurting them."

Auto déjà vu

For Gregory Gibson, it was Mary Haddon's car.

It was a car, too, for Melanie Gray. The 14-year-old Durham girl and her 19-year-old boyfriend, Todd Boggess, kidnapped Daniel Pence in Wilmington, drove him to Durham and killed him — because Gray wanted his sporty Ford Mustang.

Boggess is on death row at Central Prison in Raleigh; Gray is serving a sentence at Women's Prison in Raleigh. She could be released in about eight years.

Gibson, though, is out on the streets, after serving a five-year sentence in training school.

At the time of his crime, he was too young, by a year, to be tried as an adult. And he could not, by law, stay in training school beyond his 18th birthday.

After Haddon's gruesome death, lawmakers changed the juvenile code to allow 13-year-olds into adult court to be tried for certain felonies. But the changes did not apply to Gibson.

Gov. Jim Hunt repeatedly has invoked Haddon and Gibson's names in his quest for more juvenile-justice reform.

More teen killers

Police say teens also were involved in the murder last New Year's Eve of cabbie Tracey Price on North Buchanan Boulevard.

Three boys, 15, 16 and 17, have been charged with the murder: Eric Bobbitt, 17, and Anthony Bobbitt, 16, are brothers.

In February, the 15-year-old was sent to Superior Court to be tried as an adult. But his Durham lawyer, Brian Aus, has promised to appeal the decision all the way to the state Supreme Court, and so the youth's name has not yet been released.

Aus has argued that the evidence against the teen is so scant that releasing his name would not be appropriate because he technically is still a juvenile.

Other youth crime has forced Durham to examine how its children are raised and how far residents can go to protect themselves.

One day in 1993, Michael Seagroves helped several teens repair a go-kart they rode in his Woodcroft community.

The youths noticed a motorcycle in his garage and returned within days to try to steal it.

But Seagroves was home with his sick infant son when he heard a loud bang and looked into his attached garage to see five youths. He grabbed his .22-caliber rifle and confronted them.

Accounts conflicted about whether they moved toward him or simply turned and ran. But at some point Seagroves opened fire, fatally wounding 15-year-old Jamal Evans Elliot. Clifton Hester Taft was hit in the head and shoulder but survived.

The shooting, which touched homeowners rights as well as juvenile crime, sparked one of the most controversial cases in Durham's judicial history and divided the community along racial lines. Seagroves stood trial for

manslaughter. But the jury deadlocked — for acquittal — and a mistrial was declared. The state declined to try him again.

Crimes petty at the start

Most children who murder began with the petty crimes, Durham juvenile investigator Leroy Williams said.

He sees the patterns. When he hears of an adult murderer, he remembers the juvenile record and understands the familiar situation, he said.

"I've seen some kids we deal with at the juvenile age, and all of a sudden they're involved in some things, and there's a pattern and ultimately they kill someone," he said. "There's a pattern, violent crime, stealing vehicles — it's not always assault."

Education and home life are crucial to breaking the cycle, he said.

"I really feel it starts with providing

kids an educational foundation," Williams said. "It also starts in the home and then once they get into schools. Instead of the kid skipping school, they know they're going to be involved in positive programs."

Attaining a material goal, such as a car or money, may be the immediate reason a child kills. But the foundation for homicide begins at home, when the child is young, he said.

"I think there are a number of factors you have to look at — the kid's background and how he was raised, the environment," Williams said. "There are a lot of kids who don't have parents there, so in essence, they become responsible for what they do themselves."

"In a sense, they're basically on their own from birth. A number of things can happen: They can identify with people who are not being successful; there might be some abuse along the way."

Answers elusive elsewhere

In New York, the police homicide unit battles one of the highest juvenile-crime rates of any city. And complete, full answers for why children so young kill are just as elusive here.

"I think juveniles are more vulnerable to influences, societal influences and what kind of environment they live in," said Officer Kenneth Bryson, a New York Police Department media relations specialist. "When it's boiled down to why someone would take another life, many people analyze, forensic scientists on up, but it's hard to pinpoint why people kill each other."

How can we stop it?

"Who would think a 13-year-old kid is going to come to school in Oregon with a high-powered rifle and blow some kids away? His neighbors said he was a nice kid," Bryson said. "You just can't predict it, it's crazy to me."

Gun, teen are lethal bedfellows

Durham killing came after drug argument

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

Eric wanted drugs. He got a bullet in his eye instead.

Eric and his friend knew the corner where Curtis and others sold "rock." They drove there to make a deal at 2 in the afternoon one cold January day in 1994.

Like so many similar situations every day, this one had all the insidious ingredients of an affair destined to run amok. Drugs. Drunkenness. An argument. A sawed-off, .22-caliber Daisy rifle.

All on the wrong corner in the wrong part of town.

Even at 15, the slender, quick-tempered Curtis wasn't interested in using the crack cocaine he peddled. In a normal world, that's as strange as a baker who won't eat his own bread.

Curtis just didn't like the "hold" he noticed crack has on people. And the corner of Jackson and Carroll streets in 1994 was not a "normal" world.

But Curtis Barnette would sell crack to people like 25-year-old Eric Donell Brown, though Curtis and police say he was not selling that day.

JUVENILE INJUSTICE

Carolina lets its youngest criminals beat the system

PART FIVE

Teen kills elderly woman. Motive? To get her car/A12

An argument broke out.

Eric and his friend saw the rifle and started to run.

Curtis fired three times. Brown, struck by each of the bullets, died.

Curtis' choice of murder weapon — a gun — is common among juveniles. More than eight in every 10 child homicides involve a firearm, according to Lisa Price of the N.C. Gun Violence Education Fund.

Many youths get the guns from their parents, who can be — but rarely are — charged with improperly storing a firearm, Price said.

"Most cops don't know the law," she said.

On Jan. 4, 1994, Curtis became a murderer — and grew up in the eyes of the justice system.

No more probation, second chances, "treatment plans" or meaningless trips to juvenile court. It was to Superior Court now, into an adult world where a philosophy of retribution replaced one of forgiveness and treatment.

please see **KILLING/A12**

KILLING

FROM A1

The consequences

In March, more than four years after the shooting, Curtis sat on a cold metal bunk built into the wall of his cramped prison cell at Foothills Correctional Institution in Morganton.

**BARNETTE**

Head hanging, he talked about the people who tried to set him straight — the pleas to go to school, the way he hurt his mother. But talk of the murder quickly brought silence.

He offered little insight into that day, the rage, the pulling of the trigger. The police didn't care about the reasons; they just wanted to catch him. The West End community did, too — offering tips about where he could be found.

Going their separate ways

Before the murder, Curtis' mother had taken up "rejoicing the Lord." She is a minister now.

She has worked in her technical job for 11 years and gave up drinking more than a decade ago. But to do it, she said, she had to break up her family — kicking out Curtis' father, her partner of 12 years, because he abused alcohol and beat her.

Inner-city family budgets don't often have money to spare for marriage or relationship counseling. There are too many other tall orders — such as paying for food and rent — that are hard enough to fill. Somehow, his mother's new life left Curtis behind. At 12, he started roaming the streets while she worked the night shift.

Whose fault is it?

Curtis talks of his life at home with a violent father, on the streets with drugs and skipping school.

His former teacher talks about the sadness and anger he saw in Curtis.

"He would talk to me about getting his momma out of the neighborhood, and they were real things he talked about with the same intensity that he ended up killing someone with," said Richard Moore, now a state House representative from Kannapolis.

"He wanted a job and wanted to go to school, but he didn't see any reason," Moore said. "He'd say, 'Moore, I'm black, I'm male, and I live in the West

End. I don't have hope.'"

Death visits teen

Several months before Curtis gunned down Brown, a friend accidentally shot himself in the head while playing with a gun and died.

"It sort of hurt me," Curtis said from his barren prison cell.

Things got out of control fast after that, he said.

He stopped caring, drank every day and smoked marijuana. Even with a teacher like Moore, he rarely

went to school. His aim was to feel good as much and as fast as possible. School, with its frustrations and delays, just didn't fit in.

"If I'm doing my school work, and I have a problem and you're over there helping another student do their work, I want you to stop and come over and help me [right away]," he said, acknowledging the self-centered attitude.

Napoleon in Durham

Curtis is short, about 5 feet 5 inches, but stocky now from years of working out in prison. He shaves his head, has large brown eyes and sports movie star good looks.

Five years ago, Curtis was the youngest and smallest of his group of friends — and ended up with the biggest attitude. He had to drink the most, smoke the most pot and have the quickest temper.

"He was a scrawny little kid, and now he's physically fit," said Moore, who visits Curtis once a month. "He wasn't really a mean person as such. He was the type of person that you'd mention his name and people would say, 'I don't know why he won't be good. You need to work with Curtis.'"

Curtis says he is calmer now and, after years in jail, not so "young and stupid."

He wants to marry his high school sweetheart, who still visits him nearly every Saturday. And he refuses to pass the blame, he said. He was the one who skipped school, drank and used drugs.

But he also had a mother who worked nights, no father and few examples of how to avoid trouble.

'I thank God for my kids'

Curtis' mother, Bertha, raised on a Virginia farm, says her own father was tough, too tough. She wanted to be a kinder parent, she says.

"You want to call it discipline. I call it abuse," she said of her father. "I was sort of soft. I got so many whippin's that when I got kids, I said, 'I'm not going to whip 'em.'"

That, she says, was a mistake.

In 1974, when she was 18, Curtis' mother gave birth to Keisha.

"I was headed for an abortion and the doctor he looked me dead in the eye and he said, 'Are you sure you want to do this?' And I said, 'No.' I'm glad I didn't do it. I thank God for my kids."

She had two more children, including Curtis, with another man she stayed with for 12 years, despite his drinking and beating. The white liquor would come out at 6 a.m., she said, and the drunk would last all day. His work suffered and income dried up.

Curtis soaked in all the scenes.

His mother said she got tired of being mistreated.

"You kick a dog long enough, and he'll turn on you," she said. "I got tired. I wanted to kill him, but the Lord had a restraint on me."

THE STATE OF CHILDREN AND THEIR HOMES IN DURHAM

Social Well-being	1980s	1990s	Latest figures
Divorce rate	59.9%	65.5%	59.8%
Percentage of children in single parent homes	29.3%	34.6%	35.8%
Child abuse and neglect rate (per 1,000)	7.3	30	87.8
Rate of children in Social Services custody (per 1,000)	6.4	8.0	9.0
Number of children in foster care	24	149	232
Teen pregnancy rate (per 1,000)	97.5	113.2	92.6
Teen birth rate (per 1,000)	40	52.8	50.4
Juvenile custody rate (per 1,000)	N/A	16.4	12.5
Number of juvenile suicides	0	1	3
Economics			
Median family income	\$19,286	\$38,578	\$52,300
Number of children in poverty	6,663	6,315	11,926
Percentage of children in poverty	17.3%	15.3%	23.6%
Percentage of working single parents	65.8%	71.4%	N/A
Percentage of single parent families in poverty	27.4%	27.8%	N/A
Number of welfare recipients age 0-17	N/A	4,573	5,703
Number of food stamp recipients	N/A	7,194	9,588
Number of children in subsidized school meal program	6,658	7,924	11,736
Intellectual Well-being			
Number of children in subsidized childcare	N/A	890	4,807
Public school dropout rate	N/A	5.2%	3.0%
Per student expenditures	\$1,683	\$4,137	\$5,638
Middle school students writing at or above grade level	70.4%	57.7%	33.1%
Average SAT scores	829	833	984

Source: N.C. Child Advocacy Institute, 1998 N.C. Data Guide

STAFF GRAPHIC

Sentenced to life

Curtis' court file brims with his despair.

A judge ordered him to Dorothea Dix Hospital in Raleigh to determine his mental fitness for a murder trial. Only 15, he wound up on a suicide watch after doctors found a sheet tied around his neck. He also complained of hearing voices.

His lawyer eventually cut a deal with the state and Curtis was convicted of second-degree murder and sentenced to life. Recently transferred to Polk Youth Institution in Butner, he could be paroled in 2004 because he committed his crime less than a year before stricter sentencing guidelines took effect.

"I really cried. I cried for the mother who lost her son," Bertha said of Brown's mother. "I can go see my son. I can drive up ... and see him, but she can't see her son."

Tomorrow: The state's youth detention centers have run out of room, and young lawbreakers head back home to await trial.

'Wild' West End makes strides toward change; focus on kids

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

In a pocket of the city, hemmed in by cemeteries and public housing, drugs and crime reigned for years.

Now, a decade after some of the worst violence, a 5-year-old girl with braids clutches her stuffed bunny as she wonders aloud if a friend will buy her candy. She hugs two visitors, one at a time around the legs, her head barely reaching their knees as she squeezes tightly.

Tianna Miles embodies what many

in the tight-knit community bordered by Duke University Road, Chapel Hill Street and the Lakewood area, hope for the future — smiling children, education and peace emerging from a violent past.

There have been strides: a new community center, after-school programs, a growing teen program, a dozen homes built by Habitat for Humanity, and a 100-year land trust that allows residents to purchase and refurbish homes.

But the violence, though muted,

persists.

On Friday, a 14-year-old walking in the West End with his mother was shot by a 15-year-old driving by in a car, police said. The motive is unknown. The suspected shooter was arrested Wednesday. Drug sales continue, too, in the neighborhood, trying hard to swim to a standstill against the social currents of poverty and drugs.

"It happens," said Ronnie McKoy, director of the West End Community

please see **CHANGE/A12**

Center. "There have been some drivebys, people shooting at houses."

McKoy, who has a degree in biology and is also an ordained minister, has run the center since 1995. He's seen changes and crime decrease, he said.

The center's programs target the youngest children, he admits, the ones who have not yet started down destructive paths lined with the social pressures of the inner city.

"That's the key, that's our hope," he said. "The older ones, the ones who are 17 or 18, well, it's not a hopeless cause, it's more complex than that. They just already have their minds made up."

While problems persist, the picture is rosy compared to even four or five years ago, when an open drug market flourished and murder in

the middle of the day was not unheard of.

In 1994, 15-year-old Curtis Barnette shot and killed a 25-year-old on the corner of Carroll and Jackson streets, simply because the victim insisted on buying drugs that Curtis did not have.

The West End had a Wild West feel of hair-trigger tempers but without the romance or nostalgia, only the certain permanence of death and ruined lives.

Tianna — in yellow pants and a pink, daisy-flowered shirt — looks pitiful, in the sweet child way, as she asks for candy from McKoy, who is selling it to pay for extra summer activities for the children.

"We'll see what we can do," he says, an answer a child always suspects means no.

An 8-year-old boy, riding by on his red bike, asks if McKoy accepts food stamps.

An older woman within earshot on a porch laughs at the child's play for sweets.

Take a shirt, a life; laws unresponsive

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

It was only \$5, but it would mean everything to Jerry's future.

As an older friend held a gun, Jerry stuck his hand into a frightened man's pocket and grabbed his cash.

In that split second, Jerry became an adult in the eyes of the law. Though still a boy, he faced a grownup system of justice.

No more idle threats about training school or stern warnings from soft-touch juvenile court judges about missed mental health appointments.

Jerry, 14, is "going up," a judge says, and will stand with rapists, murderers and other armed robbers two and three times his age.

Under a state law with Durham roots, juveniles as young as 13 can be "bound over" to Superior Court. The law was inspired by the gruesome 1992 bludgeoning of a 90-year-old Durham woman by a 13-year-old boy who could not be tried as an adult and who served just five years for the murder. When he turned 18 last year, he had to be released from training school.

Jerry is a real person but, because of confidentiality laws covering young lawbreakers, his name was changed in a state report critical of the juvenile-justice system. He was 14 and deemed an adult because he committed armed robbery.

'Get-tough' policy doesn't

Jerry's life and criminal story spotlight the paradox in the state's get-tough approach to crime — it's really not that tough and, it can backfire.

Many times, sending youths like Jerry to adult court ends up transforming them into bigger threats to themselves and society, says Marcia Morey, Durham juvenile prosecutor. Morey says, "Jerry's sentence for the armed robbery — pleaded down to common law robbery in Superior Court — was a suspended sentence and three years of probation. Despite the light sentence, his encounter with adult court left a scar.



MOREY

"When Jerry pleaded guilty to common law robbery, his prior record in juvenile court could not be considered, by law, and so for sentencing purposes, he had no prior record," Morey wrote in a report outlining Jerry's case and how his story reflects problems with the state's juvenile-justice system.

"[But] because he was convicted of a felony, he was not allowed back into the public schools.... Because of his age and his record, it was virtually impossible for him to find employment," she wrote.

A sentence to training school — the modern term for reform school — until his 18th birthday would have packed more punch and provided more services, critics of the system say. But now Jerry has an adult criminal record and still has never been formally sentenced to time in a real jail.

"Although binding a case over to Superior Court for trial as an adult may sound tough, in reality, it often results in a more lenient sentence, with no rehabilitative services, than if the case had not been transferred," Morey wrote.

In 1996, the state sent 154 juveniles to Superior Court for felonies such as rape, murder and armed robbery.

A statewide survey of more than 300 judges, district attorneys, law officers and child advocates found that judges want more statutory guidelines for deciding which teens to send to Superior Court. The same survey showed that juveniles' sentences in Superior Court often are lighter than those juvenile court would have handed out.

Seventeen months after Jerry, as a seventh-grader, got into trouble for stealing a \$45 shirt but went free, he was in adult court for the armed robbery. He had waited eight months in the Durham Youth Home for his "adult" trial.

That eight-month waiting period is the harshest punishment he received in his juvenile-crime career, which included possession of a weapon, riding in a stolen car, petty theft — and ultimately murder.

Survey shows that juvenile sentences in Superior Court lighter than those in juvenile court

A system too slow

Jerry swipes a shirt.
— The police report doesn't reach juvenile court until three weeks after the crime. Technically, that's not late. The law sets no time requirements.

Jerry and his father meet with a juvenile services intake officer — who is in charge of directing cases to court or to some other treatment option.

"Although three weeks, as in Jerry's case, may not seem long in adult terms, it is a long time to a child," Morey's report states. "The child may think that he 'has gotten away with it' or that there will be no

repercussions."

At a meeting with the intake officer, called to discuss Jerry's fate, his father says his son is improving his school attendance, which has been a problem.

The intake officer decides to "divert" the stolen shirt case because it's Jerry's first offense. She also orders mental health counseling for the boy — an order with no force of law behind it.

The decision saves Jerry a juvenile record and a court hearing. In effect, it's a second chance. The question is whether Jerry is ready to make good on his "diversion agreement."

The next month, Jerry "attends" his counseling appointment — simply by signing his name on a clipboard at the county mental health office.

He doesn't talk to anyone or participate in a treatment program. And he doesn't have to. Strictly interpreted, state law requires him only to make "contact" under a diversion agreement. Signing the clipboard qualifies as contact.

"Because of heavy case loads, intake officers rarely follow up on diverted cases," Morey's report states. "These cases are not put on the docket, and because youths cannot be sanctioned in juvenile court for failing to follow through on diversion orders, these cases remain unaddressed."

A child's eye-view of court

Jerry only knows his lawyer as a "tall man."

His parents do not come to court with him, and the boy can't fathom what's happening as he stands small and young before the judge.

Seven weeks after he was captured in a stolen Jeep that his 15-year-old friend was driving, Jerry's case moves quickly, like pressurized water, through a juvenile court pipeline that seeks to reprimand and rehabilitate him.

When his case is called, the tall man tells him to "just go ahead and admit the petition." That means plead guilty.

It's good lawyerly advice, because most first offenses equal probation for juveniles. But Jerry never has a chance to explain that he didn't know the car was stolen or that his friend didn't have a license.

The judge orders the court counselor to study Jerry's home life and report back to him. Jerry leaves.

Four months later, after the home study, Jerry's court hearing resumes. This time, his father attends.

The judge discovers the boy has been suspended from school and orders Jerry into the Durham Youth Home until he can be allowed back into school. But, as usual, the detention center's 15 beds are full. So Jerry is sent home.

"Because of a lack of facilities and overcrowding, no detention bed was available for Jerry, and once again Jerry experienced no immediate consequence for his actions," Morey wrote.

Six months after he was caught in the stolen Jeep, Jerry goes home with little more than a mild tongue-lashing. The judge tells him he's "skating on thin ice."

The judge also orders a curfew and for Jerry to stay away from his older friend who drove the car.

Jerry never speaks in court. He breaks the curfew and the system does nothing about it.

Death visits Jerry

Jerry lives with his drug-abusing mother the summer after the seventh grade.

He knows the streets and is on them late at night, hanging out with his 16-year-old brother and the older boy.

One night, as the teens revel in the season of shorts, no shirts and no school, Jerry sees his brother gunned down.

Jerry and his brother are standing in a crowd on a corner at midnight. A car drives by, its occupants firing weapons and spraying bullets.

His brother, barely old enough to drive, dies a brutal death before Jerry's eyes.

Two weeks later, Jerry is caught with a friend in the stolen Jeep. His first court appearance follows.

It isn't long before Jerry grows more violent and lawless. He receives probation, which is standard in juvenile court. And the trouble in his future begins to snowball as events roll downhill.

The murder Jerry commits is not special as murders go. It sparks no marches on City Hall or even a second thought from most who read or hear about it.

But for the victim and the teen triggerman, the death changes everything.

On probation from Superior Court for his common law robbery conviction, Jerry, 14, shoots and kills a drug dealer.

The robbery conviction was his first as an adult, a status the district attorney's office insisted on and a judge agreed to grant.

But the probation is less severe than if Jerry had remained in juvenile court for the original, more serious charge of armed robbery. That could have landed him in training school for four years, until his 18th birthday.

Just two years after his first brush with the law, the theft of a \$45 shirt, Jerry has moved quickly into the upper echelon of crime.

Convicted of manslaughter, his term will only be a few years, a lesser sentence agreed upon because of his young age — a bit of unnoticed irony.

Then he will be out again — not even old enough to drink or vote, but unemployable, uneducated and likely unwelcome in society.

And still just a child.

Prison life: Time, rules, order ironic twist after brash youth

Society's heavy debt for outrageous acts paid back in regrets

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

MORGANTON — Curtis Barnette keeps far to the right of the yellow line as he walks down the corridor at Foothills Correctional Institution.

That's a rule all prisoners must follow to help steer the usual throng of humanity through the hallways.

But on this day, the corridor is empty, and all the other inmates are locked in their cells. Curtis is walking down the nearly empty hallway with a visitor — and still he clings to the right-hand wall.

Curtis is institutionalized now, in every sense of the word. He spends his days behind bars.

But, more tellingly, after years of fighting and rebelling in prison, he knows and obeys Foothills' rules.

The contrast is sharp to the brash little Napoleon with the quick temper who drove cars at 12 and 13 and murdered at 15.

His world used to be Durham's tough West End community. Now, it is a prison cell.

"At first, it was like, this can't be happening. Now I'm growing up. I got to deal with it," says Curtis, 20, sitting in the prison cafeteria.

Back in Durham, his mother works and "witnesses" for the Lord.

Some days, she stops on the street and yells at children who loiter in the middle of the day.

"Why aren't you in school?" Bertha

JUVENILE INJUSTICE

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Barnette snaps. The children look at her strangely, cocking their heads like confused pets. "Why would she care?" they seem to be thinking.

Other days, she goes to the courthouse and simply sits and watches in a courtroom packed with bewildered young faces. Sometimes there are confident young faces, too — the way Curtis once was — who know the routine and just go through the motions.

Bertha also knows the system needs to be mended.

"I look at them, and I see my son is not the only one," she says.

Well-meaning judges hand out probation, mental health counseling and other orders. But often the youths ignore the decrees.

please see **PRISON/A14**

JUVENILE INJUSTICE

Carolina lets its youngest criminals beat the system

PART SEVEN

JUVENILE JUSTICE: A LOOK INSIDE

■ It was only \$5, but it would mean everything to Jerry's future. As an older friend held a gun, Jerry stuck his hand into a frightened man's pocket and grabbed his cash. In that split second, Jerry became an adult in the eyes of the law. Though still

a boy, he faced a grown-up system of justice. Jerry's life and criminal story spotlight the paradox in the state's get-tough approach to crime — it's really not that tough, and it can backfire. **A14**

PRISON FROM A1

And no one does much about their defiance.

It's a situation that has ignited a call for changes in North Carolina's system of juvenile justice — and not just from people paid to make sure the young lawbreakers are held accountable for their crimes.

State legislators are clamoring for reform, too. So are mental health counselors, whose job is to help youths in trouble by offering treatment. And, like Bertha Barnette, other mothers and fathers of teens in trouble also want to see changes.

Curtis may spend the rest of his life in prison, and Bertha finds solace in court, watching others walk down his path.

She has another son, 16. Fear and love, she says, keep her especially close to him.

"If I die, I want him to be able to take care of himself," she says. She is 40.

On her birthday, he came home from school and handed her a poem, written in pencil on loose-leaf paper. In ornate letters, it described the beauty of aging, his mother's grace and his love for her.

"When you lose one, you ...," she says, pausing. "Curtis will be home. He will be home."

Curtis dreams, too — about marrying his girlfriend, whom he calls by his own last name now, and getting a job.

He dreams of getting out early, before 2004 — his earliest possible parole date. He dreams of barking dogs and children laughing, the little things he says he never knew he would miss.

But for at least the next six years, his life is all planned. Even if he is released, there will be rules to follow — the life of an ex-convict on parole.

Proving himself in prison

In his defiant days, Curtis weighed little more than 115 pounds.

He had to prove himself, he says, shaking his head. That's the trouble when you're "young and stupid," he says.

Prison regulations rule his life — in Bunker now, following a recent transfer to Polk Youth Institution. In Morganton,

where he was interviewed for this series, guards counted the more than 700 inmates five times a day in the bleak maze of bars and heavy steel doors, even though escape was unlikely.

Wherever the inmate, the system demands routine, order, discipline and control.

"It gets on your nerves," Curtis says. "[Foothills] is basically wrapped in steel. ain't nobody goin' to escape, so why all the countin'? I don't know what that's about. It gets on your nerves."

Guards keeping a sharp eye from a central area in each cell block. Metal bars. Metal stairs. Televisions mounted too high on the walls. Hard plastic chairs, set in uninviting rows on cold white tile. And time, lots of time.

As with his mother, 20-20 hindsight guides Curtis.

Families need to be tighter, he says. He tries to counsel his younger brother. But on most visiting days, they just sit and stare at each other across a prison table.

"He's more distant," Curtis says softly, sitting on his metal bunk.

The bunk covers the width of the cell. Around him are two steps of walking room, white walls and a stainless-steel sink and shelf jutting out from the wall beside his bed. The toilet is only one step away.

After four years in jail, Curtis says he doesn't want to see his old friends again.

"One of them is locked up somewhere. Another one was shot in the head or somethin'. We'll just leave the past in the past," he says.

Father is missing link

But he still wants his father, who has never visited him in prison, to know him — a positive attempt, this time, for male attention.

"I wrote him once, to tell him you know, that I can't hold nothing against him for what he did," Curtis says. "I'm a man. I'm old enough now that I can understand that he had problems."

The letter was less forgiveness than an offer — a chance for a father to get to know a son.

"He sent me a card last Christmas."

Curtis says. "He sent me some money once, but that doesn't mean anything."

Curtis spends little time looking back and wondering what might have been. He knows now that violence and prison were virtually inevitable in his life. And he feels almost lucky to be young and alive, even if he's in jail. At least he's still not running down a path toward death or a lifetime of crime, he says.

Curtis doesn't want to talk about the murder. He once told police he couldn't recall it because he was high on alcohol and drugs when it happened.

"I remembered that. I've always remembered that," he says now. "I don't think it's a good idea to get into all of that."

But he's ready to offer advice to younger children: You don't have to act like a big man and prove yourself. Listen to the ones you love and who care about you.

His mother's love remains constant.

"I love him. I still love him. That hasn't changed," she says. "The whole time my son was in trouble, I was embarrassed. I was mad. I was bewildered. But I wouldn't imagine anything happening like that. He's still my son. I love him. When he did, doesn't change that."

Bertha Barnette no longer lives in the West End, and the community is struggling to change. The dead-end street where Curtis once lived is now redeveloped — with a way in and a way out.

"He lived on a dead-end street in a dead-end life," says state Rep. Richard Moore of Nannapolis, who once taught Curtis at the former Durham High School. He also encouraged him to stay in school and keep out of trouble.

"[Now] there is a way to get in and out [of the street]," Moore says. "That's kind of the way Curtis' life is — he has a way in and a way out."

Curtis' life now parallels a cleaning and turnaround in the West End.

"The community seems to be turning a corner," Moore says. "He's accepting responsibility."

Tomorrow's A Boston program was national experiment as a model of controlling youth crime.

SPECIAL REPORT

Nightlight program puts out crime by juveniles in Boston

Murders of youths have been almost zero for 3 years

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

BOSTON — The Iranian cab driver looks nervous as he turns from swanky downtown seafood restaurants and valet parking into the bumpy pavement and chained-up retail stores of Washington Avenue.

"I don't like to go there at all," he says in heavily accented English. "Because I like my life."

The road heads into the heart of the city's gang territory.

An elderly black woman in a tan raincoat waves for the taxi to stop,

but the driver ignores her. He won't pick up another fare until he smells chowder and steaks again near \$200-a-night hotels and brass-buttoned doormen.

"She will only bring me farther into this mess,"

he says.

Waiting at the cabby's destination are three men in a building bathed in yellow light from a McDonald's across the street. They are surrounded by a pool of poverty, crime and drugs — but happily stationed in the police outpost, in the most prolific juvenile-crime area of Boston.

The two patrolmen and a



The Herald-Sun/CHRISTOPHER KIRKPATRICK

TRACKING DOWN JUVENILES: Probation officer John Holloran and Boston police Detective Mark Buchanan look over a list of juveniles who are on probation and live in Boston's Dorchester and Roxbury sections. They visited the youths to ensure they are following their curfews.

probation officer work in the rundown Roxbury and Dorchester sections nearly every day, sometimes after hours.

And on this rain-soaked Thursday night, they are about to embark on an unusual duty — part of an overtime, after-hours commitment that has kept children safe from violent death and earned the city's police department and judicial system national acclaim.

Juvenile murder is all but dead in Boston and has been for about three years — an astounding development anywhere, but certainly in a large city in the Northeast.

The program responsible for the

turnaround is called Operation Nightlight. Its goal is simple: to make sure juveniles obey their probation agreements. But it stands in contrast to more lethargic efforts in many other cities. Boston's success has attracted envy and attention from at least three North Carolina cities: Raleigh, Charlotte and Winston-Salem.

All have sent officials to this Massachusetts city of about 600,000 to see how Operation Nightlight works. And with juvenile-justice reform a hot topic in North Carolina, the Boston program stands a credible example

please see **NIGHTLIGHT/A3**

JUVENILE JUSTICE
How North Carolina lets its youngest criminals beat the system

PART EIGHT

JUVENILE JUSTICE: A LOOK INSIDE

■ A state commission's report on overhauling the juvenile justice system is being debated in the N.C. General Assembly. Lawmakers and money may hinder its implementation.

Prevention vs. punishment is debated as means to reduce juvenile crime. Aftercare and practical prevention are emerging as the maxim for fighting youth crime/A4

NIGHTLIGHT

FROM A1

How to deal with juvenile crime.

Under Operation Nightlight, police from the anti-gang Youth Violence Task Force protect the probation officers — who are not allowed to carry guns — as they drive around at night randomly checking juveniles' homes to make sure they are obeying curfews.

The officers also check specific streets that are off-limits to some youths under their probation agreements, now minutely tailored for each child. Youths who break probation too many times could go to jail.

"The key is you remove the leaders — the small group that is the catalyst for everything," said Bernie Fitzgerald, Boston's chief probation officer.

When Nightlight started, juvenile gang and crime leaders broke their probation first.

Suspended sentences — jail time deferred in exchange for staying off drugs, going to school or obeying a curfew — became real jail time in front of fed-up judges.

The juvenile-crime rate plunged. And in 1995, the city started a 29-month stretch of zero juvenile murders.

The federal government has awarded six five-year grants to half a dozen major cities so they can copy Boston's approach to battling juvenile crime. The method includes massive collaboration from all city agencies and 54 churches that banded together as the Ten Point Coalition.

In 1996, Boston suffered nearly 60 homicides — with no juvenile victims. That same year, Durham, about a fourth of Boston's size, counted 41 homicides. There were no juvenile victims, but one 15-year-old was charged with murder.

"We'd put probation on [juvenile lawbreakers] and only enforce it if they got arrested," said Bill Stewart, a probation officer who came up with the Operation Nightlight idea. "We were expecting the police to do our jobs for us, because nobody had said: 'You have to work after 4 p.m.'"

Trailed, nailed, jailed

"[Now], if you want to try and get over on us, we'll get you. You will be targeted, and you will be taken out — trailed, nailed and jailed if you commit an act of violence, if you pick up a gun and commit violence," he said.

The program moved Stewart from behind a desk to the streets, and he brought along some armed help.

"We didn't know what to expect. We didn't know the kids' reactions. They had been used to seeing us from behind that desk," he said.

Four minutes into the first night of Operation Nightlight, Nov. 12, 1992, a bullet ripped through the chest of a teen named Tito.

"We were saying, 'Let's be careful out there,' like on TV," Stewart said. "We were kidding each other, and the radio called the shooting."

Tito was on probation with Stewart's partner, Rich Skinner. At the scene, Skinner rushed to help the teen, Tito, who was still alive when Skinner and Stewart arrived, despite the .30-caliber hole through his rib cage.

"I see six kids across the police tape who are all on probation and breaking curfew," Stewart said. "I purposefully bumped into one: 'I'm riding in the Five-O, and I'm out checkin' curfews.'"

"That's not fair," Stewart remembered.

From the rain-washed streets of Roxbury, Boston's tall hotels and awesome skyline glitter as if in a far-off land of money and opportunity.

Down Warren Street from the Boston Police Youth Violence Strike Force building, a religious service rages inside dark wrought-iron front gates. Decked out black people have chosen church this Thursday night.

But off Warren, on the twisting side streets of old, three-story homes and tall, thin duplexes, live children who have crossed the law: Assaults, robberies, drug charges — the myriad crimes of misspent youth are represented. And all the juveniles are on probation.

"Probation is a chance not to go to jail," says police Officer Gary Ryan, one of the three men preparing for a Thursday night of checking homes. It's not a free walk-away — not since Nightlight began.

Many of the juveniles and older "youthful offenders" are on a list that probation Officer John Holloran holds in his hand and reads by flashlight.

It's 7:45 p.m., well past some curfews. Many of the older youths have until 9 p.m. Some haven't been checked on in months — they'd better be home tonight.

The three officers are preparing to do what few cities, including Durham, even imagine: checking on the teens at night, when the curfews take hold.

Ryan, more than 6 feet tall with a full day's growth of beard and a 9-month-old son at home, will drive. Riding shotgun is Mark Buchanan, who used to walk a Dorchester beat as a street cop.

"I was the mayor of Codman Square [a small section of town]," Buchanan says from under his black baseball cap with "Brooklyn" in white letters across the front.

He made it on the evening news one night years ago for lifting weights with the children. He takes small groups of juveniles to jail and dresses them in jail uniforms to scare them into good grades and obedience.

Plans to scuttle gangs

He talks about plans to scuttle the blossoming Crips and Bloods, notorious Los Angeles gangs showing signs of taking root in Boston. For now, the teens are just talking, "but we're going to take them seriously," he says.

In battling the gangs, Buchanan has a new technique: working with pediatricians, who are becoming founts of information about what youths are thinking, who wants out of the gangs or who is scared. He plans to meet with one teen who told his doctor he was afraid he was getting in too deep with the Crips.

"Who knows where that will lead?" Buchanan says, hoping to learn the burgeoning gang's main membership list, then break it apart. But he must step softly. The teen does not know his doctor called the police.

Holloran, with Roy Orbison black hair and a wry wit, sits in the back. He's the noncop, the one who can't carry a gun, the one who pokes fun at his police officer friends. He's also the one police officers might have ignored many years ago.

Ryan describes a horrible sex crime and murder a 14-year-old committed several years ago.

"Of course, they immediately started looking for cops," Holloran cracks.

In the early 1990s, local gangs — the kind that would control a few blocks at a time — were over-running Dorchester and Roxbury. Drugs and gunshots ruled some streets, where ordinary citizens tried to live.

For 54 churches, the last straw came when a gang member was fatally stabbed at a funeral for a rival gang member. They formed the Ten Point Coalition to work with police on reducing juvenile violence.

Now, about six years later, the coalition has a cog in nearly every city agency and every church in

in-crime communities.

The machine of cooperation battles juvenile lethargy with jobs and attention, always with a weather eye out for the first signs of trouble in a child's life.

Each year, the city of Boston organizes more than 10,000 jobs for youths, including some with local businesses. And the city pays ex-offenders, reformed gang members, to work as mentors to help children steer away from violence.

The public schools watch students' grades. If they nose dive or other problems arise, a social worker might visit the home.

The district attorney's office vigorously prosecutes juveniles who break their probation agreements.

Juveniles who commit crimes, carry guns or sell drugs get active jail time of a year or more.

And in contrast to the way many other cities, including Durham, handle juvenile problems, all the agencies share information. No longer are prosecutors and judges in the dark about a youth's potentially abusive home life or school troubles when he stands before them for a probation problem or some other crime.

Boston either supplies support or punishes, depending on the youth, and the efforts have been crushing the juvenile crime rate.

JUVENILE INJUSTICE

Sunday: Do young criminals get too many 'second' chances? A look inside a juvenile-justice system overwhelmed by youth crime.

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Saturday: A teen murderer looks back with regrets.

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Some change is afoot in Durham, where a youth services board with representatives from several agencies is organizing to give children and parents one place to go for services and information.

But police and probation officers still don't work together checking curfews. And there is nothing in the state juvenile code about sharing information.

All of which leaves troubled youths and society worse off, says Marcia Morey, a Durham prosecutor on leave to work on proposals to reform the state's juvenile-justice system.

Operation Nightlight's success amazes social workers, probation officers and prosecutors from around the country who grapple with juvenile crime and, often, with just trying to get everyone involved to talk to each other.

In Durham, juvenile probation officers, called court counselors, do not carry guns, and they do not regu-

larly search for juveniles who miss their appointments or fail drug tests.

The counselors simply have too many juveniles to keep track of, on average more than 40 at a time. So the process of holding teens accountable is slow in the City of Medicine. Charlotte, Winston-Salem and Raleigh want to change that, as do the state legislature and Gov. Jim Hunt.

While North Carolina lawmakers have toyed this year with passing new laws to reform the juvenile-justice system, police and probation officers from the three cities traveled to Boston to see probation officers and Operation Nightlight in action.

A Haitian greeting

In some inner cities, members of black gangs pose as Haitians or Jamaicans because real criminals from those countries have a reputation as being extra-violent.

The black Americans groom dreadlocks and adopt phony accents that include "mon" and other trademark phrases.

Pierre, standing on the front porch of an old Dorchester home, is really Haitian. But he's not so tough, and he's where he should be at 8 p.m.

He's in the minority of juveniles the three police and probation officers check on that night, breaking into a wide-faced grin at the probation officer's bad jokes.

"Sock Poh-seh, Mom Boolay," Holloran says as the mother and son open the door. Pierre looks confused;

he doesn't understand the Haitian phrase for "what's up?" or "how are you doing?"

"He doesn't speak the language," his mother says with a deep island accent.

"I speak English," the 14-year-old says.

"No, you don't. You speak Daaahchester," Holloran says with an unwitting Boston intonation on the letter "O."

Pierre hardly seems like someone facing assault charges as he stands next to his mother, smiling up at the white, black-haired Holloran.

"You're doing OK," Holloran says.

In this neighborhood, a late-night knock can be dangerous.

A tiny mother, about 100 pounds, nervously opens another door.

"Probation!" Holloran announces.

She doesn't know where her boy is tonight.

"No, he hasn't been in yet," she responds in a quiet voice.

"He has to go see his probation officer tomorrow," Holloran says sternly. "Will you make sure that he's there?"

The mother stands in a white smock of a dress and house shoes in the dim light of her front door. She's embarrassed talking to Holloran. And it's obvious she's not sure she can make her son go see his probation officer.

Buchanan lingers as the others step away. "It ain't easy, is it?" he says softly to her.

"She's scared," he says later. "He's bigger than his mother. When I went over there before, he had gang things at the house. I think he's a Crip."

There's too much noise and hollering for Jamiel's mother's liking.

She stomps on to the second-floor porch and peers down suspiciously: Who's yelling?

Her demeanor changes some when she realizes the authority standing on her front stoop.

"Jimmy's not here," she says with irritation.

"He's supposed to be here," Holloran says, craning his neck back and up to look at the irked mother.

"He's not here," she answers again.

"All right, he's in violation of his probation. He has to go see his probation officer tomorrow," Holloran says.

"Yeah, he knows that. When he goes to court, they're going to put him away," she says as the three walk away.

"It sounds like she wants him to [go to prison],"

Buchanan says under his breath.

Jamiel will get a visit the next night and the night after that. He has been marked by the system now. Holloran or another probation officer will call his school to see if he is attending. Jamiel may be going to jail, having squandered his second chance.

Coffee and doughnuts. They are cops, and they actually stop for doughnuts.

"Now you can really say you've been with the police," Buchanan says.

In the store next to Dunkin' Donuts, Lotto tickets are on sale. The jackpot is \$50 million. Buchanan talks about the party he'll give his unit if he hits the jackpot.

"Niice Sweedish meatballs. Nothing too good for my guys," he says. "If I hit the \$50 million, nothing but the best cold cuts."

"Probation!" Holloran yells again, re-energized by coffee.

He's standing at the front door on a paint-chipped porch. A long stairwell inside reaches up into the apartment where the juvenile pretends to be sleeping. He is one who already has been marked.

The teen feigns sleepiness as he pretends to wipe drogginess from his red, glassy eyes. He's not surprised to see them, he says.

And Buchanan wants him to know that he knows what he's really been up to: smoking marijuana.

"You remember I was here *last Tuesday*,"

Buchanan says just before the officers walk away.

The boy doesn't answer. And he is home, where he should be. The group probably will check on him again Friday and Saturday.

He's been marked by Operation Nightlight.

"Yeah, we were here a couple of days ago — the old sleep-in routine," Buchanan says. "They were firing it up [smoking marijuana], but they threw it through the window last time."

This Thursday night, the officers are four for eight, and they will be four for nine before it is over. More juveniles broke their curfew than are at home.

But all were tagged. And if it happens too much, they will be plucked from the streets, and a judge will reckon with them.

"We [really] are eight for eight," Ryan says. "because we have information now on all of them."

On another street, a boarded-up house recalls a daylight murder years ago.

The gangs raged then, before Ryan, Buchanan and their police and federal brethren cracked down.

"They shot him on the front porch at 3 p.m.," Ryan said, walking across the street. "Everyone thinks it's about turf. But it can be over a girlfriend or over respect."

Next door is a home where a juvenile must be in every night by 9 p.m. In the adjoining alley, an overflowing garbage can hasn't been emptied in ages. The discarded food and wet cardboard boxes rot in the open.

Nobody's home, and the list is marked.

Using a simple logic

Operation Nightlight screams with simple logic.

But first, a crevasse between court workers and cops had to be bridged.

"We've forgotten what it was like years ago when everyone had an ego," Buchanan says.

Now there are no turf battles or competition for credit.

North Carolina officials say the state could use such solid communication and cooperation as it grapples with juvenile crime.

Boston police now cooperate with everyone, including ministers and pediatricians who hear children complain about gang pressure.

Even after a botched drug raid inadvertently caused a black minister's heart attack and death, other black clergy called for forgiveness and order.

Police raided the wrong home.

"[But] they didn't fan the flames," Buchanan says of the black community.

"We have the clergy on our side," Ryan says. "The community lost these kids and they've said, 'No more.' In most communities, the black clergy and black community don't get along with the police."

Years ago, Boston was a city known for its racial tension. It nearly exploded after a federal judge ruled the school system had to bus to integrate classrooms.

"We are all products of that in this car," says Ryan, 36, a white cop who sits next to Buchanan, a black cop. Holloran, a white probation officer, sits in the back.

Success has made cooperation infectious, said Stewart, the probation officer who started Operation Nightlight.

Now police are calling the sanitation department and other departments about summer jobs for the teens they watch. And federal-law enforcement agencies — the FBI, Alcohol Tobacco and Firearms and the Drug Enforcement Agency — are all welcome in Roxbury and Dorchester police stations.

The Boston gang unit, FBI and DEA broke the Intervale Street Posse, a gang that terrorized the area. Most members got 20 years in prison on federal drug and racketeering charges, Ryan says.

On Intervale today, an empty lot has been cleared of the thick trees and gnarled shrubs that once hid the Posse's drugs, money and guns.

The white picket fence in front of the barren field bears three black, spray-painted letters recalling the gang's past — "IVP." But it now reads like an inscription on a headstone.

"When we were there, people would mouth 'thank you' at their windows," Ryan says.

Stewart has become a bit of a celebrity in judicial circles.

His face is in U.S. News & World Report, and "Operation Nightlight" trips off the tongues of would-be reformers from around the country, including in North Carolina.

"I think it's catching on," he says. "Like anything else, it's easy, it's free — copy it, take it. I'm not making money off it. I'm too busy doing it."

He has taped his thoughts as he drives back from Dorchester each night. Maybe with a ghost writer, he could turn his thoughts into a book or something else, he says. But he doesn't think about that too much.

Neither he nor Holloran earns overtime like the police. But they do get compensatory time — and satisfaction.

"... To have a kid come back and say thank you. Those are the wins you take," Stewart says. "To drive by a playground that five years ago was dead [but] because of the partnership ... is now filled with little kids. They don't know why they're back [playing in the once-dangerous neighborhood]. I work for those kids."

JUVENILE JUSTICE

Lawmakers, money may hinder reform

Juvenile-overhaul report debated in N.C. Assembly

By CHRISTOPHER KIRKPATRICK
Capital bureau

For months, a state commission has been working on reforms to the juvenile-justice system and its creaking criminal code, last overhauled in 1979.

The commission's report now has been transformed into proposed legislation resting in the House and the Senate Judiciary committees, where lawmakers vote in changes and debate the different provisions.

The bills seek a refurbishing of the juvenile-justice system, including more punishment and more options for judges other than probation and training school.

"I think we're coming around to common sense and meeting the demands of the seriousness of the problem. It's not that we want a punitive system. We're responding to what's happening," said Marcia Morey, a Durham juvenile prosecutor who heads Gov. Jim Hunt's Commission on Juvenile Crime and Justice.

A disturbing rise in violent juvenile crime, 172 percent over the last 10 years, prompted calls for reform.

The most drastic changes under the proposal are to the juvenile code that now forces judges to use the "least restrictive alternative," which usually means probation that is not well-enforced.

Under the proposal, certain violent acts

would merit a training-school sentence immediately, even if it is a first offense.

"First-time offenders today do not fear the consequences," Hunt said. "We need tougher punishment and correction ... there have to be real consequences. ... It's got to be swift."

Critics of the proposal say the reforms are too punitive without enough money included for prevention. Under the proposal, a new sentencing grid allows judges the option to sentence children into novel, alternative programs, but critics say there isn't enough money for the counties to start and maintain those programs, thus the options aren't real.

But Morey has countered that Smart Start, which Hunt wants funded in the state budget for all 100 counties, is the ultimate in prevention, offering early-childhood development programs for children.

And every county does have the funding from the state to start the programs under the "Community Based Alternatives" section of the state budget, Morey said. Some counties choose to use the money for YMCA-type programs, she said. But half the clients in the programs must be court-involved youth, according to state law.

Confidentiality rules that hamper police investigations would be opened up under the proposal for police use and for use by other professionals in the juvenile-justice system.

Police have complained for years that investigating juvenile crime is more difficult because under current law, most children cannot be fingerprinted or have mug shots taken for permanent files.

Under the proposal, police could take fingerprints and mug shots if they wanted to and would have to for felonies.

Hunt's proposal also calls for a Cabinet-level position for juvenile crime, a new state agency and more money to hire additional court counselors.

"We're going to assist law enforcement to take photographs and fingerprints of juveniles charged with felonies. We're going to open up their records ... not to the public, but to professionals in the system," Morey said. "We're going to speed up the process of getting kids into court. We're going to hold the parents more accountable. If the parents are financially able, they will have to pay for the treatment, maybe court costs, attorney's fees, if a court finds them able to."

The cry for juvenile-justice reform could be partially in vain because of extra competition for tax dollars this year.

The state now must pay state retirees about \$1 billion in tax refunds owed to them because their benefits were taxed improperly, the state Supreme Court recently decided.

Lawmakers, such as Senate President Pro Tem Marc Basnight, a Dare County Democrat, hope the court will allow the money to be paid back over a period of three or more years.

And lawmakers already have committed to teacher raises and certain tax cuts.

"Juvenile-justice reform is as high a priority as education funding. I know there's this great myth that there's this huge budget surplus, but with the retirees ... we have to prioritize," said Julia White, spokeswoman for Basnight.

JUVENILE JUSTICE**SOME HIGHLIGHTS
OF JUVENILE-JUSTICE REFORM BILLS**

Issue	Current status	Recommendation
Sentencing	Judge must use least restrictive alternative.	More options for sentencing, including automatic sentences — even on first offenses — to training school.
Disposition grid	Doesn't exist. Judges have extreme options of training school or probation.	Three new categories of offenses: minor, violent or serious would be matched with prior record. Adds intermediate punishment options, which now don't exist.
Training school sentences	Most are indefinite commitments with no minimum stay. No post-release supervision is required.	Change to six-month minimum. Must have 90 days of post-release supervision.
Diversion	A child's case can be diverted from court in exchange for a diversion agreement, which is a promise to see a counselor or to complete a program. Whether the agreement is followed is rarely checked on.	A new rule would hold parents and juveniles responsible for completing diversion agreements.
Mug shots and fingerprints	They now can only be taken after a juvenile is found guilty of a serious felony. Police say they need to use them for investigations.	It would be at the officer's discretion and a requirement for a felony.
Time limits for detention	A hearing within 5 days if a juvenile is in detention. No time limit for other juveniles.	Same 5-day rule, and a new 10-day rule for those not in detention. A probable cause hearing within 15 days of first court appearance.
Parental accountability	Very limited and rarely enforced.	Parents must attend all hearings and must help with probation. Parents will pay court costs and treatment costs if they are able.
Confidentiality	Proceedings and court records are confidential.	Open proceedings to public and allow justice professionals to review juvenile files.

STAFF GRAPHIC

Program shows children effects of violence

By CHRISTOPHER KIRKPATRICK
The Herald-Sun

A visit to the morgue to see dead bodies, or a trip to Duke's emergency room to watch a bloody trauma unfold teaches juveniles about the real consequences of violence and sets them onto the right path, so the theory goes.

The PROUD program teaches children — pushed by juvenile court into the 12 weeks of classes and four weeks of community services — about the real-life consequences of violent decisions, sometimes through gruesome lessons.

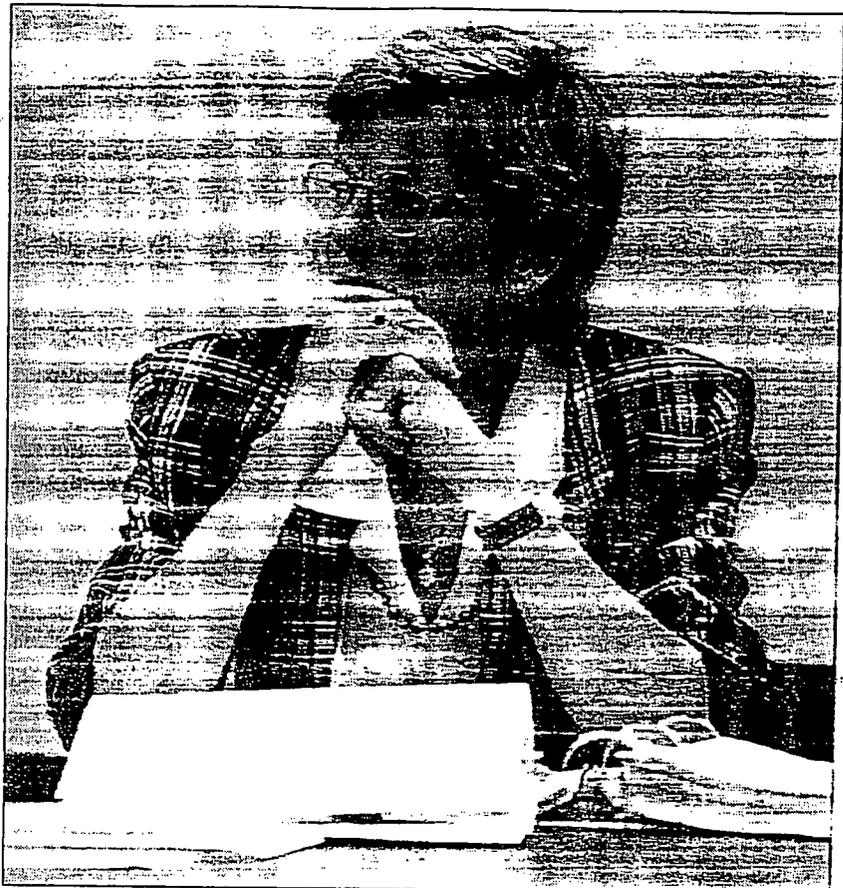
"There's role playing, a health department person comes to talk about health issues, not the least of which is preventing HIV and AIDS," said Irene Dwinnell, co-chairwoman of the PROUD program. "We visit Duke ER to see an actual trauma: When you shoot somebody, this is the outcome. They visit the morgue, they go to teen court, and they have gone to the prison and talked to prisoners."

In its 2½ years, PROUD has taken care of 200 juveniles with only 10 committing another crime and going back to juvenile court after the program, she said.

The idea is modeled after an Omaha, Neb., program that has been successful in diverting children away from violence and criminal behavior, she said.

PROUD is one of a growing group of programs or approaches around the country that actually work and are being copied by other high-crime communities looking for answers to their juvenile-crime problems. The key, Dwinnell and others say, is acting on an emerging maxim in fighting juvenile crime: aftercare and practical prevention. No program, however novel, works without aftercare — follow-up on children after they complete a course of classes, sentence or any program designed to rehabilitate, whether it's a prison sentence or group therapy, experts say.

There is little or no official follow-up after teens are released



The Herald-Sun, ELLEN OZIER
COMMISSION HEAD: Marcia Morey, a Durham juvenile prosecutor who heads Gov. Jim Hunt's Commission on Juvenile Crime and Justice, appears at a recent House Judiciary Committee meeting in Raleigh.

from training school, and most parents of those children don't attend planning sessions with staff psychologists at the schools, which might explain a UNC Charlotte study that showed 50 percent recidivism for inmates released from training school.

The most successful programs take on an early-childhood care flavor or teach basic skills, such as reading.

The approach for juveniles also must involve parents and a sense of consequence, experts say.

"You need to approach it from a holistic standpoint. Yes, their behaviors require consequences, but we need to look at the whole child. Programs that work look at the whole picture, not just looking at the child, but looking at the family," Dwinnell said.

The juvenile crime rate in the state is rising, and lawmakers, juvenile-justice officials and community leaders are clamoring for reforms to the system that seeks to punish, treat and rehabilitate children who go astray.

Gov. Jim Hunt's budget proposal this year seeks an increase of \$6.5 million in funding to the \$15 million Community-Based Alternative state budget, and millions to put Smart Start, an early childhood development program, in all 100 counties.

Part of the search for panaceas first began funding "community-based alternatives," meant to offer judges alternatives to training school.

This year, Durham's share of the state money is \$415,000, which will fund different programs

applying to the county, such as PROUD and Trinity House, which offers juveniles emergency shelter. And a Youth Development Board is coming together to place information on all services and programs under one roof for so-called "one-stop shopping."

As it stands now, no one in Durham County government knows how many different programs are available, said Karen Thompson, treasurer of the Community-Based Alternative board, which gives out the state money to local programs.

"A lot of programs stop and start and don't get funded, and they only last a year or two. There's no duplication out there, people just aren't coordinating," she said.

The board will be set up with high-ranking officials together, ensuring action, Thompson said.

"A lot of people try to coordinate, but nobody has any power, and they don't listen to them," she said.

The idea of alternative, novel treatments is old, but few have the resources to adequately follow up on a child. Even PROUD only has the resources to call a child once a month for a year.

Some of the most successful models for reducing juvenile crime involve entire bureaucracies dedicating themselves to follow up on children who commit crimes, such as in Boston. There, probation officers check juveniles randomly at their homes to make sure they're obeying curfews and city agencies, and private businesses work to find 10,000 summer jobs for juveniles each year. The whole city is watching them, not just some small program or one office in city government.

Durham to start program

The Durham County Sheriff's Department is going to start a



HUNT

BASNIGHT

program similar to Boston's Operation Nightlight, and Deputy Durham County Manager Michael Palmer has visited Boston to observe the city's model for dealing with juveniles.

Studying other alternative programs reinforces the idea that there are no magic or exotic answers.

At the Three Springs Wilderness Camp outside of Pittsboro, juveniles live in the wild, as part of probation agreements, to build character as they rough it.

The results have been mixed, said Paul Savery, a juvenile program coordinator for Durham County.

"We have had good experiences and positive outcomes, but with all treatment placements, there are some children who fail to respond. When we say they fail, it might be because they weren't motivated, or in retrospect, they weren't matched with the best placement," he said. "We like to think we do a pretty good job."

Research backs up the idea that simple, alternative approaches don't work unless they include follow-up — whether it's just calls to children's homes once a month or checking for a year, as PROUD

does to make sure the child has not committed another crime.

Dwinnell said. The more intense the services, the better.

'Shock treatments'

A government study on "shock treatments" which include programs that force juveniles to spend time in wilderness camps or in military-style boot camps, concluded the same.

"The boot-camp experience in itself does not reduce [repeat offenses]. Boot camps may seem novel, but again, success seems predicated on a several-pronged approach which should include intensive follow-up after a child's release," the federal government study states.

Also, a child must want help, which means voluntary programs work the best, and the program has to be difficult enough to force many to drop out, the study concludes.

On the other end is an extensive study that shows "law-and-order" reforms also fail to cut crime.

The answer seems to be some combination of the two schools of thought: Show juveniles that there is punishment for crime, but also work hard to prevent the crime to begin with.

Some popular programs have been proven failures, according to studies, such as Drug Abuse Resistance Education, or D.A.R.E., and boot camps, which do not pass empirical scrutiny and are said largely to be failures.

The programs that work involve basic, sensible activities, such as improving schools, teaching children how to read or ensuring the health of young children, federal reports and a University of Maryland study have shown.

6-14-98

The Herald-Sun

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EDITORIALS

JUVENILE JUSTICE SERIES

Prospects for change

Our eight-part series "Juvenile Injustice" has examined many ways in which North Carolina's juvenile justice system is broken. The overriding problem is that the laws pertaining to juvenile crime are antiquated, intended for a time when serious crimes among juveniles were rare.

Herald-Sun reporter Christopher Kirkpatrick has looked at a number of areas that judges and other experts have identified as problems in the state code. There are not enough youth homes that run effective programs to prevent delinquents from becoming lifetime criminals. There is no effective way to enforce the state's compulsory school-attendance law and prevent truancy. The confidentiality that surrounds court records of juvenile offenders hampers effective police work against repeat offenders and keeps agencies from sharing vital information. Above all, the system allows juvenile offenders too many second chances.

However, today's final installment of the series offers a ray of hope. Kirkpatrick examines a Boston program that is successfully putting a dent in that city's juvenile crime. A

program called Operation Nightlight operates on the old-fashioned premise that probation ought to have consequences, rather than be a joy ride. In Operation Nightlight, probation officers work at night, paying surprise visits to the homes of offenders to ensure they obey curfews and other provisions of probation.

Stepped-up enforcement is just one aspect of the program. Boston has worked to make sure agencies share information, and offenders who break probation agreements face aggressive prosecution. Since Operation Nightlight began, Boston has had a 29-month stretch without any juvenile murders.

Boston has not eliminated juvenile crime, but it has shown that the problem is not intractable.

North Carolina, too, can get a handle on its juvenile crime problem. The Governor's Commission on Juvenile Crime and Justice headed by Durham prosecutor Marcia Morey issued a set of recommendations earlier this year that point the way. The report contains a number of worthwhile recommendations for overhauling the juvenile justice code.

For example, the commission recommends that juveniles charged with felonies who are not in secure custody be required to make an initial court appearance within five days of service of a summons. Juveniles charged with felonies also could be photographed and fingerprinted. These recommendations are designed to ensure that offenders immediately see the seriousness of their actions.

The governor's commission did exemplary work. It's up to the Legislature to transform the commission's recommendations into law. North Carolina's habitual youthful offenders must not be allowed to continue to beat the system and make a mockery of justice.

VISITOR REGISTRATION SHEET

~~RULES AND OPERATIONS OF THE SENATE~~

~~May 28, 1998~~

Name of Committee

Date

Senate Judiciary 6/18/98

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

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Larry Dick	JSJ / AOL
Holly Wilson	ACLU
Debra Ross	ACLU
Piper Nilters	SBE
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LARRY W JESSOP	GRASP (NENG)
F. Doug Phelps	National Guard
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Pam Meadows	MA10 - DOA
Martha Livegood	Youth Advocacy & Involvement

VISITOR REGISTRATION SHEET

~~RULES AND OPERATIONS OF THE SENATE~~

~~2020-21-98~~

Name of Committee

Date

Senate Judiciary 4/18/98

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

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Paula Hoff	Covenant with NC's Children
Ken Foster	DYS
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Thad Davis	NCAE
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Bill Phillips	LT. GOV.'S OFFICE
Zee Lamb	"
Lao Ruben	CYPL
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Bernard Allen	SOS

PATRICK HANNAH
 U.P. Hume

SEN. Ballance
 ACLU

MINUTES
SENATE JUDICIARY COMMITTEE
June 23, 1998

The Senate Judiciary Committee met on Tuesday, June 23, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and explained that he would begin taking amendments to Senate Bill 1260 - AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO MAKE CONFORMING CHANGES TO THE STATUTES, AND TO APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE.

Senator Soles moved to make technical amendments to the bill. (See attached amendment #1.)

Walker Reagan, Committee Counsel, was recognized to explain the technical changes contained in the amendment.

Senator Cooper called for a vote on Senator Soles' motion. The motion carried by a majority voice vote.

Senator Soles moved to amend the bill on Page 182, Line 41 through Page 183, Line 20. (See attached amendment #2.) The motion carried by a majority voice vote.

Senator Rand moved to reconsider the vote on the previous amendment (#2). The motion carried by a majority voice vote.

Senator Rand moved to amend the amendment by adding the words "to be considered for pretrial release" on Page 1, Line 21 of the amendment (#2). The motion carried by a majority voice vote.

Senator Cooper called for a vote on Amendment #2 as amended. The motion carried by a majority voice vote.

Senator Miller moved to amend the bill on Page 184, Lines 26 through 36. (See attached amendment #3.) and as a friendly amendment, to change the word "employee" on Page 1, Line 9 to read "parent, guardian or custodian". The motion carried by a majority voice vote.

Senator Odom moved to amend the bill on Page 141, Lines 26 and 27; Page 142, Lines 28 and 29; Page 210, Line 1; and Page 211, Lines 15 through 17. The motion carried by a majority voice vote.

Senator Allran moved to amend the bill by "deleting all sections of the bill, the purpose of which is to create a new cabinet position;" further, the bill "is amended so as to consolidate the functions set out in the bill under one department, viz: The Department of Crime Control and Public Safety." (See attached amendment #5.)

Marcia Morey, Executive Director of the Governor's Commission on Juvenile Justice, was recognized to speak on the amendment.

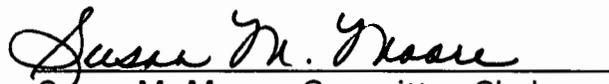
Senator Cooper called for a vote on Senator Allran's amendment. The motion failed by an 11-9 show-of-hands vote.

Senator Winner moved to amend the bill on Page 250, Line 21 and Page 251, Lines 23 and 24. The motion carried by a majority voice vote.

Senator Cooper asked the Committee to continue working on any amendments which they would like to offer and bring them to the next meeting when Senate Bill 1260 is scheduled to be heard.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, June 23, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 06/19/98 9:29 AM



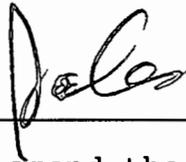
NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1260-ASC-001.1

Date 6-23, 1998

Comm. Sub. [Yes]
Amends Title []
S1260-CSSC-001

Senator 

- 1 moves to amend the bill on page 3, lines 6 through 7, by deleting
- 2 the phrase "Except as provided in subdivisions (6) and (23) of this
- 3 section, any" and substituting the word "Any";
- 4
- 5 on page 3, line 25,
- 6 by deleting the word "facilities" and substituting the word
- 7 "facility";
- 8
- 9 on page 3, line 28,
- 10 by deleting the phrase "committed delinquents" and substituting the
- 11 phrase "delinquent juveniles";
- 12
- 13 on page 3, line 36, by
- 14 deleting the phrase "dispositional community service" and
- 15 substituting the phrase "juvenile court services";
- 16
- 17 on page 4, line 6, by
- 18 deleting the word "youth" and substituting the word "juvenile";
- 19
- 20 on page 4, lines 14 through 15,
- 21 by rewriting the lines to read:
- 22 "(23) Undisciplined Juvenile. -- A juvenile who, while less than
- 23 16 years of age but at least 6 years of";
- 24
- 25 on page 4, lines 23 through 28, by deleting the lines;
- 26



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 2 of ____

S1260-ASC-001.1

- 1 on page 5, line 4 by inserting after the word "appropriate" the
- 2 phrase "services, including";
- 3
- 4 on page 5, line 21, by deleting the word "action" and inserting the
- 5 word "the" before the word "prevention";
- 6
- 7 on page 5, line 42
- 8 by rewriting the line to read:
- 9 "cooperation clause to ensure compliance with the";
- 10
- 11 on page 6, line 43, by deleting the phrase "criminal offenses" and
- 12 substituting the phrase "delinquent acts";
- 13
- 14 on page 7, line 5, by deleting the word "child" and substituting the
- 15 word "juvenile";
- 16
- 17 on page 7, line 34, by deleting the phrase "the child-serving
- 18 agencies of";
- 19
- 20 on page 7, line 39, by inserting the word "services" after the word
- 21 "prevention";
- 22
- 23 on page 7, lines 41 through 42,
- 24 by rewriting the lines to read:
- 25 "funding sources and assistance in making application for needed
- 26 funding.";
- 27
- 28 on page 8, lines 1 through 2,
- 29 by rewriting the lines to read:
- 30 "continuation funding based on the evaluations.";
- 31
- 32 on page 8, line 16,
- 33 by deleting the word "youth" and substituting the word "juvenile";
- 34
- 35 on page 9, lines 38 through 39,
- 36 by rewriting those lines to read:
- 37 "administration of statewide programs to provide any juvenile in a
- 38 juvenile facility with appropriate treatment according to the
- 39 juvenile's";
- 40



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 3 of ____

S1260-ASC-001.1

- 1 on page 10, line 7, by deleting the word "children" and substituting
- 2 the word "juveniles";
- 3
- 4 on page 10, lines 13 through 14, by deleting the phrase "from
- 5 custody";
- 6
- 7 on page 10, lines 14 through 15, by deleting the phrase "parents or
- 8 guardians." and substituting the phrase "parent or guardian.";
- 9
- 10 on page 10, line 38, by deleting the word "variable";
- 11
- 12 on page 10, line 40, and on page 11, line 30, by deleting the word
- 13 "homes," and substituting the word "facilities,";
- 14
- 15 on page 11, line 1 and line 10, by deleting the word "home" and
- 16 substituting the word "facility";
- 17
- 18 on page 12, line 5, by deleting the word "youth" and substituting
- 19 the word "juvenile";
- 20
- 21 on page 12, line 19, by deleting the word "children" and
- 22 substituting the word "juvenile";
- 23
- 24 on page 12, line 33, by deleting the phrase "the various";
- 25
- 26 on page 13, line 19,
- 27 by rewriting the line to read:
- 28 "the court according to the programs developed and rules promulgated
- 29 by the Secretary in accordance with G.S. 143B-531.";
- 30
- 31 on page 13, lines 26 through 27,
- 32 by rewriting the lines to read:
- 33 "All juvenile court counselors shall have the following powers and";
- 34
- 35 on page 13, line 28,
- 36 by rewriting the line to read:
- 37 "duties, as the court or the chief court counselor may direct or
- 38 require:";
- 39
- 40 on page 13, line 35,



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 4 of ____

S1260-ASC-001.1

- 1 by rewriting the line to read:
- 2 "(4) To assume custody of a juvenile as authorized by G.S. 7B-
- 3 1900 or when";
- 4
- 5 on page 14, line 19, by deleting the word "officer's" and
- 6 substituting the word "counselor's";
- 7
- 8 on page 14, line 21, by deleting the word "child" and substituting
- 9 the word "juvenile";
- 10
- 11 on page 14, line 22, by deleting the word "Correction" and
- 12 substituting the phrase "Juvenile Justice";
- 13
- 14 on page 14, line ³21, by deleting the phrase "prepare and";
- 15
- 16 on page 14, lines 37 through 39, by rewriting the lines to read:
- 17 "juvenile delinquency and substance abuse prevention.";
- 18
- 19 on page 15, lines 35 through 36, by deleting the phrase "or other
- 20 State agencies";
- 21
- 22 on page 16, line 16,
- 23 by rewriting the line to read:
- 24 "(c) As a prerequisite for a county's receiving";
- 25
- 26 on page 16, line 18,
- 27 by deleting the phrase "of each county";
- 28
- 29 on page 16, line 29,
- 30 by rewriting the line to read:
- 31 "(6) The Director of the Area Mental Health, Developmental
- 32 Disabilities, and Substance Abuse Authority";
- 33
- 34 on page 16, line 31, by deleting the word "local" and substituting
- 35 the word "county";
- 36
- 37 on page 16, line 32, by inserting the phrase "or consolidated human
- 38 services agency" before the word "or";
- 39
- 40 on page 16, line 37,



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
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Page 5 of _____

S1260-ASC-001.1

- 1 by rewriting the line to read:
2 "(12) A person under the age of 21;";
3
4 on page 17, lines 3 through 4,
5 by rewriting the lines to read:
6 "(19) Up to seven members of the public.";
7
8 on page 17, line 5,
9 by inserting the phrase "board of" before the word "county" and the
10 word "commissioners" after the word "county";
11
12 on page 17, lines 9 through 13,
13 by rewriting those lines to read:
14 "(d) The Council shall annually review the needs of juveniles in
15 the county who are at risk of delinquency or have been adjudicated
16 undisciplined or delinquent and the resources available to address
17 those needs. The Council shall develop and advertise a request
18 for";
19
20 on page 17, line 16, by deleting the word "county" and substituting
21 the phrase "board of county commissioners";
22
23 on page 17, lines 21 through 26,
24 by rewriting the lines to read:
25 "(1) Assess the needs of juveniles in the community, evaluate
26 the adequacy of resources available to meet those needs, and develop
27 or propose ways to address unmet needs.
28 (2) Evaluate the performance of juvenile services and programs
29 in the community. The Council";
30
31 on page 17, line 41, by inserting the word "services." at the end of
32 the line.
33
34 on page 17, lines 42 through 43,
35 by rewriting the lines to read:
36 "(e) Juvenile Crime Prevention";
37
38 on page 17, line 44, by deleting the word "shall" and substituting
39 the word "may";
40



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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Principal Clerk)
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S1260-ASC-001.1

- 1 on page 18, line 1, by deleting the phrase "If two" and substituting
- 2 the word "Two";
- 3
- 4 on page 18, lines 2 through 3,
- 5 by rewriting the lines to read:
- 6 "more counties may establish a multicounty Juvenile Crime";
- 7
- 8 on page 19, lines 15 through 26, by deleting the lines, and
- 9 renumbering the following sections accordingly;
- 10
- 11 on page 19, line 43, by deleting the phrase "youth and";
- 12
- 13 on page 21, lines 19, 21, and 24, by deleting the word "youth" and
- 14 substituting the word "juvenile";
- 15
- 16 on page 68, lines 8 through 9,
- 17 by rewriting the lines to read:
- 18 "court or until the juvenile reaches the age of 18 years or is
- 19 otherwise emancipated, whichever occurs first.";
- 20
- 21 on page 77, line 31,
- 22 by rewriting the line to read:
- 23 "and address of the juvenile and the name and last known address of
- 24 the";
- 25
- 26 on page 86, line 5, by deleting the phrase "legally made";
- 27
- 28 on page 87, line 6, by inserting the word "or" before the word
- 29 "pursuant";
- 30
- 31 on page 87, line 38, by deleting the phrase "the offense alleged
- 32 or";
- 33
- 34 on page 88, line 36,
- 35 by rewriting the line to read:
- 36 "if the juvenile is in nonsecure custody, the juvenile shall be
- 37 released to the parent, guardian, custodian, or caretaker."
- 38
- 39 on page 89, lines 2 and 10, by deleting the phrase "or
- 40 rehabilitation";



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
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Page 7 of ____

S1260-ASC-001.1

- 1 on page 101, lines 1 through 2,
- 2 by rewriting the lines to read:
- 3 "until terminated by order of the court or until the juvenile
- 4 reaches the age of 18 or is otherwise emancipated, whichever occurs
- 5 first.";
- 6
- 7 on page 128, lines 21 through 22, by deleting the phrase "Except as
- 8 provided in subdivisions (7) and (28) of this section, any" and
- 9 substituting the word "Any";
- 10
- 11 on page 128, line 3⁵, by deleting the phrase "returned to the
- 12 community" and substituting the word "released";
- 13
- 14 on page 129, line 35, by inserting the phrase "whichever occurs
- 15 first." at the end of the line;
- 16
- 17 on page 131, line 11, by inserting the phrase "on or" before the
- 18 word "after";
- 19
- 20 on page 151, lines 11 through 13,
- 21 by rewriting those lines to read:
- 22 "The juvenile is not adjudicated delinquent.";
- 23
- 24 on page 166, line 18, by deleting the word "a" and substituting the
- 25 phrase "an undisciplined";
- 26
- 27 on page 166, line 26, by deleting the word "shall";
- 28
- 29 on page 169, line 24, by deleting the word "the" before the word
- 30 "victim" and substituting the word "a";
- 31
- 32 on page 169, line 33,
- 33 by rewriting the line to read:
- 34 "period of time. The Clerk of Court shall notify the Division of
- 35 Motor";
- 36
- 37 on page 170, lines 25 through 26, by deleting the phrase "secure
- 38 juvenile" and substituting the word "approved";
- 39



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 8 of ____

S1260-ASC-001.1

- 1 on page 174, line 2, by deleting the word "submits" and substituting
2 the word "makes";
3
4 on page 174, line 4, by deleting the word "offending";
5
6 on page 174, line 33, by inserting the word "as" before the word
7 "specified";
8
9 on page 174, line 42, by deleting the word "shall";
10
11 on page 176, line 18, by inserting the word "only" before the word
12 "for";
13
14 on page 178, line 42,
15 by deleting the phrase "Community-Based Alternatives" and
16 substituting the phrase "juvenile court services";
17
18 on page 251, lines 4 through 5,
19 by rewriting the lines to read:
20 "study, including any legislative recommendations, to the General
21 Assembly no later than March 15, 1999."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ ✓ _____

FAILED _____

TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of _____

S1260-ASE-001

Date 6-23, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

1 Senator Jales

2
3 moves to amend the bill on page 182, line 41, through page 183, line
4 20 by rewriting the lines to read:

5
6 "(a) Any order transferring jurisdiction of the district court in
7 a juvenile matter to superior court under §7B-2203 may be appealed
8 to the superior court for a hearing de novo. Notice of the appeal
9 must be given in open court or in writing within 10 days after the
10 hearing. A juvenile who fails to appeal the transfer order to the
11 superior court waives the right to raise the issue of transfer
12 before the Court of Appeals. The clerk of superior court shall
13 provide the district attorney with a copy of any written notice of
14 appeal filed by the attorney for the juvenile. Upon expiration of
15 the 10-day period in which an appeal may be entered, if an appeal
16 has been entered and not withdrawn, the clerk shall transfer the
17 case to the superior court docket. The superior court shall, within
18 a reasonable time, conduct a transfer hearing and shall not consider
19 whether the district court had sufficient evidence to find probable
20 cause for the underlying offense.

21 (b) Once an order of transfer has been entered by the district
22 court, the juvenile has the right to pretrial release as provided in
23 G.S. 15A-533 and G.S. 15A-534. The release order shall specify the
24 person or persons to whom the juvenile may be released. Pending
25 release, the court shall order that the juvenile be detained in a
26 detention facility while awaiting trial. The court may order the
27 juvenile to be held in a holdover facility as defined by §7B-
28 1501(13) at any time the presence of the juvenile is required in



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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S1260-ASE-001

1 court for pretrial hearings or trial, if the court finds that it
2 would be inconvenient to return the juvenile to the detention
3 facility.
4 (c) If an appeal of the transfer order is taken, the superior
5 court shall enter an order either (i)remanding the case to the
6 juvenile court for adjudication or (ii) upholding the transfer
7 order. If the superior court remands the case to juvenile court for
8 adjudication, and the juvenile has been granted pretrial release as
9 provided in G.S. 15A-533 and G.S. 15A-534, the obligor shall be
10 released from the juvenile's bond upon the district court's review
11 of whether the juvenile shall be placed in secure or nonsecure
12 custody as provided in G.S. 7B-1903.
13 (d) The superior court order shall be an interlocutory order, and
14 the issue of transfer may be appealed to the Court of Appeals only
15 after the juvenile has been convicted in superior court."
16

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
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S1260-ASE-002

Date 6.23, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator _____

1 moves to amend the bill on page 184, lines 26 through 36,
2 by rewriting the lines to read:
3
4 shall be grounds for contempt; and
5
6 page 186, by inserting a new section between lines 3 and 4 to read:
7
8 "§7B-2703.1. No discharge or demotion. parent guardian or custodian
9 No employer may discharge or demote any employee because the
10 employee is required to comply with G.S. 7B-2700, G.S. 7B-2701, G.S.
11 7B-2702 or G.S. 7B-2703.".
12

SIGNED Bred Gill
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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Principal Clerk)
Page 1 of ____

S1260-ARV-001

Date 6-23, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Odom

- 1 moves to amend the bill on page 141, lines 26 and 27,
- 2 by adding between those lines the following:
- 3 " (4) A law-enforcement officer may take physical custody of
- 4 a juvenile who is 16 or 17 years of age without a
- 5 court order, at the request of the juvenile's parent,
- 6 guardian, or custodian if there are reasonable grounds
- 7 to believe the juvenile is beyond the disciplinary
- 8 control of the juvenile's parent, guardian, or
- 9 custodian and has been absent from the home without
- 10 permission for 48 consecutive hours.";
- 11
- 12 and on page 142, lines 28 and 29,
- 13 by adding between those lines the following:
- 14 "(d) A person who takes a juvenile into custody under G.S. 7B-
- 15 1900(4) shall return the juvenile to the custody of the juvenile's
- 16 parent, guardian, or custodian or notify the parent, guardian, or
- 17 custodian that the juvenile has been taken into custody unless there
- 18 are reasonable grounds to believe the juvenile is abused, neglected,



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
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S1260-ARV-001

- 1 or dependent and would be injured if returned to the custody of the
2 parent, guardian, or custodian, in which case the person shall
3 proceed pursuant to G.S. 7B-500 and 7B-501."
4
5 and on page 210, line 1,
6 by deleting the number "18" and substituting "16";
7
8 and on page 211, lines 15-17,
9 by rewriting those lines to read:
10 "(h) Any person who has attained the age of 16 years,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 1260

COMMITTEE SUBSTITUTE _____

DATE 6/23/98

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) ALLRAN

Sen.)

1 moves to amend the bill on page _____, line _____

2 () WHICH CHANGES THE TITLE

3 by deleting all sections of the bill, ~~the purpose of~~ the ~~purpose of~~ purpose of
4 which ~~is~~ is to create a new cabinet
5 position;

6 further: the bill is amended so as
7 to consolidate the functions set out in the
8 bill under one department, viz: The Dept. of
9 Crime Control and Public Safety.

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED Allran

ADOPTED _____ FAILED TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1260-ARU-005

Page 1 of ____

Date 6-23, 1998

Comm. Sub. [YES]
Amends Title [YES]
S1260-CSSC-001

Senator Winn

1 moves to amend the bill on page 250, line 21,
2 by rewriting the line to read:
3 "PART VII. STUDIES AND REPORTS."; and
4
5 on page 251, lines 23 and 24,
6 by inserting between the lines the following new section to read:
7 "Section 22C. The State Board of Education, through the
8 Department of Public Instruction, shall study and report to the
9 General Assembly on ways for the State to provide an alternative
10 educational program for any student suspended or expelled from
11 school. This study shall include (1) a review of current safe
12 school plans and alternative educational programs, (2) an analysis
13 of current data on suspensions and expulsions, (3) an assessment of
14 federal, state, local, and private resources currently available to
15 provide an educational program for students suspended or expelled
16 from school, (4) research of other educational programs offered by
17 other State agencies, (5) a review of current law related to
18 suspension and expulsion from school and the right to a public
19 education, and (6) recommendations for a plan and timetable for
20 implementing alternative educational programs for every student
21 suspended or expelled from school. The State Board of Education
22 shall report the results of this study, including any legislative
23 recommendations, to the ~~1999 General Assembly.~~ *Joint Education Oversight*

SIGNED Winn
Amendment Sponsor

Committee by December 15, 1998.

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED

FAILED _____

TABLED _____

TO: Senate Judiciary Committee Members
 FROM: M. Morey
 RE: Substitute Senate Bill 1260: Major changes from the original SB 1260
 DATE: June 23, 1998

Issue	Change	Statute	Pages
Composition of local Juvenile Crime Prevention Councils	<u>Add: a representative from Parks and Recreation to Council</u>	143B-550 (c)(18)	16
Comprehensive Juvenile Delinquency and Substance Abuse Plan	<u>No substantive change. Section re-written for clarity.</u>	143B-540	14 - 15
Original age of jurisdiction for Undisciplined	<u>Change: from 18 to 16 (status quo current law)</u>	7B-1501 7B-1600	129
Destroy records of fingerprint and photographs and nontestimonial records	<u>Add: at the earlier of: one year, if no petition filed; not guilty or no probable cause</u>	7B-2102 (e) 7B-2108 (l)	151 153
Direct file by D.A. for 15 yr. olds charged with A - E felonies	<u>Eliminate: direct filing</u>	7B-2203	155
Disposition GRID Level 1 offenders [New]	<u>Add: If resitution less than \$500 and community service under 100 hours</u>	7B02504 (4) (6)	168
Grid: Level 2 offenders [New]	<u>Add: Resitution more than \$500 and c/s < 100 hrs.</u>	7B-2504 (22) (23)	170 - 171
Chronic minor offenders may be committed to Level 3: Training School [New]	<u>Add: 4 or more adjudications for minor offense on different court sessions may get Training School</u>	7B-2505(g)	174
Probation conditions [New]	<u>Add: remain free of alcohol</u>	7B-2506(a)(5)	175
Term of probation	<u>Change: 2 years to 1</u>	7B-2506 ©	176

Re-commitment to Training School	Add: <u>Juvenile must spend a min. of 6 additional months</u>	7B-2512	180
Extended jurisdiction to the age of 19.	Add: <u>only for juveniles who are in T.S. within 45 days of 18th birthday on A-E felonies</u>	7B-2513	181
Right to appeal transfer orders [New]	Add: <u>Superior Ct. may review Interlocutory order of court; appeal to Court of Appeals</u>	7B-2602	182
Sharing of information	Add: <u>Must be in accordance with FERPA</u>	7B-3100	208
Blended sentencing	Eliminate	15A-1340-16(b)	
Educating juveniles who are expelled from school [New]	Add: <u>encourage use of alt. schools for long-term suspended or expelled students</u>	115C-47 and Part IV replaces 10,11	232
Court space for juvenile intake and probation [New]	Add: <u>Counties must provide space for juvenile court services</u>	7A-302 Part V: conforming legislation	
Lose control; Lose your license [New]	<u>Persons who does not have a h.s. or equivalent must obtain a driving eligibility certificate. Must show: currently enroll or hardship if cannot get h.s. diploma or equivalent; Also must show person not been suspended for more than 10 days since 6th grade for possession or sale of alcohol or controlled substance or weapon or firearm on school property or assault teacher or school personnel. Exception to above is proof of exemplary behavior or complete drug treatment.</u>	20-11	253 - 260

JUVENILES ADJUDICATED DELINQUENT
PROJECTED DISPOSITIONAL RESOURCE IMPACT

FISCAL YEAR ENDING	TRAINING SCHOOL IMPACT: <i>Juvenile Justice Reform Act Extending Age of Jurisdiction to 19 for All Juveniles</i> (1)	TRAINING SCHOOL IMPACT: <i>Juvenile Justice Reform Act Extending Age of Jurisdiction to 19 for Violent Juveniles</i> (2)	IMPACT DIFFERENCE (1) - (2)
1999	-39	-80	41
2000	221	120	101
2001	305	200	105
2002	313	205	108
2003	327	217	110

SOURCE: 1997 N.C. Juvenile Sample

VISITOR REGISTRATION SHEET

Judiciary Senate 6/23/98
 Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

Holly Wilson	ACLU
John Wilson	NCAE
Cathy Dix	FSO/AOC
Robert Wilson	Office of the Gov.
Lisa Barber	CPA
Susan Whitten	DYS
Ken Foster	DYS
Ann Belam	SBE
Riper Nieters	SBE
Madelyn E. Chis	KCPA
Patience Coulter	NCAE
Mary Carnilia	Mecklenburg County
Kerling Bandy	Gov. Office
Quandaiah	WRAL
Hal Miller	NCACCT
Julie White	Lt. Gov. office
Martha Swenepod	YAIIO - DOT
James Bowden	DYS
Ruth Sappire	DOT
Eric Jones	AOC
Barbara Stewart	PCNCTI
[Signature]	Sen. Hard's office
[Signature]	Sen. Ballance

Kenneth Snow (Intern)

Bob Phillips

Zee B. Lamb

Julie White

Jan. Ballance

LT. Fox's office

"

"

MINUTES
SENATE JUDICIARY COMMITTEE
JUNE 25, 1998

The Senate Judiciary Committee met on Thursday, June 25, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Miller to explain House Bill 1049 - AN ACT TO INCREASE THE PENALTY FOR CRUELTY TO ANIMALS AND TO PROHIBIT GREYHOUND RACING IN NORTH CAROLINA.

Senator Miller moved to adopt a Proposed Committee Substitute for House Bill 1049 for discussion. The motion carried by a majority voice vote.

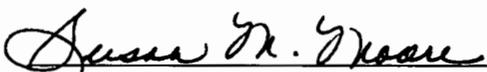
Senator Blust moved to amend the Proposed Committee Substitute on Page 2, Line 7 and on Page 2, Line 9. (Amendment attached.) The amendment was adopted by a majority voice vote.

Senator Moore moved to give the Proposed Committee Substitute a favorable report as amended and re-refer it to the Appropriations Committee. The motion carried by a majority voice vote.

There being no further business, the meeting was adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Comm. Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, June 25, 1998
Time: 10:00 a.m. to 12:00 noon
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 06/23/98 3:35 PM

1 (c) In this section, the term 'animal' shall be held to include every domestic or
2 otherwise useful animal. This section shall not apply to animals under the
3 jurisdiction and regulation of the Wildlife Resources Commission, lawful activities
4 conducted for purposes of biomedical research or training, lawful activities for sport
5 or other lawful entertainment, the production of livestock or poultry, or the lawful
6 destruction of any animal for the purpose of protecting the public, other animals, the
7 public health, or for lawful veterinary purposes."

8 Section 2. This act becomes effective December 1, 1997, and applies to
9 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

H1049-CSRV-003

Committee Substitute Favorable 4/30/97

PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1049

THIS IS A DRAFT 25-JUN-98 09:39:28

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Increase Cruelty to Animals Penalty. (Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PENALTY FOR CRUELTY TO ANIMALS AND TO
3 PROHIBIT GREYHOUND RACING IN NORTH CAROLINA
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 14-360 reads as rewritten:
6 "§ 14-360. Cruelty to animals; construction of section.
7 (a) If any person shall willfully overdrive, overload, wound,
8 injure, torture, torment, deprive of necessary sustenance,
9 cruelly beat, needlessly mutilate or kill or cause or procure to
10 be overdriven, overloaded, wounded, injured, tortured, tormented,
11 deprived of necessary sustenance, cruelly beaten, needlessly
12 mutilated or killed as aforesaid, ~~any useful beast, fowl or any~~
13 animal, every such offender shall for every such offense be
14 guilty of a Class 1 misdemeanor. In this section, and in every
15 law which may be enacted relating to animals, the words "animal"
16 and "dumb animal" shall be held to include every living creature;

1 the words "torture," "torment" or "cruelty" shall be held to
2 include every act, omission or neglect whereby unjustifiable
3 physical pain, suffering or death is caused or permitted. ~~Such~~
4 ~~terms shall not be construed to prohibit the lawful taking of~~
5 ~~animals under the jurisdiction and regulation of the Wildlife~~
6 ~~Resources Commission.~~

7 (b) If any person shall maliciously torture, torment, maim,
8 cruelly beat, disfigure, poison or kill, or cause to be tortured,
9 tormented, mutilated, maimed, cruelly beaten, disfigured,
10 poisoned, or killed, any equine animal, bovine animal, sheep,
11 goat, swine or other livestock, dogs, cats, and other animals
12 kept as pets or mascots, every such offender shall for every such
13 offense be guilty of a Class I felony. The word 'maliciously' as
14 used in this subsection, shall mean an act done with bad motive,
15 without justifiable excuse, and with the intent to cause physical
16 pain, suffering or death.

17 (c) This section does not apply to the taking of animals under
18 the jurisdiction and regulation of the Wildlife Resources
19 Commission."

20 Section 2. Article 37 of Chapter 14 of the General
21 Statutes is amended by adding a new Part to read:

22 "Part 3. Greyhound Racing.

23 "§ 14-309.20. Greyhound racing prohibited.

24 (a) No person shall hold, conduct, or operate any greyhound
25 racers for public exhibition in this State for monetary
26 remuneration.

27 (b) No person shall transmit or receive interstate or
28 intrastate simulcasting of greyhound races for commercial
29 purposes in this State.

30 (c) Any person who violates this section shall be guilty of a
31 Class 1 misdemeanor."

32 Section 3. This act becomes effective December 1, 1998,
33 and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1049 CSRV 003

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) BLUST

Sen.)

moves to amend the bill on page 2, line 7

by 1 INSERTING BETWEEN THE WORDS "TORMENT,"
AND "MAIN," THE WORDS "DEPRIVE OF
NECESSARY SUSTENANCE," ; AND

ON PAGE 2, LINE 9,

BY INSERTING BETWEEN THE WORDS "TORMENTED,"
AND "MUTILATED," THE WORDS "DEPRIVED OF
NECESSARY SUSTENANCE," .

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Monday, June 29, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)	1049	Increase Cruelty to Animals Penalty
		Draft Number: PCS 3148
		Sequential Referral: None
		Recommended Referral: Appropriations
		Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**HOUSE BILL 1049: INCREASE CRUELTY TO ANIMALS PENALTY****ESTIMATED ADDITIONAL PRISON INMATES**

FISCAL YEAR ENDING:	MAXIMUM PRISON IMPACT
98/99	13
99/00	26
00/01	27
01/02	27
02/03	28
03/04	28
04/05	29
05/06	30
06/07	30
07/08	31

Notes:

1. Assumes effective for crimes committed on or after 12/1/98.
2. Assumes no deterrent or incapacitative effects.

VISITOR REGISTRATION SHEET

~~RULES AND OPERATIONS OF THE SENATE~~

~~May 20, 1998~~

Name of Committee

Date

Senate Judiciary 6/25/98

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

✓ Gene M. Tuttle	Rocky Mount Telegram
Kenneth Snow (Intern)	Sen. F. Ballance
C. Parker	Bone & Associates
Regina Bone	" "
Lou-Ann Coe	7.77
Porky Pig	Sampson Co.
Katie Adams	CCNC
Richard Hamilton	Wildlife
Patrick Hannan	Sen. Ballance

MINUTES
SENATE JUDICIARY COMMITTEE
July 7, 1998

The Senate Judiciary Committee met on Tuesday, July 7, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and asked that any amendments to Senate Bill 1260 - AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO MAKE CONFORMING CHANGES TO THE STATUTES, AND TO APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE be sent forward.

Senator Odom moved to amend the bill on Page 4, Lines 14 through 28; Page 12, Line 20; Page 129, Lines 14 through 21; and on Page 166, Line 5. (See attached amendment #1.) The motion carried by a majority voice vote.

Senator Reeves moved to amend the bill on Page 253, Line 26 through Page 260, Line 10. (See attached amendment #2.)

Robin Johnson, with General Research, was recognized to answer questions from the Committee.

Senator Cooper asked that the amendment be held for the purpose of making changes in it and for it to be brought back to the meeting scheduled for Wednesday, July 8, 1998 at 9:00 a.m.

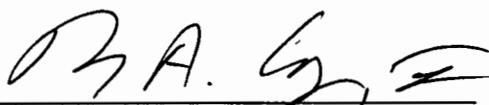
Senator Winner moved to amend the bill on Page 161, Lines 42 through 44; Page 163, Lines 9 and 10; Page 173, Line 35; Page 173, Line 37; and on Page 250, Line 22. (See attached amendment #3.)

Sandy Pearce, with the Governor's Crime Commission, was recognized to speak on the amendment.

Senator Cooper called for a vote on Senator Winner's amendment (#3). The motion carried by a majority voice vote.

Senator Cooper announced that the Committee meeting would continue at 3:00 p.m.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, July 7, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1260 Juvenile Justice Reform Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 07/02/98 2:12 PM



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1260-ASE-011

Page 1 of ____

Date July 7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Odom

1 moves to amend the bill on page 4, lines 14-28,
2 by rewriting those lines to read:

3 ²³
4 ~~"(28)~~ Undisciplined juvenile.-- A juvenile who, while less than
5 18 years of age, but at least 6 years of age who:
6 (a) is beyond the lawful control of the juvenile's parent,
7 guardian, or custodian and the lack of control over
8 the juvenile is established by the juvenile's repeated
9 disobedience; or
10 (b) without permission or just cause, runs away from home
11 for a period of more than 24 hours; or
12 (c) is regularly found in places where it is unlawful for
13 a juvenile to be; or
14 (d) is less than 16 years of age and is unlawfully absent
15 from school.";
16

17 and on page 12, line 20, by rewriting the line to read:

18
19 "supervision. The Secretary shall give priority to delinquency
20 cases when allocating resources for juvenile services.";
21

22 and on page 129, lines 14-21 by rewriting those lines to read:

23
24 "(28) Undisciplined juvenile.-- A juvenile who, while less than
25 18 years of age, but at least 6 years of age who:
26 (a) is beyond the lawful control of the juvenile's parent,
27 guardian, or custodian and the lack of control over



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S1260-ASE-011

- 1 the juvenile is established by the juvenile's repeated
- 2 disobedience; or
- 3 (b) without permission or just cause, runs away from home
- 4 for a period of more than 24 hours; or
- 5 (c) is regularly found in places where it is unlawful for
- 6 a juvenile to be; or
- 7 (d) is less than 16 years of age and is unlawfully absent
- 8 from school.";
- 9

10 and on page 166, line 5, by rewriting the line to read:
11 "of a court counselor for a period of up to three months, with an
12 extension of an additional three months in the discretion of the
13 court."

SIGNED *[Signature]*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
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S1260-ARH-006.1

Date 7-7, 1998

Comm. Sub. [X]
Amends Title [YES]
S1260-CSSC-001

Senator Reeves

1 moves to amend the bill on page 253, line 26, through page 260, line
2 10, by rewriting the lines to read:

3 "Section 26. Subsection (n) of G.S. 20-11, as amended by Session
4 Law 1997-507, reads as rewritten:

5 '(n) Driving Eligibility Certificate. -- A person who desires to
6 obtain a permit or license issued under this section and who does
7 not have a high school diploma or its equivalent must have a driving
8 eligibility certificate. A driving eligibility certificate must meet
9 the following conditions:

- 10 (1) The person who is required to sign the certificate
11 under subdivision (4) of this subsection must show
12 that he or she has determined that one of the
13 following requirements is met:
 - 14 a. The person is currently enrolled in school and is
15 making progress toward obtaining a high school
16 diploma or its equivalent.
 - 17 b. A substantial hardship would be placed on the
18 person or the person's family if the person does
19 not receive a certificate.
 - 20 c. The person cannot make progress toward obtaining
21 a high school diploma or its equivalent.

22 (1a) If the person who desires to obtain a permit or
23 license under this section was expelled, suspended for
24 more than 10 consecutive days, or assigned to an
25 alternative educational setting, for an incident that
26 occurred after the July 1 before the school year in
27 which the person enrolled in the eighth grade or after
28 the person's fourteenth birthday, whichever event



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1 occurred first, and this disciplinary action was for
2 (i) the possession or sale of alcohol or an illegal
3 controlled substance on school property or at a
4 school-sponsored or school-related activity on or off
5 school property, (ii) the possession or use of a
6 weapon or firearm on school property in accordance
7 with G.S. 115C-391(d1), or (iii) the physical assault
8 on and serious injury to a teacher or other school
9 personnel on school property or at a school-sponsored
10 or school-related activity on or off school property
11 in accordance with G.S. 115C-391(d2)(1), then the
12 person who is required under subdivision (4) of this
13 subsection to sign the certificate must show that he
14 or she has determined that the person has exhausted
15 all administrative appeals connected to the
16 disciplinary action and that one of the following
17 conditions is met:
18 a. The person has returned to school following the
19 period of expulsion or suspension and since that
20 time the person has displayed exemplary student
21 behavior, as determined in accordance with rules
22 adopted by the State Board of Education under
23 G.S. 115C-12(28), the Secretary of Administration
24 under G.S. 115C-566, or the State Board of
25 Community Colleges under G.S. 115D-5(a3), as
26 applicable.
27 b. The person was placed in an alternative
28 educational setting and has displayed exemplary
29 student behavior, as determined in accordance
30 with rules adopted by the State Board of
31 Education under G.S. 115C-12(28), the Secretary
32 of Administration under G.S. 115C-566, or the
33 State Board of Community Colleges under G.S.
34 115D-5(a3), as applicable.
35 c. The expulsion, suspension, or alternative
36 placement was for the possession or sale of
37 alcohol or an illegal controlled substance on
38 school property or at a school-sponsored or
39 school-related activity on or off school
40 property, and the person subsequently attended



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- 1 and successfully completed a drug or alcohol
2 treatment counseling program, as appropriate.
3 d. The person needs the certificate in order to
4 drive to and from school or to drive to and from
5 a drug or alcohol treatment counseling program,
6 as appropriate, and no other transportation is
7 available.
8 (1b) The person who is required under subdivision (4) of
9 this subsection to sign the certificate must show that
10 the appropriate person consents to the disclosure to
11 the Division of information necessary to comply with
12 this section.
13 (2) It must be on a form approved by the Division.
14 (3) It must be dated within 30 days of the date the person
15 applies for a permit or license issuable under this
16 section.
17 (4) It must be signed by the applicable person named
18 below:
19 a. The principal, or the principal's designee, of
20 the public school in which the person is
21 enrolled.
22 b. The administrator, or the administrator's
23 designee, of the nonpublic school in which the
24 person is enrolled.
25 c. The person who provides the academic instruction
26 in the home school in which the person is
27 enrolled.
28 d. The designee of the board of directors of the
29 charter school in which the person is enrolled.
30 e. The president, or the president's designee, of
31 the community college in which the person is
32 enrolled.

33 Notwithstanding any other law, the decision concerning whether a
34 driving eligibility certificate was properly issued or improperly
35 denied shall be appealed only as provided under the rules adopted in
36 accordance with ~~G.S. 115C-12(27)~~, G.S. 115C-12(28), G.S. 115D-5(a3),
37 or G.S. 115C-566, whichever is applicable, and may not be appealed
38 under this Chapter.'

39 Section 27. G.S. 20-13.2, as amended by Session Law 1997-
40 507, reads as rewritten:



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1 '(c1) The Division ~~must~~ shall revoke the permit or license of a
2 person under the age of 18 if the proper school authority notifies
3 the Division that the person no longer meets the requirements for a
4 driving eligibility certificate under G.S. 20-11(n).
5 Notwithstanding subsection (d) of this section, the length of
6 revocations ~~must~~ shall last for the following periods:
7 (1) If the revocation is because of ineligibility for a
8 driving eligibility certificate under G.S. 20-
9 11(n)(1), then the revocation shall last until the
10 person's eighteenth birthday.
11 (2) If the revocation is because of ineligibility for a
12 driving eligibility certificate under G.S. 20-
13 11(n)(1a) and if:
14 a. The person is under the age of 16 at the time of
15 the disqualifying offense, then the revocation
16 shall be until the person's eighteenth birthday.
17 b. The person is 16 years of age or older at the
18 time of the disqualifying offense, then the
19 revocation shall be for a period of one year.
20 ~~until the division restores the permit or license under this~~
21 ~~subsection.~~
22 The For a person whose permit or license was revoked due to
23 ineligibility for a driving eligibility certificate under G.S. 20-
24 11(n)(1) or G.S. 20-11(n)(1b), the Division ~~must~~ shall restore a
25 person's permit or license before the person's eighteenth birthday,
26 if the person submits to the Division one of the following:
27 (1) A high school diploma or its equivalent.
28 (2) A driving eligibility certificate as required under
29 G.S. 20-11(n).
30 For a person whose permit or license was revoked due to
31 ineligibility for a driving eligibility certificate under G.S. 20-
32 11(n)(1a), the Division shall restore a person's permit or license
33 before the end of the revocation period, if the person submits to
34 the Division a driving eligibility certificate as required under
35 G.S. 20-11(n).
36 Notwithstanding any other law, the decision concerning whether a
37 driving eligibility certificate was properly issued or improperly
38 denied shall be appealed only as provided under the rules adopted in
39 accordance with ~~G.S. 115C-12(27)~~, G.S. 115C-12(28), G.S. 115D-5(a3),



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1 or G.S. 115C-566, whichever is applicable, and may not be appealed
2 under this Chapter.'

3 Section 28. G.S. 115C-12(28), as amended by Session Law
4 1997-507, reads as rewritten:

5 '(28) Duty to Develop Rules for Issuance of Driving
6 Eligibility Certificates. -- The State Board of
7 Education shall issue ~~rules defining the~~
8 following rules to assist schools in their
9 administration of procedures necessary to
10 implement G.S. 20-11 and G.S. 20-13.2:

11 a. To define what is equivalent to a high school
12 diploma for the purposes of G.S. 20-11 and G.S.
13 20-13.2. These rules shall apply to all
14 educational programs offered in the State by
15 public schools, charter schools, nonpublic
16 schools, or community colleges.

17 b. To establish ~~The State Board also shall issue~~
18 ~~rules for~~ the procedures a person who is or was
19 enrolled in a public school, in a charter school,
20 or in a nonpublic school accredited by the Board
21 must follow and the requirements that person must
22 meet to obtain a driving eligibility certificate.

23 c. To require the ~~The~~ person who is required under
24 G.S. 20-11(n) to sign the driving eligibility
25 certificate ~~must to~~ provide the certificate if he
26 or she determines that ~~one of~~ the following
27 requirements ~~is~~ are met:

28 a- 1. The person seeking the certificate is
29 currently enrolled in school and is
30 making progress toward obtaining a high
31 school diploma or its ~~equivalent.~~

32 b- A equivalent; a substantial hardship would
33 be placed on the person seeking the
34 certificate or the person's family if the
35 person does not receive the ~~certificate.~~

36 c- The certificate; or the person seeking the
37 certificate cannot make progress toward
38 obtaining a high school diploma or its
39 equivalent. ~~equivalent.~~



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2. If the person who desires to obtain a permit or license under G.S. 20-11 was expelled, suspended for more than 10 consecutive days, or assigned to an alternative educational setting, for an incident that occurred after the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, for the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or for the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under G.S. 20-11(n)(4) to sign the certificate must show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:
- i. The person has returned to school following the period of expulsion or suspension and since that time the person has displayed exemplary student behavior.
 - ii. The person was placed in an alternative educational setting and has displayed exemplary student behavior.
 - iii. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance, and the



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person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

- iv. The person needs the certificate in order to drive to and from school or to drive to and from a drug or alcohol treatment counseling program, as appropriate, and no other transportation is available.

These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

- d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

- e. For a person whose permit or license was denied or revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), to provide for the optional issuance of a driving eligibility certificate, after six months from the date the person would otherwise be eligible for a driving eligibility certificate, if the person meets one of the following:

1. Displays exemplary student behavior.
2. Attends and successfully completes a drug or alcohol treatment counseling program, as appropriate.

These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

- f. To define exemplary student behavior. These rules shall apply to public schools, charter schools, and nonpublic schools accredited by the State Board.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a



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1 person who is or was enrolled in a public school, in a charter
2 school, or in a nonpublic school accredited by the Board no longer
3 meets the requirements for a driving eligibility certificate.
4 The State Board shall develop a form for parents,
5 guardians, or emancipated juveniles, as appropriate, to provide
6 their written consent for a school to disclose to the Division of
7 Motor Vehicles any information necessary to comply with G.S. 20-11
8 or G.S. 20-13.2 in the event that this disclosure is necessary.
9 This form shall be used for students enrolled in public schools,
10 charter schools, or nonpublic schools accredited by the Board. When
11 a person subsequently revokes his or her consent for this
12 disclosure, the person required under G.S. 20-11(n)(4) to sign the
13 driving eligibility certificate shall notify the Division of Motor
14 Vehicles that the student no longer meets the requirements for that
15 certificate.'

16 Section 29. G.S. 115C-566, as amended by Session Law 1997-
17 507, reads as rewritten:

18 '§ 115C-566. Driving eligibility certificates; requirements.

19 (a) The Secretary of Administration, upon consideration of the
20 advice of the Division of Nonpublic Education in the Office of the
21 Governor and representatives of nonpublic schools, shall issue rules
22 for the procedures a person who is or was enrolled in a home school
23 or in a nonpublic school that is not accredited by the State Board
24 of Education must follow and the requirements that person must meet
25 to obtain a driving eligibility certificate. ~~The person~~ The
26 procedures shall provide that the person who is required under G.S.
27 20-11(n) to sign the driving eligibility certificate must provide
28 the certificate if he or she determines that one of the following
29 requirements is are met:

30 (1) He or she determines that:

31 a. The person seeking the certificate is currently
32 enrolled in school and is making progress toward
33 obtaining a high school diploma or its
34 ~~equivalent.~~ equivalent;

35 ~~(2)~~ b. A substantial hardship would be placed on the
36 person seeking the certificate or the person's
37 family if the person does not receive the
38 ~~certificate.~~ certificate; or



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- 1 d. The person needs the certificate in order to
2 drive to and from school or to drive to and from
3 a drug or alcohol treatment counseling program,
4 as appropriate, and no other transportation is
5 available.
- 6 The rules shall define exemplary student behavior and shall
7 provide for an appeal to an appropriate educational entity by a
8 person who is denied a driving eligibility certificate. The
9 Division of Nonpublic Education also shall develop policies as to
10 when it is appropriate to notify the Division of Motor Vehicles that
11 a person who is or was enrolled in a home school or in a nonpublic
12 school that is not accredited by the State Board of Education no
13 longer meets the requirements for a driving eligibility certificate.
14 For a person whose permit or license was denied or revoked due to
15 ineligibility for a driving eligibility certificate under G.S. 20-
16 11(n)(1a), these rules shall provide for the optional issuance of a
17 driving eligibility certificate, after six months from the date the
18 person would otherwise be eligible for a driving eligibility
19 certificate, if the person meets one of the following:
- 20 (1) Displays exemplary student behavior.
21 (2) Attends and successfully completes a drug or alcohol
22 treatment counseling program, as appropriate.
- 23 (b) The Secretary of Administration shall develop a form for
24 parents, guardians, or emancipated juveniles, as appropriate, to
25 provide their written consent for a school to disclose to the
26 Division of Motor Vehicles any information necessary to comply with
27 G.S. 20-11 or G.S. 20-13.2 in the event that this disclosure is
28 necessary. This form shall be used for students enrolled in home
29 schools or nonpublic schools. When a person subsequently revokes
30 his or her consent for this disclosure, the person required under
31 G.S. 20-11(n)(4) to sign the driving eligibility certificate shall
32 notify the Division of Motor Vehicles that the student no longer
33 meets the requirements for that certificate.
- 34 (c) In accordance with rules adopted by the Secretary under this
35 section, persons who are required to sign driving eligibility
36 certificates that meet the conditions established in G.S. 20-11,
37 shall obtain the necessary written consent from parents, guardians,
38 or emancipated juveniles, as appropriate, in order to disclose
39 information to the Division of Motor Vehicles, and shall notify the



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1 Division of Motor Vehicles when a student who holds a driving
2 eligibility certificate no longer meets its conditions.'

3 Section 30. G.S. 115C-288 is amended by adding the
4 following new subsection to read:

5 '(i) To Sign Driving Eligibility Certificates and to Notify the
6 Division of Motor Vehicles. -- In accordance with rules adopted by
7 the State Board of Education, the principal or the principal's
8 designee shall sign driving eligibility certificates that meet the
9 conditions established in G.S. 20-11, shall obtain the necessary
10 written consent from parents, guardians, or emancipated juveniles,
11 as appropriate, in order to disclose information to the Division of
12 Motor Vehicles, and shall notify the Division of Motor Vehicles when
13 a student who holds a driving eligibility certificate no longer
14 meets its conditions. When the appropriate person subsequently
15 revokes his or her consent for disclosure of necessary information
16 to the Division of Motor Vehicles, the principal or principal's
17 designee shall notify that Division that the student no longer meets
18 the requirements for that certificate.'

19 Section 31. G.S. 115C-238.29F is amended by adding the
20 following new subsection to read:

21 '(j) Driving Eligibility Certificates. -- In accordance with
22 rules adopted by the State Board of Education, the designee of the
23 school's board of directors shall sign driving eligibility
24 certificates that meet the conditions established in G.S. 20-11,
25 shall obtain the necessary written consent from parents, guardians,
26 or emancipated juveniles, as appropriate, in order to disclose
27 information to the Division of Motor Vehicles, and shall notify the
28 Division of Motor Vehicles when a student who holds a driving
29 eligibility certificate no longer meets its conditions. When the
30 appropriate person subsequently revokes his or her consent for
31 disclosure of necessary information to the Division of Motor
32 Vehicles, the designee of the school's board of directors shall
33 notify that Division that the student no longer meets the
34 requirements for that certificate.'

35 Section 32. G.S. 115D-5(a3) reads as rewritten:

36 '(a3) The State Board of Community Colleges shall issue the
37 following rules ~~for~~ to assist community colleges in their
38 administration of procedures necessary to implement G.S. 20-11 and
39 G.S. 20-13.2:



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- 1 (1) To establish the procedures a person who is or was
2 enrolled in a community college must follow and the
3 requirements that person must meet to obtain a driving
4 eligibility certificate. ~~The~~
5 (2) To require the person who is required under G.S. 20-
6 11(n) to sign the driving eligibility certificate ~~must~~
7 to provide the certificate if he or she determines
8 that ~~one of~~ the following requirements ~~is~~ are met:
9 (+1) a. The person seeking the certificate is currently
10 enrolled in school and is making progress toward
11 obtaining a high school diploma or its
12 equivalent.
13 (+2) A equivalent; a substantial hardship would be placed
14 on the person seeking the certificate or the person's
15 family if the person does not receive the ~~certificate.~~
16 (+3) The certificate; or the person seeking the certificate
17 cannot make progress toward obtaining a high school
18 diploma or its equivalent.
19 b. If the person who desires to obtain a permit or
20 license under G.S. 20-11 was expelled, suspended
21 for more than 10 consecutive days, or assigned to
22 an alternative educational setting, for an
23 incident that occurred after the July 1 before
24 the school year in which the person enrolled in
25 the eighth grade or after the person's fourteenth
26 birthday, whichever event occurred first, and
27 this disciplinary action was for the possession
28 or sale of alcohol or an illegal controlled
29 substance on school property or at a school-
30 sponsored or school-related activity on or off
31 school property, for the possession or use of a
32 weapon or firearm on school property in
33 accordance with G.S. 115C-391(d1), or for the
34 physical assault on and serious injury to a
35 teacher or other school personnel on school
36 property or at a school-sponsored or school-
37 related activity on or off school property in
38 accordance with G.S. 115C-391(d2)(1), then the
39 person who is required under G.S. 20-11(n)(4) to
40 sign the certificate must show that he or she has



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
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S1260-ARH-006.1

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determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

- i. The person has returned to school following the period of expulsion or suspension and since that time the person has displayed exemplary student behavior.
- ii. The person was placed in an alternative educational setting and has displayed exemplary student behavior.
- iii. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.
- iv. The person needs the certificate in order to drive to and from a community college or to drive to and from a drug or alcohol treatment counseling program, as appropriate, and no other transportation is available.

(3) ~~The rules shall~~ To provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate.

(4) For a person whose permit or license was denied or revoked due to ineligibility for a driving eligibility certificate under G.S. 20-11(n)(1a), to provide for the optional issuance of a driving eligibility certificate, after six months from the date the person would otherwise be eligible for a driving eligibility certificate, if the person meets one of the following:
a. Displays exemplary student behavior.
b. Attends and successfully completes a drug or alcohol treatment counseling program, as appropriate.

(5) To define exemplary student behavior.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

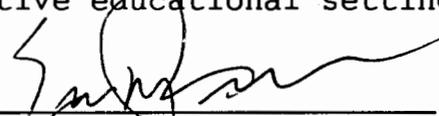
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S1260-ARH-006.1

1 The State Board also shall develop policies as to when it
2 is appropriate to notify the Division of Motor Vehicles that a
3 person who is or was enrolled in a community college no longer meets
4 the requirements for a driving eligibility certificate. The State
5 Board also shall adopt guidelines to assist the presidents of
6 community colleges in their designation of representatives to sign
7 driving eligibility certificates.

8 The State Board shall develop a form for the appropriate
9 individuals to provide their written consent for a community college
10 to disclose to the Division of Motor Vehicles any information
11 necessary to comply with G.S. 20-11 or G.S. 20-13.2 in the event
12 that this disclosure is necessary. When a person subsequently
13 revokes his or her consent for disclosure of necessary information
14 to the Division of Motor Vehicles, the president or the president's
15 designee shall notify that Division that the student no longer meets
16 the requirements for that certificate.'

17 Section 33. Sections 28, 29, and 32 are effective when they
18 become law. The remainder of this Part becomes effective July 1,
19 1999. This Part does not apply to any person who held a valid North
20 Carolina limited learner's permit issued before December 1, 1997,
21 who held a valid North Carolina learner's permit issued before
22 December 1, 1997, or who was a provisional licensee and held a valid
23 North Carolina drivers license issued before December 1, 1997. This
24 Part shall only apply to conduct committed on or after the effective
25 date by a person who is expelled, suspended, or placed in an
26 alternative educational setting as a result of that conduct."

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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Principal Clerk)
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S1260-ARU-008

Date 7-7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Winner

1 moves to amend the bill on page 161, lines 42 through 44,
2 by rewriting the lines to read:
3 "The court shall proceed to the dispositional hearing upon receipt
4 of the predisposition report. A risk and needs assessment,
5 containing information regarding the juvenile's social, medical,
6 psychiatric, psychological, and educational history, as well as any
7 factors indicating the probability of the juvenile committing
8 further delinquent acts, shall be conducted for the juvenile and
9 shall be attached to the predisposition report. In cases where no
10 predisposition report is available and the court makes a written
11 finding that a report is not needed, the court may proceed with the
12 dispositional hearing. No predisposition"; and
13
14 on page 163, lines 9 and 10,
15 by rewriting the line to read:
16 "(5) The rehabilitative and treatment needs of the juvenile
17 indicated by a risk and needs assessment."; and
18
19 on page 173, line 25,
20 by rewriting the line to read:
21 "the juvenile as indicated by the risk and needs assessment
22 contained in the predisposition report, the appropriate community
23 resources available to"; and
24
25 moves to amend the bill on page 173, line 35,
26 by rewriting the lines to read:
27 "and (14) through (22) of G.S. 7B-2504. The court shall also order
28 the juvenile to participate in those counseling, treatment, and



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

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1 educational services that will meet the juvenile's needs as
2 identified by the needs assessment conducted at intake. In
3 determining which"; and

4

5 on page 173, line 37,
6 by rewriting the line to read:

7 "consider the needs of the juvenile as indicated by the risk and
8 needs assessment contained in the predisposition report, the
9 appropriate community"; and

10

11 on page 250, line 22,
12 by rewriting the line to read:

13 "Section 22. (a) The Department of Juvenile Justice shall
14 use available funds to develop a risk and needs assessment
15 instrument to be used to determine the treatment needs of delinquent
16 juveniles and the risk that a delinquent juvenile will commit
17 additional delinquent acts as part of the At-Risk Assessment System.
18 The Department shall present the recommended risk and needs
19 assessment instrument to the Joint
20 Legislative Commission on Governmental Operations by April 1, 1999.
21 (b) The Department of Juvenile Justice shall".

SIGNED *Felipe W.*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Lose Control, Lose Your License

(Including concerns addressed at June 18 Judiciary Meeting)

- If a student has been suspended, expelled, or placed in an alternative school for more than 10 days for possession or sale of alcohol or a controlled substance on school property, possession or use of a weapon or firearm on school property, or physical assault on and serious injury to a teacher or other school personnel they will lose their driver's license privilege.
- If the student is between the ages of 14 (or eighth grade, whichever comes first) and 15 they will not be able to obtain a Driver's Eligibility Certificate from their school necessary to obtain a driver's license and will not be eligible to obtain a driver's license until they are 18.
- If the student already has obtained a driver's license and they are suspended, expelled, or placed in an alternative school for more than 10 days for one of the above acts the school will send a Certificate of Ineligibility to the Department of Motor Vehicles (DMV) after all administrative appeals are exhausted. The DMV will generate a certified letter to the student informing them that their driving privileges have been suspended for one year.
- The student has the right to an administrative appeal and if the suspension, expulsion, or placement in an alternative school is overturned the license will not be revoked.
- If the student can prove to the principal that he has successfully completed a drug or alcohol treatment or counseling program or demonstrated exemplary student behavior they can earn their driving privileges back six months from the date of suspension.
- If the school does not provide transportation or the student requires transportation to counseling the principal can authorize the student to keep their driving privilege.
- When the student is ready to apply for a learner's permit he must obtain a Driver's Eligibility Certification from the school, which is signed by the school administrator after receiving a consent from the parent. In signing a consent form the parent is authorizing the school to release any of their child's records relevant to this law to the DMV in the future. This complies with FERPA requirements as verified by Ellen Campbell with the Family Policy Compliance Office in the U.S. Department of Education.
- Endorsements: The Raleigh, News & Observer, The Greensboro News and Record, The Fayetteville Observer Times, The Durham Herald-Sun, The Wilmington Morning Star, The Winston Salem Journal, The North Carolina PTA Association, North Carolina State Board of Education, SAVE, North Carolina Association of Educators, North Carolina Association of School Administrators, and NCCBI.

VISITOR REGISTRATION SHEET

Senate Judiciary

7-7-98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
<i>Paula A. Hoff</i>	<i>Covenant w/ NC's Children</i>
<i>Christina P. Medina</i>	<i>Covenant w/ NC's Children</i>
<i>Lucy Bobe</i>	<i>private citizen</i>
<i>Debrah Ross</i>	<i>Debrah Ross</i> <i>ALL</i>
<i>Frogg</i>	<i>Research Services</i>
<i>Ju Niff</i>	<i>ND</i>
<i>Ann Belem</i>	<i>SBE</i>
<i>iper Nieters</i>	<i>SBE</i>
<i>Alex Wilson</i>	<i>AOC</i>
<i>John Madler</i>	<i>Sentencing Commission</i>
<i>Debbie Magner</i>	<i>Sentencing Commission</i>
<i>S. Katherine Nelson</i>	<i>" "</i>
<i>Stacey Parker</i>	<i>Sen Basnight</i>
<i>Philip Fournier</i>	<i>Sen. Basnight</i>
<i>Miss L. Edwards</i>	<i>Christian Justice Comm. on Pub. for NC</i>
<i>Lacey Dick</i>	<i>JSD/AOC</i>
<i>Bob Atkinson</i>	<i>AOC</i>
<i>Wayne Dixon</i>	<i>JSD/AOC</i>
<i>Ed Toyle</i>	<i>JSD/AOC</i>
<i>LAURENCE BERGMAN</i>	<i>DOC R+P</i>
<i>Judy Pearce</i>	<i>DOC</i>
<i>Julia Kim</i>	<i>Commissioner Juvenile Crime</i>

VISITOR REGISTRATION SHEET

Senate Judiciary 4/7/98
Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Ronald Gant	Gov. Office
Frank Freeman	
Zink Lutz	Speaker's Office
Pam Seamans	United Way of NC / Covenant w/ NC's Children
James Boyden	DYS
Debbie Kelly	Heed - Sun
Joe Stevens	CRPS
Zee Lamb	LT. Gov.
Mark Mason	Capital Group
Robert Watson	Gov. Office
Lou Rubens	CYK
Ken Foster	DYS
Janne W. Dine	
Pam Seardorf	YA 10 / DOA
Martha Livingston	Youth Advocacy & Involvement
Bill Phillips	LT Gov's office
Julie White	LT Gov office
Beryl S. Wade	Gov's Off
Celeste Clifton	Sen. Cooper's office
Jane P. Gray	DOJ
George Reed	NC Council of Churches

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Janit Mason

Institute of Government UDC-CH

MINUTES
SENATE JUDICIARY COMMITTEE
July 7, 1998

The Senate Judiciary Committee met on Tuesday, July 7, 1998 at 3:00 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and asked that amendments to Senate Bill 1260 - AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO MAKE CONFORMING CHANGES TO THE STATUTES, AND TO APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE be sent forward.

Senator Odom moved to amend the bill on Page 127, Line 5; Page 246, Lines 25 and 26; Page 247, Line 11; Page 248, Lines 3 through 38; and Page 248, Lines 2 and 3. (See attached amendment #4.) The motion carried by a majority voice vote.

Senator Winner moved to amend the bill on Page 174, Lines 25 through 30. (See attached amendment #5.) The motion carried by a majority voice vote.

Senator Moore moved to amend the bill on Page 175, Lines 30 and 31 and Page 178, Lines 15 and 16. (See attached amendment #6.)

Dr. Ken Foster, with the Division of Youth Services/Training Schools, was recognized to speak on the amendment.

Senator Horton moved to amend the amendment on Page 1, Line 4, by replacing the words "placed on probation" with the words "adjudicated as delinquent". The motion carried by a majority voice vote.

After further discussion, Senator Cooper asked that the amendment be held until the Committee meeting scheduled for Wednesday, July 8, 1998.

Senator Moore moved to amend the bill on Page 186, Lines 20 and 21. (See attached amendment # 7.) The motion carried by a majority voice vote.

Senator Moore moved to amend the bill on Page 159, Line 27. (See attached amendment #8.) The motion failed by a majority voice vote.

Senator Moore moved to amend the bill on Page 12, Line 32. (See attached amendment #9.) After discussion, the amendment was withdrawn.

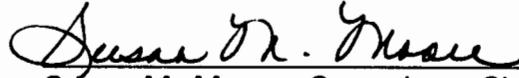
Senator Kerr moved to amend the bill on Page 180, Lines 30 and 31. (See attached amendment #10.) The motion carried by a majority voice vote.

Senator Cooper announced that the Committee would meet on Wednesday, July 8th at 9:00 a.m. to continue taking amendments to Senate Bill 1260.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1260-ARU-010

Date 7-7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Odom

1 moves to amend the bill on page 127, line 5,
2 by deleting the word "Justice." and substituting the words "Justice,
3 except in District Court Districts 12, 14, and 26 the term shall
4 mean the Family Court, if established."; and
5
6 on page 246, lines 25 and 26,
7 by inserting between the lines the following to read:
8 "Prior to expending more than \$600,000 from the Juvenile Justice
9 Reserve Fund for the Juvenile Justice Information System as
10 appropriated in Senate Bill 1366, Section 8.1(b)(5), the Criminal
11 Justice Information Network Governing Board shall prepare a Juvenile
12 Justice Information Plan. The Plan shall identify the scope and
13 purpose of the system, the management information that will be
14 collected and tracked, the general design of the system, estimates
15 of the short and long range cost and the schedule to develop and
16 implement the system, and potential sources and amounts of federal
17 funding. The Plan shall recommend priorities for system
18 development, implementation, and options, including cost estimates,
19 for phasing in components of the system. The Plan shall ensure that
20 the information system will enable the state to evaluate the
21 efficiency and effectiveness of the overall juvenile justice system
22 as well as to monitor and evaluate the progress of individual
23 clients.
24 Development of the Plan shall involve all agencies likely to be
25 part of or need access to the System, as well as the Sentencing and
26 Policy Advisory Commission and the Information Management Resources
27 Commission (IRMC).



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1260-ARU-010

Page 2 of ____

1 Prior to expending more than \$600,000 from the Juvenile Justice
2 Reserve Fund for the system, the Criminal Justice Information
3 Network Governing Board shall present this Plan to the House and
4 Senate Appropriation Committees. The Plan shall include comments by
5 the IRMC on the design and estimated cost of the project."; and
6
7 on page 247, line 11,
8 by deleting the words "Subcommittees on Justice and Public Safety"
9 and substituting the word "Committees"; and
10
11 on page 248, lines 3 through 38,
12 by deleting the lines; and
13
14 on page 248, lines 2 and 3,
15 by inserting between the lines a new section to read:
16 "Section 19. The Department of Juvenile Justice shall
17 establish a phased-in 10-county pilot On Track program as an
18 additional probation option for certain juvenile delinquents who are
19 subject to Level 1 disposition. Juveniles enrolled in this program
20 will be placed under the supervision of a special On Track court
21 counselor as case manager for the juvenile. Every juvenile enrolled
22 in the On Track program will be subjected to a risk assessment, a
23 responsibility contract, a restitution requirement, parental
24 accountability, counseling attendance, and graduation upon
25 completion of the program. The responsibility contract shall be
26 signed by the juvenile, the juvenile's parents, guardian or
27 custodian, and the On Track court counselor. The contract shall
28 include the agreement of the parties to restitution requirements,
29 school attendance and appropriate school conduct, extracurricular
30 school activity participation, obedience to parental supervision,
31 counseling requirements, and requirements for abstinence from
32 substance abuse. The program shall provide for intense intervention
33 by the On Track court counselor. Each juvenile enrolled shall be
34 assigned a trained mentor by the On Track court counselor.
35 Section 20. The Department of Juvenile Justice shall
36 establish three pilot Guard Response Alternative Sentencing Programs
37 in three separate District Court Divisions as an additional
38 probation option for certain first-time juvenile delinquents who are
39 subject to Level 1 disposition through contract services."; and
40



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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S1260-ARU-010

1 by renumbering the remaining bill sections accordingly.

SIGNED  _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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S1260-ARV-002A

Date 7-7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator WINNER

1 moves to amend the bill on page 174, lines 25-30,
2 by rewriting those lines to read:
3 "(g) Notwithstanding subsection (f) of this section, a juvenile
4 who has been adjudicated for a minor offense may be committed to a
5 Level 3 disposition if the juvenile has been adjudicated of four or
6 more prior minor offenses. For purposes of determining the number
7 of prior offenses under this subsection, each successive offense is
8 one that was committed after adjudication of the preceding offense.
9 (h) If a juvenile is adjudicated of more than one offense during
10 a session of juvenile court, the".

SIGNED *D. Winner*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



Withdrawn 7-7
6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
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S1260-ASE-007

Date 7-7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Moore

1 moves to amend the bill on page 175, lines 30 and 31,
2 by inserting between those lines the following new subsection:
3

4 "(a1) Within 30 days of being placed on probation for an offense
5 involving the possession, use, sale, or delivery of alcohol or a
6 controlled substance, the court shall require the juvenile, as a
7 condition of probation, to be tested for substance abuse. The
8 results of the test shall be used for treatment purposes only."
9

10 and on page 178, lines 15 and 16, by inserting between those lines
11 the following new subsection:
12

13 "(i) A juvenile who is committed to a facility of the Department
14 shall be tested for substance abuse. The results of the test shall
15 be incorporated into the plan of care as provided in 7B-2509(f) and
16 used for treatment purposes only."
17
18

SIGNED *Sen Moore*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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Principal Clerk)
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S1260-ASE-008

Date 7-7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Moore

1 moves to amend the bill on page 186, lines 20 and 21,
2 by inserting between those lines the following:

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4
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8

"All money paid by a parent pursuant to this section shall be paid
into the office of the clerk of superior court."

SIGNED *Len Moore*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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Principal Clerk)
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S1260-ASE-006

Date 7-7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Moore

1 moves to amend the bill on page 159, line 27,
2 by rewriting the line to read:

3
4 "All hearings for juveniles age 14 or older shall be open to the
5 public. For juveniles under age 14, all hearings authorized or
6 required pursuant to this Subchapter".
7

SIGNED *Jan Moore*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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S1260-ASE-005

Date 7-7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Moore

1 moves to amend the bill on page 12, line 32,
2 by rewriting the line to read:

3
4
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7

"chief district court judge of that district, and with the
approval of the Area Administrator of that district."

SIGNED *Len Moore*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
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Principal Clerk)
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S1260-ARU-009

Date 7-7, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Kerr

1 moves to amend the bill on page 180, lines 30 and 31,
2 by deleting the words "term of at least six months," and
3 substituting the word "term,".

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

3:00 pm

VISITOR REGISTRATION SHEET

Senate Judiciary 7/7/98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Brenda Summers

NC Senate

Tam Deardorff

UNO / DOA

Monica Inzine

Hutchison + Mason, PLLC

D. Lynn

NC DOC

Kwina Howell

NCBA

Pat Young

APCNC / SCSL

MINUTES
SENATE JUDICIARY COMMITTEE
July 8, 1998

The Senate Judiciary Committee met on Wednesday, July 8, 1998 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and asked that any amendments to Senate Bill 1260 - AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO MAKE CONFORMING CHANGES TO THE STATUTES, AND TO APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE be sent forward.

Senator Odom moved to amend the bill on Page 260, Lines 11 through 22 and Page 260, Line 33. (See attached amendment #1.) The motion carried by a majority voice vote.

Senator Odom moved to amend the bill on Page 179, Line 1; Page 179, Lines 12 and 14; Page 179, Line 26; Page 180, Line 13; Page 180, Line 17; Page 180, Lines 26 through 34; Page 182, Line 37; Page 209, Line 13 and Page 209, Line 15. (See attached amendment #2.) The motion carried by a majority voice vote.

Senator Odom moved to amend the bill on Page 3, Lines 41 and 42; Page 4, Lines 11 and 12; Page 4, Line 13; Page 129, Line 5; Page 4, Line 36; page 4, Lines 38 and 39; Page 4, Lines 40 through 42; Page 4, Line 43; Page 5, Line 1; Page 5, Lines 3 through 9; Page 5, Line 10; Page 5, Lines 23 through 31; Page 6, Lines 1 and 2; Page 7, Line 3; Page 7, Lines 6 and 7; Page 7, Lines 11 and 12; Page 7, Line 31; Page 8, Line 3; Page 8, Lines 17 and 18; Page 8, Line 26; Page 8, Lines 34 through 44; Page 10, Line 22; Page 10, Line 44; Page 11, Lines 1 and 2; Page 11, Line 12; Page 11, Lines 20 through 25; Page 12, Line 14; Page 12, Line 16; Page 12, Line 25; Page 12, Line 29; page 13, Line 6; Page 13, Lines 17 through 19; page 13, Lines 37 through 43; Page 14, Line 3; Page 14, Lines 16 and 17; Page 16, Line 39; Page 16, Line 41; Page 21, Lines 15 through 16; Page 63, Lines 26 through 28; page 77, Line 38; Page 79, Lines 33 through 34; Page 126, Line 36; Page 127, Line 8; Page 128, Lines 36 and 37; Page 129, between lines 3 and 4; Page 139, Lines 34 through 37; Page 161, Line 38; Page 164, Lines 43 through 44; Page 165, Line 1; Page 167, Lines 23 through 25; Page 169, Lines 15 through 15; Page 170, Line 21; Page 171, Line 2; Page 173, Lines 43 and 44; Page 174, Lines 33 through 34; Page 176, Lines 7 through 29; Page 177, Line 2; Page 177, Lines 3 through 5; Page 177, Lines 9 and 10; Page 177, Line 13; Page 177; Line 15; page 177, Line 17; Page 177, Line 36; Page 177, Lines 42 and 43; Page 178,

Line 1; Page 178, Line 4; Page 178, Lines 15 and 16; Page 178, Lines 23, 40 and 43; Page 179, Lines 3, 19 and 35; Page 179, Line 6; Page 179, Lines 17 through 20; page 179, Line 32; Page 179, Lines 33 and 34; Page 179, Line 37; Page 179, Line 39; page 179, Line 43 through Page 180, Line 5; Page 180, Lines 15 and 16; Page 180, Line 22; Page 181, Line 13; Page 181, Lines 39 and 40; Page 182, Line 38; Page 183, Line 23; Page 183, Line 44 and Page 184, Line 1; Page 184, Line 23; Page 206, Line 13 and Page 207, Line 26; Page 206, Line 15 and Page 207, Line 28; Page 207, Lines 7 and 8 and Page 207, Line 42. (See attached amendment #3.)

James Bowden, with the Division of Youth Services/Training Schools, was recognized to speak on the amendment.

Senator Cooper called for a vote on amendment #3. The motion carried by a majority voice vote.

Senator Odom moved to amend the bill on Page 181, Lines 3 through 42 and on Page 181, Lines 43 and 44. (See attached amendment #4.)

Janet Mason, with the Institute of Government; Secretary Richard Moore, Department of Crime Control and Public Safety and Susan Katzen-Nelson, with the N. C. Sentencing Commission, were recognized to speak on the amendment.

Senator Cooper called for a vote on amendment # 4. The motion carried by a majority voice vote.

Senator Odom moved to amend the bill on Page 15, Line 30 through Page 19, Line 12. (See attached amendment #5.)

Walker Reagan, Committee Counsel, was recognized to explain the amendment.

Senator Cooper called for a vote on amendment #5. The motion carried by a majority voice vote.

Senator Reeves moved to amend the bill on Page 253, Line 26 through Page 260, Line 10. (See attached amendment #6.) Motion carried by a majority voice vote.

Senator Blust moved to amend the bill on Page 2, Lines 8 through 9; Page 6, Lines 13 through 14; Page 9, Line 6; and Page 12, Line 7. (See attached amendment #6-A.)

After discussion, Senator Blust agreed to temporarily withdraw the amendment.

Senator Allran moved to amend the bill on Page 13, Line 25. (See attached amendment #6-B.) The motion was withdrawn.

Senator Cooper announced that amendments would continue to be taken to Senate Bill 1260 at the meeting scheduled for tomorrow, July 9, 1998 at 8:30 a.m.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk



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S1260-ASC-004

Date 7-8, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Odom

1 moves to amend the bill on page 260, lines 11 through 22,
2 by deleting those lines; and,
3
4 on page 260, line 33, by rewriting the line to read:
5 "1999, and apply to offenses committed and causes of action arising
6 on or after that date."
7

SIGNED *Odom*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ASC-002.1

Date 7-8, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator

1 moves to amend the bill on page 179, line 1,
2 by deleting the phrase "may serve as a" and substituting the phrase
3 "would be appropriate";
4
5 on page 179 lines 12 and 14, by
6 deleting the word "on" in each of those lines;
7
8 on page 179, line 26,
9 by inserting the phrase "of the" after the word "head";
10
11 on page 180, line 13,
12 by deleting the phrase "at the hearing";
13
14 on page 180, line 17,
15 by deleting the phrase "violation alleged" and substituting the
16 phrase "alleged violation";
17
18 on page 180, lines 26 through 34,
19 by rewriting the lines to read:
20 "If the court revokes a juvenile's post-release supervision, the
21 juvenile shall be returned to a facility of the Department for an
22 indefinite term, ~~of at least six months~~, provided that no juvenile
23 shall remain committed to a Department facility past the juvenile's
24 eighteenth birthday, or the juvenile's nineteenth birthday if
25 jurisdiction has been extended pursuant to G.S. 7B-2513. If the
26 court revokes the juvenile's post-release supervision, the chief
27 court counselor shall have the responsibility for returning the
28 juvenile to the facility specified by the Department."



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S1260-ASC-002.1

- 1 on page 182, line 37,
2 by deleting the phrase "Department's care" and substituting the word
3 "Department";
4
5 on page 209, line 13,
6 by deleting the word "or" at the end of the line, and substituting
7 the word "of"; and
8
9 on page 209, line 15,
10 by deleting the phrase "alleged or found" and substituting the word
11 "adjudicated"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ASC-003.1

Date 7-8, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator ODom :

- 1
- 2 moves to amend the bill on page 3, lines 41 and 42, by rewriting
- 3 those lines to read:
- 4 "committed to the Department for placement in a training school.";
- 5
- 6 on page 4, lines 11 and 12, by adding between those lines the
- 7 following:
- 8 "(21a) Protective Supervision.-- The status of a juvenile who has
- 9 been adjudicated undisciplined and is under the supervision of a
- 10 court counselor.";
- 11
- 12 on on page 4, line 13 and page 129, line 5,
- 13 by rewriting the line to read:
- 14 "Juvenile Justice, or the Secretary's designee.";
- 15
- 16 on page 4, line 36, by rewriting the line to read:
- 17 "juvenile intake, protective supervision, probation, and post-
- 18 release supervision";
- 19
- 20 on page 4, lines 38 and 39, by rewriting those lines to read:
- 21 "juveniles who are alleged or found to be delinquent or
- 22 undisciplined";
- 23
- 24 on page 4, lines 40 through 42, by deleting those lines;
- 25
- 26 on page 4, line 43, by deleting "(5)" and substituting "(4)";
- 27
- 28 on page 5, line 1, by rewriting the line to read:



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- 1 "for the prevention of juvenile delinquency, early intervention,
2 and";
3
4 on page 5, lines 3 through 9, by rewriting those lines to read:
5 "(5) Operate and administer juvenile facilities and implement
6 training school programs.";
7
8 on page 5, line 10, by deleting "(7)" and substituting "(6)";
9
10 on page 5, lines 23 through 31, by rewriting those lines to read:
11 "(c) The Department shall annually collect and report expense data
12 for every program operated and contracted by the Department. The
13 Department shall submit an annual budget and expense report to the
14 Office of Governor no later than February 1 each year.";
15
16 on page 6, lines 1 and 2, by rewriting the line to read:
17 "requirements.";
18
19 on page 7, line 3, by rewriting the line to read:
20 "juvenile facilities, including the";
21
22 on page 7, lines 6 and 7, by rewriting those lines to read:
23 "(2) To assure quality programs in juvenile facilities
24 or juvenile programs which shall";
25
26 on page 7, lines 11 and 12, by rewriting those lines to read:
27 "to juvenile services, juvenile facilities, or juvenile programs
28 as provided";
29
30 on page 7, line 31, by rewriting the line to read:
31 "government to receive information about available juvenile";
32
33 on page 8, line 3, by deleting the word "approve" and substituting
34 the word "develop";
35
36 on page 8, lines 17 and 18, by rewriting those lines to read:
37 "(11) Assist the Criminal Justice Information Network Governing
38 Board with administering a comprehensive";
39
40 on page 8, line 26, by rewriting the line to read:



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1 "(12) Establish procedures for substance abuse testing for
2 juveniles";
3
4 on page 8, lines 34 through 44, by deleting those lines and
5 renumbering the remaining subsections accordingly;
6
7 on page 10, line 22,
8 by rewriting the line to read:
9 "for juveniles in care after the juvenile has been in a juvenile
10 facility for a period of at least six months.";
11
12 on page 10, line 44, by rewriting the line to read:
13 "care. The physical facility of a regional detention home shall
14 comply with State standards established by the Department of Health
15 and Human Services. The programs of a regional detention home shall
16 comply with the standards established by the Department.";
17
18 on page 11, lines 1 and 2, by deleting those lines;
19
20 on page 11, line 12, by deleting the word "child" and substituting
21 the word "juvenile";
22
23 on page 11, lines 20 through 25, by rewriting those lines to read:
24 "(1) To release or transfer a juvenile from one detention
25 facility to another when necessary to appropriately administer the
26 juvenile's detention. The Department shall, in writing, notify the
27 court that placed the juvenile in detention of the Department's
28 intent to release or";
29
30 on page 12, line 14, by rewriting the line to read:
31 "intake, protective supervision, probation and post-release
32 supervision services in all district";
33
34 on page 12, line 16, by rewriting the line to read:
35 "for planning, organizing, and administering juvenile intake,
36 protective supervision, probation";
37
38 on page 12, line 25, by rewriting the line to read:
39 "intake, protective supervision, probation, post-release supervision
40 services.";



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- 1 on page 12, line 29, by rewriting the line to read:
2 "intake, protective supervision, probation and post-release
3 supervision.";
4
5 on page 13, line 6, by rewriting the line to read:
6 "statewide and uniform program of juvenile intake, protective
7 supervision, probation";
8
9 on page 13, lines 17 through 19, by rewriting those lines to read:
10 "intake, protective supervision, probation, and post-release
11 supervision within the district court district.";
12
13 on page 13, lines 37 through 43, by rewriting those lines to read:
14 "(5) To furnish each juvenile on probation or protective
15 supervision and the juvenile's parents, guardian, or
16 custodian with a written statement of the juvenile's
17 conditions of probation or protective supervision and
18 consult with the juvenile's parent's guardian, or custodian
19 so that they may help the juvenile comply with the
20 conditions.";
21
22 on page 14, line 3, by rewriting the line to read:
23 "protective supervision through home visits or";
24
25 on page 14, lines 16 and 17, by rewriting those lines to read:
26 "(11) To have all the powers of a law enforcement officer
27 necessary to carry out their responsibilities under this section and
28 and Chapter 7B of the General Statutes.";
29
30 on page 16, line 39,
31 by rewriting the line to read:
32 "(14) The chief district court judge, or another district court
33 judge designated by the chief district court judge;";
34
35 on page 16, line 41,
36 by rewriting the line to read:
37 "(16) The local health director, or that person's designee;";
38
39 on page 21, lines 15 through 16,
40 by rewriting the lines to read:



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- 1 "distribution of funds to juvenile crime prevention councils.";
- 2
- 3 on page 63, lines 26 through 28,
- 4 by rewriting the lines to read:
- 5 "limitations of the juvenile, and the strengths and weaknesses of
- 6 the family.";
- 7
- 8 on page 77, line 38,
- 9 by deleting the phrase "each juvenile,";
- 10
- 11 on page 79, lines 33 through 34,
- 12 by deleting the phrase "and the juvenile or counsel or guardian ad
- 13 litem,";
- 14
- 15 on page 126, line 36,
- 16 by inserting the words "protective supervision" after the word
- 17 "intake";
- 18
- 19 on page 127, line 8,
- 20 by inserting the phrase "intake, protective supervision," at the
- 21 beginning of the line;
- 22
- 23 on page 128, lines 36 and 37, by rewriting those lines to read:
- 24 "after having been committed to the Department for placement in a
- 25 training school.";
- 26
- 27 on page 129, between lines 3 and 4,
- 28 by inserting the following:
- 29 "(25a) Protective Supervision. -- The status of a juvenile who has
- 30 been adjudicated undisciplined and is under the supervision of a
- 31 court counselor.";
- 32
- 33 on page 139, lines 34 through 37,
- 34 by rewriting those lines to read:
- 35 "ORDER OF THE COURT MAY RESULT IN A FINDING OF CRIMINAL CONTEMPT. A
- 36 PERSON HELD IN CRIMINAL CONTEMPT MAY BE SUBJECT TO IMPRISONMENT OF
- 37 UP TO 30 DAYS, A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00)
- 38 OR BOTH.";
- 39
- 40 on page 161, line 38, by rewriting the line to read:



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- 1 "a juvenile to the Department for placement in a training school
2 shall neither be";
3
4 on page 164, lines 43 through 44, and page 165, line 1,
5 by rewriting the lines to read:
6 "juvenile's own home by a court counselor, or the department of
7 social services in the juvenile's county of residence, or other";
8
9 on page 167, lines 23 through 25
10 by rewriting the lines to read:
11 "juvenile's own home by a court counselor, the department of social
12 services in the juvenile's county, or other personnel as may be";
13
14 on page 169, lines 14 through 15,
15 by rewriting the lines to read:
16 "juvenile's offense, if the juvenile has the ability to pay the
17 fine. Any fine imposed pursuant to this subdivision shall not
18 exceed the maximum";
19
20 on page 170, line 21, by rewriting the line to read:
21 "(21) Commit the juvenile to the Department for placement in
22 a training school";
23
24 on page 171, line 2,
25 by rewriting the line to read:
26 "restitution; however, the court shall not require the juvenile to
27 make restitution if the juvenile satisfies the court that the
28 juvenile does not have, and could not reasonably acquire, the means
29 to make restitution.";
30
31 on page 173, lines 43 and 44, by rewriting those lines to read:
32
33 "prescribes a Level 3 disposition shall commit the juvenile to the
34 Department for placement in a training school in accordance with
35 G.S. 7B-2504(21).";
36
37 on page 174, lines 33 through 34,
38 by rewriting the lines to read:



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1 "disposition shall be as specified for the juvenile's delinquency
2 history level and the class of offense of the most serious
3 offense.";
4

5 on page 176, lines 7 through 29
6 by rewriting the lines to read:

7 "(d) On motion of the court counselor or the juvenile, or on the
8 court's own motion, the court may review the progress of any
9 juvenile on probation at any time during the period of probation or
10 at the end of probation. The conditions or duration of probation
11 may be modified only as provided in this Subchapter and only after
12 notice and a hearing.

13 (e) If the court, after notice and a hearing, finds by the greater
14 weight of the evidence that the juvenile has violated the conditions
15 of probation set by the court, the court may continue the original
16 conditions of probation, modify the conditions of probation, or,
17 except as provided in subsection (f) of this section, order a new
18 disposition at the next higher level on the disposition chart in
19 G.S. 7B-2505. In the court's discretion, part of the new
20 disposition may include an order of confinement in a secure juvenile
21 detention facility for up to twice the term authorized by G.S. 7B-
22 2505.

23 (f) A court shall not order a Level 3 disposition for a violation
24 of the conditions of probation by a juvenile adjudicated delinquent
25 for an offense classified as minor under G.S. 7B-2505.

26 "§ 7B-2507. Termination of probation.

27 At the";
28

29 on page 177, line 2,
30 by rewriting the line to read:

31 "(a) Pursuant to G.S. 7B-2504 and G.S. 7B-2505, except as
32 provided in subsection (b) of this section, the court may";
33

34 on page 177, lines 3 through 5, by rewriting those lines to read:
35 "commit a delinquent juvenile who is at least 10 years of age to
36 the Department for placement in a training school. Commitment";
37

38 on page 177, lines 9 and 10,
39 by inserting between the word "not" and "more", the words "less than
40 six months and not";



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- 1 on page 177, line 13, by rewriting the line to read:
2 "committed to a training school";
3
- 4 on page 177, line 15, by rewriting the line to read:
5 "for transporting the juvenile to the training school";
6
- 7 on page 177, line 17, by rewriting the line to read:
8 " to the training school by a person of the same sex";
9
- 10 on page 177, line 36, by rewriting the line to read:
11 "Secretary shall place the juvenile in the training school";
12
- 13 on page 177, lines 42 and 43, by rewriting those lines to read:
14 "(f) When the court commits a juvenile to the Department for
15 placement in a training school, the Secretary shall prepare a plan
16 for care or";
17
- 18 on page 178, line 1, by rewriting the line to read:
19 " (g) Commitment of a juvenile to the Department for placement in
20 a training school";
21
- 22 on page 178, line 4, by rewriting the line to read:
23 "Commitment of a juvenile to the Department for placement in a
24 training school";
25
- 26 on page 178, lines 15 and 16,
27 by inserting between the lines, a new subsection to read:
28 "(i) The chief court counselor shall notify the victim of a
29 juvenile adjudicated delinquent of an offense that would have been a
30 Class A or B1 felony if committed by an adult, and members of the
31 victim's immediate family that the victim, or the victim's immediate
32 family members may request in writing to be notified in advance of
33 the juvenile's scheduled release date in accordance with G.S. 7B-
34 2510(d).";
35
- 36 on page 178, lines 23, 40, and 43, and page 179, lines 3, 19, 35,
37 by deleting the word "Department" and substituting the word
38 "Secretary";
39
- 40 on page 179, line 6,



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- 1 by deleting the word "days" and substituting the words "days, but
2 not more than one year,";
3
4 on page 179, lines 17 through 20,
5 by rewriting the lines to read:
6 "this Chapter, at least 45 days before releasing to post-release
7 supervision a juvenile who was committed for a Class A or B1 felony,
8 the Secretary shall notify, by first-class mail at the";
9
10 on page 179, line 32,
11 by deleting the words "of consideration" and substituting the word
12 "proposed";
13
14 on page 179, lines 33 and 34,
15 by rewriting the lines to read:
16 "release. A copy of the notice shall be sent to the appropriate
17 clerk of superior court for placement in the juvenile's court
18 file.";
19
20 on page 179 line 37, by rewriting the line to read:
21 "has been committed to the Department for placement in a training
22 school for a period";
23
24 on page 179, line 39, by rewriting the line to read:
25 "(f) A juvenile committed to the Department for placement in a
26 training school for a";
27
28 on page 179, line 43 through page 180, line 5,
29 by rewriting the lines to read:
30 "On motion of the court counselor providing post-release
31 supervision or motion of the juvenile, or on the court's own motion,
32 and after notice, the court may hold a hearing to review the
33 progress of any juvenile on post-release supervision at any time
34 during the period of post-release supervision. With respect to any
35 hearing involving allegations that the juvenile has violated the
36 terms of post-release supervision, the juvenile:";
37
38 on page 180, lines 15 and 16,
39 by rewriting the lines to read:
40 "witnesses.";



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- 1 on page 180, line 22,
- 2 by inserting between the words "determines" and "that" the words "by
- 3 the greater weight of the evidence";
- 4
- 5 on page 181, line 13, by rewriting the line to read:
- 6 "juvenile has been committed to the Department for placement in a
- 7 training school, determines";
- 8
- 9 on page 181, lines 39 and 40, by rewriting those lines to read:
- 10 "jurisdiction of the court and the juvenile is committed to the
- 11 Department for placement in a training school, commitment shall be
- 12 for a definite";
- 13
- 14 on page 182, line 38,
- 15 by deleting the words "so that the court may make" and substituting
- 16 the words "asking the court to make";
- 17
- 18 on page 183, line 23,
- 19 by deleting the words "State or county agency." and substituting the
- 20 word "State.";
- 21
- 22 on page 183, line 44 and page 184, line 1,
- 23 by deleting the words "adjudication or";
- 24
- 25 on page 184, line 23,
- 26 by deleting the words "subsequent hearings." and substituting the
- 27 words "a particular hearing or hearings, or all hearings.";
- 28
- 29 on page 206, line 13, and page 207, line 26,
- 30 by rewriting the line to read:
- 31 "(1) The juvenile;";
- 32
- 33 on page 206, line 15, and page 207, line 28,
- 34 by rewriting the line to read:
- 35 "authorized representative of the juvenile's parent,
- 36 guardian, or custodian.";
- 37
- 38 on page 207, lines 7 and 8,
- 39 by rewriting the lines to read:



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1 "7B-3200 or by rules adopted by the Administrative Office of the
2 Courts in consultation with the Department of Juvenile Justice.";
3 and,
4
5 page 207, line 42,
6 by deleting the word "agency" and substituting the word
7 "Department".
8
9

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



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S1260-ASE-014

NORTH CAROLINA GENERAL ASSEMBLY

Date 7-8, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Odom

1 moves to amend the bill on page 181, lines 3 through 42, by
2 rewriting those lines to read:

3
4 "(a) The court's and the Department's jurisdiction over a juvenile
5 who has been adjudicated delinquent may be extended beyond the
6 juvenile's eighteenth birthday until the juvenile reaches the age of
7 19 if the juvenile was committed to a training school for an offense
8 that would be a Class A-E felony if committed by an adult, and if
9 the juvenile has not been released from the training school on or
10 before the juvenile's eighteenth birthday. If jurisdiction is
11 extended beyond the juvenile's eighteenth birthday in accordance
12 with this subsection, the juvenile may be released from training
13 school at any time prior to the juvenile's nineteenth birthday.";

14 and on page 181, lines 43 and 44, by rewriting those lines to read:

15
16
17 "(b) The Secretary may modify the plan for care or treatment of
18 the juvenile prepared pursuant to G.S. 7B-2509.".

19
SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



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S1260-ASC-005

Date 7-8, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Odom :

1 moves to amend the bill on page 15, line 30, through page 19, line
2 12, by rewriting the lines to read:

3
4

5 "Part 5. Juvenile Crime Prevention Councils.

6 "§ 143B-550. Legislative intent.

7 It is the intent of the General Assembly both to reduce the number
8 of juveniles committed by the courts for delinquency to institutions
9 operated by the Department of Juvenile Justice and to prevent
10 juveniles who are at risk from becoming delinquent. The primary
11 intent of this Part is to provide an ongoing, comprehensive
12 State/local partnership to develop nonduplicative community-based
13 alternatives to training school and to provide community-based
14 delinquency and substance abuse prevention strategies and programs.
15 Additionally, it is the intent of the General Assembly to provide
16 noninstitutional dispositional alternatives that will protect the
17 community and the juvenile.

18 These programs and services shall be planned and organized at the
19 community level, and developed in partnership with the State. These
20 planning efforts shall include appropriate representation from local
21 government, local public and private agencies serving juveniles and
22 their families, local business leaders, citizens with an interest in
23 youth problems, youth representatives, and others as may be
24 appropriate in a particular community. The planning bodies at the
25 local level shall be the Juvenile Crime Prevention Councils.

26 "§143B-551. Creation; method of appointment; membership; chair and
27 vice chair.



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- 1 As a prerequisite for a county receiving funding for juvenile court
2 services and delinquency prevention programs, the board of county
3 commissioners shall appoint a Juvenile Crime Prevention Council.
4 The Juvenile Crime Prevention Council shall consist of not more than
5 25 members and should include, if possible, the following:
- 6 (1) The local school superintendent(s), or that person's
7 designee(s);
 - 8 (2) A chief of police in the county;
 - 9 (3) The local sheriff, or that person's designee;
 - 10 (4) The district attorney, or that person's designee;
 - 11 (5) The chief court counselor, or that person's designee;
 - 12 (6) The Director of the Area Mental Health, Developmental
13 Disabilities, and Substance Abuse Authority, or that
14 person's designee;
 - 15 (7) The director of the county department of social
16 services, or consolidated human services agency, or
17 that person's designee;
 - 18 (8) The county manager, or that person's designee;
 - 19 (9) A substance abuse professional;
 - 20 (10) A member of the faith community;
 - 21 (11) A county commissioner;
 - 22 (12) A person under the age of 21;
 - 23 (13) A juvenile defense attorney;
 - 24 (14) The chief district court judge, or a district court
25 judge designated by the chief district court judge;
 - 26 (15) A member of the business community;
 - 27 (16) The local health director, or that person's designee;
 - 28 (17) A representative from the United Way or other
29 nonprofit agency;
 - 30 (18) A representative of a local parks and recreation
31 program; and
 - 32 (19) Up to seven members of the public to be appointed by
33 the county board of commissioners.
- 34 The board of county commissioners shall modify the Council's
35 membership as necessary to ensure that current Council members
36 reflect the racial and socioeconomic diversity of the community and
37 to minimize potential conflicts of interest by members.
38 The chair and vice-chair shall be elected annually by the members
39 of the council.
40 "§143B-552. Terms of appointment.



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1 Each member of a juvenile crime prevention council shall serve for
2 a term of two years. Members may be reappointed. Terms of
3 appointment shall begin October 1, 1998. In order to provide for
4 staggered terms, persons appointed for the positions designated as
5 9, 10, 12, 15, 17, and 18 in G.S. 143B-551 shall be for an initial
6 one year term, and two year terms thereafter.
7 "§143B-553. Vacancies; removal.
8 Appointments to fill vacancies shall be for the remainder of the
9 former member's term.
10 Members shall only be removed for misfeasance, malfeasance, or
11 nonfeasance as determined by the board of county commissioners.
12 "§143B-554. Meetings; quorum.
13 Councils shall meet at least once per month, or more often if a
14 meeting is called by the chair.
15 A majority of members shall constitute a quorum.
16 "§143B-555. Compensation of members.
17 Members of Juvenile Crime Prevention Councils shall receive no
18 compensation but may receive a per diem in such an amount as may be
19 established by the board of county commissioners.
20 "§143B-556. Powers and duties.
21 (a) The Councils shall annually review the needs of juveniles in
22 the county who are at risk of delinquency or have been adjudicated
23 undisciplined or delinquent and the resources available to address
24 those needs. The Council shall develop and advertise a request for
25 proposal process, and submit a written plan of action for the
26 expenditure of juvenile sanction and prevention funds to the board
27 of county commissioners for its approval. Upon the county's
28 authorization, the plan shall be submitted to the Department for
29 final approval and subsequent implementation.
30 (b) The Councils shall ensure that appropriate intermediate
31 dispositional options are available and shall prioritize funding, as
32 established in G.S. 143B-515, for dispositions of intermediate and
33 community level sanctions for court-adjudicated juveniles pursuant
34 to minimum standards adopted by the Department.
35 (c) The Councils shall perform the following functions on an
36 ongoing basis:
37 (1) Assess the needs of juveniles in the community,
38 evaluate the adequacy of resources available to meet
39 those needs, and develop or propose ways to address
40 unmet needs;



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- 1 (2) Evaluate the performance of juvenile services and
2 programs in the community. The Council shall evaluate
3 each funded program as a condition of continued
4 funding;
5 (3) Increase public awareness of the causes of delinquency
6 and of strategies to reduce the problem;
7 (4) Develop strategies to intervene and appropriately
8 respond to and treat the needs of juveniles at risk of
9 delinquency through appropriate risk assessment
10 instruments;
11 (5) Provide funds for services for treatment, counseling,
12 or rehabilitation for juveniles and their families,
13 including court-ordered parenting responsibility
14 classes; and
15 (6) Plan for the establishment of a permanent funding
16 stream for delinquency prevention.
17 (d) The Councils may examine the benefits of joint program
18 development between counties within the same judicial district. Two
19 or more counties may establish a multicounty Juvenile Crime
20 Prevention Council, with the membership consisting of the members
21 from each county represented.
22 "§143B-557. Funding for programs.
23 (a) The Secretary shall develop a funding mechanism for programs
24 that meet the standards as developed under the provisions of this
25 Part. The Secretary shall ensure that the guidelines for the
26 State/local partnership's funding process include the following
27 requirements:
28 (1) Fund programs that demonstrate effectiveness by
29 preventing delinquency and recidivism. Programs that
30 have proven to be ineffective shall not be funded;
31 (2) Use a formula for the distribution of funds. -- A
32 funding formula shall be developed that ensures that
33 even the smallest counties will be able to provide the
34 basic prevention and alternatives services to
35 juveniles in their communities;
36 (3) Allow and encourage local flexibility. -- A vital
37 component of the State/local partnership established
38 by this section is local flexibility to determine how
39 best to allocate prevention and alternatives funds;
40 and



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1 (4) Combine resources. -- Counties shall be allowed and
2 encouraged to combine resources and services.
3 (b) The Secretary shall adopt rules to implement this section and
4 the Department shall provide technical assistance to Juvenile Crime
5 Prevention Councils and shall ensure that the Juvenile Crime
6 Prevention Councils evaluate all State funded programs and services
7 on an ongoing and regular basis.
8 "§ 143B-558. Purchase of care or services from programs meeting
9 State standards.
10 The Department of Juvenile Justice and any other appropriate State
11 or local agency may purchase care or services from public or private
12 agencies providing delinquency prevention programs or juvenile court
13 services, including parenting responsibility classes. The programs
14 shall meet the State standards as authorized by G.S. 143B-550. As
15 institutional populations are reduced, the Department of Juvenile
16 Justice may divert State funds appropriated for institutional
17 programs to purchase the services pursuant to the provisions of the
18 Executive Budget Act.
19 The Secretary of Juvenile Justice shall prepare an annual report
20 on the effectiveness and cost-benefit of the Department's programs,
21 which shall include the most current institutional populations of
22 juveniles being served by the various departments of State
23 government which shall include comparative costs of all child-
24 serving agencies. Such report shall be submitted to the Governor,
25 the General Assembly, and the various State departments providing
26 services to juveniles.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



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Date 7-8, 1998

Comm. Sub. [X]
Amends Title [YES]
S1260-CSSC-001

Senator Reeves

1 moves to amend the bill on page 253, line 26, through page 260, line
2 10, by rewriting the lines to read:

3 "Section 26. Subsection (n) of G.S. 20-11, as amended by Session
4 Law 1997-507, reads as rewritten:

5 '(n) Driving Eligibility Certificate. -- A person who desires to
6 obtain a permit or license issued under this section and who does
7 not have a high school diploma or its equivalent must have a driving
8 eligibility certificate. A driving eligibility certificate must meet
9 the following conditions:

- 10 (1) The person who is required to sign the certificate
- 11 under subdivision (4) of this subsection must show
- 12 that he or she has determined that one of the
- 13 following requirements is met:
- 14 a. The person is currently enrolled in school and is
- 15 making progress toward obtaining a high school
- 16 diploma or its equivalent.
- 17 b. A substantial hardship would be placed on the
- 18 person or the person's family if the person does
- 19 not receive a certificate.
- 20 c. The person cannot make progress toward obtaining
- 21 a high school diploma or its equivalent.

22 (1a) If the person who desires to obtain a permit or
 23 license under this section was expelled, suspended for
 24 more than 10 consecutive days, or assigned to an
 25 alternative educational setting, for an incident that
 26 occurred after the July 1 before the school year in
 27 which the person enrolled in the eighth grade or after
 28 the person's fourteenth birthday, whichever event



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- 1 occurred first, and this disciplinary action was for
2 (i) the possession or sale of alcohol or an illegal
3 controlled substance on school property or at a
4 school-sponsored or school-related activity on or off
5 school property, (ii) the possession or use of a
6 weapon or firearm on school property in accordance
7 with G.S. 115C-391(d1), or (iii) the physical assault
8 on and serious injury to a teacher or other school
9 personnel on school property or at a school-sponsored
10 or school-related activity on or off school property
11 in accordance with G.S. 115C-391(d2)(1), then the
12 person who is required under subdivision (4) of this
13 subsection to sign the certificate must show that he
14 or she has determined that the person has exhausted
15 all administrative appeals connected to the
16 disciplinary action and that one of the following
17 conditions is met:
- 18 a. The person has returned to school following the
19 period of expulsion or suspension and has
20 displayed exemplary student behavior, in
21 accordance with rules adopted by the State Board
22 of Education under G.S. 115C-12(28), the
23 Secretary of Administration under G.S. 115C-566,
24 or the State Board of Community Colleges under
25 G.S. 115D-5(a3), as applicable.
- 26 b. The person was placed in an alternative
27 educational setting and has displayed exemplary
28 student behavior, in accordance with rules
29 adopted by the State Board of Education under
30 G.S. 115C-12(28), the Secretary of Administration
31 under G.S. 115C-566, or the State Board of
32 Community Colleges under G.S. 115D-5(a3), as
33 applicable.
- 34 c. The expulsion, suspension, or alternative
35 placement was for the possession or sale of
36 alcohol or an illegal controlled substance on
37 school property or at a school-sponsored or
38 school-related activity on or off school
39 property, and the person subsequently attended
40 and successfully completed a drug or alcohol



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- 1 treatment counseling program, as appropriate.
2 The determination as to whether the person
3 successfully completed this program shall be made
4 in accordance with rules adopted by the State
5 Board of Education under G.S. 115C-12(28), the
6 Secretary of Administration under G.S. 115C-566,
7 or the State Board of Community Colleges, as
8 applicable.
9 d. The person needs the certificate in order to
10 drive to and from school, a drug or alcohol
11 treatment counseling program, as appropriate, or
12 a mental health treatment program, and no other
13 transportation is available.
14 (2) It must be on a form approved by the Division.
15 (3) It must be dated within 30 days of the date the person
16 applies for a permit or license issuable under this
17 section.
18 (4) It must be signed by the applicable person named
19 below:
20 a. The principal, or the principal's designee, of
21 the public school in which the person is
22 enrolled.
23 b. The administrator, or the administrator's
24 designee, of the nonpublic school in which the
25 person is enrolled.
26 c. The person who provides the academic instruction
27 in the home school in which the person is
28 enrolled.
29 d. The designee of the board of directors of the
30 charter school in which the person is enrolled.
31 e. The president, or the president's designee, of
32 the community college in which the person is
33 enrolled.
34 Notwithstanding any other law, the decision concerning whether a
35 driving eligibility certificate was properly issued or improperly
36 denied shall be appealed only as provided under the rules adopted in
37 accordance with ~~G.S. 115C-12(27)~~, G.S. 115C-12(28), G.S. 115D-5(a3),
38 or G.S. 115C-566, whichever is applicable, and may not be appealed
39 under this Chapter.'



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1 Section 27. G.S. 20-13.2, as amended by Session Law 1997-
2 507, reads as rewritten:

3 '(c1) The Division ~~must~~ shall revoke the permit or license of a
4 person under the age of 18 if the proper school authority notifies
5 the Division that the person no longer meets the requirements for a
6 driving eligibility certificate under G.S. 20-11(n).

7 Notwithstanding subsection (d) of this section, the length of
8 revocations ~~must~~ shall last for the following periods:

9 (1) If the revocation is because of ineligibility for a
10 driving eligibility certificate under G.S. 20-
11 11(n)(1), then the revocation shall last until the
12 person's eighteenth birthday.

13 (2) If the revocation is because of ineligibility for a
14 driving eligibility certificate under G.S. 20-
15 11(n)(1a), then the revocation shall be for a period
16 of one year.

17 ~~until the division restores the permit or license under this~~
18 ~~subsection.~~

19 ~~The~~ For a person whose permit or license was revoked due to
20 ineligibility for a driving eligibility certificate under G.S. 20-
21 11(n)(1), the Division ~~must~~ shall restore a person's permit or
22 license before the person's eighteenth birthday, if the person
23 submits to the Division one of the following:

24 (1) A high school diploma or its equivalent.

25 (2) A driving eligibility certificate as required under
26 G.S. 20-11(n).

27 For a person whose permit or license was revoked due to
28 ineligibility for a driving eligibility certificate under G.S. 20-
29 11(n)(1a), the Division shall restore a person's permit or license
30 before the end of the revocation period, if the person submits to
31 the Division a driving eligibility certificate as required under
32 G.S. 20-11(n).

33 Notwithstanding any other law, the decision concerning whether a
34 driving eligibility certificate was properly issued or improperly
35 denied shall be appealed only as provided under the rules adopted in
36 accordance with ~~G.S. 115C-12(27)~~, G.S. 115C-12(28), G.S. 115D-5(a3),
37 or G.S. 115C-566, whichever is applicable, and may not be appealed
38 under this Chapter.'

39 Section 28. G.S. 115C-12(28), as amended by Session Law
40 1997-507, reads as rewritten:



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- 1 (28) Duty to Develop Rules for Issuance of Driving
2 Eligibility Certificates. -- The State Board of
3 Education shall issue ~~rules defining the~~
4 following rules to assist schools in their
5 administration of procedures necessary to
6 implement G.S. 20-11 and G.S. 20-13.2:
7 a. To define what is equivalent to a high school
8 diploma for the purposes of G.S. 20-11 and G.S.
9 20-13.2. These rules shall apply to all
10 educational programs offered in the State by
11 public schools, charter schools, nonpublic
12 schools, or community colleges.
13 b. To establish ~~The State Board also shall issue~~
14 ~~rules for~~ the procedures a person who is or was
15 enrolled in a public school, in a charter school,
16 or in a nonpublic school accredited by the Board
17 must follow and the requirements that person must
18 meet to obtain a driving eligibility certificate.
19 c. To require the ~~The~~ person who is required under
20 G.S. 20-11(n) to sign the driving eligibility
21 certificate ~~must to~~ provide the certificate if he
22 or she determines that ~~one of~~ the following
23 requirements ~~is~~ are met:
24 a- 1. The person seeking the certificate is
25 currently enrolled in school and is
26 making progress toward obtaining a high
27 school diploma or its ~~equivalent.~~
28 b- A equivalent; a substantial hardship would
29 be placed on the person seeking the
30 certificate or the person's family if the
31 person does not receive the ~~certificate.~~
32 c- The certificate; or the person seeking the
33 certificate cannot make progress toward
34 obtaining a high school diploma or its
35 ~~equivalent.~~ equivalent.
36 2. If the person who desires to obtain a permit
37 or license under G.S. 20-11 was expelled,
38 suspended for more than 10 consecutive days,
39 or assigned to an alternative educational
40 setting, for an incident that occurred after



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the July 1 before the school year in which the person enrolled in the eighth grade or after the person's fourteenth birthday, whichever event occurred first, and this disciplinary action was for the possession or sale of alcohol or an illegal controlled substance on school property or at a school-sponsored or school-related activity on or off school property, for the possession or use of a weapon or firearm on school property in accordance with G.S. 115C-391(d1), or for the physical assault on and serious injury to a teacher or other school personnel on school property or at a school-sponsored or school-related activity on or off school property in accordance with G.S. 115C-391(d2)(1), then the person who is required under G.S. 20-11(n)(4) to sign the certificate must show that he or she has determined that the person has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

- i. The person has returned to school following the period of expulsion or suspension and has displayed exemplary student behavior.
- ii. The person was placed in an alternative educational setting and has displayed exemplary student behavior.
- iii. The expulsion, suspension, or alternative placement was for the possession or sale of alcohol or an illegal controlled substance, and the person subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.
- iv. The person needs the certificate in order to drive to and from school, a



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1 Division of Motor Vehicles any information necessary to comply with
2 G.S. 20-11 or G.S. 20-13.2 in the event that this disclosure is
3 necessary. This form shall be used for students enrolled in public
4 schools, charter schools, or nonpublic schools accredited by the
5 Board.'

6 Section 29. G.S. 115C-566, as amended by Session Law 1997-
7 507, reads as rewritten:

8 '§ 115C-566. **Driving eligibility certificates; requirements.**

9 (a) The Secretary of Administration, upon consideration of the
10 advice of the Division of Nonpublic Education in the Office of the
11 Governor and representatives of nonpublic schools, shall issue rules
12 for the procedures a person who is or was enrolled in a home school
13 or in a nonpublic school that is not accredited by the State Board
14 of Education must follow and the requirements that person must meet
15 to obtain a driving eligibility certificate. ~~The person~~ The
16 procedures shall provide that the person who is required under G.S.
17 20-11(n) to sign the driving eligibility certificate must provide
18 the certificate if he or she determines that one of the following
19 requirements is are met:

20 (1) He or she determines that:

21 a. The person seeking the certificate is currently
22 enrolled in school and is making progress toward
23 obtaining a high school diploma or its
24 ~~equivalent.~~ equivalent;

25 ~~(2)~~ b. A substantial hardship would be placed on the
26 person seeking the certificate or the person's
27 family if the person does not receive the
28 ~~certificate.~~ certificate; or

29 ~~(3)~~ c. The person seeking the certificate cannot make
30 progress toward obtaining a high school diploma
31 or its ~~equivalent.~~ equivalent; and

32 (2) If the person who desires to obtain a permit or
33 license under G.S. 20-11 was expelled, suspended for
34 more than 10 consecutive days, or assigned to an
35 alternative educational setting, for an incident that
36 occurred after the July 1 before the school year in
37 which the person enrolled in the eighth grade or after
38 the person's fourteenth birthday, whichever event
39 occurred first, and this disciplinary action was for
40 the possession or sale of alcohol or an illegal



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- 1 controlled substance on school property or at a
2 school-sponsored or school-related activity on or off
3 school property, for the possession or use of a weapon
4 or firearm on school property in accordance with G.S.
5 115C-391(d1), or for the physical assault on and
6 serious injury to a teacher or other school personnel
7 on school property or at a school-sponsored or school-
8 related activity on or off school property in
9 accordance with G.S. 115C-391(d2)(1), then the person
10 who is required under G.S. 20-11(n)(4) to sign the
11 certificate must show that he or she has determined
12 that the person has exhausted all administrative
13 appeals connected to the disciplinary action and that
14 one of the following conditions is met:
15 a. The person has returned to school following the
16 period of expulsion or suspension and has
17 displayed exemplary student behavior.
18 b. The person was placed in an alternative
19 educational setting and has displayed exemplary
20 student behavior.
21 c. The expulsion, suspension, or alternative
22 placement was for the possession or sale of
23 alcohol or an illegal controlled substance, and
24 the person subsequently attended and successfully
25 completed a drug or alcohol treatment counseling
26 program, as appropriate.
27 d. The person needs the certificate in order to
28 drive to and from school, a drug or alcohol
29 treatment counseling program, as appropriate, or
30 a mental health treatment program, and no other
31 transportation is available.

32 The rules shall define exemplary student behavior and shall
33 provide for an appeal to an appropriate educational entity by a
34 person who is denied a driving eligibility certificate. The
35 Division of Nonpublic Education also shall develop policies as to
36 when it is appropriate to notify the Division of Motor Vehicles that
37 a person who is or was enrolled in a home school or in a nonpublic
38 school that is not accredited by the State Board of Education no
39 longer meets the requirements for a driving eligibility certificate.



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1 For a person whose permit or license was denied or revoked due to
2 ineligibility for a driving eligibility certificate under G.S. 20-
3 11(n)(1a), these rules shall provide for the optional issuance of a
4 driving eligibility certificate, after six months from the date the
5 person would otherwise be eligible for a driving eligibility
6 certificate, if the person meets one of the following:
7 (1) Displays exemplary student behavior.
8 (2) Attends and successfully completes a drug or alcohol
9 treatment counseling program, as appropriate.
10 (b) The Secretary of Administration shall develop a form for
11 parents, guardians, or emancipated juveniles, as appropriate, to
12 provide their written, irrevocable consent for a school to disclose
13 to the Division of Motor Vehicles any information necessary to
14 comply with G.S. 20-11 or G.S. 20-13.2 in the event that this
15 disclosure is necessary. This form shall be used for students
16 enrolled in home schools or nonpublic schools.
17 (c) In accordance with rules adopted by the Secretary under this
18 section, persons who are required to sign driving eligibility
19 certificates that meet the conditions established in G.S. 20-11,
20 shall obtain the necessary written, irrevocable consent from
21 parents, guardians, or emancipated juveniles, as appropriate, in
22 order to disclose information to the Division of Motor Vehicles, and
23 shall notify the Division of Motor Vehicles when a student who holds
24 a driving eligibility certificate no longer meets its conditions.'
25 Section 30. G.S. 115C-288 is amended by adding the
26 following new subsection to read:
27 '(i) To Sign Driving Eligibility Certificates and to Notify the
28 Division of Motor Vehicles. -- In accordance with rules adopted by
29 the State Board of Education, the principal or the principal's
30 designee shall sign driving eligibility certificates that meet the
31 conditions established in G.S. 20-11, shall obtain the necessary
32 written irrevocable consent from parents, guardians, or emancipated
33 juveniles, as appropriate, in order to disclose information to the
34 Division of Motor Vehicles, and shall notify the Division of Motor
35 Vehicles when a student who holds a driving eligibility certificate
36 no longer meets its conditions.'
37 Section 31. G.S. 115C-238.29F is amended by adding the
38 following new subsection to read:
39 '(j) Driving Eligibility Certificates. -- In accordance with
40 rules adopted by the State Board of Education, the designee of the



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1 school's board of directors shall sign driving eligibility
2 certificates that meet the conditions established in G.S. 20-11,
3 shall obtain the necessary written, irrevocable consent from
4 parents, guardians, or emancipated juveniles, as appropriate, in
5 order to disclose information to the Division of Motor Vehicles, and
6 shall notify the Division of Motor Vehicles when a student who holds
7 a driving eligibility certificate no longer meets its conditions.'
8 Section 32. G.S. 115D-5(a3) reads as rewritten:
9 '(a3) The State Board of Community Colleges shall issue the
10 following rules for to assist community colleges in their
11 administration of procedures necessary to implement G.S. 20-11 and
12 G.S. 20-13.2:
13 (1) To establish the procedures a person who is or was
14 enrolled in a community college must follow and the
15 requirements that person must meet to obtain a driving
16 eligibility certificate. The
17 (2) To require the person who is required under G.S. 20-
18 11(n) to sign the driving eligibility certificate must
19 to provide the certificate if he or she determines
20 that one of the following requirements is are met:
21 (+1) a. The person seeking the certificate is currently
22 enrolled in school and is making progress toward
23 obtaining a high school diploma or its
24 equivalent.
25 (+2) A equivalent; a substantial hardship would be placed
26 on the person seeking the certificate or the person's
27 family if the person does not receive the certificate.
28 (+3) The certificate; or the person seeking the certificate
29 cannot make progress toward obtaining a high school
30 diploma or its equivalent.
31 b. If the person who desires to obtain a permit or
32 license under G.S. 20-11 was expelled, suspended
33 for more than 10 consecutive days, or assigned to
34 an alternative educational setting, for an
35 incident that occurred after the July 1 before
36 the school year in which the person enrolled in
37 the eighth grade or after the person's fourteenth
38 birthday, whichever event occurred first, and
39 this disciplinary action was for the possession
40 or sale of alcohol or an illegal controlled



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- 1 substance on school property or at a school-
2 sponsored or school-related activity on or off
3 school property, for the possession or use of a
4 weapon or firearm on school property in
5 accordance with G.S. 115C-391(d1), or for the
6 physical assault on and serious injury to a
7 teacher or other school personnel on school
8 property or at a school-sponsored or school-
9 related activity on or off school property in
10 accordance with G.S. 115C-391(d2)(1), then the
11 person who is required under G.S. 20-11(n)(4) to
12 sign the certificate must show that he or she has
13 determined that the person has exhausted all
14 administrative appeals connected to the
15 disciplinary action and that one of the following
16 conditions is met:
17 i. The person has returned to school following
18 the period of expulsion or suspension and
19 has displayed exemplary student behavior.
20 ii. The person was placed in an alternative
21 educational setting and has displayed
22 exemplary student behavior.
23 iii. The expulsion, suspension, or alternative
24 placement was for the possession or sale of
25 alcohol or an illegal controlled substance,
26 and the person subsequently attended and
27 successfully completed a drug or alcohol
28 treatment counseling program, as
29 appropriate.
30 iv. The person needs the certificate in order to
31 drive to and from a community college, a
32 drug or alcohol treatment counseling
33 program, as appropriate, or a mental health
34 treatment program, and no other
35 transportation is available.
36 (3) ~~The rules shall~~ To provide for an appeal through the
37 grievance procedures established by the board of
38 trustees of each community college by a person who is
39 denied a driving eligibility certificate.



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- 1 (4) For a person whose permit or license was denied or
2 revoked due to ineligibility for a driving eligibility
3 certificate under G.S. 20-11(n)(1a), to provide for
4 the optional issuance of a driving eligibility
5 certificate, after six months from the date the person
6 would otherwise be eligible for a driving eligibility
7 certificate, if the person meets one of the following:
8 a. Displays exemplary student behavior.
9 b. Attends and successfully completes a drug or
10 alcohol treatment counseling program, as
11 appropriate.
- 12 (5) To define exemplary student behavior.
13 The State Board also shall develop policies as to when it
14 is appropriate to notify the Division of Motor Vehicles that a
15 person who is or was enrolled in a community college no longer meets
16 the requirements for a driving eligibility certificate. The State
17 Board also shall adopt guidelines to assist the presidents of
18 community colleges in their designation of representatives to sign
19 driving eligibility certificates.
- 20 The State Board shall develop a form for the appropriate
21 individuals to provide their written, irrevocable consent for a
22 community college to disclose to the Division of Motor Vehicles any
23 information necessary to comply with G.S. 20-11 or G.S. 20-13.2 in
24 the event that this disclosure is necessary.'
- 25 Section 33. Sections 28, 29, and 32 are effective when they
26 become law. The remainder of this Part becomes effective July 1,
27 1999. This Part does not apply to any person who held a valid North
28 Carolina limited learner's permit issued before December 1, 1997,
29 who held a valid North Carolina learner's permit issued before
30 December 1, 1997, or who was a provisional licensee and held a valid
31 North Carolina drivers license issued before December 1, 1997. This
32 Part shall only apply to conduct committed on or after the effective



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1 date by a person who is expelled, suspended, or placed in an
2 alternative educational setting as a result of that conduct.".

SIGNED *Y. R. ...*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



6A
w/drawn

NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ARH-008

Date 7-8, 1998

Comm. Sub. S1260-CSSC-001
Amends Title
S1260-ARH-007

Senator BLUST

1 moves to amend the amendment, S1260-ARH-007, on page 2, lines 8-9;
2 page 6, lines 13-14; page 9, line 6; and on page 12, line 7,
3 by deleting the phrase "teacher or other school personnel", and by
4 substituting the phrase "teacher, other school personnel, or
5 student".

6
7

SIGNED John Blust
Amendment sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



6B
Wpleasun

NORTH CAROLINA GENERAL ASSEMBLY
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(to be filled in by
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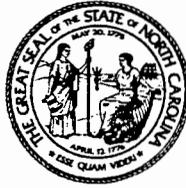
S1260-ARH-009

Date 7-8, 1998

Comm. Sub. S1260-CSSC-001
Amends Title
S1260-ARH-007

Senator Allran

1 moves to amend the amendment, S1260-ARH-007, on page 13, line 25, by
2 rewriting the line to read:
3 "Section 33. G.S. 115C-403(b) reads as rewritten:
4 '(b) When any child transfers from one school system to another
5 school system, the receiving school shall, within 30 days of the
6 child's enrollment, obtain the child's record from the school from
7 which the child is transferring. If the child's parent, custodian,
8 or guardian provides a copy of the child's record from the school
9 from which the child is transferring, the receiving school shall,
10 within 30 days of the child's enrollment, request written
11 verification of the school record by contacting the school or
12 institution named on the transferring child's record. The school
13 counselor of the school from which the child is transferring shall
14 mail to the receiving school a copy of that child's school record or
15 a verification of that child's school record, as applicable, within
16 five days of the school's receipt of a request for this record or
17 verification. If the school does not have a school counselor, the
18 principal's designee shall mail this record or verification, as
19 applicable. Failure to mail the record or verification in
20 accordance with this subsection is grounds for dismissal under G.S.
21 115C-325. Any information received indicating that the transferring
22 child is a missing child shall be reported to the North Carolina
23 Center for Missing Persons.'



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S1260-ARH-009

1 Section 34. Sections 23, 29, 32, and 33 are effective when they".

SIGNED Allen
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Senate Judiciary 7/8/98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Ed Taylor	AO/JSD
Bob Atkinson	AOC
Larry Dix	JSD/AOC
James L. Edwards	Christian Science Comm'n Pub for NC
Dorland Mandy	Gov office
Julio Wh	Lt. Gov office
Martha Livegood	YAI0 - DDA
Paula A. Hoel	Covenant w/ NC's Children
Deborah Rios	ACh
ERIC ZOBRY	RESEARCH SERVICES /AOC
S. Katzenelson	Sentencing Commission
Debbie Meagher	Sentencing Commission
John Madden	Sentencing Commission
Kim Firth	DYS
Christina Medina	Covenant w/ NC's Children
George Reed	NC Council of Churches
Melissa Lovell	DOJ
Ken Howell	NCBA
James Bowen	DYS
Riper Nieters	SBE
Bob Phillips	LT. Gov's office
Zee Lamb	LT. GOV.

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Hal Miller	NCACEE
LAURA LANGNER	NASW NC
Mike Jackson	Charlotte NC
Stacey Parker	Sen. Bassnight
Stacey Parker	Sen. Bassnight
Tim Crowley	NC Public Radio
Kenneth Snow (Intern)	Sen. Ballance
Michelle Cotton	DMH/ID/SAS
LAURENCE BERGMAN	DOC
Sandy Pearce	DOC
Celeste Clinton	Sen. Cooper
Debbie Halbot	Sen. Lucas Office
Julia Kim	Commissioner on Inv. Crime & Justice
Janet Mason	IOA

MINUTES
SENATE JUDICIARY COMMITTEE
July 9, 1998

The Senate Judiciary Committee met on July 9, 1998 at 8:30 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and asked that Committee members send forth any amendments they have to Senate Bill 1260 - AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE, TO AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, TO MAKE CONFORMING CHANGES TO THE STATUTES, AND TO APPROPRIATE FUNDS, AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE.

Senator Martin moved to amend the bill on Page 251, Lines 23 and 24. (See attached amendment #1.) The motion carried by a majority voice vote.

Senator Martin moved to amend the bill on Page 208, Lines 7 through 9. (See attached amendment #2.) The motion carried by a majority voice vote.

Senator Martin moved to amend the bill on Page 179, Lines 41 and 42. (See attached amendment #3.)

Senator Martin offered as a "friendly amendment" the change, beginning on Page 1, Line 11, by adding the words "shall be done at the time of the hearing".

Marcia Morey, Executive Director of the Governor's Commission on Juvenile Justice, Janet Mason, with the Institute of Government, and Ken Foster, with the Division of Youth Services/Training Schools, were recognized to speak on the amendment.

Senator Cooper called for a vote on amendment #3. The amendment was adopted as amended by a majority voice vote.

Senator Martin moved to amend the bill as amended by amendment number S1260-ASE-014 (Amendment #4), adopted by the Committee on July 8, 1998 on Page 181, Lines 1 through 44; Page 130, Lines 34 through 38; Page 127, Lines 28 through 31; Page 178, Line 19; Page 179, Line 8; Page 179, Lines 12 through 15; Page 180, Line 34; Page 180, Lines 42 and 43 and on Page 182, Line 1. (See attached amendment #4.)

Walker Reagan, Committee Counsel, suggested, because of a previous amendment passed at this meeting, Lines 19 through 29 on Page 2, should be removed and on Line 18 add "pursuant to GS 65-7B-2510.1".

Senator Odom moved to amend the amendment by changing on Page 1, Line 9 to read "The courts jurisdiction over and the department's custody of a juvenile..." and to make other conforming changes in the bill. The amendment to the amendment was adopted by a majority voice vote.

After discussion by the Committee, Senator Cooper asked that the amendment be held for further clarification.

Senator Martin moved to amend the bill on Page 251, between Lines 23 and 24. (See attached amendment #5.)

Senator Odom moved to amend the amendment on Page 1, Lines 3-15 by deleting the words "Task Force" and substituting the word "Secretary" and adding that "the study shall be done with funds appropriated to the Department." The motion carried by a majority voice vote.

The amendment was adopted as amended by a majority voice vote.

Senator Moore moved to amend the bill on Page 163, Line 22 and on Page 178, Lines 15 and 16. (See attached amendment #6.) (This amendment was taken up on July 8th, but not voted on.)

Senator Moore moved to amend the amendment being considered on Page 1, Line 8 by adding after the word "alcohol" the words "the court may require testing of other juveniles adjudicated delinquent if the court determines the need for such a test. The results of the initial test should be used for treatment purposes only." The motion carried by a majority voice vote.

Senator Cooper called for a vote on amendment #6 as amended. The motion carried by a majority voice vote.

Senator Horton moved to amend the bill on Page 5, Line 11; Page 109, Line 17; page 110, Lines 20 through 22; Page 154, Line 43 through Page 155, Line 1 and Page 232, Lines 4 and 5. (See attached amendment #7.)

After discussion by the Committee, Secretary Moore, Department of Crime Control and Public Safety, suggested that on Line 10, add the word "department" before the word "personnel" and take out the words "juvenile facility".

Senator Horton agreed to this change in his amendment and Senator Cooper asked for a vote on amendment #7 as amended. The motion carried by a majority voice vote.

Senator Ballance moved to amend the bill on Page 18, Lines 11-20 and Page 251, Lines 23 and 24. (See attached amendment #8.)

After discussion, Senator Ballance moved to strike Lines 10 through 17; on Line 4 after the word "and" add the words "where appropriate"; and on Line 5 by adding after the words "committed to" the words "detention center, adjudicated delinquent, and to training school." The motion carried by a majority voice vote.

Senator Cooper called for a vote on the amended amendment #8. The motion carried by a majority voice vote.

Senator Blust moved to amend the bill on Page 154, Lines 3 through 11; Page 153, Lines 11 and 15 and on Page 154, Line 20. (See attached amendment #9.) The motion failed by a majority voice vote.

Senator Ballance moved to amend the bill on Page 206, Lines 18 through 20; Page 207, Line 29 and page 207, Lines 30 through 31. (See attached amendment #10.)

After discussion, Senator Ballance asked that the amendment be withdrawn.

Senator Martin moved to amend the bill on Page 1, Lines 9 through 20; Page 1, Line 28 and Page 2, Lines 1 through 6. (See attached amendment #11.) The motion carried by a majority voice vote.

Senator Odom moved to amend the bill on Page 4, Lines 13 and 14; page 14, Lines 16 and 17; Page 129, Lines 13 and 14 and Page 179, Lines 43 through Page 180, Line 5. (See attached amendment #12.) The motion carried by a majority voice vote.

Senator Blust moved to amend the bill on Page 207, Lines 4 and 5 and Page 208, Lines 35 and 36. (See attached amendment #13.) The motion failed by a majority voice vote.

Senator Ballance moved to amend the bill on Page 18, Line 37. (See attached amendment #14.) The motion carried by a majority voice vote.

Senator Kerr moved to amend the bill on Page 177, Line 8 and Page 179, Lines 41 and 42. (See attached amendment #15.) The motion carried by a majority voice vote.

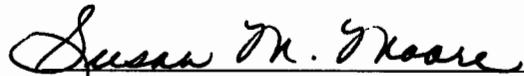
Senator Blust moved to amend the amendment, S1260-ARH-007 (Amendment #6 - July 8, 1998), on Page 2, Lines 8 through 9; Page 6, Lines 13 through 14, Page 9, Line 6 and Page 12, Line 7. The motion failed on a 11-12 show-of-hands vote.

Senator Horton moved to amend the bill on Page 67, Lines 11 and 12 and Page 69, Lines 3 and 4. After discussion, Senator Horton agreed to withdraw the amendment and for it to be sent to a subcommittee for study.

Senator Odom moved to give the bill a favorable report as amended, make necessary technical changes and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
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S1260-ARU-012

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Martin of Guilford

1 moves to amend the bill on page 251, lines 23 and 24,
2 by inserting between the lines a new section to read:
3 "Section 22C. The Department of Juvenile Justice shall
4 study the use of detention facilities and make recommendations as to
5 how those detention facilities could be utilized more efficiently.
6 The study shall include statistical analysis of the number of
7 juveniles housed in detention facilities, the reasons for their
8 detention, the length of their stays, and the numbers and frequency
9 that juveniles are detained in adult jails. The Department shall
10 report its findings and recommendations to by April 1, 1999 to the
11 Fiscal Research Division of the General Assembly and the Chairs of
12 the House and Senate Appropriation Committees."

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ARU-013

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Martin of Guilford

1 moves to amend the bill on page 208, lines 7 through 9,
2 by rewriting the lines to read:
3 "(a) The Secretary, after consultation with the Conference of
4 Chief District Court Judges, shall adopt rules designating certain
5 local agencies that are authorized to share information concerning
6 juveniles in accordance with the provisions of this section.
7 Agencies so".

SIGNED *W. J. Martin*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ARU-014.1

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Martin of Guilford

1 moves to amend the bill on page 179, lines 41 and 42,
2 by inserting between the lines the following new statutory section
3 to read:
4 "§ 7B-2510.1. Extended commitment for treatment.
5 Notwithstanding the provisions of G.S. 7B-2509, no juvenile shall
6 be committed to a training school beyond the minimum six-month
7 commitment for a period greater than the maximum time an adult could
8 be incarcerated for the same offense except when the Secretary
9 determines that the juvenile's commitment needs to be continued for
10 a specified additional period of time for the further treatment or
11 rehabilitation of the juvenile. Within 30 days after assuming
12 custody of the juvenile, the Secretary shall notify the juvenile and
13 the juvenile's parents, guardian, or custodian of the juvenile's
14 maximum commitment period. If the Secretary determines that the
15 juvenile's commitment needs to be continued beyond the maximum
16 commitment period, the Secretary shall notify the juvenile and the
17 juvenile's parents, guardian or custodian, in writing at least 15
18 days in advance of the end of the maximum commitment period, of the
19 additional specific commitment period proposed by the Secretary, the
20 basis for extending commitment period, and the plan for future
21 treatment and rehabilitation. The plan shall specify (i) the
22 specific goals and outcomes that require additional time for
23 treatment and rehabilitation of the juvenile; (ii) the specific
24 course of treatment and rehabilitation that will be implemented to
25 achieve the established goals and outcomes; and (iii) the efforts
26 that will be taken to assist the juvenile's family in creating an
27 environment that will increase the likelihood that the efforts to
28 treat and rehabilitate the juvenile will be successful upon release.



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S1260-ARU-014.1

1 Unless the juvenile or the juvenile's parents request a review by
2 the court of the Secretary's decision to extend the juvenile's
3 commitment beyond the maximum commitment period, the Secretary's
4 decision shall become the juvenile's new maximum commitment period.
5 After hearing, the court may modify the Secretary's decision. If
6 modified by the court, the juvenile's maximum commitment period may
7 only be modified further by order of the court."

SIGNED *W. J. [Signature]*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ASE-014.1

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Martin of Guilford

1 moves to amend the bill as amended by amendment number S1260-ASE-
2 014, adopted by the Committee on July 8, 1998
3 on page 181, lines 1 through 44,
4 by deleting those lines;
5
6 and on page 130, lines 34 through 38, by rewriting those lines to
7 read:

8
9 "(a)The court's and the Department's jurisdiction over a juvenile
10 who has been adjudicated delinquent may be extended beyond the
11 juvenile's eighteenth birthday until the juvenile reaches the age of
12 19 if the juvenile was committed to a training school for an offense
13 that would be a Class A, B1, B2, C, D, or E felony if committed by
14 an adult, and if the juvenile has not been released from the
15 training school on or before the juvenile's eighteenth birthday. If
16 the Department decides to extend jurisdiction over the juvenile
17 beyond the juvenile's eighteenth birthday, the Department must
18 notify the juvenile and the juvenile's parents, in writing, at least
19 30 days prior to the juvenile's eighteenth birthday the basis for
20 extending jurisdiction and the plan for future treatment and
21 rehabilitation. The plan shall specify (i) the specific goals and
22 outcomes that require additional time for treatment and
23 rehabilitation of the juvenile; (ii) the specific course of
24 treatment and rehabilitation that will be implemented to achieve the
25 established goals and outcomes; and (iii) the efforts that will be
26 taken to assist the juvenile's family in creating an environment
27 that will increase the likelihood that the efforts to treat and
28 rehabilitate the juvenile will be successful upon release. When



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S1260-ASE-014.1

1 extending jurisdiction, if appropriate, the Department has the
2 discretion to place the juvenile in a setting other than a training
3 school. If jurisdiction is extended beyond the juvenile's eighteenth
4 birthday in accordance with this subsection, the juvenile may be
5 released from training school at any time prior to the juvenile's
6 nineteenth birthday."

7 (b) The Secretary may modify the plan for care or treatment of the
8 juvenile prepared pursuant to G.S. 7B-2509."

9
10 and on page 127, lines 28 through 31, by deleting those lines and
11 renumbering the remainder of the section accordingly;

12
13 and on page 178, line 19, by rewriting the line to read:

14
15 "as the juvenile remains in the care of the Department. Any
16 determination that the juvenile should remain in the care of the
17 Department for an additional period of time shall be based on the
18 Secretary's determination that the juvenile requires additional
19 treatment or rehabilitation. The Secretary shall specify (i) the
20 specific goals and outcomes that require additional time for
21 treatment and rehabilitation of the juvenile; (ii) the specific
22 course of treatment and rehabilitation that will be implemented to
23 achieve the established goals and outcomes; and (iii) the efforts
24 that will be taken to assist the juvenile's family in creating an
25 environment that will increase the likelihood that the efforts to
26 treat and rehabilitate the juvenile will be successful upon release.
27 When the juvenile remains in care for an additional time, if
28 appropriate, the Department has the discretion to place the juvenile
29 in a setting other than a training school. If the";

30
31 and on page 179, line 8, by rewriting the line to read:

32 "post-release supervision at least 90 days prior to:";

33
34 and on page 179, lines 12 through 15, by rewriting those lines to
35 read:

36
37 "term, on the juvenile's eighteenth birthday, if the juvenile is
38 committed for an offense that would not be a Class A, B1, B2, C, D,
39 or E felony if committed by an adult or on or before the juvenile's
40 nineteenth birthday, if the juvenile is committed for an offense



NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ASE-014.1

- 1 that would be a Class A, B1, B2, C, D, or E felony if committed by
2 an adult.";
3
4 and on page 180, line 34, by rewriting the line to read:
5
6 "the juvenile was committed for an offense that would be a Class
7 A, B1, B2, C, D, or E felony if committed by an adult.";
8
9 and on page 180, lines 42 and 43, by rewriting those lines to read:
10
11 "Department after the juvenile's eighteenth birthday, except
12 pursuant to G.S. 7B-1602.";
13
14 and on page 182, line 1, by rewriting the line to read:
15
16 "§ 7b-2513. Transfer authority of the Governor."
17
18

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ASC-006.1

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Martin of Guilford

1 moves to amend the bill on page 251, between lines 23 and 24,
2 by inserting the following:
3 "Section 22D. There is established the Task Force on Racial
4 Minorities in the Juvenile Justice System. The Task Force shall be
5 composed of 18 members, as follows: the Secretary of the Department
6 of Juvenile Justice; the Secretary of the Department of Health and
7 Human Services; four members of the House of Representatives
8 appointed by the Speaker; four members of the Senate appointed by
9 the President Pro Tempore; four members appointed by the Chief
10 Justice of the North Carolina Supreme Court; and, four members
11 appointed by the Governor. The Governor shall designate the Chair.
12 All members of the Task Force shall be voting members. Vacancies in
13 the appointed membership shall be filled by the officer who made the
14 initial appointment. Staff to the Task Force shall be provided by
15 the Department of Juvenile Justice.
16 The Task Force shall study the over-representation of racial
17 minorities in the juvenile justice system. The Task Force shall
18 compare the dispositions for minority juveniles adjudicated
19 delinquent or undisciplined with the dispositions for non-minority
20 juveniles. The Task Force shall also compare the services made
21 available to minority and non-minority juveniles and their families.
22 To the extent that inequities are found, the Task Force shall make
23 recommendations, including any legislative proposals, as to how
24 those disparities should be addressed. The Task Force may hire an
25 outside consultant to assist it with its work.
26 The Task Force shall report annually, no later than February 1st,
27 to the Governor, Chief Justice, and the General Assembly, on any
28 findings, recommendations, or legislative proposals. The Task Force



NORTH CAROLINA GENERAL ASSEMBLY
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S1260-ASC-006.1

1 shall make its final report to the Governor, Chief Justice, and the
2 General Assembly no later than February 1, 2002, at which time, the
3 Task Force shall cease to exist.
4 Of the funds appropriated to the Department of Juvenile Justice,
5 up to two-hundred and fifty thousand dollars (\$250,000) may be used
6 to implement the provisions of this Section.

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

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S1260-ASE-007

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Moore

1 moves to amend the bill on page 163, line 22, by rewriting the line
2 to read:

3
4 "needs of the juvenile. In any delinquency case, within 30 days
5 of being adjudicated delinquent for committing an offense that
6 involves the possession, use, sale, or delivery of alcohol or a
7 controlled substance, the court shall require the juvenile to be
8 tested for the use of controlled substances or alcohol. The results
9 of the test shall be used for treatment purposes only.";

10
11 and on page 178, lines 15 and 16, by inserting between those lines
12 the following new subsection:

13
14 "(i) A juvenile who is committed to the Department for placement
15 in a training school shall be tested for the use of a controlled
16 substance or alcohol. The results of the test shall be incorporated
17 into the plan of care as provided in 7B-2509(f) and used for
18 treatment purposes only."

19
20

SIGNED *Le Moore*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1260-ARU-016

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Horton

- 1 moves to amend the bill on page 5, line 11,
- 2 by rewriting the line to read:
- 3 "supervision, and treatment of juveniles in juvenile
- 4 facilities, are"; and
- 5
- 6 on page 109, line 17,
- 7 by rewriting the line to read:
- 8 "(f) The burden in such proceedings shall be upon the petitioner
- 9 and all findings of fact shall be based on clear, cogent and"; and
- 10
- 11 on page 110, lines 20 through 22,
- 12 by deleting the lines and renumbering the remaining subdivisions
- 13 accordingly; and
- 14
- 15 on page 154, line 43 through page 155, line 1,
- 16 by rewriting the lines to read:
- 17 "the case in issue, when stated in a report by that
- 18 person, is admissible in"; and
- 19
- 20 on page 232, lines 4 and 5,
- 21 by rewriting the lines to read:
- 22 "PART IV. ALTERNATIVE LEARNING PROGRAMS ENCOURAGED".

SIGNED 
Amendment Sponsor



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of _____

S1260-ARV-004

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Ballance

1 moves to amend the bill on page 18, lines 11-20,
2 by rewriting those lines to read:
3 "(1) Fund programs that demonstrate effectiveness by preventing
4 delinquency and recidivism, and that have in place a plan to reduce
5 the number of minority youth who are committed to training school.
6 Programs that have proven to be ineffective shall not be funded;"
7
8 and on page 251, lines 23 and 24,
9 by adding between those lines the following:
10 "Section 22C. The Department of Juvenile Justice shall
11 study standard law enforcement and intake practices in the handling
12 and processing of juvenile delinquency cases. The Department shall
13 identify any disparities that appear to exist with regard to cases
14 involving minority juveniles, and shall make recommendations as to
15 how such disparities may be eliminated within the juvenile justice
16 system. The Department shall report its findings and
17 recommendations to the General Assembly by April 1, 1999."

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1260-ARV-005

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Blust

1 moves to amend the bill on page 154, lines 3-11,
2 by rewriting those lines to read:
3 "After notice, hearing, and a finding of probable cause the court
4 may, upon motion of the prosecutor, the juvenile's attorney, or upon
5 its own motion, transfer jurisdiction over a juvenile to superior
6 court if the juvenile was 10 years of age or older at the time the
7 juvenile allegedly committed an offense that would be a felony if
8 committed by an adult. If the juvenile was 13 years of age or older
9 at the time the offense was committed and the alleged felony
10 constitutes a Class A, B1, B2, C, D or E felony and the court finds
11 probable cause, the court shall transfer the case to the superior
12 court for trial as in the case of adults.";
13
14 and on page 153, lines 11 and 15,
15 and again on page 154, line 20,
16 by deleting the number "13" and substituting "10".

SIGNED John Blust
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____

10 w/rawn



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of _____

S1260-ARV-006

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Ballance

1 moves to amend the bill on page 206, lines 18-20,
2 by deleting those lines in their entirety;
3
4 and on page 207, lines 29,
5 by adding after the semicolon the word "and";
6
7 and on page 207, lines 30-31,
8 by rewriting those lines to read:
9 "(4) Court counselors."

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

11

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 7-9

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep. → MARTIN
Sen.)

amendment (S1260-ASE-014.1)

1 moves to amend the bill on page 1, lines 9-20

2 () WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 "When a juvenile is committed to the Department
5 for placement in a training school for an offense
6 that would be a Class A, B1, B2, C, D, or E
7 if committed by an adult, jurisdiction shall
8 continue until terminated by order of the court or
9 until the juvenile reaches the age of 19, whichever
10 occurs first. If the Department does not plan
11 to release the juvenile prior to the juvenile's
12 eighteenth birthday, the Department must
13 notify the juvenile and the juvenile's parents,
14 in writing, at least 30 days prior to the
15 juvenile's eighteenth birthday the basis for
16 continued custody and the plan for future
17 treatment and";

18
19 and on page 1, line 28, by deleting the word, "When";

SIGNED _____

ADOPTED FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) _____
) _____
Sen.) _____

1 moves to amend the bill on page _____, line _____

2 () WHICH CHANGES THE TITLE

3 by _____

4 and on page 2, lines 1 through 6, by
5 rewriting those lines to read:

6
7 "If appropriate, the Department may place
8 the juvenile in a setting other than training
9 school."

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED 

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1260-ARU-015

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Odom

1 moves to amend the bill, as amended by Amendment S1260-ASC-003.1,
2 on page 4, lines 13 and 14,
3 by inserting between the lines the following new subdivision to
4 read:

5 "(22a) Training school. -- A secure residential facility
6 authorized to provide long-term treatment,
7 education, and rehabilitative services for
8 delinquent juveniles committed by the court to
9 the Department of Juvenile Justice."; and

10
11 on page 14, lines 16 and 17,
12 by rewriting the lines to read:

13 "(11) To serve necessary court documents pertaining to
14 delinquent and undisciplined juvenile matters.
15 (11a) To assume custody of juveniles under the jurisdiction
16 of the court when necessary for the protection of the
17 public and the juvenile and necessary to carry out
18 the responsibilities of court counselors under this
19 section and under Chapter 7B of the General Statutes.
20 (11b) To use reasonable force and restraint necessary to
21 secure custody assumed under subdivision (11a) of
22 this section"; and

23
24 on page 129, lines 13 and 14,
25 by inserting between the lines the following new subdivision to
26 read:

27 "(27a) Training school. -- A secure residential facility
28 authorized to provide long-term treatment,



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1260-ASE-009

Date 7-9, 1998

Comm. Sub. [YES]
Amends Title []
S1260-CSSC-001

Senator Blust

1 moves to amend the bill on page 207, lines 4 and 5 by adding between
2 those lines the following new subsection:
3

4 "(f1) Notwithstanding the provisions of subsection (b) of this
5 section, an adjudication of delinquency shall be indexed by the
6 clerk of superior court in the regular public index to criminal
7 dispositions maintained under G.S. 7A-109. This subsection shall
8 apply only to an adjudication of delinquency for an offense that, if
9 committed by an adult, would be one of the following:

10
11
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28

- (1) Murder under G.S. 14-17;
- (2) A sex offense under Article 7A of Chapter 14;
- (3) Kidnapping under G.S. 14-39;
- (4) Robbery with a firearm or other dangerous weapon under G.S. 14-87;
- (5) Assault with a dangerous weapon with the intent to kill inflicting serious injury under G.S. 14-32(a);
- (6) Assault with a dangerous weapon with intent to kill under G.S. 14-32(c).

Upon motion of the juvenile or the district attorney, the judge may order the clerk not to index the juvenile's adjudication of delinquency if the interest of justice requires that the juvenile's adjudication be protected from public inspection."

and on page 208, lines 35 and 36 by rewriting those lines to read:



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 2 of _____

S1260-ASE-009

1 "prohibited except that:

2
3
4
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20

- (1) Publication of names and pictures of runaways is permitted with the permission of the parents.
- (2) Upon a determination by the district attorney for the jurisdiction that publication of the name and picture of the juvenile under investigation of an offense that would be a Class A, B, C, D, or E felony if committed by an adult is necessary to further the investigation, the juvenile's name and picture may be published to appropriate law enforcement agencies.
- (3) Upon a determination by the chief district court judge or a juvenile court judge for the jurisdiction that publication of the name and picture of the juvenile under investigation of an offense that would be a Class A, B, C, D, or E felony if committed by an adult is necessary to lead to the apprehension of a juvenile, the juvenile's name and picture may be published. "

SIGNED John Beust
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED Tabled _____

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 7-9-98

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.)~~) BALLANCE
Sen.)

1 moves to amend the bill on page 18, line 37

2 () WHICH CHANGES THE TITLE by adding after the period the

3 by Department following:

4 where statistics indicate an overrepresentation

5 of minority youth, the Secretary shall ensure

6 that ~~State-funded programs~~ ^{there is} have in place an

7 appropriate plan to reduce the number of minority youth

8 who are committed to training schools,

9 com

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED FAILED _____ TABLED _____

(Please type or use ballpoint pen)

①

EDITION No. _____

H. B. No. _____

DATE 7-9-98

S. B. No. 1260
S1260-CSSC-001
COMMITTEE SUBSTITUTE _____

Amendment No. _____
(to be filled in by
Principal Clerk)

Rep.) Kerr
Sen.) as amended by S1260-ARU-014.1,

1 moves to amend the bill on page 177, line 8

2 () WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 _____

5 "juvenile ~~and~~ No juvenile shall be committed to a

6 training school beyond the minimum six-month commitment

7 for a period greater than the maximum time an adult

8 could be incarcerated for the same offense except

9 when the Secretary, ^{pursuant to G.S. 7B-2510.1} determines that the juvenile's

10 commitment needs to be continued for an additional

11 period of time to continue care or treatment under

12 the plan of care or treatment developed under subsection

13 (f) of this section. ~~Within 30 days of returning custody~~

14 ~~of the juvenile, the Secretary shall notify the juvenile and~~

15 ~~the juvenile's parents, guardian, or custodian of the~~

16 ~~juvenile's maximum commitment period.~~" ; and

17 _____

18 _____

19 _____

SIGNED J. Kerr

ADOPTED FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

2

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

1 moves to amend the bill on page 179, line s 41 and 42

2 () WHICH CHANGES THE TITLE

3 by inserting between the lines the following new
4 statutory section to read:

5
6 "§ 7B-2510.1 Extended commitment for treatment.
7 If the Secretary determines that the juvenile's
8 commitment should be continued beyond the maximum
9 commitment period as set forth in G.S. 7B-2509(a),
10 the Secretary shall modify the plan of care or treatment
11 development pursuant to G.S. 7B-2509(f) to specify
12 (i) the specific goals and outcomes that require
13 additional time for care or treatment of the juvenile;
14 (ii) the specific course of treatment or care that
15 will be implemented to achieve the established goals and
16 outcomes; and (iii) the efforts that will be taken
17 to assist the juvenile's family in creating an environment
18 that will increase the likelihood that the efforts to
19 treat and rehabilitate the juvenile will be successful
upon release.

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

3

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Kern

1 moves to amend the bill on page _____, line _____

2 () WHICH CHANGES THE TITLE

3 by _____

4 The Secretary shall notify the juvenile and the
5 juvenile's parents, guardian, or custodian, in writing
6 at least 15 days in advance of the end of
7 the maximum commitment period, of the
8 additional specific commitment period proposed
9 by the Secretary, the basis for extending
10 commitment period, and the plan for future
11 care or treatment.

12 The juvenile and the juvenile's parents, guardian, or
13 custodian may request a review by the court of
14 the Secretary's decision to extend the juvenile's commitment
15 beyond the maximum commitment period, in which case the
16 court shall conduct a review hearing. The court may
17 modify the Secretary's decision and the juvenile's maximum
18 commitment period. If the juvenile or the juvenile's parents
19 do not request a review of the Secretary's decision, the
Secretary's decision shall become the juvenile's new
maximum commitment period.

SIGNED _____

[Signature]

ADOPTED _____

FAILED _____

TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of 1

S1260-ARH-008

Date 7-9, 1998

Comm. Sub. S1260-CSSC-001
Amends Title
S1260-ARH-007

Senator BLUST

1 moves to amend the amendment, S1260-ARH-007, on page 2, lines 8-9;
2 page 6, lines 13-14; page 9, line 6; and on page 12, line 7,
3 by deleting the phrase "teacher or other school personnel", and by
4 substituting the phrase "teacher, other school personnel, or
5 student".

6
7

SIGNED John Blust
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ Tabled _____
11-12



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1260

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1260-ASE-003

Date 7-9, 1998

Comm. Sub. [yes]
Amends Title []
S1260-CSSC-001

Senator Horton

1 moves to amend the bill on page 67, lines 11 and 12,
2 by inserting between those lines the following:
3

4 "For purposes of this subchapter, the provision of spiritual
5 treatment through prayer alone to a juvenile in accordance with a
6 recognized religious method of healing which has a reasonable,
7 proven record of success, in lieu of medical care, by the juvenile's
8 parent, guardian, or custodian, shall not be considered abusing or
9 neglecting such juvenile."
10

11 and on page 69 , lines 3 and 4, by inserting between those lines the
12 following:
13

14 "Nothing in this section shall be construed to require a priest,
15 rabbi, accredited christian science practitioner, clergyman, or
16 ordained minister of an established church to make the report
17 mandated under this section if such report would disclose matters
18 conveyed to the priest, rabbi, accredited christian science
19 practitioner, clergyman, or ordained minister of an established
20 church in a confession or other sacred or confidential communication
21 during the course of his or her ministerial duties."

SIGNED _____
Amendment Sponsor

SIGNED Horton
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Tuesday, July 14, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	1260	Juvenile Justice Reform Act	
		Draft Number:	PCS 9603
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Senate Judiciary 7/19

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Celeste Clinton

Sen. Cooper

Donice Harlow

Sen. Lucas

Janet Ross
Julia Kim

DOC DOC

Commissioner Ju. Crime & Justice

Marcia-Money
LAURENCE BERGMAN

Gov Com Ju. Crime & Justice

DOC

Danny Hallbrook

DOC

Greg Nieters

State Bd of Ed

Sharon Ross

MLU

Debbi Magner

Sentencing Commission

S. Katzenelson

" "

K. Horne

NCBA

Sharon Davis

NCAE

Kim Frick

DYS

Marta P. Swerzoff

YAIIO / DAA

Adam Solak

NCCAI

Paula A. Hall

Covenant w/NC's Children

Kate McShane

NC Center for Nonprofits

George Reed

NC Council of Churches

Stacey Parker

Sen. Barnight

Anne L. Edwards Christian Justice Commission Pub for NC

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

LARRY DIX	JSD/AOC
Bob Atkinson	AOC
Ed Taylor	JSD/AOC
Paul James	Gov. Office
Roberta Hadley	interna (unc - CH)
Melissa Lovell	DOJ

MINUTES
SENATE JUDICIARY COMMITTEE
July 14, 1998

The Senate Judiciary Committee met on Tuesday, July 14, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members were present.

Senator Cooper called the meeting to order and recognized Senator Rand to explain Senate Bill 1243 - AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND THE GOVERNOR'S CRIME COMMISSION.

Senator Rand moved to give the bill a favorable report. The motion carried by a majority voice vote.

Senator Odom was recognized to explain Senate Bill 1336 - AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR THE "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES AND CHILD CARE VEHICLES, AND TO PROVIDE FOR THE IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER 21 YEARS OF AGE; AND TO ELIMINATE THE INFRACTION TREATMENT OF PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES BY A 19 OR 20 YEAR OLD AND TO MAKE CONFORMING CHANGES.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 1336 for discussion. The motion carried by a majority voice vote.

Joe Dougdale, with the Department of Crime Control and Public Safety, was recognized to answer questions from the Committee.

After further discussion, Senator Cooper asked that the bill be brought back to the Committee for discussion at a future meeting.

Representative Hensley was recognized to explain House Bill 354 - AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN BOND FORFEITURE CASES.

Senator Rand moved to give the bill a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

AGENDA
SENATE JUDICIARY COMMITTEE
July 14, 1998

HB 354	Eliminate Certified Notice	Hensley
SB 1243	Clerk of Court on Commissions	Rand
SB 1244	IV-D UIFSA Cases/Represent.	Rand
SB 1336	1998 Gov. DWI Amendments	Odom



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Jo B. McCants, Committee Co-Counsel

RE: **SENATE BILL 1243- Clerks of Court on Commissions.**

Senate Bill 1243 would amend the authorizing legislation for the Sentencing and Policy Advisory Commission, the Criminal Justice Advisory Board, and the Governor's Crime Commission to add a clerk of superior court to each of the Commissions.

Senate Bill 1243 is a recommendation of the North Carolina Courts Commission.

Section 1 of this bill adds the President of the Association of Clerks of Superior Court or the President's designee to the Sentencing and Policy Advisory Commission membership.

Section 2 of this bill adds a clerk of superior court to the Criminal Justice Partnership Advisory Board. The Chief Justice of the North Carolina Supreme Court will appoint a clerk to serve a three year term.

Section 3 of this bill adds a clerk of superior court to the Governor's Crime Commission. The clerk will be a voting member of the Commission and appointed by the Governor based on a recommendation from the Chief Justice.

The bill becomes effective when it becomes law.

- 1 (9) The President of the North Carolina Association of Chiefs of
2 Police or his designee;
- 3 (10) One member of the public at large, who is not currently licensed
4 to practice law in North Carolina, to be appointed by the
5 Governor;
- 6 (11) One member to be appointed by the Lieutenant Governor;
- 7 (12) Three members of the House of Representatives, to be appointed
8 by the Speaker of the House;
- 9 (13) Three members of the Senate, to be appointed by the President
10 Pro Tempore of the Senate;
- 11 (14) The President Pro Tempore of the Senate shall appoint the
12 representative of the North Carolina Community Sentencing
13 Association that is recommended by the President of that
14 organization;
- 15 (15) The Speaker of the House of Representatives shall appoint the
16 member of the business community that is recommended by the
17 President of the North Carolina Retail Merchants Association;
- 18 (16) The Chief Justice of the North Carolina Supreme Court shall
19 appoint the criminal defense attorney that is recommended by the
20 President of the North Carolina Academy of Trial Lawyers;
- 21 (17) The President of the Conference of District Attorneys or his
22 designee;
- 23 (18) The Lieutenant Governor shall appoint the member of the North
24 Carolina Victim Assistance Network that is recommended by the
25 President of that organization;
- 26 (19) A rehabilitated former prison inmate, to be appointed by the
27 Chairman of the Commission;
- 28 (20) The President of the North Carolina Association of County
29 Commissioners or his designee;
- 30 (21) The Governor shall appoint the member of the academic
31 community, with a background in criminal justice or corrections
32 policy, that is recommended by the President of The University of
33 North Carolina;
- 34 (22) The Attorney General, or a member of his staff, to be appointed
35 by the Attorney General;
- 36 (23) The Governor shall appoint the member of the North Carolina Bar
37 Association that is recommended by the President of that
38 organization.
- 39 (24) A member of the Justice Fellowship Task Force, who is a resident
40 of North Carolina, to be appointed by the Chairman of the
41 Commission.
- 42 (25) The President of the Association of Clerks of Superior Court of
43 North Carolina, or his designee.

1 The Commission shall have its initial meeting no later than September 1, 1990, at
2 the call of the Chairman. The Commission shall meet a minimum of four regular
3 meetings each year. The Commission may also hold special meetings at the call of
4 the Chairman, or by any four members of the Commission, upon such notice and in
5 such manner as may be fixed by the rules of the Commission. A majority of the
6 members of the Commission shall constitute a quorum."

7 Section 2. G.S. 143B-273.6 reads as rewritten:

8 **"§ 143B-273.6. State Criminal Justice Partnership Advisory Board; members; terms;
9 chairperson.**

10 (a) There is created the State Criminal Justice Partnership Advisory Board. The
11 State Board shall act as an advisory body to the Secretary with regards to this Article.
12 The State Board shall consist of ~~24~~ 22 members as follows:

- 13 (1) A member of the Senate.
- 14 (2) A member of the House of Representatives.
- 15 (3) A judge of the Superior Court.
- 16 (4) A judge of the district court.
- 17 (5) A district attorney.
- 18 (6) A criminal defense attorney.
- 19 (7) A county sheriff.
- 20 (8) A chief of a city police department.
- 21 (9) Two county commissioners, one from a predominantly urban
22 county and one from a predominantly rural county.
- 23 (10) A representative of an existing community-based corrections
24 program.
- 25 (11) A member of the public who has been the victim of a crime.
- 26 (12) A rehabilitated ex-offender.
- 27 (13) A member of the business community.
- 28 (14) Three members of the general public, one of whom is a person
29 recovering from chemical dependency or who is a previous
30 consumer of substance abuse treatment services.
- 31 (15) A victim service provider.
- 32 (16) A member selected from each of the following service areas:
33 mental health, substance abuse, and employment and training.
- 34 (17) A clerk of superior court.

35 (b) The membership of the State Board shall be selected as follows:

- 36 (1) The Governor shall appoint the following members: the county
37 sheriff, the chief of a city police department, the member of the
38 public who has been the victim of a crime, a rehabilitated ex-
39 offender, the members selected from each of the service areas.
- 40 (2) The Lieutenant Governor shall appoint the following members: the
41 member of the business community, one member of the general
42 public who is a person recovering from chemical dependency or
43 who is a previous consumer of substance abuse treatment services,
44 the victim service provider.

1 (3) The Chief Justice of the North Carolina Supreme Court shall
2 appoint the following members: the superior court judge, the
3 district court judge, the district attorney, the clerk of superior
4 court, the criminal defense attorney, the representative of an
5 existing community-based corrections program.

6 (4) The President Pro Tempore of the Senate shall appoint the
7 following members: the member of the Senate, the county
8 commissioner from a predominantly urban county, one member of
9 the general public.

10 (5) The Speaker of the House shall appoint the following members:
11 the member of the House of Representatives, the county
12 commissioner from a predominantly rural county, one member of
13 the general public.

14 In appointing the members of the State Board, the appointing authorities shall
15 make every effort to ensure fair geographic representation of the State Board
16 membership and that minority persons and women are fairly represented.

17 (c) The initial members shall serve staggered terms, one-third shall be appointed
18 for a term of one year, one-third shall be appointed for a term of two years, and one-
19 third shall be appointed for a term of three years. The members identified in
20 subdivisions (1) through (7) of subsection (a) of this section shall be appointed
21 initially for a term of one year. The members identified in subdivisions (8) through
22 (13) in subsection (a) of this section shall be appointed initially for a term of two
23 years. The members identified in subdivisions (14) through (16) of subsection (a) of
24 this section shall each be appointed for a term of three years. The additional
25 member identified in subdivision (17) in subsection (a) of this section shall be
26 appointed initially for a term of three years.

27 At the end of their respective terms of office their successors shall be appointed for
28 terms of three years. A vacancy occurring before the expiration of the term of office
29 shall be filled in the same manner as original appointments for the remainder of the
30 term. Members may be reappointed without limitation.

31 (d) Each appointing authority shall have the power to remove a member it
32 appointed from the State Board for misfeasance, malfeasance, or nonfeasance.

33 (e) The members of the State Board shall, within 30 days after the last initial
34 appointment is made, meet and elect one member as chairman and one member as
35 vice-chairman.

36 (f) The State Board shall meet at least quarterly and may also hold special
37 meetings at the call of the chairman. For purposes of transacting business, a majority
38 of the membership shall constitute a quorum.

39 (g) Any member who has an interest in a governmental agency or unit or private
40 nonprofit agency which is applying for a State-County Criminal Justice Partnership
41 grant or which has received a grant and which is the subject of an inquiry or vote by
42 a grant oversight committee, shall publicly disclose that interest on the record and
43 shall take no part in discussion or have any vote in regard to any matter directly
44 affecting that particular grant applicant or grantee. 'Interest' in a grant applicant or

1 grantee shall mean a formal and direct connection to the entity, including, but not
2 limited to, employment, partnership, serving as an elected official, board member,
3 director, officer, or trustee, or being an immediate family member of someone who
4 has such a connection to the grant applicant or grantee.

5 (h) The members of the State Board shall serve without compensation but shall be
6 reimbursed for necessary travel and subsistence expenses."

7 Section 3. G.S. 143B-478 reads as rewritten:

8 "**§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings,**
9 **etc.**

10 (a) There is hereby created the Governor's Crime Commission of the Department
11 of Crime Control and Public Safety. The Commission shall consist of 34 voting
12 members and six nonvoting members. The composition of the Commission shall be
13 as follows:

14 (1) The voting members shall be:

15 a. The Governor, the Chief Justice of the Supreme Court of
16 North Carolina (or his alternate), the Attorney General, the
17 Director of the Administrative Office of the Courts, the
18 Secretary of the Department of Human Resources, the
19 Secretary of the Department of Correction, and the
20 Superintendent of Public Instruction;

21 b. A judge of superior court, a judge of district court
22 specializing in juvenile matters, a chief district court judge, a
23 clerk of superior court, and a district attorney;

24 c. A defense attorney, three sheriffs (one of whom shall be
25 from a 'high crime area'), three police executives (one of
26 whom shall be from a 'high crime area'), six citizens (two
27 with knowledge of juvenile delinquency and the public
28 school system, two of whom shall be under the age of 21 at
29 the time of their appointment, one representative of a
30 'private juvenile delinquency program,' and one in the
31 discretion of the Governor), three county commissioners or
32 county officials, and three mayors or municipal officials;

33 d. Two members of the North Carolina House of
34 Representatives and two members of the North Carolina
35 Senate.

36 (2) The nonvoting members shall be the Director of the State Bureau
37 of Investigation, the Secretary of the Department of Crime Control
38 and Public Safety, the Director of the Division of Youth Services
39 of the Department of Human Resources, the Administrator for
40 Juvenile Services of the Administrative Office of the Courts, the
41 Director of the Division of Prisons and the Director of the Division
42 of Adult Probation and Paroles.

43 (b) The membership of the Commission shall be selected as follows:

- 1 (1) The following members shall serve by virtue of their office: the
2 Governor, the Chief Justice of the Supreme Court, the Attorney
3 General, the Director of the Administrative Office of the Courts,
4 the Secretary of the Department of Human Resources, the
5 Secretary of the Department of Correction, the Director of the
6 State Bureau of Investigation, the Secretary of the Department of
7 Crime Control and Public Safety, the Director of the Division of
8 Prisons, the Director of the Division of Adult Probation and
9 Paroles, the Director of the Division of Youth Services, the
10 Administrator for Juvenile Services of the Administrative Office of
11 the Courts, and the Superintendent of Public Instruction. Should
12 the Chief Justice of the Supreme Court choose not to serve, his
13 alternate shall be selected by the Governor from a list submitted by
14 the Chief Justice which list must contain no less than three
15 nominees from the membership of the Supreme Court.
- 16 (2) The following members shall be appointed by the Governor: the
17 district attorney, the defense attorney, the three sheriffs, the three
18 police executives, the six citizens, the three county commissioners
19 or county officials, the three mayors or municipal officials.
- 20 (3) The following members shall be appointed by the Governor from a
21 list submitted by the Chief Justice of the Supreme Court, which list
22 shall contain no less than three nominees for each position and
23 which list must be submitted within 30 days after the occurrence of
24 any vacancy in the judicial membership: the judge of superior
25 court, the clerk of superior court, the judge of district court
26 specializing in juvenile matters, and the chief district court judge.
- 27 (4) The two members of the House of Representatives provided by
28 subdivision (a)(1)d. of this section shall be appointed by the
29 Speaker of the House of Representatives and the two members of
30 the Senate provided by subdivision (a)(1)d. of this section shall be
31 appointed by the President Pro Tempore of the Senate. These
32 members shall perform the advisory review of the State plan for
33 the General Assembly as permitted by section 206 of the Crime
34 Control Act of 1976 (Public Law 94-503).
- 35 (5) The Governor may serve as chairman, designating a vice-chairman
36 to serve at his pleasure, or he may designate a chairman and
37 vice-chairman both of whom shall serve at his pleasure.
- 38 (c) The initial members of the Commission shall be those appointed pursuant to
39 subsection (b) above, which appointments shall be made by March 1, 1977. The
40 terms of the present members of the Governor's Commission on Law and Order shall
41 expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint
42 members, other than those serving by virtue of their office, to serve staggered terms;
43 seven shall be appointed for one-year terms, seven for two-year terms, and seven for
44 three-year terms. At the end of their respective terms of office their successors shall

1 be appointed for terms of three years and until their successors are appointed and
2 qualified. The Commission members from the House and Senate shall serve two-year
3 terms effective March 1, of each odd-numbered year; and they shall not be
4 disqualified from Commission membership because of failure to seek or attain
5 reelection to the General Assembly, but resignation or removal from office as a
6 member of the General Assembly shall constitute resignation or removal from the
7 Commission. Any other Commission member no longer serving in the office from
8 which he qualified for appointment shall be disqualified from membership on the
9 Commission. Any appointment to fill a vacancy on the Commission created by the
10 resignation, dismissal, death, disability, or disqualification of a member shall be for
11 the balance of the unexpired term.

12 (d) The Governor shall have the power to remove any member from the
13 Commission for misfeasance, malfeasance or nonfeasance.

14 (e) The Commission shall meet quarterly and at other times at the call of the
15 chairman or upon written request of at least eight of the members. A majority of the
16 voting members shall constitute a quorum for the transaction of business."

17 Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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D

S1336-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1336
THIS IS A DRAFT 13-JUL-98 23:37:35
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 1998 Gov. DWI Amendments.

(Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI
3 TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL
4 OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER
5 RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL
6 DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES AND
7 CHILD CARE VEHICLES, AND TO PROVIDE FOR IMMEDIATE
8 ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER 21
9 YEARS OF AGE; AND TO ELIMINATE THE INFRACTION TREATMENT OF
10 PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES BY A 19 OR 20
11 YEAR OLD AND TO MAKE CONFORMING CHANGES.

12 The General Assembly of North Carolina enacts:

13 PART I. DWI FORFEITURE REVISIONS.

14 Section 1. G.S. 20-4.01(24a) reads as rewritten:

15 "(24a) Offense Involving Impaired Driving. -- Any of
16 the following offenses:

- 17 a. Impaired driving under G.S. 20-138.1.
18 b. Death by vehicle under G.S. 20-141.4 when
19 conviction is based upon impaired driving or a
20 substantially equivalent offense under
21 previous law.

- 1 c. ~~Second~~ First or second degree murder under
2 G.S. 14-17 or involuntary manslaughter under
3 G.S. 14-18 when conviction is based upon
4 impaired driving or a substantially equivalent
5 offense under previous law.
- 6 d. An offense committed in another jurisdiction
7 substantially equivalent to the offenses in
8 subparagraphs a through c.
- 9 e. A repealed or superseded offense substantially
10 equivalent to impaired driving, including
11 offenses under former G.S. 20-138 or G.S. 20-
12 139.
- 13 f. Impaired driving in a commercial motor vehicle
14 under G.S. 20-138.2, except that convictions
15 of impaired driving under G.S. 20-138.1 and
16 G.S. 20-138.2 arising out of the same
17 transaction shall be considered a single
18 conviction of an offense involving impaired
19 driving for any purpose under this Chapter.
- 20 g. Habitual impaired driving under G.S. 20-138.5.
21 A conviction under former G.S. 20-140(c) is
22 not an offense involving impaired driving."

23 Section 2. G.S. 20-28.2 reads as rewritten:

24 "§ 20-28.2. Forfeiture of motor vehicle for impaired driving
25 after impaired driving license revocation.

26 (a) Meaning of "Impaired Driving License Revocation". -- The
27 revocation of a person's ~~driver's~~ drivers license is an impaired
28 driving license revocation if the revocation is pursuant to:

- 29 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-
30 17(a)(2), 20-17(a)(12), ~~or 20-17.2; 20-17.2, or 20-~~
31 138.5; or
- 32 (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-
33 17(a)(9), or 20-17(a)(11), if the offense involves
34 impaired driving.

35 (a1) ~~{Definitions.}~~ Definitions. -- As used in this section
36 and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6, 20-28.7, 20-~~
37 28.8, and 20-28.9, the following terms mean:

38 (1) Acknowledgment. -- A written document acknowledging
39 that:

- 40 a. The motor vehicle was operated by a person
41 charged with an offense involving impaired
42 driving while that person's drivers license
43 was revoked as a result of a prior impaired
44 drivers license revocation;

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- b. If the motor vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the motor vehicle is subject to impoundment and forfeiture; and
- c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Fair market value. -- The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent Party owner. -- A motor vehicle ~~owner who~~ owner:

- a. ~~Did not~~ Who did not know and had no reason to know that the defendant's drivers license was revoked;
- b. ~~Knew~~ Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;
- c. Whose vehicle was reported stolen;
- d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;
- e. Who is in the business of renting vehicles, the driver is not listed as an authorized driver on the rental contract; or
- f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance company. -- Any insurance company that has

- 1 coverage on or
2 is otherwise
3 liable for
4 repairs or
5 damages to the
6 motor vehicle at
7 the time of the
8 seizure.
- 9 (2b) Insurance proceeds. -- Proceeds paid under an
10 insurance policy for damage to a seized motor
11 vehicle less any payments actually paid to valid
12 lienholders and for towing and storage costs
13 incurred for the motor vehicle after the time the
14 motor vehicle became subject to seizure.
- 15 (3) Lienholder. -- A person who holds a perfected
16 security interest in a motor vehicle at the time of
17 seizure.
- 18 (3a) Motor vehicle owner. -- A person in whose name a
19 registration card or certificate of title for a
20 motor vehicle is issued at the time of seizure.
- 21 (4) Order of Forfeiture. -- An order by the court which
22 terminates the rights and ownership interest of a
23 motor vehicle owner in a motor vehicle and any
24 insurance proceeds or proceeds of sale in
25 accordance with G.S. 20-28.2.
- 26 ~~(5) Possessory Lien.~~ -- ~~A lien for all costs and fees~~
27 ~~associated with the towing, storage, or sale of a~~
28 ~~vehicle pursuant to this section. This lien shall~~
29 ~~have priority over perfected and unperfected~~
30 ~~security interests. Storage fees subject to this~~
31 ~~lien shall not exceed five dollars (\$5.00) per day.~~
- 32 (6) Registered Owner. -- A person in whose name a
33 registration card for a motor vehicle is issued,
34 issued at the time of seizure.
- 35 ~~(7) Vehicle Owner.~~ -- ~~A person in whose name a~~
36 ~~registration card or certificate of title for a~~
37 ~~motor vehicle is issued.~~
- 38 (b) When Motor Vehicle Becomes Property Subject to Order of
39 Forfeiture. -- If at a sentencing hearing conducted pursuant to
40 G.S. 20-179 or 20-138.5 the judge determines that the grossly
41 aggravating factor described in G.S. 20-179(c)(2) applies, for
42 the underlying offense involving impaired driving, at a separate
43 hearing after conviction of the defendant, or at a forfeiture
44 hearing held at least 60 days after the defendant failed to

1 appear at the scheduled trial for the underlying offense and the
2 defendant's order of arrest for failing to appear has not been
3 set aside, the judge determines by the greater weight of the
4 evidence that the defendant is guilty of an offense involving
5 impaired driving and that the defendant's license was revoked
6 pursuant to an impaired driving license revocation as defined in
7 subsection (a) of this section, the motor vehicle that was
8 driven by the defendant at the time the defendant committed the
9 offense of impaired driving becomes property subject to an order
10 of forfeiture.

11 (c) Duty of Prosecutor to Notify Possible Innocent Parties. --
12 In any case in which a prosecutor determines that a motor vehicle
13 driven by a defendant may be subject to forfeiture under this
14 ~~section,~~ section and the motor vehicle has not been permanently
15 released to a nondefendant vehicle owner pursuant to G.S. 20-
16 28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a
17 lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall
18 determine the identity of every vehicle owner. The prosecutor
19 shall also determine if there are any lienholders noted on the
20 vehicle's certificate of title. The State shall notify the
21 defendant, each motor vehicle owner, and each lienholder that the
22 motor vehicle may be subject to forfeiture and that the
23 defendant, motor vehicle owner, or the lienholder may intervene
24 to protect that person's interest. The notice may be served by
25 any means reasonably likely to provide actual notice, and shall
26 be served at least fourteen 10 days before the hearing at which
27 an order of forfeiture may be entered.

28 (c1) Motor Vehicles Involved in Accidents. -- If a motor
29 vehicle subject to forfeiture was damaged while the defendant
30 operator was committing the underlying offense involving impaired
31 driving, or was damaged incident to the seizure of the motor
32 vehicle, the Division shall determine the name of any insurance
33 companies that are the insurers of record with the Division for
34 the motor vehicle at the time of the seizure or that may
35 otherwise be liable for repair to the motor vehicle. In any case
36 where a seized motor vehicle was involved in an accident, the
37 Division shall notify the insurance companies that the claim for
38 insurance proceeds for damage to the seized motor vehicle shall
39 be paid to the clerk of superior court of the county where the
40 motor vehicle was seized to be held and disbursed pursuant to
41 further orders of the court. Any insurance company that receives
42 written or other actual notice of seizure pursuant to this
43 section shall not be relieved of any legal obligation under any
44 contract of insurance unless the claim for property damage to the

1 seized motor vehicle minus the policy owner's deductible is paid
2 directly to the clerk of court. The insurance company paying
3 insurance proceeds to the clerk of court pursuant to this section
4 shall be immune from suit by the motor vehicle owner for any
5 damages alleged to have occurred as a result of the motor vehicle
6 seizure. The proceeds shall be held by the clerk. The clerk
7 shall disburse the insurance proceeds pursuant to further orders
8 of the court.

9 ~~(d) Duty of Judge. Forfeiture Hearing. -- The trial judge~~
10 Unless a motor vehicle that has been seized pursuant to G.S. 20-
11 28.3 has been permanently released to an innocent owner pursuant
12 to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-
13 28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the
14 court shall conduct a hearing on the forfeiture of the motor
15 vehicle. The hearing may be held at the sentencing hearing on the
16 operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5
17 shall determine if the vehicle is subject to forfeiture under
18 this section, underlying offense involving impaired driving, at a
19 separate hearing after conviction of the defendant, or at a
20 separate forfeiture hearing held not less than 60 days after the
21 defendant failed to appear at the scheduled trial for the
22 underlying offense and the defendant's order of arrest for
23 failing to appear has not been set aside. - If at the sentencing
24 hearing, or at a subsequent forfeiture hearing, the judge
25 determines that the requirements of subsections (a) through (c)
26 of this section exist and the defendant was the only motor
27 vehicle owner at the time of the offense, motor vehicle is
28 subject to forfeiture pursuant to this section and proper notice
29 of the hearing has been given, the judge shall order the motor
30 vehicle forfeited. If at the sentencing hearing or at a
31 subsequent forfeiture hearing, the judge determines that the
32 requirements of subsections (a) through (c) of this section exist
33 and the defendant was not the only vehicle owner at the time of
34 the offense, motor vehicle is subject to forfeiture pursuant to
35 this section and proper notice of the hearing has been given, the
36 judge shall order the motor vehicle forfeited unless another
37 motor vehicle owner establishes, by the greater weight of the
38 evidence, that such motor vehicle owner is an innocent party
39 owner as defined by subdivision (a1)(2) of in this section, in
40 which case the trial judge shall order the motor vehicle released
41 to the innocent party vehicle owner pursuant to the provisions of
42 subsection (e) of this section. In any case where the motor
43 vehicle is ordered forfeited, the judge shall either: shall:

1 ~~(3) The payment of towing and storage fees; fees,~~
2 ~~except in the case of release to an innocent~~
3 ~~vehicle owner; and~~

4 (4) The execution of an acknowledgment as defined in
5 subdivision (a1)(1) of this section.

6 If the nondefendant owner is a lessor, the release shall also
7 be conditioned upon the lessor agreeing not to sell, give, or
8 otherwise transfer possession of the forfeited motor vehicle to
9 the defendant or any person acting on the defendant's behalf. A
10 lessor who refuses to sell, give, or transfer possession of a
11 seized motor vehicle to the defendant or any person acting on the
12 behalf of the defendant shall not be liable for damages arising
13 out of the refusal.

14 No motor vehicle subject to forfeiture under this section shall
15 be released to a nondefendant motor vehicle owner if the records
16 of the Division indicate the motor vehicle owner had previously
17 signed an acknowledgment, as required by this section, and the
18 same person was operating the motor vehicle while that person's
19 license was revoked unless the innocent ~~vehicle~~ owner shows by
20 the greater weight of the evidence that the motor vehicle owner
21 has taken all reasonable precautions to prevent the use of the
22 motor vehicle by this particular person and immediately reports,
23 upon discovery, any unauthorized use to the appropriate law
24 enforcement agency. A determination by the court at the
25 forfeiture hearing held pursuant to subsection (d) of this
26 section that the petitioner is not an innocent owner is a final
27 judgment and is immediately appealable to the Court of Appeals.

28 (f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the
29 trial judge shall order a forfeited motor vehicle released to the
30 lienholder upon payment of all towing and storage charges
31 incurred as a result of the seizure of the motor vehicle if the
32 judge determines, by the greater weight of the evidence, that:

33 (1) The lienholder's interest is equal to or greater
34 than the fair market value of the vehicle; has been
35 perfected and appears on the title to the forfeited
36 vehicle;

37 (2) The lienholder agrees not to sell, give, or
38 otherwise transfer possession of the forfeited
39 motor vehicle to the defendant or to the motor
40 vehicle owner who owned the motor vehicle
41 immediately prior to forfeiture, or any person
42 acting on the defendant's or motor vehicle owner's
43 behalf; and

- 1 (3) The forfeited motor vehicle had not previously been
2 released to the ~~lienholder; and~~ lienholder.
3 ~~(4) The lienholder pays, in full, any towing and~~
4 ~~storage costs incurred as a result of the seizure~~
5 ~~of the vehicle. The owner is in default under the~~
6 ~~terms of the security instrument evidencing the~~
7 ~~interest of the lienholder and as a consequence of~~
8 ~~the default the lienholder is entitled to~~
9 ~~possession of the motor vehicle; and~~
10 (5) The lienholder agrees to sell the motor vehicle in
11 accordance with the terms of its agreement and
12 pursuant to the provisions of Part 5 of Article 9
13 of Chapter 25 of the General Statutes. Upon the
14 sale of the motor vehicle, the lienholder will pay
15 to the clerk of court of the county in which the
16 vehicle was forfeited all proceeds from the sale,
17 less the amount of the lien in favor of the
18 lienholder, and any towing and storage costs paid
19 by the lienholder.

20 A lienholder who refuses to sell, give, or transfer possession of
21 a forfeited motor vehicle to the defendant, the vehicle owner who
22 owned the motor vehicle immediately prior to forfeiture, or any
23 person acting on the behalf of the defendant or motor vehicle
24 owner shall not be liable for damages arising out of such
25 refusal. The defendant, the motor vehicle owner who owned the
26 motor vehicle immediately prior to forfeiture, and any person
27 acting on the defendant's or motor vehicle owner's behalf are
28 prohibited from purchasing the motor vehicle at any sale
29 conducted by the lienholder.
30

31 ~~(g) Possessory Lien. -- The entity that tows or stores the~~
32 ~~motor vehicle, other than the county school board, shall be~~
33 ~~entitled to a possessory lien as defined in C.S. 28.2(a)(5)."~~

34 Section 3. G.S. 20-28.3 reads as rewritten:

35 "§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles
36 for offenses involving impaired driving while license revoked.

37 (a) {Vehicles Subject to Seizure.} Motor Vehicles Subject to
38 Seizure. -- A motor vehicle that is driven by a person in
39 violation of C.S. 20-138.1 or C.S. 20-138.5 who is charged with
40 an offense involving impaired driving is subject to seizure if at
41 the time of the violation the drivers license of the person
42 driving the motor vehicle was revoked as a result of a prior
43 impaired driving license revocation as defined in G.S. 20-
44 28.2(a).

1 (b) Duty of Officer. -- If the charging officer has probable
2 cause to believe that a motor vehicle driven by the defendant may
3 be subject to forfeiture under this section, the officer shall
4 seize the motor vehicle and have it impounded. If the officer
5 determines prior to seizure that the motor vehicle had been
6 reported stolen or that the motor vehicle was a rental vehicle
7 driven by a person not listed as an authorized driver on the
8 rental contract, the officer shall not seize the motor vehicle.
9 Probable cause may be based on the officer's personal knowledge,
10 reliable information conveyed by another officer, records of the
11 Division, or other reliable source. ~~The officer shall cause to be~~
12 ~~issued written notification of impoundment to any vehicle owner~~
13 ~~who was not operating or present in the vehicle at the time of~~
14 ~~the offense. This notice shall be sent by first-class mail to the~~
15 ~~most recent address contained in the Division records. This~~
16 ~~written notification shall inform the vehicle owner(s) that the~~
17 ~~vehicle has been impounded, shall state the reason for the~~
18 ~~impoundment and the procedure for requesting release of the~~
19 ~~vehicle. The seizing officer shall notify the Division and the~~
20 agency designated under subsection (b1) of this section of the
21 seizure in accordance with procedures established by the
22 Division and the agency designated under subsection
23 (b1) of this section. Within 72 hours of the seizure of the
24 vehicle the officer shall also cause notice of the impoundment
25 and intent to forfeit the vehicle to be given to any lienholder
26 of record with the Division.

27 (b1) Notification of Impoundment. -- Within 48 hours of
28 receipt of the notice of seizure, an agency designated by the
29 Governor shall issue written notification of impoundment to any
30 lienholder of record and to any motor vehicle owner who was not
31 operating the motor vehicle at the time of the offense. This
32 notice shall be sent by first-class mail to the most recent
33 address contained in the Division's records. If the motor
34 vehicle is registered in another state, notice shall be sent to
35 the address shown on the records of the state where the motor
36 vehicle is registered. This written notification shall provide
37 notice that the motor vehicle has been seized, state the reason
38 for the seizure and the procedure for requesting release of the
39 motor vehicle. Additionally, if the motor vehicle was damaged
40 while the defendant operator was committing an offense involving
41 impaired driving or incident to the seizure, the agency shall
42 issue written notification of the seizure to the owner's
43 insurance company of record and to any other insurance companies
44 that may be insuring other motor vehicles involved in the

1 accident. The Division shall prohibit title to a seized motor
2 vehicle from being transferred by a motor vehicle owner unless
3 authorized by court order.

4 (c) Review by Magistrate. -- Upon ~~seizing~~ determining that
5 there is probable cause for seizing a motor vehicle, the seizing
6 officer shall present to a magistrate within the county where the
7 vehicle was seized driver was charged an affidavit of impoundment
8 setting forth the basis upon which the motor vehicle has been or
9 will be seized for forfeiture. The magistrate shall review the
10 affidavit of impoundment and if the magistrate determines the
11 requirements of this section have been met, shall order the motor
12 vehicle held. The magistrate may request additional information
13 and may hear from the ~~operator~~ defendant if the ~~operator~~
14 defendant is present. If the magistrate determines the
15 requirements of this section have not been met, the magistrate
16 shall order the motor vehicle released to a motor vehicle owner
17 upon payment of towing and storage fees. If the motor vehicle
18 has not yet been seized, and the magistrate determines that
19 seizure is appropriate, the magistrate shall issue an order of
20 seizure of the motor vehicle. The magistrate shall provide a
21 copy of the order of seizure to the clerk of court. The clerk
22 shall provide copies of the order of seizure to the district
23 attorney and the attorney for the county board of education.

24 (c1) Effecting an Order of Seizure. -- An order of seizure
25 shall be valid anywhere in the State. Any officer with
26 territorial jurisdiction and who has subject matter jurisdiction
27 for violations of Chapter 20 of the General Statutes, may use
28 such force as may be reasonable to seize the motor vehicle and to
29 enter upon the property of the defendant to accomplish the
30 seizure. An officer who has probable cause to believe the motor
31 vehicle is concealed or stored on private property of a person
32 other than the defendant may obtain a search warrant to enter
33 upon that property for the purpose of seizing the motor vehicle.

34 (d) Custody of Motor Vehicle. -- ~~The~~ Unless the motor vehicle
35 is towed pursuant to a statewide or regional contract, or a
36 contract with the county board of education, the seized motor
37 vehicle shall be towed by a commercial towing company designated
38 by the law enforcement agency that seized the motor vehicle. ~~to~~
39 a location designated by the county school board for the county
40 in which the operator of the vehicle is charged and Seized motor
41 vehicles not towed pursuant to a statewide or regional contract
42 or a contract with a county board of education shall be retrieved
43 from the commercial towing company within a reasonable time, not
44 to exceed 10 days, by the county board of education or their

1 agent who must pay towing and storage fees to the commercial
2 towing company when the motor vehicle is retrieved. If either a
3 statewide or regional contractor, or the county board of
4 education, choose to contract for local towing services, all
5 towing companies on the towing list for each law enforcement
6 agency with jurisdiction within the county shall be given written
7 notice and an opportunity to submit proposals prior to a contract
8 for local towing services being awarded. Upon seizure, the motor
9 vehicle is placed under the constructive possession of the school
10 board county board of education for the county in which the
11 operator of the vehicle is charged pending release or sale. Each
12 Absent a statewide or regional contract that provides otherwise,
13 each county school board board of education may elect to have
14 seized motor vehicles stored on property owned or leased by the
15 school county board of education and charge ~~no~~ a reasonable fee
16 for ~~storage.~~ storage, not to exceed ten dollars (\$10.00) per day.
17 In the alternative, the county school board board of education
18 may contract with a commercial towing and storage facility or
19 other private entity for the ~~storage~~ towing, storage and disposal
20 of seized motor vehicles, and a storage fee of not more than five
21 ten dollars ~~(\$5.00)~~ (\$10.00) per day may be charged. Except for
22 gross negligence or intentional misconduct, the county board of
23 education, or any of its employees, shall not be liable to the
24 owner or lienholder for damage to or loss of the motor vehicle
25 or its contents, or to the owner of personal property in a seized
26 vehicle, during the time the motor vehicle is being towed or
27 stored pursuant to this subsection.

28 (e) Release of Motor Vehicle Pending Trial. -- A motor vehicle
29 owner, ~~or a lienholder of a motor vehicle,~~ other than the driver
30 at the time of the underlying offense resulting in the seizure,
31 may apply to the clerk of superior court in the county where the
32 charges are pending for pretrial release of the motor vehicle.

33 The clerk shall release the motor vehicle to a qualified
34 nondefendant motor vehicle owner ~~or a lienholder~~ conditioned upon
35 payment of all towing and storage charges incurred as a result of
36 seizure and impoundment of the motor vehicle under the following
37 conditions:

- 38 (1) The motor vehicle has been ~~stored~~ seized for not
39 less than 24 hours;
- 40 ~~(2) All towing and storage charges have been paid;~~
- 41 (3) ~~Execution of a good and valid bond with sufficient~~
42 ~~sureties in an amount equal to twice the value of~~
43 ~~the seized vehicle, as determined in accordance~~
44 ~~with the schedule of values adopted by the~~

1 ~~Commissioner of Motor Vehicles pursuant to G.S.~~
2 ~~105-187.3, A bond in an amount equal to the fair~~
3 ~~market value of the motor vehicle as defined by~~
4 ~~G.S. 20-28.2 has been executed and is secured by a~~
5 ~~cash deposit in the full amount of the bond, by a~~
6 ~~recordable deed of trust to real property in the~~
7 ~~full amount of the bond, by a bail bond under G.S.~~
8 ~~58-71-1(2), or by at least one solvent surety,~~
9 ~~payable to the county school fund and conditioned~~
10 ~~on return of the motor vehicle, in substantially~~
11 ~~the same condition as it was at the time of seizure~~
12 ~~and without any new or additional liens or~~
13 ~~encumbrances, on the day of trial of the operator;~~
14 ~~any hearing scheduled and noticed by the district~~
15 ~~attorney under G.S. 20-28.2(c), unless the motor~~
16 ~~vehicle has been permanently released;~~

17 (4) If a ~~qualified~~ nondefendant motor vehicle owner,
18 execution of an acknowledgment as described in G.S.
19 20-28.2(a1); and

20 (5) A check of the records of the Division indicates
21 that the requesting motor vehicle owner has not
22 previously executed an acknowledgment naming the
23 operator of the seized ~~vehicle~~ motor vehicle; and

24 (6) A bond posted to secure the release of this motor
25 vehicle under this subsection has not been
26 previously ordered forfeited under G.S. 20-28.5.

27 In the event a nondefendant motor vehicle owner or lienholder
28 who obtains temporary possession of a seized motor vehicle
29 pursuant to this subsection does not return the motor vehicle on
30 the day of the forfeiture hearing as noticed by the district
31 attorney under G.S. 20-28.3(c) or otherwise violates a condition
32 of pretrial release of the seized motor vehicle as set forth in
33 this subsection, the bond posted shall be ordered forfeited and
34 an order of seizure shall be issued by the court. Additionally,
35 a nondefendant motor vehicle owner or lienholder who willfully
36 violates any condition of pretrial release may be held in civil
37 or criminal contempt.

38 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. --
39 A nondefendant motor vehicle owner may file a petition with the
40 clerk of court seeking a pretrial determination that the
41 petitioner is an innocent owner. The clerk shall schedule a
42 hearing before a judge to be held within 10 business days or as
43 soon as thereafter may be feasible. Notice of the hearing shall
44 be given to the petitioner, the district attorney, and the

1 attorney for the county board of education. The clerk shall
2 forward a copy of the petition to the district attorney for the
3 district attorney's review. If, based on available information,
4 the district attorney determines that the petitioner is an
5 innocent owner and that the motor vehicle is not subject to
6 forfeiture, the district attorney may note the State's consent to
7 the release of the motor vehicle on the petition and return the
8 petition to the clerk of court who shall enter an order releasing
9 the motor vehicle to the petitioner subject to the conditions of
10 release as set forth in G.S. 20-28.2(e) and no hearing shall be
11 held. The clerk shall send a copy of the order of release to the
12 county board of education attorney. At any pretrial hearing
13 conducted pursuant to this subsection, the court is not required
14 to determine the issue of forfeiture, only the issue of whether
15 the petitioner is an innocent owner. Accordingly, the State
16 shall not be required to prove the underlying offense of impaired
17 driving or the existence of a prior drivers license revocation.
18 If the court determines that the petitioner is an innocent owner,
19 the court shall release the motor vehicle to the petitioner
20 subject to the same conditions as if the petitioner were an
21 innocent owner under G.S. 20-28.2(e). An order issued under this
22 subsection finding that the petitioner failed to establish that
23 the petitioner is an innocent owner may be reconsidered by the
24 court as part of the forfeiture hearing conducted pursuant to
25 G.S. 20-28.2(d).

26 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. --
27 A defendant motor vehicle owner may file a petition with the
28 clerk of court seeking a pretrial determination that the
29 defendant's license was not revoked pursuant to an impaired
30 driving license revocation as defined in G.S. 20-28.2(a). The
31 clerk shall schedule a hearing before a judge of the division in
32 which the underlying criminal charge is pending for a hearing to
33 be held within 10 business days or as soon as thereafter as may
34 be feasible. Notice of the hearing shall be given to the
35 defendant, the district attorney, and the attorney for the county
36 board of education. The clerk shall forward a copy of the
37 petition to the district attorney for the district attorney's
38 review. If, based on available information, the district
39 attorney determines that the defendant's motor vehicle is not
40 subject to forfeiture, the district attorney may note the State's
41 consent to the release of the motor vehicle on the petition and
42 return the petition to the clerk of court who shall enter an
43 order releasing the motor vehicle to the defendant upon payment
44 of all towing and storage charges incurred as a result of the

1 seizure and impoundment of the motor vehicle, subject to the
2 satisfactory proof of the identity of the defendant as a motor
3 vehicle owner and the existence of financial responsibility to
4 the extent required by Article 13 of this Chapter, and no hearing
5 shall be held. The clerk shall send a copy of the order of
6 release to the attorney for the county board of education. At
7 any pretrial hearing conducted pursuant to this subsection, the
8 court is not required to determine the issue of the underlying
9 offense of impaired driving only the existence of a prior drivers
10 license revocation as an impaired driving license revocation.
11 Accordingly, the State shall not be required to prove the
12 underlying offense of impaired driving. An order issued under
13 this subsection finding that the defendant failed to establish
14 that the defendant's license was not revoked pursuant to an
15 impaired driving license revocation as defined in G.S. 20-28.2(a)
16 may be reconsidered by the court as part of the forfeiture
17 hearing conducted pursuant to G.S. 20-28.2(d).

18 (e3) Pretrial Release of Motor Vehicle to Lienholder. -- A
19 lienholder may file a petition with the clerk of court requesting
20 the court to order pretrial release of a seized motor vehicle.
21 The lienholder shall serve a copy of the petition on all
22 interested parties which shall include the registered owner, the
23 titled owner, the district attorney and the county board of
24 education attorney. Upon 10 days' prior notice of the date,
25 time, and location of the hearing sent by the lienholder to all
26 interested parties, a judge, after a hearing, shall order a
27 seized motor vehicle released to the lienholder conditioned upon
28 payment of all towing and storage costs incurred as a result of
29 the seizure and impoundment of the motor vehicle if the judge
30 determines, by the greater weight of the evidence, that:

- 31 (1) Default on the obligation secured by the motor
32 vehicle has occurred;
- 33 (2) As a consequence of default, the lienholder is
34 entitled to possession of the motor vehicle;
- 35 (3) The lienholder agrees to sell the motor vehicle in
36 accordance with the terms of its agreement and
37 pursuant to the provisions of Part 5 of Article 9
38 of Chapter 25 of the General Statutes. Upon sale
39 of the the motor vehicle, the lienholder will pay
40 to the clerk of court of the county in which the
41 vehicle was seized all proceeds from the sale, less
42 the amount of the lien in favor of the lienholder,
43 and any towing and storage costs paid by the
44 lienholder.;

- 1 (4) The lienholder agrees not to sell, give, or
2 otherwise transfer possession of the forfeited
3 motor vehicle to the defendant or the motor vehicle
4 owner; and
5 (5) The forfeited motor vehicle had not previously been
6 released to the lienholder.
- 7 The clerk of superior court may order a seized vehicle released
8 to the lienholder conditioned upon payment of all towing and
9 storage costs incurred as a result of the seizure and impoundment
10 of the motor vehicle at any time when all interested parties
11 have, in writing, waived any rights that they may have to notice
12 and a hearing, and the lienholder has agreed to the provision of
13 subdivision (4) above. A lienholder who refuses to sell, give, or
14 transfer possession of a forfeited motor vehicle to:
- 15 (1) The defendant;
16 (2) The motor vehicle owner who owned the motor vehicle
17 immediately prior to forfeiture; or
18 (3) Any person acting on the behalf of the defendant or
19 the motor vehicle owner,
- 20 shall not be liable for damages arising out of such refusal.
21 However, any subsequent violation of the conditions of release by
22 the lienholder shall be punishable by civil or criminal contempt.
- 23 ~~(f) Duty of Trial Judge. -- The trial judge at the sentencing~~
24 ~~hearing on the operator's charge of violating C.S. 20-138.1 or~~
25 ~~C.S. 20-138.5 shall determine if the vehicle is subject to~~
26 ~~forfeiture pursuant to the provisions of C.S. 20-28.2.~~
- 27 ~~(g) Possessory Lien. -- The entity that tows and stores the~~
28 ~~vehicle, other than the county school board, shall be entitled to~~
29 ~~a possessory lien as defined in C.S. 28.2(a1)(5).~~
- 30 (h) Insurance Proceeds. -- In the event a motor vehicle is
31 damaged incident to the conduct of the defendant which gave rise
32 to the defendant's arrest and seizure of the motor vehicle
33 pursuant to this section, the county board of education, or its
34 authorized designee, is authorized to negotiate the county board
35 of education's interest with the insurance company and to
36 compromise and accept settlement of any claim for damages.
37 Property insurance proceeds accruing to the defendant, or other
38 owner of the seized motor vehicle, shall be paid by the
39 responsible insurance company directly to the clerk of superior
40 court in the county where the motor vehicle was seized. If the
41 motor vehicle is declared a total loss by the insurance company
42 responsible for repairs to the motor vehicle, the clerk of
43 superior court, upon application of the county board of
44 education, shall enter an order that the motor vehicle be

1 released to the insurance company upon payment into the court of
2 all insurance proceeds for damage to the motor vehicle after
3 payment of towing and storage costs and all valid liens. The
4 clerk of superior court shall provide the Division with a
5 certified copy of the order entered pursuant to this subsection,
6 and the Division shall transfer title to the insurance company or
7 to such other person or entity as may be designated by the
8 insurance company. Insurance proceeds paid to the clerk of court
9 pursuant to this subsection shall be subject to forfeiture
10 pursuant to G.S. 20-28.5 and shall be disbursed pursuant to
11 further orders of the court. An affected motor vehicle owner or
12 lienholder who objects to any agreed upon settlement under this
13 subsection may file an independent claim with the insurance
14 company for any additional monies believed owed.

15 (i) Expedited Sale of Seized Motor Vehicles in Certain Cases.
16 -- In order to avoid additional liability for towing and storage
17 costs pending resolution of the criminal proceedings of the
18 defendant, the county board of education may, after expiration of
19 90 days from the date of seizure, sell any motor vehicle having a
20 fair market value of one thousand five hundred dollars (\$1,500)
21 or less. The county board of education may also sell a motor
22 vehicle, regardless of the fair market value, any time the towing
23 and storage costs exceed eighty-five percent (85%) of the fair
24 market value of the vehicle, or with the consent of all the motor
25 vehicle owners. Any sale conducted pursuant to this subsection
26 shall take place upon not less than 10 days' prior notice to the
27 motor vehicle owners and lienholders and the proceeds of the sale
28 shall be deposited with the clerk of superior court. If an order
29 of forfeiture is entered by the court, the court shall order the
30 proceeds held by the clerk to be disbursed as provided in G.S.
31 20-28.5(b). If the court determines that the motor vehicle is
32 not subject to forfeiture, the court shall order the proceeds
33 held by the clerk to be disbursed first to pay the sale, towing,
34 and storage costs, second to pay outstanding liens on the motor
35 vehicle, and the balance to be paid to the motor vehicle owners.

36 (j) Retrieval of Certain Personal Property. -- At reasonable
37 times, the entity charged with storing the motor vehicle may
38 permit owners of personal property not affixed to the motor
39 vehicle to retrieve those items from the motor vehicle, provided
40 satisfactory proof of ownership of the motor vehicle or the items
41 of personal property is presented to the storing entity.

42 (k) County Board of Education Right to Appear and Participate
43 in Proceedings. -- The attorney for the county board of education
44 shall be given notice of all proceedings regarding offenses

1 involving impaired driving related to a motor vehicle subject to
2 forfeiture. The attorney for the county board of education shall
3 also have the right to appear and to be heard on all issues
4 relating to the seizure, possession, release, forfeiture, sale,
5 and other matters related to the seized vehicle under this
6 section. With the prior consent of the county board of
7 education, the district attorney may delegate to the attorney for
8 the county board of education any or all of the duties of the
9 district attorney under this section. Clerks of superior court,
10 law enforcement agencies, and all other agencies with information
11 relevant to the seizure, impoundment, release or forfeiture of
12 motor vehicles are authorized and directed to provide county
13 boards of education with access to that information and to do so
14 by electronic means when existing technology makes this type of
15 transmission possible.

16 (l) Payment of Fees Upon Conviction. -- If the driver of a
17 motor vehicle seized pursuant to this section is convicted of an
18 offense involving impaired driving, the defendant shall be
19 ordered to pay as restitution to the county board of education,
20 the motor vehicle owner, or the lienholder, the cost paid or
21 owing for the towing, storage, and sale of the motor vehicle to
22 the extent the costs were not covered by the proceeds from the
23 forfeiture and sale of the motor vehicle. The order of payment
24 of costs under this subsection, in addition to being a part of
25 the criminal judgment, shall also constitute a civil judgment in
26 favor of the party to whom the restitution is owed, shall be
27 docketed by the clerk of court as any other civil judgment, and
28 may be collected as any other civil judgment.

29 (m) Trial Priority. -- Trials of impaired driving offenses
30 involving forfeitures of motor vehicles pursuant to G.S. 20-28.2
31 shall be scheduled on the arresting officer's next court date or
32 within 30 days of the offense, whichever comes first.

33 Once scheduled, the case shall not be continued unless all of
34 the following conditions are met:

35 (1) A written motion for continuance is filed with
36 notice given to the opposing party prior to the
37 motion being heard.

38 (2) The judge makes a finding of a 'compelling reason'
39 for the continuance.

40 (3) The motion and finding are attached to the court
41 case record.

42 Upon a determination of guilt, the issue of vehicle forfeiture
43 shall be heard by the judge immediately, or as soon thereafter as

1 feasible, and the judge shall issue the appropriate orders
2 pursuant to G.S. 20-28.2(d).

3 Should a defendant appeal his conviction to superior court, the
4 appeal shall be set down for trial on the next available trial
5 date and the limitations on continuances and requirement for
6 expedited hearing on the forfeiture of the vehicle, set forth
7 above, shall apply."

8 Section 4. G.S. 20-28.4 reads as rewritten:

9 "§ 20-28.4. Release of impounded motor vehicles by judge.

10 (a) Release to Innocent Vehicle Owner. -- A motor vehicle
11 owner who was not the operator of the motor vehicle at the time
12 of the offense may file a petition in the underlying criminal
13 case with the the court for return of the vehicle clerk of
14 superior court for:

- 15 (1) Temporary pretrial release of the motor vehicle;
- 16 (2) Permanent release of the motor vehicle;
- 17 (3) Payment of any insurance proceeds; or
- 18 (4) Payment of proceeds of the prior sale of a motor
19 vehicle,

20 pursuant to the provisions of ~~G.S. 20-28.2(e)~~ G.S. 20-28.2(e),
21 20-28.3(e), 20-28.3(h), or 20-28.3(i).

22 (b) Acknowledgment Required. -- The motor vehicle owner
23 ~~seeking release petitioning~~ under this section ~~or pretrial~~
24 ~~release under G.S. 20-28.3~~ shall sign an acknowledgment as
25 described in G.S. 20-28.2(a1)(1).

26 (c) Release to Lienholder. -- A Upon petition by the
27 lienholder and after 10 days' prior written notice to the
28 district attorney and the county board of education attorney, a
29 district court judge may order a forfeited motor vehicle released
30 to a lienholder if the judge determines, by the greater weight of
31 the evidence, that the lienholder satisfies the criteria as set
32 out in G.S. 20-28.2(f). Lienholders may also petition the court
33 for release of a seized motor vehicle prior to forfeiture
34 pursuant to the provisions of G.S. 20-28.3(e3).

35 (d) Release Upon Conclusion of Trial. -- If the driver of a
36 motor vehicle seized pursuant to G.S. 20-28.3:

- 37 (1) Is subsequently not convicted of either G.S.
38 20-138.1 or G.S. 20-138.5 an offense involving
39 impaired driving due to dismissal or a finding of
40 not guilty; or
- 41 (2) The judge at the sentencing hearing fails to find
42 the grossly aggravating factor described in G.S.
43 20-179(c)(2), a forfeiture hearing conducted
44 pursuant to G.S. 20-28.2(d) fails to find that the

1 driver's license was revoked as a result of a prior
2 impaired driving license revocation as defined in
3 G.S. 20-28.2; or
4 (3) The vehicle has not previously been released to a
5 lienholder pursuant G.S. 20-28.3(e3),
6 the seized motor vehicle shall be returned released to the motor
7 vehicle ~~owner,~~ owner conditioned upon payment of towing and
8 storage costs. Notwithstanding G.S. 44A-2(d), if the owner of
9 the seized motor vehicle does not obtain release of the vehicle
10 within 10 days from the date of the court's order, the possessor
11 of the seized motor vehicle has a mechanics lien on the seized
12 motor vehicle for the full amount of the towing and storage
13 charges incurred since the motor vehicle was seized and may
14 dispose of the seized motor vehicle pursuant to Article 1 of
15 Chapter 44A of the General Statutes.

16 ~~If the court finds that probable cause did not exist to seize~~
17 ~~the motor vehicle, the court shall order the vehicle released.~~

18 ~~A determination which results in the return or release of the~~
19 ~~seized vehicle under this section authorizes the driver, vehicle~~
20 ~~owner, or lienholder to recover towing or storage fees paid in~~
21 ~~order to obtain pretrial release of the motor vehicle. Towing or~~
22 ~~storage fees recovered pursuant to this subsection shall be paid~~
23 ~~by the county school board from forfeitures paid into the county~~
24 ~~school fund."~~

25 Section 5. G.S. 20-28.5 reads as rewritten:

26 "§ 20-28.5. Forfeiture of impounded ~~vehicle,~~ motor vehicle or
27 funds.

28 (a) ~~Sale. -- Unless a judge orders the vehicle returned to an~~
29 ~~innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S.~~
30 ~~20-28.4, the vehicle shall be ordered forfeited and sold or~~
31 ~~transferred to the school board in the county where the charges~~
32 ~~were filed. The sale of the vehicle shall be a judicial A motor~~
33 vehicle ordered forfeited and sold shall be sold at a public sale
34 conducted in accordance with the provisions of Parts 1 and 2 of
35 Article 29A of Chapter 1 Article 12 of Chapter 160A of the
36 General Statutes Statutes, applicable to sales authorized
37 pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the
38 notice requirements of this subsection, and shall be conducted by
39 the county school board board of education or a person acting on
40 its behalf. In addition to the notice requirements of Part 2 of
41 Article 29A of Chapter 1 of the General Statutes, notice of sale
42 Notice of sale, including the date, time, location, and manner of
43 sale, shall also be given by certified mail, return receipt
44 requested, first-class mail, to all motor vehicle owners at the

1 address shown by the ~~Division's~~ records of the Division and at
2 any other address of the motor vehicle owner as may be found in
3 the criminal file in which the forfeiture was ordered. ~~Notice~~
4 Written notice of sale shall also be ~~by certified mail, return~~
5 ~~receipt requested,~~ given to all lienholders on file with the
6 Division. Notice of sale shall be given to the Division in
7 accordance with the procedures established by the Division.
8 Notices required to be given under this subsection shall be
9 mailed at least 14 days prior to the date of sale. A lienholder
10 shall be permitted to purchase the motor vehicle at any such sale
11 by bidding in the amount of its lien, if that should be the
12 highest bid, without being required to tender any additional
13 funds, other than the towing and storage fees.

14 (b) Proceeds of Sale. -- Proceeds of any sale conducted under
15 this ~~section~~ section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3),
16 shall first be applied to the cost of sale and then to satisfy
17 towing and storage liens and the cost of sale costs. The
18 balance of the proceeds of sale, if any, shall be used to satisfy
19 any other existing liens of record that were properly recorded
20 ~~with the Division~~ prior to the date of initial seizure of the
21 vehicle. Any remaining balance shall be paid to the county school
22 fund in the county in which the motor vehicle was ordered
23 forfeited. If there is more than one school board in the county,
24 then the net proceeds of sale, after reimbursement to the county
25 board of education of reasonable administrative cost incurred in
26 connection with the forfeiture and sale of the motor vehicle,
27 shall be distributed in the same manner as fines and other
28 forfeitures. ~~Vehicles sold~~ The sale of a motor vehicle pursuant
29 to this section shall be deemed to extinguish all existing liens
30 on the motor vehicle and the motor vehicle shall be transferred
31 free and clear of any liens.

32 (c) Retention of Motor Vehicle. -- The county board of
33 education may, at its option, retain any forfeited motor vehicle
34 for its ~~use,~~ use upon payment of towing and storage costs. If the
35 motor vehicle is retained, any valid lien of record at the time
36 of the initial seizure of the motor vehicle shall be satisfied by
37 the ~~school board~~ county board of education relieving the motor
38 vehicle owner of all liability for the obligation secured by the
39 motor vehicle. If there is more than one school board in the
40 county, and the motor vehicle is retained by the county board of
41 education, then the fair market value of the motor vehicle, less
42 the costs for towing, storage, reasonable administrative costs,
43 and liens paid, shall be used to determine and pay the share due

1 each of the school boards in the same manner as fines and other
2 forfeitures.

3 ~~(d) [Counties with Multiple School Boards.] -- If there is~~
4 ~~more than one school board in the county, then the fair market~~
5 ~~value of the vehicle shall be used to determine the share due~~
6 ~~each of the school boards in the same manner as fines and other~~
7 ~~forfeitures.~~

8 (e) Order of Forfeiture; Appeals. -- An order of forfeiture is
9 stayed pending appeal of a conviction for an offense that is the
10 basis for the order. When the conviction of an offense that is
11 the basis for an order of forfeiture is appealed from district
12 court, the issue of forfeiture shall be heard in superior court
13 de novo. Appeal from a final order of forfeiture shall be to the
14 Court of Appeals."

15 Section 6. G.S. 20-28.6 is repealed.

16 Section 7. G.S. 20-28.7 reads as rewritten:

17 "§ 20-28.7. Responsibility of Division of Motor Vehicles.

18 The Division shall establish procedures by rule to provide for
19 the orderly seizure, forfeiture, sale, and transfer of motor
20 vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-
21 28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

22 Section 8. Article 2 of Chapter 20 of the General
23 Statutes is amended by adding two new sections to read:

24 "§ 20-28.8. Reports to the Division.

25 In any case in which a vehicle has been seized pursuant to G.S.
26 20-28.3, in addition to any other information that must be
27 reported pursuant to this Chapter, the clerk of superior court
28 shall report to the Division by electronic means the execution of
29 an acknowledgement as defined in G.S. 20-28.2(a)(1), the entry
30 of an order of forfeiture as defined in G.S. 20-28.2(a)(4), and
31 the entry of an order of release as defined in G.S. 20-28.3 and
32 G.S. 20-28.4. Each report shall include any of the following
33 information that has not previously been reported to the Division
34 in the case: the name, address, and drivers license number of
35 the defendant; the name, address, and drivers license number of
36 the non-defendant motor vehicle owner, if known; and the make,
37 model, year, vehicle identification number, state of
38 registration, and vehicle registration plate number of the seized
39 vehicle, if known.

40 "§ 20-28.9. Authority for the Department of Public Instruction
41 to administer a statewide or regional towing, storage, and sales
42 program for driving while impaired vehicles forfeited.

43 (a) The Department of Public Instruction is authorized to
44 enter into a contract for a statewide service or contracts for

1 regional services to tow, store, process, maintain, and sell
2 motor vehicles seized pursuant to G.S. 20-28.3. All motor
3 vehicles seized under G.S. 20-28.3 shall be subject to contracts
4 entered into pursuant to this section. Contracts shall be let by
5 the Department of Public Instruction in accordance with the
6 provisions of Article 3 of Chapter 143 of the General Statutes.
7 All contracts shall ensure the safety of the motor vehicles while
8 held and any funds arising from the sale of any seized motor
9 vehicle. The contract shall require the contractor to maintain
10 and make available to the agency a computerized up-to-date
11 inventory of all motor vehicles held under the contract, together
12 with an accounting of all accrued charges, the status of the
13 vehicle, and the county school fund to which the proceeds of sale
14 are to be paid. The contract shall provide that the contractor
15 shall pay the towing and storage charges owed on a seized vehicle
16 to a commercial towing company at the time the seized vehicle is
17 obtained from the commercial towing company, with the contractor
18 being reimbursed this expense when the vehicle is released or
19 sold.

20 (b) The Department, through its contractor or contractors
21 designated in accordance with subsection (a) of this section, may
22 charge a reasonable fee for storage not to exceed ten dollars
23 (\$10.00) per day for the storage of seized vehicles pursuant to
24 G.S. 20-28.3.

25 (c) The Department shall collect a ten dollar (\$10.00)
26 administrative fee for each seized vehicle to help defray the
27 administrative costs associated with the administration of this
28 section. The funds collected under this subsection shall be paid
29 to the General Fund."

30 Section 9. G.S. 20-54 reads as rewritten:

31 "§ 20-54. Authority for refusing registration or certificate of
32 title.

33 The Division shall refuse registration or issuance of a
34 certificate of title or any transfer of registration upon any of
35 the following grounds:

36 (1) The application contains a false or fraudulent
37 statement, the applicant has failed to furnish
38 required information or reasonable additional
39 information requested by the Division, or the
40 applicant is not entitled to the issuance of a
41 certificate of title or registration of the vehicle
42 under this Article.

43 (2) The vehicle is mechanically unfit or unsafe to be
44 operated or moved upon the highways.

- 1 (3) The Division has reasonable ground to believe that
2 the vehicle is a stolen or embezzled vehicle, or
3 that the granting of registration or the issuance
4 of a certificate of title would constitute a fraud
5 against the rightful owner or another person who
6 has a valid lien against the vehicle.
- 7 (4) The registration of the vehicle stands suspended or
8 revoked for any reason as provided in the motor
9 vehicle laws of this State.
- 10 (5) The required fee has not been paid.
- 11 (6) The vehicle is not in compliance with the emissions
12 inspection requirements of Part 2 of Article 3A of
13 this Chapter or a civil penalty assessed as a
14 result of the failure of the vehicle to comply with
15 that Part has not been paid.
- 16 (7) The Division has been notified that the motor
17 vehicle has been seized by a law enforcement
18 officer and is subject to forfeiture pursuant to
19 G.S. 20-28.2, et. seq., or any other statute."

20 Section 10. Part 2 of Article 3 of Chapter 20 of the
21 General Statutes is amended by adding a new section to read:

22 "§ 20-54.1. Forfeiture of right of registration.

23 (a) Upon receipt of notice of conviction of a violation of an
24 offense involving impaired driving while the person's license is
25 revoked as a result of a prior impaired driving license
26 revocation as defined in G.S. 20-28.2, the Division shall revoke
27 the registration of all motor vehicles registered in the
28 convicted person's name and shall not register a motor vehicle in
29 the convicted person's name until the convicted person's license
30 is restored. Upon receipt of notice of revocation of
31 registration from the Division, the convicted person shall
32 surrender the registration on all motor vehicles registered in
33 the convicted person's name to the Division within 10 days of the
34 date of the notice.

35 (b) Upon receipt of a notice of conviction under subsection
36 (a) of this section, the Division shall revoke the registration
37 of the motor vehicle seized and the owner shall not be allowed to
38 register the motor vehicle seized until the convicted operator's
39 drivers license has been restored. The Division shall not revoke
40 the registration of the owner of the seized motor vehicle if the
41 owner is determined to be an innocent owner. The Division shall
42 only revoke the owner's registration after the owner is given an
43 opportunity for a hearing to demonstrate that the owner is an
44 innocent owner as defined in G.S. 20-28.2. Upon receipt of

1 notice of revocation of registration from the Division, the owner
2 shall surrender the registration on the motor vehicle seized to
3 the Division within 10 days of the date of the notice."

4 Section 11. G.S. 20-55 reads as rewritten:

5 "§ 20-55. Examination of registration records and index of
6 seized, stolen and recovered vehicles.

7 The Division, upon receiving application for any transfer of
8 registration or for original registration of a vehicle, other
9 than a new vehicle sold by a North Carolina dealer, shall first
10 check the engine and serial numbers shown in the application with
11 its record of registered motor vehicles, and against the index
12 of seized, stolen and recovered motor vehicles required to be
13 maintained by this Article."

14 Section 12. G.S. 20-114(c) reads as rewritten:

15 "(c) It shall also be the duty of every ~~sheriff of every county~~
16 ~~of the State and of every police or peace officer of the State~~
17 law enforcement officer to make immediate report to the
18 Commissioner of all motor vehicles reported to ~~him~~ the officer as
19 abandoned or that are seized by ~~him~~ the officer for being used
20 for illegal transportation of alcoholic beverages or other
21 unlawful purposes, or seized and are subject to forfeiture
22 pursuant to G.S. 20-28.2, et. seq., or any other statute, and no
23 motor vehicle shall be sold by any sheriff, police or peace
24 officer, or by any person, firm or corporation claiming a
25 mechanic's or storage lien, or under judicial proceedings, until
26 notice on a form approved by the Commissioner shall have been
27 given the Commissioner at least 20 days before the date of such
28 sale."

29 Section 12.1. G. S. 20-166.1(h) reads as rewritten:

30 "(h) Forms. - The Division must provide forms to persons
31 required to make reports under this section and the reports must
32 be made on the forms provided. The forms must ask for the
33 following information about a reportable accident:

- 34 (1) The cause of the accident
- 35 (2) The conditions existing at the time of the
36 accident.
- 37 (3) The persons and vehicles involved.
- 38 (4) Whether the vehicle has been seized and is subject
39 to forfeiture under G.S. 20-28.2."

40 Section 13. G.S. 1-339.4 reads as rewritten:

41 "§ 1-339.4. Who may hold sale.

42 An order of sale may authorize the persons designated below to
43 hold the sale:

- 1 (1) In any proceeding, a commissioner specially
2 appointed therefor; or
3 (2) In a proceeding to sell property of a decedent, the
4 administrator, executor or collector of such
5 decedent's estate;
6 (3) In a proceeding to sell property of a minor, the
7 guardian of such minor's estate;
8 (4) In a proceeding to sell property of an incompetent,
9 the guardian or trustee of such incompetent's
10 estate;
11 (5) In a proceeding to sell property of an absent or
12 missing person, the administrator, collector,
13 conservator, or guardian of the estate of such
14 absent or missing person;
15 (6) In a proceeding to foreclose a deed of trust, the
16 trustee named in the deed of trust;
17 (7) In a receivership proceeding, the receiver;
18 (8) In a proceeding to sell property of a trust, the
19 trustee;
20 ~~(9) In a motor vehicle forfeiture proceeding pursuant~~
21 ~~to G.S. 20-28.5, the county school board or a~~
22 ~~person acting on its behalf."~~

23 Section 14. G.S. 44A-2(d) reads as rewritten:

24 "(d) Any person who repairs, services, tows, or stores motor
25 vehicles in the ordinary course of ~~his~~ the person's business
26 pursuant to an express or implied contract with an owner or legal
27 possessor of the motor ~~vehicle~~ vehicle, except for a motor
28 vehicle seized pursuant to G.S. 20-28.3, has a lien upon the
29 motor vehicle for reasonable charges for such repairs, servicing,
30 towing, storing, or for the rental of one or more substitute
31 vehicles provided during the repair, servicing, or storage. This
32 lien shall have priority over perfected and unperfected security
33 interests. Payment for towing and storing a motor vehicle seized
34 pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2
35 through G.S. 20-28.5."

36 Section 15. G.S. 44A-4(b)(1) reads as rewritten:

37 "(b) Notice and Hearings. --

- 38 (1) If the property upon which the lien is claimed is a
39 motor vehicle that is required to be registered,
40 the lienor following the expiration of the relevant
41 time period provided by subsection (a) shall give
42 notice to the Division of Motor Vehicles that a
43 lien is asserted and sale is proposed and shall
44 remit to the Division a fee of ten dollars

1 (\$10.00). The Division of Motor Vehicles shall
2 issue notice by registered or certified mail,
3 return receipt requested, ~~within 15 days of receipt~~
4 ~~of notice from the lienor,~~ to the person having
5 legal title to the property, if reasonably
6 ascertainable, to the person with whom the lienor
7 dealt if different, and to each secured party and
8 other person claiming an interest in the property
9 who is actually known to the Division or who can be
10 reasonably ascertained. The notice shall state that
11 a lien has been asserted against specific property
12 and shall identify the lienor, the date that the
13 lien arose, the general nature of the services
14 performed and materials used or sold for which the
15 lien is asserted, the amount of the lien, and that
16 the lienor intends to sell the property in
17 satisfaction of the lien. The notice shall inform
18 the recipient that the recipient has the right to a
19 judicial hearing at which time a determination will
20 be made as to the validity of the lien prior to a
21 sale taking place. The notice shall further state
22 that the recipient has a period of 10 days from the
23 date of receipt in which to notify the Division by
24 registered or certified mail, return receipt
25 requested, that a hearing is desired and that if
26 the recipient wishes to contest the sale of his
27 property pursuant to such lien, the recipient
28 should notify the Division that a hearing is
29 ~~desired and the Division shall notify lienor.~~
30 desired. The notice shall state the required
31 information in simplified terms and shall contain a
32 form whereby the recipient may notify the Division
33 that a hearing is desired by the return of such
34 form to the Division. The Division shall notify
35 the lienor whether such notice is timely received
36 by the Division. In lieu of the notice by the
37 lienor to the Division and the notices issued by
38 the Division described above, the lienor may issue
39 notice on a form approved by the Division pursuant
40 to the notice requirements above. If notice is
41 issued by the lienor, the recipient shall return
42 the form requesting a hearing to the lienor, and
43 not the Division, within 10 days from the date they
44 receive the notice if a judicial hearing is

1 requested. Failure of the recipient to notify the
2 Division or lienor, as specified in the notice,
3 within 10 days of the receipt of such notice that a
4 hearing is desired shall be deemed a waiver of the
5 right to a hearing prior to the sale of the
6 property against which the lien is asserted, ~~the~~
7 ~~Division shall notify the lienor,~~ and the lienor
8 may proceed to enforce the lien by public or
9 private sale as provided in this section and the
10 Division shall transfer title to the property
11 pursuant to such sale. If the Division or lienor,
12 as specified in the notice, is notified within the
13 10-day period provided above that a hearing is
14 desired prior to sale, the lien may be enforced by
15 sale as provided in this section and the Division
16 will transfer title only pursuant to the order of a
17 court of competent jurisdiction.

18 If the ~~Division notifies the lienor that the~~
19 registered or certified mail notice has been
20 returned as undeliverable, or if ~~the Division~~
21 ~~cannot ascertain~~ the name of the person having
22 legal title to the vehicle cannot reasonably be
23 ascertained and the fair market value of the
24 vehicle is less than eight hundred dollars
25 (\$800.00), the lienor may institute a special
26 proceeding in the county where the vehicle is being
27 held, for authorization to sell that vehicle.
28 Market value shall be determined by the schedule of
29 values adopted by the Commissioner under G.S. 105-
30 187.3.

31 In such a proceeding a lienor may include more
32 than one vehicle, but the proceeds of the sale of
33 each shall be subject only to valid claims against
34 that vehicle, and any excess proceeds of the sale
35 shall escheat to the State and be paid immediately
36 to the treasurer for disposition pursuant to
37 Chapter 116B of the General Statutes. A vehicle
38 owner or possessor claiming an interest in such
39 proceeds shall have a right of action under G.S.
40 116B-38.

41 The application to the clerk in such a special
42 proceeding shall contain the notice of sale
43 information set out in subsection (f) hereof. If
44 the application is in proper form the clerk shall

1 enter an order authorizing the sale on a date not
2 less than 14 days therefrom, and the lienor shall
3 cause the application and order to be sent
4 immediately by first-class mail pursuant to G.S.
5 1A-1, Rule 5, to each person to whom ~~the Division~~
6 ~~has mailed~~ notice was mailed pursuant to this
7 subsection. Following the authorized sale the
8 lienor shall file with the clerk a report in the
9 form of an affidavit, stating that the lienor has
10 complied with the public or private sale provisions
11 of G.S. 44A-4, the name, address, and bid of the
12 high bidder or person buying at a private sale, and
13 a statement of the disposition of the sale
14 proceeds. The clerk then shall enter an order
15 directing the Division to transfer title
16 accordingly.

17 If prior to the sale the owner or legal
18 possessor contests the sale or lien in a writing
19 filed with the clerk, the proceeding shall be
20 handled in accordance with G.S. 1-399."

21 Section 16. G.S. 58-71-1 reads as rewritten:

22 "§ 58-71-1. Definitions.

23 The following words when used in this Article shall have the
24 following meanings:

- 25 (1) 'Accommodation bondsman' is a natural person who
26 has reached the age of 18 years and is a bona fide
27 resident of this State and who, aside from love and
28 affection and release of the person concerned,
29 receives no consideration for action as surety and
30 who endorses the bail bond after providing
31 satisfactory evidences of ownership, value and
32 marketability of real or personal property to the
33 extent necessary to reasonably satisfy the official
34 taking bond that such real or personal property
35 will in all respects be sufficient to assure that
36 the full principal sum of the bond will be realized
37 in the event of breach of the conditions thereof.
38 "Consideration" as used in this subdivision does
39 not include the legal rights of a surety against a
40 principal by reason of breach of the conditions of
41 a bail bond nor does it include collateral
42 furnished to and securing the surety so long as the
43 value of the surety's rights in the collateral do
44 not exceed the principal's liability to the surety

- 1 by reason of a breach in the conditions of said
2 bail bond.
- 3 (2) 'Bail bond' shall mean an undertaking by the
4 principal to appear in court as required upon
5 penalty of forfeiting bail to the State in a stated
6 amount; and may include an unsecured appearance
7 bond, a premium-secured appearance bond, an
8 appearance bond secured by a cash deposit of the
9 full amount of the bond, an appearance bond secured
10 by a mortgage pursuant to G.S. 58-74-5, and an
11 appearance bond secured by at least one surety. A
12 bail bond may also include a bond securing the
13 return of a motor vehicle subject to forfeiture in
14 accordance with G.S. 20-28.3(e).
- 15 (3) 'Bail bondsman' shall mean a surety bondsman,
16 professional bondsman or an accommodation bondsman
17 as hereinafter defined.
- 18 (4) 'Commissioner' shall mean the Commissioner of
19 Insurance.
- 20 (5) 'Insurer' shall mean any domestic, foreign, or
21 alien surety company which has qualified generally
22 to transact surety business and specifically to
23 transact bail bond business in this State.
- 24 (6) 'Obligor' shall mean a principal or a surety on a
25 bail bond.
- 26 (7) 'Principal' shall mean a defendant or witness
27 obligated to appear in court as required upon
28 penalty of forfeiting bail under a bail bond, bond
29 or a person obligated to return a motor vehicle
30 subject to forfeiture in accordance with G.S. 20-
31 28.3(e).
- 32 (8) 'Professional bondsman' shall mean any person who
33 is approved and licensed by the Commissioner and
34 who pledges cash or approved securities with the
35 Commissioner as security for bail bonds written in
36 connection with a judicial proceeding and receives
37 or is promised money or other things of value
38 therefor.
- 39 (9) 'Runner' shall mean a person employed by a bail
40 bondsman for the purpose of assisting the bail
41 bondsman in presenting the defendant in court when
42 required, or to assist in apprehension and
43 surrender of defendant to the court, or keeping
44 defendant under necessary surveillance, or to

1 execute bonds on behalf of the licensed bondsman
2 when the power of attorney has been duly recorded.
3 "Runner" does not include, however, a duly licensed
4 attorney-at-law or a law-enforcement officer
5 assisting a bondsman.

6 (10) 'Surety' shall mean one who, with the principal, is
7 liable for the amount of the bail bond upon
8 forfeiture of bail.

9 (11) 'Surety bondsman' means any person who is licensed
10 by the Commissioner as a surety bondsman under this
11 Article, is appointed by an insurer by power of
12 attorney to execute or countersign bail bonds for
13 the insurer in connection with judicial
14 proceedings, and receives or is promised
15 consideration for doing so."

16 Section 17. G.S. 58-71-35(a) reads as rewritten:

17 "(a) The Except for bonds issued to secure the return of a
18 motor vehicle subject to forfeiture in accordance with G.S. 20-
19 28.3(e), the procedure for forfeiture of bail shall be that
20 provided in Article 26 of Chapter 15A of the General Statutes and
21 all provisions of that Article shall continue in full force and
22 effect."

23 PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

24 Section 18. G.S. 20-16.2(a) reads as rewritten:

25 "(a) Basis for Charging Officer to Require Chemical Analysis;
26 Notification of Rights. -- Any person who drives a vehicle on a
27 highway or public vehicular area thereby gives consent to a
28 chemical analysis if charged with an implied-consent offense. The
29 charging officer shall designate the type of chemical analysis to
30 be administered, and it may be administered when the officer has
31 reasonable grounds to believe that the person charged has
32 committed the implied-consent offense.

33 Except as provided in this subsection or subsection (b), before
34 any type of chemical analysis is administered the person charged
35 shall be taken before a chemical analyst authorized to administer
36 a test of a person's breath, who shall inform the person orally
37 and also give the person a notice in writing that:

38 (1) The person has a right to refuse to be tested.

39 (2) Refusal to take any required test or tests will
40 result in an immediate revocation of the person's
41 driving privilege for at least 30 days and an
42 additional 12-month revocation by the Division of
43 Motor Vehicles.

- 1 (3) The test results, or the fact of the person's
2 refusal, will be admissible in evidence at trial on
3 the offense charged.
- 4 (4) The person's driving privilege will be revoked
5 immediately for at least 30 days if:
6 a. The test reveals an alcohol concentration of
7 0.08 or more; or
8 b. The person was driving a commercial motor
9 vehicle and the test reveals ~~an~~ any alcohol
10 ~~concentration of 0.04 or more.~~ concentration.
- 11 (5) The person may choose a qualified person to
12 administer a chemical test or tests in addition to
13 any test administered at the direction of the
14 charging officer.
- 15 (6) The person has the right to call an attorney and
16 select a witness to view for him or her the testing
17 procedures, but the testing may not be delayed for
18 these purposes longer than 30 minutes from the time
19 when the person is notified of his or her rights.

20 If the charging officer or an arresting officer is authorized to
21 administer a chemical analysis of a person's breath, the charging
22 officer or the arresting officer may give the person charged the
23 oral and written notice of rights required by this subsection.
24 This authority applies regardless of the type of chemical
25 analysis designated."

26 Section 19. G.S. 20-16.5(b) reads as rewritten:

27 "(b) Revocations for Persons Who Refuse Chemical Analyses or
28 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~
29 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~
30 Who Are Charged With Certain Implied Consent Offenses. -- A
31 person's driver's license is subject to revocation under this
32 section if:

- 33 (1) A charging officer has reasonable grounds to
34 believe that the person has committed an offense
35 subject to the implied-consent provisions of G.S.
36 20-16.2;
- 37 (2) The person is charged with that offense as provided
38 in G.S. 20-16.2(a);
- 39 (3) The charging officer and the chemical analyst
40 comply with the procedures of G.S. 20-16.2 and G.S.
41 20-139.1 in requiring the person's submission to or
42 procuring a chemical analysis; and
- 43 (4) The person:

- 1 a. Willfully refuses to submit to the chemical
2 analysis;
3 b. Has an alcohol concentration of 0.08 or more
4 within a relevant time after the driving; or
5 c. Has ~~an~~ any alcohol concentration ~~of 0.04 or~~
6 ~~more~~ at any relevant time after the driving of a
7 commercial vehicle."

8 Section 20. G.S. 20-16.5(b1) reads as rewritten:

- 9 "(b1) Precharge Test Results as Basis for Revocation. --
10 Notwithstanding the provisions of subsection (b), a person's
11 driver's license is subject to revocation under this section if:
12 (1) ~~He~~ The person requests a precharge chemical
13 analysis pursuant to G.S. 20-16.2(i); and
14 (2) ~~He~~ The person has:
15 a. An alcohol concentration of 0.08 or more at
16 any relevant time after driving; or
17 b. ~~An~~ Any alcohol concentration ~~of 0.04 or more~~
18 at any relevant time after driving a commercial
19 motor vehicle; and
20 (3) ~~He~~ The person is charged with an implied-consent
21 offense."

22 Section 21. G.S. 20-17(a) reads as rewritten:

- 23 "(a) The Division shall forthwith revoke the license of any
24 driver upon receiving a record of the driver's conviction for any
25 of the following offenses:
26 (1) Manslaughter (or negligent homicide) resulting from
27 the operation of a motor vehicle.
28 (2) Either of the following impaired driving offenses:
29 a. Impaired driving under G.S. 20-138.1.
30 b. Impaired driving under G.S. ~~20-138.2 when the~~
31 ~~person convicted did not take a chemical test at~~
32 ~~the time of the offense or the person took a~~
33 ~~chemical test at the time of the offense and the~~
34 ~~test revealed that the person had an alcohol~~
35 ~~concentration at any relevant time after driving of~~
36 ~~less than 0.04 or of 0.08 or more. 20-138.2.~~
37 (3) Any felony in the commission of which a motor
38 vehicle is used.
39 (4) Failure to stop and render aid in violation of G.S.
40 20-166(a) or (b).
41 (5) Perjury or the making of a false affidavit or
42 statement under oath to the Division under this
43 Article or under any other law relating to the
44 ownership of motor vehicles.

- 1 (6) Conviction upon two charges of reckless driving
2 committed within a period of 12 months.
- 3 (7) Conviction upon one charge of reckless driving
4 while engaged in the illegal transportation of
5 intoxicants for the purpose of sale.
- 6 (8) Conviction of using a false or fictitious name or
7 giving a false or fictitious address in any
8 application for a drivers license, or learner's
9 permit, or any renewal or duplicate thereof, or
10 knowingly making a false statement or knowingly
11 concealing a material fact or otherwise committing
12 a fraud in any such application or procuring or
13 knowingly permitting or allowing another to commit
14 any of the foregoing acts.
- 15 (9) Death by vehicle as defined in G.S. 20-141.4.
- 16 (10) Repealed by Session Laws 1997-443, s. 19.26(b).
- 17 (11) Conviction of assault with a motor vehicle.
- 18 (12) A second or subsequent conviction of transporting
19 an open container of alcoholic beverage under G.S.
20 20-138.7."

21 Section 22. G.S. 20-17.4 reads as rewritten:

22 "§ 20-17.4. Disqualification to drive a commercial motor
23 vehicle.

24 (a) One Year. -- Any of the following disqualifies a person
25 from driving a commercial motor vehicle for one year:

- 26 (1) A first conviction of G.S. 20-138.1, driving while
27 impaired, that occurred while the person was
28 driving a motor vehicle not a commercial motor
29 vehicle.
- 30 ~~(2) A first conviction of G.S. 20-138.2, driving a~~
31 ~~commercial motor vehicle while impaired.~~
- 32 (3) A first conviction of G.S. 20-166, hit and run,
33 involving a commercial motor vehicle driven by the
34 person.
- 35 (4) A first conviction of a felony in the commission of
36 which a commercial motor vehicle was used.
- 37 (5) Refusal to submit to a chemical test when charged
38 with an implied-consent offense, as defined in G.S.
39 20-16.2, that occurred while the person was driving
40 a commercial motor vehicle.

41 (b) Modified Life. -- A person who has been disqualified from
42 driving a commercial motor vehicle ~~for~~ for either of the
43 following:

1 (1)~~a~~ A first conviction or refusal described in
2 subsection (a) who, as the result of a separate
3 incident, is subsequently convicted of an offense
4 or commits an act requiring disqualification under
5 subsection ~~(a)~~ (a); or

6 (2) A first conviction of G.S. 20-138.2 is disqualified
7 for life. The Division may adopt guidelines,
8 including conditions, under which a
9 disqualification for life under this subsection may
10 be reduced to 10 years.

11 (b) Life Without Reduction. -- A person is disqualified from
12 driving a commercial motor vehicle for life, without the
13 possibility of reinstatement after 10 years, if that person is
14 convicted of a second or subsequent violation of G.S. 20-138.2 or
15 if the person refuses to submit to a chemical test a second time
16 when charged with an implied-consent offense, as defined in G.S.
17 20-16.2, that occurred while the person was driving a commercial
18 motor vehicle.

19 (c) Life. -- A person is disqualified from driving a
20 commercial motor vehicle for life if that person uses a
21 commercial motor vehicle in the commission of any felony
22 involving the manufacture, distribution, or dispensing of a
23 controlled substance, or possession with intent to manufacture,
24 distribute, or dispense a controlled substance.

25 (d) Less Than a Year. -- A person is disqualified from driving
26 a commercial motor vehicle for 60 days if that person is
27 convicted of two serious traffic violations, or 120 days if
28 convicted of three or more serious traffic violations, committed
29 in a commercial motor vehicle arising from separate incidents
30 occurring within a three-year period.

31 (e) Three Years. -- A person is disqualified from driving a
32 commercial motor vehicle for three years if that person is
33 convicted of an offense or commits an act requiring
34 disqualification under subsection (a) and the offense or act
35 occurred while the person was transporting a hazardous material
36 that required the motor vehicle driven to be placarded.

37 (f) Revocation Period. -- A person is disqualified from
38 driving a commercial motor vehicle for the period during which
39 the person's regular or commercial drivers license is revoked."

40 Section 23. G.S. 20-36 reads as rewritten:

41 "§ 20-36. Ten-year-old convictions not considered.

42 No Except for a second or subsequent conviction for violating
43 G.S. 20-138.2 or a second failure to submit to a chemical test
44 when charged with an implied-consent offense, as defined in G.S.

1 20-16.2, that occurred while the person was driving a commercial
2 motor vehicle, no conviction of any violation of the motor
3 vehicle laws shall be considered by the Division in determining
4 whether any person's driving privilege shall be suspended or
5 revoked or in determining the appropriate period of suspension or
6 revocation after 10 years has elapsed from the date of ~~such~~ that
7 conviction."

8 Section 24. G.S. 20-138.2(a) reads as rewritten:

9 "(a) Offense. -- A person commits the offense of impaired
10 driving in a commercial motor vehicle if ~~he~~ the person drives a
11 commercial motor vehicle upon any highway, any street, or any
12 public vehicular area within the State:

13 (1) While under the influence of an impairing
14 substance; or

15 (2) After having consumed sufficient alcohol that ~~he~~
16 the person has, at any relevant time after the
17 driving, ~~an any alcohol concentration of 0.04 or~~
18 ~~more~~ concentration."

19 PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS
20 OF CHILD CARE VEHICLES.

21 Section 25. G.S. 20-4.01(27) reads as rewritten:

22 "(27) Passenger Vehicles. --

23 a. Excursion passenger vehicles. -- Vehicles
24 transporting persons on sight-seeing or
25 travel tours.

26 b. For hire passenger vehicles. -- Vehicles
27 transporting persons for compensation.
28 This classification shall not include
29 vehicles operated as ambulances; vehicles
30 operated by the owner where the costs of
31 operation are shared by the passengers;
32 vehicles operated pursuant to a
33 ridesharing arrangement as defined in
34 G.S. 136-44.21; vehicles transporting
35 students for the public school system
36 under contract with the State Board of
37 Education or vehicles leased to the
38 United States of America or any of its
39 agencies on a nonprofit basis; or
40 vehicles used for human service or
41 volunteer transportation.

42 c. Common carriers of passengers. --
43 Vehicles operated under a certificate of
44 authority issued by the Utilities

- 1 Commission for operation on the highways
2 of this State between fixed termini or
3 over a regular route for the
4 transportation of persons for
5 compensation.
- 6 c1. Child care vehicles. -- Vehicles under
7 the direction and control of a child care
8 facility, as defined in G.S. 110-86(3),
9 and operated by an owner or employee of
10 the child care facility for the purpose
11 of transporting children to and from the
12 facility, or to and from a place for
13 participation in an event or activity.
- 14 d. Motorcycles. -- Vehicles having a saddle
15 for the use of the rider and designed to
16 travel on not more than three wheels in
17 contact with the ground, including motor
18 scooters and motor-driven bicycles, but
19 excluding tractors and utility vehicles
20 equipped with an additional form of
21 device designed to transport property,
22 three-wheeled vehicles while being used
23 by law-enforcement agencies and mopeds as
24 defined in subdivision d1 of this
25 subsection.
- 26 d1. Moped. -- A vehicle that has two or three
27 wheels, no external shifting device, and
28 a motor that does not exceed 50 cubic
29 centimeters piston displacement and
30 cannot propel the vehicle at a speed
31 greater than 20 miles per hour on a level
32 surface.
- 33 d2. Motor home or house car. -- A vehicular
34 unit, designed to provide temporary
35 living quarters, built into as an
36 integral part, or permanently attached
37 to, a self-propelled motor vehicle
38 chassis or van. The vehicle must provide
39 at least four of the following
40 facilities: cooking, refrigeration or
41 icebox, self-contained toilet, heating or
42 air conditioning, a portable water supply
43 system including a faucet and sink,

- 1 separate 110-125 volt electrical power
2 supply, or an LP gas supply.
- 3 d3. School activity bus. -- A vehicle,
4 generally painted a different color from
5 a school bus, whose primary purpose is to
6 transport school students and others to
7 or from a place for participation in an
8 event other than regular classroom work.
9 The term includes a public, private, or
10 parochial vehicle that meets this
11 description.
- 12 d4. School bus. -- A vehicle whose primary
13 purpose is to transport school students
14 over an established route to and from
15 school for the regularly scheduled school
16 day, that is equipped with alternately
17 flashing red lights on the front and rear
18 and a mechanical stop signal, and that
19 bears the words "School Bus" on the front
20 and rear in letters at least 8 inches in
21 height. The term includes a public,
22 private, or parochial vehicle that meets
23 this description.
- 24 e. U-drive-it passenger vehicles. --
25 Vehicles rented or leased to be operated
26 by the lessee. This shall not include
27 vehicles of nine-passenger capacity or
28 less which are leased for a term of one
29 year or more to the same person or
30 vehicles leased or rented to public
31 school authorities for driver-training
32 instruction.
- 33 f. Ambulances. -- Vehicles equipped for
34 transporting wounded, injured, or sick
35 persons.
- 36 g. Private passenger vehicles. -- All other
37 passenger vehicles not included in the
38 above definitions."

39 Section 26. G.S. 20-16.2(a) reads as rewritten:

40 "(a) Basis for Charging Officer to Require Chemical Analysis;
41 Notification of Rights. -- Any person who drives a vehicle on a
42 highway or public vehicular area thereby gives consent to a
43 chemical analysis if charged with an implied-consent offense. The
44 charging officer shall designate the type of chemical analysis to

1 be administered, and it may be administered when the officer has
2 reasonable grounds to believe that the person charged has
3 committed the implied-consent offense.

4 Except as provided in this subsection or subsection (b), before
5 any type of chemical analysis is administered the person charged
6 shall be taken before a chemical analyst authorized to administer
7 a test of a person's breath, who shall inform the person orally
8 and also give the person a notice in writing that:

- 9 (1) The person has a right to refuse to be tested.
- 10 (2) Refusal to take any required test or tests will
11 result in an immediate revocation of the person's
12 driving privilege for at least 30 days and an
13 additional 12-month revocation by the Division of
14 Motor Vehicles.
- 15 (3) The test results, or the fact of the person's
16 refusal, will be admissible in evidence at trial on
17 the offense charged.
- 18 (4) The person's driving privilege will be revoked
19 immediately for at least 30 days if any of the
20 following occur:
 - 21 a. The test reveals an alcohol concentration of
22 0.08 or ~~more~~; or more.
 - 23 b. The person was driving a commercial motor
24 vehicle and the test reveals an alcohol
25 concentration of 0.04 or more.
 - 26 c. The person was driving a school bus, a school
27 activity bus, or a child care vehicle while
28 transporting children and the test reveals any
29 alcohol concentration.
- 30 (5) The person may choose a qualified person to
31 administer a chemical test or tests in addition to
32 any test administered at the direction of the
33 charging officer.
- 34 (6) The person has the right to call an attorney and
35 select a witness to view for him or her the testing
36 procedures, but the testing may not be delayed for
37 these purposes longer than 30 minutes from the time
38 when the person is notified of his or her rights.

39 If the charging officer or an arresting officer is authorized to
40 administer a chemical analysis of a person's breath, the charging
41 officer or the arresting officer may give the person charged the
42 oral and written notice of rights required by this subsection.
43 This authority applies regardless of the type of chemical
44 analysis designated."

1 Section 27. G.S. 20-16.5(b) reads as rewritten:

2 "(b) Revocations for Persons Who Refuse Chemical Analyses or
3 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~
4 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~
5 Who Are Charged With Certain Implied Consent Offenses. -- A
6 person's driver's license is subject to revocation under this
7 section if:

- 8 (1) A charging officer has reasonable grounds to
9 believe that the person has committed an offense
10 subject to the implied-consent provisions of G.S.
11 20-16.2;
- 12 (2) The person is charged with that offense as provided
13 in G.S. 20-16.2(a);
- 14 (3) The charging officer and the chemical analyst
15 comply with the procedures of G.S. 20-16.2 and G.S.
16 20-139.1 in requiring the person's submission to or
17 procuring a chemical analysis; and
- 18 (4) The person:
19 a. Willfully refuses to submit to the chemical
20 analysis;
- 21 b. Has an alcohol concentration of 0.08 or more
22 within a relevant time after the driving; ~~or~~
- 23 c. Has an alcohol concentration of 0.04 or more
24 at any relevant time after the driving of a
25 commercial ~~vehicle-vehicle~~; or
- 26 d. Has any alcohol concentration at any relevant
27 time after transporting children in a school bus, a
28 school activity bus, or a child care vehicle."

29 Section 28. G.S. 20-16.5(b1) reads as rewritten:

30 "(b1) Precharge Test Results as Basis for Revocation. --
31 Notwithstanding the provisions of subsection (b), a person's
32 driver's license is subject to revocation under this section if:

- 33 (1) ~~He~~ The person requests a precharge chemical
34 analysis pursuant to G.S. 20-16.2(i); and
- 35 (2) ~~He~~ The person has:
36 a. An alcohol concentration of 0.08 or more at
37 any relevant time after driving; ~~or~~
- 38 b. An alcohol concentration of 0.04 or more at
39 any relevant time after driving a commercial motor
40 ~~vehicle; and vehicle~~; or
- 41 c. Any alcohol concentration at any relevant time
42 after transporting children in a school bus, a
43 school activity bus, or a child care vehicle; and

1 (3) ~~He~~ The person is charged with an implied-consent
2 offense."

3 Section 29. G.S. 20-138.1(a) reads as rewritten:

4 "(a) Offense. -- A person commits the offense of impaired
5 driving if ~~he~~ the person drives any vehicle upon any highway, any
6 street, or any public vehicular area within this State:

7 (1) While under the influence of an impairing
8 substance; ~~or~~

9 (2) After having consumed sufficient alcohol that ~~he~~
10 the person has, at any relevant time after the
11 driving, an alcohol concentration of 0.08 or ~~more-~~
12 more; or

13 (3) After having consumed sufficient alcohol that the
14 person has, at any relevant time after the driving
15 of a school bus, a school activity bus, or a child
16 care vehicle transporting any children, any alcohol
17 concentration."

18 PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS
19 OF AGE.

20 Section 30. G.S. 20-16.2(a) reads as rewritten:

21 "(a) Basis for Charging Officer to Require Chemical Analysis;
22 Notification of Rights. -- Any person who drives a vehicle on a
23 highway or public vehicular area thereby gives consent to a
24 chemical analysis if charged with an implied-consent offense. The
25 charging officer shall designate the type of chemical analysis to
26 be administered, and it may be administered when the officer has
27 reasonable grounds to believe that the person charged has
28 committed the implied-consent offense.

29 Except as provided in this subsection or subsection (b), before
30 any type of chemical analysis is administered the person charged
31 shall be taken before a chemical analyst authorized to administer
32 a test of a person's breath, who shall inform the person orally
33 and also give the person a notice in writing that:

34 (1) The person has a right to refuse to be tested.

35 (2) Refusal to take any required test or tests will
36 result in an immediate revocation of the person's
37 driving privilege for at least 30 days and an
38 additional 12-month revocation by the Division of
39 Motor Vehicles.

40 (3) The test results, or the fact of the person's
41 refusal, will be admissible in evidence at trial on
42 the offense charged.

43 (4) The person's driving privilege will be revoked
44 immediately for at least 30 days if:

- 1 a. The test reveals an alcohol concentration of
2 0.08 or more; ~~or~~
3 b. The person was driving a commercial motor
4 vehicle and the test reveals an alcohol
5 concentration of 0.04 or ~~more~~ more; or
6 c. The person is under 21 years of age and the
7 test reveals any alcohol concentration."

8 Section 31. G.S. 20-16.5(b) reads as rewritten:

9 "(b) Revocations for Persons Who Refuse Chemical Analyses or
10 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~
11 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle~~
12 Who Are Charged With Certain Implied Consent Offenses. -- A
13 person's driver's license is subject to revocation under this
14 section if:

- 15 (1) A charging officer has reasonable grounds to
16 believe that the person has committed an offense
17 subject to the implied-consent provisions of G.S.
18 20-16.2;
19 (2) The person is charged with that offense as provided
20 in G.S. 20-16.2(a);
21 (3) The charging officer and the chemical analyst
22 comply with the procedures of G.S. 20-16.2 and G.S.
23 20-139.1 in requiring the person's submission to or
24 procuring a chemical analysis; and
25 (4) The person:
26 a. Willfully refuses to submit to the chemical
27 analysis;
28 b. Has an alcohol concentration of 0.08 or more
29 within a relevant time after the driving; ~~or~~
30 c. Has an alcohol concentration of 0.04 or more
31 at any relevant time after the driving of a
32 commercial ~~vehicle~~ vehicle; or
33 d. Has any alcohol concentration at any relevant
34 time after the driving and the person is under 21
35 years of age."

36 Section 32. G.S. 20-16.5(b1) reads as rewritten:

37 "(b1) Precharge Test Results as Basis for Revocation. --
38 Notwithstanding the provisions of subsection (b), a person's
39 driver's license is subject to revocation under this section if:

- 40 (1) ~~He~~ The person requests a precharge chemical
41 analysis pursuant to G.S. 20-16.2(i); and
42 (2) ~~He~~ The person has:
43 a. An alcohol concentration of 0.08 or more at
44 any relevant time after driving; ~~or~~

- 1 b. An alcohol concentration of 0.04 or more at
2 any relevant time after driving a commercial motor
3 vehicle; and or
4 c. Any alcohol concentration at any relevant
5 time after driving and he is under 21 years of age;
6 and
7 (3) He The person is charged with an implied-consent
8 offense."

9 PART V. INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLD PURCHASE OR
10 POSSESSION OF ALCOHOLIC BEVERAGES.

11 Section 33. G.S. 18B-302(i) is repealed.

12 Section 34. G.S. 15A-146(a) reads as rewritten:

13 "(a) If any person is charged with a crime, either a
14 misdemeanor or a felony, or ~~is~~ was charged with an infraction
15 under G.S. 18B-302(i), G.S. 18B-302(i) prior to December 1, 1998,
16 and the charge is dismissed, or a finding of not guilty or not
17 responsible is entered, that person may apply to the court of the
18 county where the charge was brought for an order to expunge from
19 all official records any entries relating to his apprehension or
20 trial. The court shall hold a hearing on the application and,
21 upon finding that the person had not previously received an
22 expungement and that the person had not previously been convicted
23 of any felony under the laws of the United States, this State, or
24 any other state, the court shall order the expunction. No person
25 as to whom such an order has been entered shall be held
26 thereafter under any provision of any law to be guilty of
27 perjury, or to be guilty of otherwise giving a false statement or
28 response to any inquiry made for any purpose, by reason of his
29 failure to recite or acknowledge any expunged entries concerning
30 apprehension or trial."

31 PART VI. MISCELLANEOUS PROVISIONS.

32 Section 35. From funds of appropriated to the
33 Department of Public Instruction, the Department shall be
34 authorized to hire a part-time person to handle the
35 administration of a statewide contract, or regional contracts for
36 services to tow, store, process, maintain, and sell motor
37 vehicles seized pursuant to G.S. 20-28.9.

38 PART VI. EFFECTIVE DATE.

39 Section 36. Parts I and VI of this act becomes
40 effective October 1, 1998 and applies to offenses committed on or
41 after that date. Parts II, III, IV, and V of this act become
42 effective December 1, 1998 and apply to offenses committed on or
43 after that date. The provisions of G.S. 20-28.3(e), (e1), (e2),
44 (e3), (h), and (i) as set forth in Section 3 of the act shall

1 also apply to vehicles held on or after the effective date as a
2 result of seizure that occurred before, on, or after that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 14, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SECOND PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL
1336 - 1998 GOVERNOR'S DWI AMENDMENTS - Senator Odom - S1336-
CSRU-002.**

Senate Bill 1336 is a recommendation of the Joint Corrections and Crime Control Oversight Committee and the Governor's DWI Task Force. The bill would implement 5 recommendations of these two groups:

- Revise the DWI forfeiture laws and other related laws.
- Provide for expedited hearings of DWI's involving seized vehicles.
- Provide for zero alcohol tolerance for commercial drivers, school bus drivers, and day care vehicle drivers.
- Provide for the immediate 30-day revocation for drivers licenses of persons under 21 violating zero tolerance.
- Increase the penalty for 19 and 20 year old possessing or purchasing alcoholic beverages.

PART I - DWI FORFEITURE AMENDMENTS

Part I of the bill (Sections 1 through 17) amends the DWI forfeiture law to make changes and improvements in the law in seven major ways:

1. Expands coverage of the law.
2. Provides greater protections for innocent owners.
3. Provides more bonding options to obtain pre-trial temporary release of the vehicle to nondefendant owners.
4. Provides greater protections for lienholders.
5. Provides greater protections for school boards.
6. Clarifies the authority of law enforcement officers and magistrates in seizure situations.

7. Expedites the sale of some seized vehicles providing greater protections to all parties to avoid excessive storage costs.

Section 1 expands the definition of offenses involving impaired driving to include first degree murder when based on impaired driving and habitual impaired driving.

Section 2 (20-28.2) expands the definition of "impaired driving revocation" to include revocations for habitual impaired driving, commercial driving while impaired, and all vehicular homicides involving impaired driving.

Subsection (a1) includes in the definition of an "innocent owner" persons whose vehicle was reported stolen, persons who filed a police report for unauthorized use of the vehicle, and persons who rent cars that are driven by a person not authorized on the contract to drive.

Subsection (b) permits a forfeiture hearing to be held either at sentencing, at a subsequent hearing, or at an expedited hearing after the defendant fails to appear on the DWI charge and the order of arrest for failing to appear has not been set aside within 60 days.

Subsection (c1) provides that insurance proceeds due from a vehicle damaged in conjunction with the offense leading to the seizure are considered part of the value of the vehicle seized and the proceeds are made subject to forfeiture as well.

Subsection (d) is amended to allow the court to order forfeited collected insurance proceeds and the rights to claim unpaid insurance proceeds.

Subsection (e) provides for the vehicle to be returned to an innocent owner, including a lessor, upon payment of towing and storage charges.

Subsection (f) provides for the vehicle to be released to a lienholder if the vehicle owner is in default on the loan secured by the vehicle, to be sold in accordance with the repossession law, with any equity arising from the sale to be paid to the county board of education.

Section 3 (20-28.3) Subsections (b) does not require the officer to seize a vehicle reported stolen or a rental vehicle driven by a person not authorized on the rental agreement, and together with (b1) removes from arresting officer the duty to notify the relevant parties of the seizure of the vehicle and transfers that responsibility to a state agency designated by the Governor.

Subsection (c1) makes an order of seizure valid statewide and clarifies law enforcement's authority to effect the order of seizure.

Subsection (d) allows custody of seized vehicles to be held either through a state or regional central storage arrangement, or if none is available, by the local county board of education. Storage fees are raised from \$5 per day to \$10 per day, and school boards are allowed to charge for storage if cars are held on school property. Private commercial towing companies are entitled to payment for towing and storage charges prior to releasing the vehicle, unless other arrangements are agreed to by the towing company.

Subsection (e) expands the options for obtaining temporary release of a seized vehicle by a nondefendant owner pending trial by allowing property and bail bonds as collateral for the return of the vehicle at the forfeiture hearing.

Subsection (e1) allows a pretrial determination of innocent owner status by petition. Upon the filing of the petition a court hearing will be set within 10 days, during which time the district attorney may authorize the release of the vehicle if the district attorney determines that the vehicle will not be subject to forfeiture.

Subsection (e2) establishes a way for a defendant owner to have a pretrial hearing on the question of whether the vehicle is subject to forfeiture where the defendant contends that the defendant's license was not revoked for an impaired driving offense and the seizure was a mistake.

Subsection (e3) allows the lienholder to petition for pretrial release where the owner is in default on the loan. The lienholder is allowed to sell the vehicle in accordance with the repossession law and any equity arising from the sale is to be paid to the county board of education.

Subsection (h) provides for insurance proceeds to be seized pending forfeiture, allowing the school board attorney to negotiate the claim and allowing a vehicle determined to be a total loss to be released upon payment of the proceeds.

Subsection (i) provides for several circumstances where a seized vehicle may be sold prior to forfeiture in order to mitigate excessive storage charges. Those situations include 1) where the owner consents to the sale, 2) after 90 days if the vehicle is worth \$1,500 or less, and 3) anytime the towing and storage charges equal or exceed 85% of the worth of the vehicle.

Subsection (k) authorizes the school board attorney to take a more active and significant role in the forfeiture process.

Subsection (l) provides that the defendant be taxed with the cost of towing and storage as part of the restitution for the criminal offense.

Subsection (m) makes trials of DWI cases involving seized vehicles a higher priority and restricts grounds on which these cases can be continued to later dates.

Section 4 (20-28.4) makes conforming changes for other changes made in the bill.

Section 5 (20-28.5). Subsection (a) changes the sales process for forfeited vehicles from a judicial sale to a public sale with special notices as permitted for the disposal of surplus property by schools.

Subsection (c) clarifies how much the county school board should pay other school boards in the county if the county school board retains the forfeited vehicle.

Section 6 repeals restrictions on registration of vehicles for persons whose vehicles are forfeited. These provisions have been recodified in other sections of the law in Sections 9 and 10 of the bill.

Section 8 (20-28.8 and 20-28.9) clarify what information the clerk of court is required to report to DMV and authorizes the Department of Public Instruction to administer regional or statewide contracts for the towing, storage, and sale of seized

and forfeited vehicles. It also clarifies that storage fees up to \$10 per day may be charged for storage under a statewide or regional contract and that a \$10 per vehicle administrative fee will be collect to defray the costs for DPI to administer this program.

Sections 9 and 10 (20-54 and 20-54.1) recodify restrictions on registration of vehicles for persons whose vehicles are forfeited.

Section 12.1 requires DMV to modify the accident report form to provide for the investigative officer to indicate on the accident report if the vehicle involved in the accident was seized and subject to forfeiture.

Section 14 (44A-2(d)) amends the mechanics lien statute to exempt seized vehicle towed or stored from the mechanics lien statute and provides for payment of towing and storage through the seizure and forfeiture process where these costs are required to be paid when the vehicle is release or paid from the proceeds of sale

Section 15 (44A-4(b)(1)) amends the mechanics lien statute to permit another alternative for notice to be sent to a vehicle owner whose vehicle is subject to sale to satisfy an unpaid mechanics lien. Under this provision in addition to DMV sending the notice, the lienholder may send the notice directly.

Sections 16 and 17 (58-71-1 and 58-71-35) amend the bail bond statutes to allow bail bonds to be used to bond the release of seized vehicles.

PART II - ZERO TOLERANCE FOR COMMERCIAL DRIVERS

Sections 18 through 24 amend the laws for commercial driving while impaired offense by reducing the permissible alcohol level from less than 0.04 to no alcohol at all. These sections also revoke for life a commercial drivers license for a second or subsequent commercial DWI.

PART III - ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES

Sections 25 through 29 make it illegal to drive a school bus or a child care vehicle with any alcohol in the body. Currently, operators of larger vehicles are required to have commercial drivers licenses and are subject to a 0.04 blood alcohol limit. This change would make zero tolerance applicable not to just commercial drivers but also operators of small vehicles for which a commercial drivers license is not required.

PART IV - IMMEDIATE REVOCATION FOR UNDER 21 DRIVERS

Sections 30 through 32 makes the immediate 30-day civil revocation of a drivers license for DWI offenses also applicable for violations of zero tolerance for drivers under age 21.

PART V - INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLDS FOR PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 33 repeals the provision that makes purchase or possession of alcoholic beverages by 19 or 20 year olds an infraction, thereby increasing the punishment to a Class 1 misdemeanor.

Section 34 makes a conforming change to the expunction statute for this offense.

PART VI - MISCELLANEOUS PROVISIONS

Section 35 authorizes the Department of Public Instruction to hire a part-time person to administer the statewide or regional towing and storage contract for seized vehicles.

PART VII - EFFECTIVE DATE

The provisions in the bill changing the DWI forfeiture law would become effective October 1, 1998 and would apply to offenses committed on or after that date. The new provisions allowing for increase options to release a seized vehicle through bonding, an innocent owner petition, a defendant owner petition, a lienholder petition, insurance proceeds and expedited pre-trial sales would apply to vehicles currently held on the effective date. The Parts for zero tolerance violations, immediate revocation for under 21 zero tolerance violation, and increasing the penalty for 19 and 20 year old alcoholic beverages purchase or possession are effective December 1, 1998.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Jo B. McCants, Committee Co-Counsel

DATE: July 14, 1998

RE: HOUSE BILL 354 - Eliminate Certified Mail Requirement in Bond Cases

House Bill 354 is a recommendation of the North Carolina Courts Commission. The bill was originally recommended by the Commission in 1997 and passed the House of Representatives during the 1997 Session.

House Bill 354 amends G.S. 15A-544(b) which requires the Clerk of Superior Court to send a copy of an order of bond forfeiture and the notice that judgment will be entered after 60 days to each obligor by certified mail.

The Courts Commission noted in its report that prior to changes enacted by the General Assembly during the 1995 Regular Session, an order of bond forfeiture was served by the sheriff, and if the sheriff could not complete service, the order was mailed by the clerk by regular mail. During the 1995 Regular Session, the General Assembly removed the requirement that the sheriff first attempt service of the order and provided that the clerk serve the order by certified mail. The Clerks of Court Association explained to the Commission that the requirement of certified mail be used to send notice results in increased costs for service and creates additional work for the clerks. The Association also stated that the notice by certified mail serves little or no purpose since, in most cases, the defendant cannot be located.

Section 1.

Requires the Clerk of Superior Court to serve a copy of the order of bond forfeiture and notice to each obligor by first class mail.

Section 2.

The act is effective when it becomes law.

Note: This exact amendment is stated in Section 16.13 of the Senate Budget Bill, SB 1366.

VISITOR REGISTRATION SHEET

Senate Judiciary 7/14/98

Name of Committee

July 14, 98

Date

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CJR

~~Thayer Bone~~

Bone + Assoc - CIADA

Zeb Vizara

Hornetown, NC

John Gyra

n.c. state change

SWAN JOHNSON

ATTY

Jim Andrews

NC AFL-CIO

Mike Mann

"

John MAY

NC CWA

David Simmons

EDA, PA

Eric Halus

San Pando office

Stephen W. Keene

NC Medical Society

Dove Hunt

Smith Abo

Major Charles Cook

NCIMA Cuppa

Muntha Glass

DOA

Heather Jaid

OSM

Spino of Higgs

State Court Office

Mindy Blason

Capital Group

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Bob Rheinhardt

DOA - P&C

Ed Little

DOA P&C

Doug Miskew

IBM

Jaⁿ Mon

Sprint

Paul Lamle

Lamle Consulting

Brenda Dougherty

Sprint

Chris Hays

Electric Corp.

Dallas Wood

State Rep

Chandler Votaw

Senate Page

Willie Riddick

ORR

Andy

WCSR

Charles

Ford & Assoc.

Alvin Darlene

Electric Utility

Sistering

Capital Group

Gene

CPL

John

AT&T

Tom

MRA

**MINUTES
SENATE JUDICIARY COMMITTEE
JULY 16, 1998**

The Senate Judiciary Committee met on Thursday, July 16, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Odom to explain Senate Bill 1336 - AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR THE "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES AND CHILD CARE VEHICLES, AND TO PROVIDE FOR THE IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER 21 YEARS OF AGE; AND TO ELIMINATE THE INFRACTION TREATMENT OF PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES BY A 19 OR 20 YEAR OLD AND TO MAKE CONFORMING CHANGES.

Senator Odom explained the changes in the Proposed Committee Substitute (003) currently before the Committee and the Proposed Committee Substitute (002) which was taken up on July 14, 1998.

Al Isley, Director and Supervisor of the Breathalyzer Training System, was recognized to explain how Breathalyzer tests are administered and to demonstrate how various amounts of alcohol affect drivers.

It was pointed out to the Committee that this legislation is supported by the Truckers Association, the School Board Association and by lenders of motor vehicles.

Senator Winner moved to amend the Proposed Committee Substitute on Page 9, Line 42 and on Page 19, Line 38. (See attached amendment.) The motion carried by a majority voice vote.

Senator Ballance moved to amend the Proposed Committee Substitute on Page 19, Line 42. (See attached amendment.) The motion carried by a majority voice vote.

Senator Ballance moved to amend the Proposed Committee Substitute by changing "'0' tolerance" to "'.02' tolerance" in all places where applicable. The motion failed by a majority voice vote.

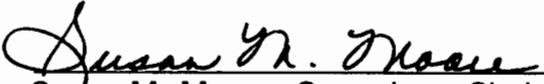
Senator Moore moved to amend the Proposed Committee Substitute on Page 45, Lines 20 and 21. After discussion, the proposed amendment was withdrawn.

Senator Winner moved to give the Proposed Committee (003) a favorable report as amended. The motion carried by a majority voice vote.

There being no further business, the meeting was adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, July 16, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1336 1998 Gov. DWI Amendments Odom

Sen. Roy Cooper, III, Chairman

Posted: 07/15/98 2:10 PM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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D

S1336-CSRU-003
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1336
THIS IS A DRAFT 15-JUL-98 23:01:19
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 1998 Gov. DWI Amendments.

(Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI
3 TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL
4 OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER
5 RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL
6 DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES AND
7 CHILD CARE VEHICLES, AND TO PROVIDE FOR IMMEDIATE
8 ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER 21
9 YEARS OF AGE; AND TO ELIMINATE THE INFRACTION TREATMENT OF
10 PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES BY A 19 OR 20
11 YEAR OLD AND TO MAKE CONFORMING CHANGES.
12 The General Assembly of North Carolina enacts:
13 PART I. DWI FORFEITURE REVISIONS.
14 Section 1. G.S. 20-4.01(24a) reads as rewritten:
15 "(24a) Offense Involving Impaired Driving. -- Any of
16 the following offenses:
17 a. Impaired driving under G.S. 20-138.1.
18 b. Death by vehicle under G.S. 20-141.4 when
19 conviction is based upon impaired driving or a
20 substantially equivalent offense under
21 previous law.

- 1 c. ~~Second~~ First or second degree murder under
2 G.S. 14-17 or involuntary manslaughter under
3 G.S. 14-18 when conviction is based upon
4 impaired driving or a substantially equivalent
5 offense under previous law.
- 6 d. An offense committed in another jurisdiction
7 substantially equivalent to the offenses in
8 subparagraphs a through c.
- 9 e. A repealed or superseded offense substantially
10 equivalent to impaired driving, including
11 offenses under former G.S. 20-138 or G.S. 20-
12 139.
- 13 f. Impaired driving in a commercial motor vehicle
14 under G.S. 20-138.2, except that convictions
15 of impaired driving under G.S. 20-138.1 and
16 G.S. 20-138.2 arising out of the same
17 transaction shall be considered a single
18 conviction of an offense involving impaired
19 driving for any purpose under this Chapter.
- 20 g. Habitual impaired driving under G.S. 20-138.5.
21 A conviction under former G.S. 20-140(c) is
22 not an offense involving impaired driving."

23 Section 2. G.S. 20-28.2 reads as rewritten:

24 "§ 20-28.2. Forfeiture of motor vehicle for impaired driving
25 after impaired driving license revocation.

26 (a) Meaning of "Impaired Driving License Revocation". -- The
27 revocation of a person's ~~driver's~~ drivers license is an impaired
28 driving license revocation if the revocation is pursuant to:

- 29 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-
30 17(a)(2), 20-17(a)(12), ~~or 20-17.2;~~ 20-17.2, or 20-
31 138.5; or
- 32 (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-
33 17(a)(9), or 20-17(a)(11), if the offense involves
34 impaired driving.

35 (a1) ~~{Definitions.}~~ Definitions. -- As used in this section
36 and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-
37 28.8, and 20-28.9, the following terms mean:

- 38 (1) Acknowledgment. -- A written document acknowledging
39 that:
- 40 a. The motor vehicle was operated by a person
41 charged with an offense involving impaired
42 driving while that person's drivers license
43 was revoked as a result of a prior impaired
44 drivers license revocation;

- 1 b. If the motor vehicle is again operated by this
2 particular person, at any time while that
3 person's drivers license is revoked, and the
4 person is charged with an offense involving
5 impaired driving, the motor vehicle is subject
6 to impoundment and forfeiture; and
- 7 c. A lack of knowledge or consent to the
8 operation will not be a defense in the future,
9 unless the motor vehicle owner has taken all
10 reasonable precautions to prevent the use of
11 the motor vehicle by this particular person
12 and immediately reports, upon discovery, any
13 unauthorized use to the appropriate law
14 enforcement agency.
- 15 (1a) Fair market value. -- The value of the seized motor
16 vehicle, as determined in accordance with the
17 schedule of values adopted by the Commissioner
18 pursuant to G.S. 105-187.3.
- 19 (2) Innocent Party owner. -- A motor vehicle ~~owner who:~~
20 owner:
- 21 a. ~~Did not~~ Who did not know and had no reason to
22 know that the defendant's drivers license was
23 revoked;
- 24 b. ~~Knew~~ Who knew that the defendant's drivers
25 license was revoked, but the defendant drove
26 the vehicle without the person's expressed or
27 implied permission;
- 28 c. Whose vehicle was reported stolen;
- 29 d. Who files a police report for unauthorized use
30 of the motor vehicle and agrees to prosecute
31 the unauthorized operator of the motor
32 vehicle;
- 33 e. Who is in the business of renting vehicles,
34 the driver is not listed as an authorized
35 driver on the rental contract; or
- 36 f. Who is in the business of leasing motor
37 vehicles, who holds legal title to the motor
38 vehicle as a lessor at the time of seizure and
39 who has no actual knowledge of the revocation
40 of the lessee's drivers license at the time
41 the lease is entered.
- 42 (2a) Insurance company. -- Any insurance company that
43 has coverage on or is otherwise liable for repairs

- 1 or damages to the motor vehicle at the time of the
2 seizure.
- 3 (2b) Insurance proceeds. -- Proceeds paid under an
4 insurance policy for damage to a seized motor
5 vehicle less any payments actually paid to valid
6 lienholders and for towing and storage costs
7 incurred for the motor vehicle after the time the
8 motor vehicle became subject to seizure.
- 9 (3) Lienholder. -- A person who holds a perfected
10 security interest in a motor vehicle at the time of
11 seizure.
- 12 (3a) Motor vehicle owner. -- A person in whose name a
13 registration card or certificate of title for a
14 motor vehicle is issued at the time of seizure.
- 15 (4) Order of Forfeiture. -- An order by the court which
16 terminates the rights and ownership interest of a
17 motor vehicle owner in a motor vehicle and any
18 insurance proceeds or proceeds of sale in
19 accordance with G.S. 20-28.2.
- 20 ~~(5) Possessory Lien. -- A lien for all costs and fees~~
21 ~~associated with the towing, storage, or sale of a~~
22 ~~vehicle pursuant to this section. This lien shall~~
23 ~~have priority over perfected and unperfected~~
24 ~~security interests. Storage fees subject to this~~
25 ~~lien shall not exceed five dollars (\$5.00) per day.~~
- 26 (6) Registered Owner. -- A person in whose name a
27 registration card for a motor vehicle is issued.
28 issued at the time of seizure.
- 29 ~~(7) Vehicle Owner. -- A person in whose name a~~
30 ~~registration card or certificate of title for a~~
31 ~~motor vehicle is issued.~~
- 32 (b) When Motor Vehicle Becomes Property Subject to Order of
33 Forfeiture. -- If at a sentencing hearing conducted pursuant to
34 G.S. 20-179 or 20-138.5 the judge determines that the grossly
35 aggravating factor described in G.S. 20-179(c)(2) applies, for
36 the underlying offense involving impaired driving, at a separate
37 hearing after conviction of the defendant, or at a forfeiture
38 hearing held at least 60 days after the defendant failed to
39 appear at the scheduled trial for the underlying offense and the
40 defendant's order of arrest for failing to appear has not been
41 set aside, the judge determines by the greater weight of the
42 evidence that the defendant is guilty of an offense involving
43 impaired driving and that the defendant's license was revoked
44 pursuant to an impaired driving license revocation as defined in

1 subsection (a) of this section, the motor vehicle that was
2 driven by the defendant at the time the defendant committed the
3 offense of ~~impaired driving~~ becomes property subject to an order
4 of forfeiture.

5 (c) Duty of Prosecutor to Notify Possible Innocent Parties. --
6 In any case in which a prosecutor determines that a motor vehicle
7 driven by a defendant may be subject to forfeiture under this
8 ~~section,~~ section and the motor vehicle has not been permanently
9 released to a nondefendant vehicle owner pursuant to G.S. 20-
10 28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a
11 lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall
12 determine the identity of every vehicle owner. The prosecutor
13 shall also determine if there are any lienholders noted on the
14 vehicle's certificate of title. The State shall notify the
15 defendant, each motor vehicle owner, and each lienholder that the
16 motor vehicle may be subject to forfeiture and that the
17 defendant, motor vehicle owner, or the lienholder may intervene
18 to protect that person's interest. The notice may be served by
19 any means reasonably likely to provide actual notice, and shall
20 be served at least ~~fourteen~~ 10 days before the hearing at which
21 an order of forfeiture may be entered.

22 (c1) Motor Vehicles Involved in Accidents. -- If a motor
23 vehicle subject to forfeiture was damaged while the defendant
24 operator was committing the underlying offense involving impaired
25 driving, or was damaged incident to the seizure of the motor
26 vehicle, the Division shall determine the name of any insurance
27 companies that are the insurers of record with the Division for
28 the motor vehicle at the time of the seizure or that may
29 otherwise be liable for repair to the motor vehicle. In any case
30 where a seized motor vehicle was involved in an accident, the
31 Division shall notify the insurance companies that the claim for
32 insurance proceeds for damage to the seized motor vehicle shall
33 be paid to the clerk of superior court of the county where the
34 motor vehicle was seized to be held and disbursed pursuant to
35 further orders of the court. Any insurance company that receives
36 written or other actual notice of seizure pursuant to this
37 section shall not be relieved of any legal obligation under any
38 contract of insurance unless the claim for property damage to the
39 seized motor vehicle minus the policy owner's deductible is paid
40 directly to the clerk of court. The insurance company paying
41 insurance proceeds to the clerk of court pursuant to this section
42 shall be immune from suit by the motor vehicle owner for any
43 damages alleged to have occurred as a result of the motor vehicle
44 seizure. The proceeds shall be held by the clerk. The clerk

1 shall disburse the insurance proceeds pursuant to further orders
2 of the court.

3 ~~(d) Duty of Judge. Forfeiture Hearing. -- The trial judge~~
4 ~~Unless a motor vehicle that has been seized pursuant to G.S. 20-~~
5 ~~28.3 has been permanently released to an innocent owner pursuant~~
6 ~~to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-~~
7 ~~28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the~~
8 ~~court shall conduct a hearing on the forfeiture of the motor~~
9 ~~vehicle. The hearing may be held at the sentencing hearing on the~~
10 ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5~~
11 ~~shall determine if the vehicle is subject to forfeiture under~~
12 ~~this section, underlying offense involving impaired driving, at a~~
13 ~~separate hearing after conviction of the defendant, or at a~~
14 ~~separate forfeiture hearing held not less than 60 days after the~~
15 ~~defendant failed to appear at the scheduled trial for the~~
16 ~~underlying offense and the defendant's order of arrest for~~
17 ~~failing to appear has not been set aside. If at the sentencing~~
18 ~~hearing, or at a subsequent forfeiture hearing, the judge~~
19 ~~determines that the requirements of subsections (a) through (c)~~
20 ~~of this section exist and the defendant was the only motor~~
21 ~~vehicle owner at the time of the offense, motor vehicle is~~
22 ~~subject to forfeiture pursuant to this section and proper notice~~
23 ~~of the hearing has been given, the judge shall order the motor~~
24 ~~vehicle forfeited. If at the sentencing hearing or at a~~
25 ~~subsequent forfeiture hearing, the judge determines that the~~
26 ~~requirements of subsections (a) through (c) of this section exist~~
27 ~~and the defendant was not the only vehicle owner at the time of~~
28 ~~the offense, motor vehicle is subject to forfeiture pursuant to~~
29 ~~this section and proper notice of the hearing has been given, the~~
30 ~~judge shall order the motor vehicle forfeited unless another~~
31 ~~motor vehicle owner establishes, by the greater weight of the~~
32 ~~evidence, that such motor vehicle owner is an innocent party~~
33 ~~owner as defined by subdivision (a1)(2) of in this section, in~~
34 ~~which case the trial judge shall order the motor vehicle released~~
35 ~~to the innocent party vehicle owner pursuant to the provisions of~~
36 ~~subsection (e) of this section. In any case where the motor~~
37 ~~vehicle is ordered forfeited, the judge shall either: shall:~~

38 (1) (a) Authorize the school board to sell sale of the
39 motor vehicle at public sale or allow the
40 county board of education to retain the motor
41 vehicle for its own use pursuant to G.S. 20-
42 28.5; or
43 +2) (b) Release Order the motor vehicle released to an
44 intervening lienholder pursuant to the

1 provisions of subsection ~~(g)~~ (f) of this
2 ~~section.~~ section; and,
3 (2) (a) Order any proceeds of sale or insurance
4 proceeds held by the clerk of court to be
5 disbursed to the county board of education;
6 and
7 (b) Order any outstanding insurance claims be
8 assigned to the county board of education in
9 the event the motor vehicle has been damaged
10 in an accident incident to the seizure of the
11 motor vehicle.

12 If the judge determines that the ~~requirements of subsection (a)~~
13 ~~and (b) of this section exist~~ motor vehicle is subject to
14 forfeiture pursuant to this section, but that notice as required
15 by subsection (c) has not been given, the judge shall continue
16 the forfeiture proceeding until adequate notice has been given.
17 In no circumstance shall the sentencing of the defendant be
18 delayed as a result of the failure of the prosecutor to give
19 adequate notice.

20 (e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner.
21 -- ~~If~~ At a forfeiture hearing, if a nondefendant motor vehicle
22 owner establishes by the greater weight of the evidence that: (i)
23 the motor vehicle was being driven by a person who was not the
24 only motor vehicle owner or had no ownership interest in the
25 motor vehicle at the time of the underlying offense and (ii) ~~that~~
26 the petitioner is an "innocent party", "innocent owner", as
27 defined by this section, a judge shall order the motor vehicle
28 returned released to the ~~that~~ owner, owner, conditioned upon
29 payment of all towing and storage charges incurred as a result of
30 the seizure and impoundment of the motor vehicle.

31 ~~This release~~ Release to an innocent owner shall only be ordered
32 upon satisfactory proof of:

- 33 (1) The identity of the person as a motor vehicle
34 owner;
35 (2) The existence of financial responsibility to the
36 extent required by Article 13 of this Chapter; and
37 ~~(3) The payment of towing and storage fees; fees,~~
38 ~~except in the case of release to an innocent~~
39 ~~vehicle owner; and~~
40 (4) The execution of an acknowledgment as defined in
41 subdivision (a1)(1) of this section.

42 If the nondefendant owner is a lessor, the release shall also
43 be conditioned upon the lessor agreeing not to sell, give, or
44 otherwise transfer possession of the forfeited motor vehicle to

1 the defendant or any person acting on the defendant's behalf. A
2 lessor who refuses to sell, give, or transfer possession of a
3 seized motor vehicle to the defendant or any person acting on the
4 behalf of the defendant shall not be liable for damages arising
5 out of the refusal.

6 No motor vehicle subject to forfeiture under this section shall
7 be released to a nondefendant motor vehicle owner if the records
8 of the Division indicate the motor vehicle owner had previously
9 signed an acknowledgment, as required by this section, and the
10 same person was operating the motor vehicle while that person's
11 license was revoked unless the innocent ~~vehicle~~ owner shows by
12 the greater weight of the evidence that the motor vehicle owner
13 has taken all reasonable precautions to prevent the use of the
14 motor vehicle by this particular person and immediately reports,
15 upon discovery, any unauthorized use to the appropriate law
16 enforcement agency. A determination by the court at the
17 forfeiture hearing held pursuant to subsection (d) of this
18 section that the petitioner is not an innocent owner is a final
19 judgment and is immediately appealable to the Court of Appeals.

20 (f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the
21 trial judge shall order a forfeited motor vehicle released to the
22 lienholder upon payment of all towing and storage charges
23 incurred as a result of the seizure of the motor vehicle if the
24 judge determines, by the greater weight of the evidence, that:

25 (1) ~~The lienholder's interest is equal to or greater~~
26 ~~than the fair market value of the vehicle;~~ has been
27 perfected and appears on the title to the forfeited
28 vehicle;

29 (2) The lienholder agrees not to sell, give, or
30 otherwise transfer possession of the forfeited
31 motor vehicle to the defendant or to the motor
32 vehicle owner who owned the motor vehicle
33 immediately prior to forfeiture, or any person
34 acting on the defendant's or motor vehicle owner's
35 behalf; and

36 (3) The forfeited motor vehicle had not previously been
37 released to the ~~lienholder;~~ and lienholder.

38 ~~(4) The lienholder pays, in full, any towing and~~
39 ~~storage costs incurred as a result of the seizure~~
40 ~~of the vehicle. The owner is in default under the~~
41 terms of the security instrument evidencing the
42 interest of the lienholder and as a consequence of
43 the default the lienholder is entitled to
44 possession of the motor vehicle; and

1 (5) The lienholder agrees to sell the motor vehicle in
2 accordance with the terms of its agreement and
3 pursuant to the provisions of Part 5 of Article 9
4 of Chapter 25 of the General Statutes. Upon the
5 sale of the motor vehicle, the lienholder will pay
6 to the clerk of court of the county in which the
7 vehicle was forfeited all proceeds from the sale,
8 less the amount of the lien in favor of the
9 lienholder, and any towing and storage costs paid
10 by the lienholder.

11 A lienholder who refuses to sell, give, or transfer possession of
12 a forfeited motor vehicle to the defendant, the vehicle owner who
13 owned the motor vehicle immediately prior to forfeiture, or any
14 person acting on the behalf of the defendant or motor vehicle
15 owner shall not be liable for damages arising out of such
16 refusal. The defendant, the motor vehicle owner who owned the
17 motor vehicle immediately prior to forfeiture, and any person
18 acting on the defendant's or motor vehicle owner's behalf are
19 prohibited from purchasing the motor vehicle at any sale
20 conducted by the lienholder.

21 ~~(g) Possessory Lien. -- The entity that tows or stores the~~
22 ~~motor vehicle, other than the county school board, shall be~~
23 ~~entitled to a possessory lien as defined in G.S. 28.2(a)(5)."~~

24 Section 3. G.S. 20-28.3 reads as rewritten:

25 "§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles
26 for offenses involving impaired driving while license revoked.

27 (a) {Vehicles Subject to Seizure.} Motor Vehicles Subject to
28 Seizure. -- A motor vehicle that is driven by a person in
29 violation of G.S. 20-138.1 or G.S. 20-138.5 who is charged with
30 an offense involving impaired driving is subject to seizure if at
31 the time of the violation the drivers license of the person
32 driving the motor vehicle was revoked as a result of a prior
33 impaired driving license revocation as defined in G.S. 20-
34 28.2(a).

35 (b) Duty of Officer. -- If the charging officer has probable
36 cause to believe that a motor vehicle driven by the defendant may
37 be subject to forfeiture under this section, the officer shall
38 seize the motor vehicle and have it impounded. If the officer
39 determines prior to seizure that the motor vehicle had been
40 reported stolen or that the motor vehicle was a rental vehicle
41 driven by a person not listed as an authorized driver on the
42 rental contract, the officer shall not seize the motor vehicle.
43 Probable cause may be based on the officer's personal knowledge,
44 reliable information conveyed by another officer, records of the

1 Division, or other reliable source. ~~The officer shall cause to be~~
2 ~~issued written notification of impoundment to any vehicle owner~~
3 ~~who was not operating or present in the vehicle at the time of~~
4 ~~the offense. This notice shall be sent by first-class mail to the~~
5 ~~most recent address contained in the Division records. This~~
6 ~~written notification shall inform the vehicle owner(s) that the~~
7 ~~vehicle has been impounded, shall state the reason for the~~
8 ~~impoundment and the procedure for requesting release of the~~
9 ~~vehicle.~~ The seizing officer shall notify the Division as soon as
10 practical but no later than 72 hours after seizure of the motor
11 vehicle and the agency designated under subsection (b1) of this
12 section of the seizure in accordance with procedures established
13 by the Division. Division and the agency designated under
14 subsection (b1) of this section. Within 72 hours of the seizure
15 of the vehicle the officer shall also cause notice of the
16 impoundment and intent to forfeit the vehicle to be given to any
17 lienholder of record with the Division.

18 (b1) Notification of Impoundment. -- Within 48 hours of
19 receipt of the notice of seizure, an agency designated by the
20 Governor shall issue written notification of impoundment to any
21 lienholder of record and to any motor vehicle owner who was not
22 operating the motor vehicle at the time of the offense. This
23 notice shall be sent by first-class mail to the most recent
24 address contained in the Division's records. If the motor
25 vehicle is registered in another state, notice shall be sent to
26 the address shown on the records of the state where the motor
27 vehicle is registered. This written notification shall provide
28 notice that the motor vehicle has been seized, state the reason
29 for the seizure and the procedure for requesting release of the
30 motor vehicle. Additionally, if the motor vehicle was damaged
31 while the defendant operator was committing an offense involving
32 impaired driving or incident to the seizure, the agency shall
33 issue written notification of the seizure to the owner's
34 insurance company of record and to any other insurance companies
35 that may be insuring other motor vehicles involved in the
36 accident. The Division shall prohibit title to a seized motor
37 vehicle from being transferred by a motor vehicle owner unless
38 authorized by court order.

39 (c) Review by Magistrate. -- Upon ~~seizing~~ determining that
40 there is probable cause for seizing a motor vehicle, the seizing
41 officer shall present to a magistrate within the county where the
42 vehicle was seized driver was charged an affidavit of impoundment
43 setting forth the basis upon which the motor vehicle has been or
44 will be seized for forfeiture. The magistrate shall review the

1 affidavit of impoundment and if the magistrate determines the
2 requirements of this section have been met, shall order the motor
3 vehicle held. The magistrate may request additional information
4 and may hear from the ~~operator~~ defendant if the ~~operator~~
5 defendant is present. If the magistrate determines the
6 requirements of this section have not been met, the magistrate
7 shall order the motor vehicle released to a motor vehicle owner
8 upon payment of towing and storage fees. If the motor vehicle
9 has not yet been seized, and the magistrate determines that
10 seizure is appropriate, the magistrate shall issue an order of
11 seizure of the motor vehicle. The magistrate shall provide a
12 copy of the order of seizure to the clerk of court. The clerk
13 shall provide copies of the order of seizure to the district
14 attorney and the attorney for the county board of education.

15 (c1) Effecting an Order of Seizure. -- An order of seizure
16 shall be valid anywhere in the State. Any officer with
17 territorial jurisdiction and who has subject matter jurisdiction
18 for violations of Chapter 20 of the General Statutes, may use
19 such force as may be reasonable to seize the motor vehicle and to
20 enter upon the property of the defendant to accomplish the
21 seizure. An officer who has probable cause to believe the motor
22 vehicle is concealed or stored on private property of a person
23 other than the defendant may obtain a search warrant to enter
24 upon that property for the purpose of seizing the motor vehicle.

25 (d) Custody of Motor Vehicle. -- ~~The~~ Unless the motor vehicle
26 is towed pursuant to a statewide or regional contract, or a
27 contract with the county board of education, the seized motor
28 vehicle shall be towed by a commercial towing company designated
29 by the law enforcement agency that seized the motor vehicle. ~~to~~
30 ~~a location designated by the county school board for the county~~
31 ~~in which the operator of the vehicle is charged and~~ Seized motor
32 vehicles not towed pursuant to a statewide or regional contract
33 or a contract with a county board of education shall be retrieved
34 from the commercial towing company within a reasonable time, not
35 to exceed 10 days, by the county board of education or their
36 agent who must pay towing and storage fees to the commercial
37 towing company when the motor vehicle is retrieved. If either a
38 statewide or regional contractor, or the county board of
39 education, choose to contract for local towing services, all
40 towing companies on the towing list for each law enforcement
41 agency with jurisdiction within the county shall be given written
42 notice and an opportunity to submit proposals prior to a contract
43 for local towing services being awarded. The seized motor
44 vehicle is ~~placed~~ under the constructive possession of the ~~school~~

1 ~~board~~ county board of education for the county in which the
2 operator of the vehicle is charged at the time the vehicle is
3 delivered to a location designated by the county board of
4 education or delivered to its agent pending release or sale, or
5 in the event of a statewide or regional contract is in place,
6 under the constructive possession of the Department of Public
7 Instruction, on behalf of the State at the time the vehicle is
8 delivered to a location designated by the Department of Public
9 Instruction or delivered to its agent pending release or sale.
10 ~~Each~~ Absent a statewide or regional contract that provides
11 otherwise, each county ~~school board~~ board of education may elect
12 to have seized motor vehicles stored on property owned or leased
13 by the ~~school~~ county board of education and charge ~~ne~~ a
14 reasonable fee for ~~storage-~~ storage, not to exceed ten dollars
15 (\$10.00) per day. In the alternative, the county ~~school board~~
16 board of education may contract with a commercial towing and
17 storage facility or other private entity for the ~~storage~~ towing,
18 storage and disposal of seized motor vehicles, and a storage fee
19 of not more than ~~five~~ ten dollars ~~(\$5.00)~~ (\$10.00) per day may be
20 charged. Except for gross negligence or intentional misconduct,
21 the county board of education, or any of its employees, shall not
22 be liable to the owner or lienholder for damage to or loss of
23 the motor vehicle or its contents, or to the owner of personal
24 property in a seized vehicle, during the time the motor vehicle
25 is being towed or stored pursuant to this subsection.

26 (e) Release of Motor Vehicle Pending Trial. -- A motor vehicle
27 owner, ~~or a lienholder of a motor vehicle,~~ other than the driver
28 at the time of the underlying offense resulting in the seizure,
29 may apply to the clerk of superior court in the county where the
30 charges are pending for pretrial release of the motor vehicle.

31 The clerk shall release the motor vehicle to a qualified
32 nondefendant motor vehicle owner ~~or a lienholder~~ conditioned upon
33 payment of all towing and storage charges incurred as a result of
34 seizure and impoundment of the motor vehicle under the following
35 conditions:

- 36 (1) The motor vehicle has been ~~stored~~ seized for not
37 less than 24 hours;
- 38 ~~(2) All towing and storage charges have been paid;~~
- 39 (3) ~~Execution of a good and valid bond with sufficient~~
40 ~~sureties in an amount equal to twice the value of~~
41 ~~the seized vehicle, as determined in accordance~~
42 ~~with the schedule of values adopted by the~~
43 ~~Commissioner of Motor Vehicles pursuant to C.S.~~
44 ~~105-187.3, A bond in an amount equal to the fair~~

- 1 market value of the motor vehicle as defined by
2 G.S. 20-28.2 has been executed and is secured by a
3 cash deposit in the full amount of the bond, by a
4 recordable deed of trust to real property in the
5 full amount of the bond, by a bail bond under G.S.
6 58-71-1(2), or by at least one solvent surety,
7 payable to the county school fund and conditioned
8 on return of the motor vehicle, in substantially
9 the same condition as it was at the time of seizure
10 and without any new or additional liens or
11 encumbrances, on the day of ~~trial of the operator,~~
12 any hearing scheduled and noticed by the district
13 attorney under G.S. 20-28.2(c), unless the motor
14 vehicle has been permanently released;
15 (4) If a ~~qualified vehicle owner,~~ execution Execution
16 of an acknowledgment as described in G.S. 20-
17 28.2(a1); and
18 (5) A check of the records of the Division indicates
19 that the requesting motor vehicle owner has not
20 previously executed an acknowledgment naming the
21 operator of the seized ~~vehicle,~~ motor vehicle; and
22 (6) A bond posted to secure the release of this motor
23 vehicle under this subsection has not been
24 previously ordered forfeited under G.S. 20-28.5.

25 In the event a nondefendant motor vehicle owner who obtains
26 temporary possession of a seized motor vehicle pursuant to this
27 subsection does not return the motor vehicle on the day of the
28 forfeiture hearing as noticed by the district attorney under G.S.
29 20-28.3(c) or otherwise violates a condition of pretrial release
30 of the seized motor vehicle as set forth in this subsection, the
31 bond posted shall be ordered forfeited and an order of seizure
32 shall be issued by the court. Additionally, a nondefendant motor
33 vehicle owner or lienholder who willfully violates any condition
34 of pretrial release may be held in civil or criminal contempt.

35 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. --
36 A nondefendant motor vehicle owner may file a petition with the
37 clerk of court seeking a pretrial determination that the
38 petitioner is an innocent owner. The clerk shall schedule a
39 hearing before a judge to be held within 10 business days or as
40 soon as thereafter may be feasible. Notice of the hearing shall
41 be given to the petitioner, the district attorney, and the
42 attorney for the county board of education. The clerk shall
43 forward a copy of the petition to the district attorney for the
44 district attorney's review. If, based on available information,

1 the district attorney determines that the petitioner is an
2 innocent owner and that the motor vehicle is not subject to
3 forfeiture, the district attorney may note the State's consent to
4 the release of the motor vehicle on the petition and return the
5 petition to the clerk of court who shall enter an order releasing
6 the motor vehicle to the petitioner subject to the conditions of
7 release as set forth in G.S. 20-28.2(e) and no hearing shall be
8 held. The clerk shall send a copy of the order of release to the
9 county board of education attorney. At any pretrial hearing
10 conducted pursuant to this subsection, the court is not required
11 to determine the issue of forfeiture, only the issue of whether
12 the petitioner is an innocent owner. Accordingly, the State
13 shall not be required to prove the underlying offense of impaired
14 driving or the existence of a prior drivers license revocation.
15 If the court determines that the petitioner is an innocent owner,
16 the court shall release the motor vehicle to the petitioner
17 subject to the same conditions as if the petitioner were an
18 innocent owner under G.S. 20-28.2(e). An order issued under this
19 subsection finding that the petitioner failed to establish that
20 the petitioner is an innocent owner may be reconsidered by the
21 court as part of the forfeiture hearing conducted pursuant to
22 G.S. 20-28.2(d).

23 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. --
24 A defendant motor vehicle owner may file a petition with the
25 clerk of court seeking a pretrial determination that the
26 defendant's license was not revoked pursuant to an impaired
27 driving license revocation as defined in G.S. 20-28.2(a). The
28 clerk shall schedule a hearing before a judge of the division in
29 which the underlying criminal charge is pending for a hearing to
30 be held within 10 business days or as soon as thereafter as may
31 be feasible. Notice of the hearing shall be given to the
32 defendant, the district attorney, and the attorney for the county
33 board of education. The clerk shall forward a copy of the
34 petition to the district attorney for the district attorney's
35 review. If, based on available information, the district
36 attorney determines that the defendant's motor vehicle is not
37 subject to forfeiture, the district attorney may note the State's
38 consent to the release of the motor vehicle on the petition and
39 return the petition to the clerk of court who shall enter an
40 order releasing the motor vehicle to the defendant upon payment
41 of all towing and storage charges incurred as a result of the
42 seizure and impoundment of the motor vehicle, subject to the
43 satisfactory proof of the identity of the defendant as a motor
44 vehicle owner and the existence of financial responsibility to

1 the extent required by Article 13 of this Chapter, and no hearing
2 shall be held. The clerk shall send a copy of the order of
3 release to the attorney for the county board of education. At
4 any pretrial hearing conducted pursuant to this subsection, the
5 court is not required to determine the issue of the underlying
6 offense of impaired driving only the existence of a prior drivers
7 license revocation as an impaired driving license revocation.
8 Accordingly, the State shall not be required to prove the
9 underlying offense of impaired driving. An order issued under
10 this subsection finding that the defendant failed to establish
11 that the defendant's license was not revoked pursuant to an
12 impaired driving license revocation as defined in G.S. 20-28.2(a)
13 may be reconsidered by the court as part of the forfeiture
14 hearing conducted pursuant to G.S. 20-28.2(d).

15 (e3) Pretrial Release of Motor Vehicle to Lienholder. -- A
16 lienholder may file a petition with the clerk of court requesting
17 the court to order pretrial release of a seized motor vehicle.
18 The lienholder shall serve a copy of the petition on all
19 interested parties which shall include the registered owner, the
20 titled owner, the district attorney and the county board of
21 education attorney. Upon 10 days' prior notice of the date,
22 time, and location of the hearing sent by the lienholder to all
23 interested parties, a judge, after a hearing, shall order a
24 seized motor vehicle released to the lienholder conditioned upon
25 payment of all towing and storage costs incurred as a result of
26 the seizure and impoundment of the motor vehicle if the judge
27 determines, by the greater weight of the evidence, that:

- 28 (1) Default on the obligation secured by the motor
29 vehicle has occurred;
30 (2) As a consequence of default, the lienholder is
31 entitled to possession of the motor vehicle;
32 (3) The lienholder agrees to sell the motor vehicle in
33 accordance with the terms of its agreement and
34 pursuant to the provisions of Part 5 of Article 9
35 of Chapter 25 of the General Statutes. Upon sale
36 of the the motor vehicle, the lienholder will pay
37 to the clerk of court of the county in which the
38 vehicle was seized all proceeds from the sale, less
39 the amount of the lien in favor of the lienholder,
40 and any towing and storage costs paid by the
41 lienholder.;
42 (4) The lienholder agrees not to sell, give, or
43 otherwise transfer possession of the forfeited

1 motor vehicle to the defendant or the motor vehicle
2 owner; and

3 (5) The forfeited motor vehicle had not previously been
4 released to the lienholder.

5 The clerk of superior court may order a seized vehicle released
6 to the lienholder conditioned upon payment of all towing and
7 storage costs incurred as a result of the seizure and impoundment
8 of the motor vehicle at any time when all interested parties
9 have, in writing, waived any rights that they may have to notice
10 and a hearing, and the lienholder has agreed to the provision of
11 subdivision (4) above. A lienholder who refuses to sell, give, or
12 transfer possession of a forfeited motor vehicle to:

13 (1) The defendant;

14 (2) The motor vehicle owner who owned the motor vehicle
15 immediately prior to forfeiture; or

16 (3) Any person acting on the behalf of the defendant or
17 the motor vehicle owner,

18 shall not be liable for damages arising out of such refusal.

19 However, any subsequent violation of the conditions of release by
20 the lienholder shall be punishable by civil or criminal contempt.

21 ~~(f) Duty of Trial Judge. -- The trial judge at the sentencing~~
22 ~~hearing on the operator's charge of violating C.S. 20-138.1 or~~
23 ~~C.S. 20-138.5 shall determine if the vehicle is subject to~~
24 ~~forfeiture pursuant to the provisions of C.S. 20-28.2.~~

25 ~~(g) Possessory Lien. -- The entity that tows and stores the~~
26 ~~vehicle, other than the county school board, shall be entitled to~~
27 ~~a possessory lien as defined in C.S. 28.2(a1)(5).~~

28 (h) Insurance Proceeds. -- In the event a motor vehicle is
29 damaged incident to the conduct of the defendant which gave rise
30 to the defendant's arrest and seizure of the motor vehicle
31 pursuant to this section, the county board of education, or its
32 authorized designee, is authorized to negotiate the county board
33 of education's interest with the insurance company and to
34 compromise and accept settlement of any claim for damages.
35 Property insurance proceeds accruing to the defendant, or other
36 owner of the seized motor vehicle, shall be paid by the
37 responsible insurance company directly to the clerk of superior
38 court in the county where the motor vehicle was seized. If the
39 motor vehicle is declared a total loss by the insurance company
40 responsible for repairs to the motor vehicle, the clerk of
41 superior court, upon application of the county board of
42 education, shall enter an order that the motor vehicle be
43 released to the insurance company upon payment into the court of
44 all insurance proceeds for damage to the motor vehicle after

1 payment of towing and storage costs and all valid liens. The
2 clerk of superior court shall provide the Division with a
3 certified copy of the order entered pursuant to this subsection,
4 and the Division shall transfer title to the insurance company or
5 to such other person or entity as may be designated by the
6 insurance company. Insurance proceeds paid to the clerk of court
7 pursuant to this subsection shall be subject to forfeiture
8 pursuant to G.S. 20-28.5 and shall be disbursed pursuant to
9 further orders of the court. An affected motor vehicle owner or
10 lienholder who objects to any agreed upon settlement under this
11 subsection may file an independent claim with the insurance
12 company for any additional monies believed owed. Notwithstanding
13 any other provisions in the Chapter, nothing in this section
14 shall require an insurance company to make payments in excess of
15 those required pursuant to its policy of insurance on the seized
16 motor vehicle.

17 (i) Expedited Sale of Seized Motor Vehicles in Certain Cases.
18 -- In order to avoid additional liability for towing and storage
19 costs pending resolution of the criminal proceedings of the
20 defendant, the county board of education may, after expiration of
21 90 days from the date of seizure, sell any motor vehicle having a
22 fair market value of one thousand five hundred dollars (\$1,500)
23 or less. The county board of education may also sell a motor
24 vehicle, regardless of the fair market value, any time the towing
25 and storage costs exceed eighty-five percent (85%) of the fair
26 market value of the vehicle, or with the consent of all the motor
27 vehicle owners. Any sale conducted pursuant to this subsection
28 shall take place upon not less than 10 days' prior notice to the
29 motor vehicle owners and lienholders and the proceeds of the sale
30 shall be deposited with the clerk of superior court. If an order
31 of forfeiture is entered by the court, the court shall order the
32 proceeds held by the clerk to be disbursed as provided in G.S.
33 20-28.5(b). If the court determines that the motor vehicle is
34 not subject to forfeiture, the court shall order the proceeds
35 held by the clerk to be disbursed first to pay the sale, towing,
36 and storage costs, second to pay outstanding liens on the motor
37 vehicle, and the balance to be paid to the motor vehicle owners.

38 (j) Retrieval of Certain Personal Property. -- At reasonable
39 times, the entity charged with storing the motor vehicle may
40 permit owners of personal property not affixed to the motor
41 vehicle to retrieve those items from the motor vehicle, provided
42 satisfactory proof of ownership of the motor vehicle or the items
43 of personal property is presented to the storing entity.

1 (k) County Board of Education Right to Appear and Participate
2 in Proceedings. -- The attorney for the county board of education
3 shall be given notice of all proceedings regarding offenses
4 involving impaired driving related to a motor vehicle subject to
5 forfeiture. The attorney for the county board of education shall
6 also have the right to appear and to be heard on all issues
7 relating to the seizure, possession, release, forfeiture, sale,
8 and other matters related to the seized vehicle under this
9 section. With the prior consent of the county board of
10 education, the district attorney may delegate to the attorney for
11 the county board of education any or all of the duties of the
12 district attorney under this section. Clerks of superior court,
13 law enforcement agencies, and all other agencies with information
14 relevant to the seizure, impoundment, release or forfeiture of
15 motor vehicles are authorized and directed to provide county
16 boards of education with access to that information and to do so
17 by electronic means when existing technology makes this type of
18 transmission possible.

19 (l) Payment of Fees Upon Conviction. -- If the driver of a
20 motor vehicle seized pursuant to this section is convicted of an
21 offense involving impaired driving, the defendant shall be
22 ordered to pay as restitution to the county board of education,
23 the motor vehicle owner, or the lienholder, the cost paid or
24 owing for the towing, storage, and sale of the motor vehicle to
25 the extent the costs were not covered by the proceeds from the
26 forfeiture and sale of the motor vehicle. The order of payment
27 of costs under this subsection, in addition to being a part of
28 the criminal judgment, shall also constitute a civil judgment in
29 favor of the party to whom the restitution is owed, shall be
30 docketed by the clerk of court as any other civil judgment, and
31 may be collected as any other civil judgment.

32 (m) Trial Priority. -- Trials of impaired driving offenses
33 involving forfeitures of motor vehicles pursuant to G.S. 20-28.2
34 shall be scheduled on the arresting officer's next court date or
35 within 30 days of the offense, whichever comes first.

36 Once scheduled, the case shall not be continued unless all of
37 the following conditions are met:

- 38 (1) A written motion for continuance is filed with
39 notice given to the opposing party prior to the
40 motion being heard.
41 (2) The judge makes a finding of a 'compelling reason'
42 for the continuance.
43 (3) The motion and finding are attached to the court
44 case record.

1 Upon a determination of guilt, the issue of vehicle forfeiture
2 shall be heard by the judge immediately, or as soon thereafter as
3 feasible, and the judge shall issue the appropriate orders
4 pursuant to G.S. 20-28.2(d).

5 Should a defendant appeal his conviction to superior court, the
6 appeal shall be set down for trial on the next available trial
7 date and the limitations on continuances and requirement for
8 expedited hearing on the forfeiture of the vehicle, set forth
9 above, shall apply."

10 Section 4. G.S. 20-28.4 reads as rewritten:

11 "§ 20-28.4. Release of impounded motor vehicles by judge.

12 ~~(a) Release to Innocent Vehicle Owner. -- A vehicle owner who~~
13 ~~was not the operator of the vehicle at the time of the offense~~
14 ~~may petition the court for return of the vehicle pursuant to the~~
15 ~~provisions of G.S. 20-28.2(e).~~

16 ~~(b) Acknowledgment Required. -- The vehicle owner seeking~~
17 ~~release under this section or pretrial release under G.S. 20-28.3~~
18 ~~shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).~~

19 ~~(c) Release to Lienholder. -- A district court judge may order~~
20 ~~a forfeited vehicle released to a lienholder if the judge~~
21 ~~determines, by the greater weight of the evidence, that the~~
22 ~~lienholder satisfies the criteria as set out in G.S. 20-28.2(f).~~

23 (d) Release Upon Conclusion of Trial. -- If the driver of a
24 motor vehicle seized pursuant to G.S. 20-28.3:

25 (1) Is subsequently not convicted of either ~~G.S.~~
26 ~~20-138.1 or G.S. 20-138.5~~ an offense involving
27 impaired driving due to dismissal or a finding of
28 not guilty; or

29 (2) The judge at the ~~sentencing hearing fails to find~~
30 ~~the grossly aggravating factor described in G.S.~~
31 ~~20-179(c)(2),~~ a forfeiture hearing conducted
32 pursuant to G.S. 20-28.2(d) fails to find that the
33 driver's license was revoked as a result of a prior
34 impaired driving license revocation as defined in
35 G.S. 20-28.2; and

36 (3) The vehicle has not previously been released to a
37 lienholder pursuant G.S. 20-28.3(e3),

38 the seized motor vehicle shall be returned released to the motor
39 vehicle owner- owner conditioned upon payment of towing and
40 storage costs. Notwithstanding G.S. 44A-2(d), if the owner of
41 the seized motor vehicle does not obtain release of the vehicle
42 within 10 days from the date of the court's order, the possessor
43 of the seized motor vehicle has a mechanics lien on the seized
44 motor vehicle for the full amount of the towing and storage

1 charges incurred since the motor vehicle was seized and may
2 dispose of the seized motor vehicle pursuant to Article 1 of
3 Chapter 44A of the General Statutes.

4 ~~If the court finds that probable cause did not exist to seize~~
5 ~~the motor vehicle, the court shall order the vehicle released.~~

6 ~~A determination which results in the return or release of the~~
7 ~~seized vehicle under this section authorizes the driver, vehicle~~
8 ~~owner, or lienholder to recover towing or storage fees paid in~~
9 ~~order to obtain pretrial release of the motor vehicle. Towing or~~
10 ~~storage fees recovered pursuant to this subsection shall be paid~~
11 ~~by the county school board from forfeitures paid into the county~~
12 ~~school fund."~~

13 Section 5. G.S. 20-28.5 reads as rewritten:

14 "§ 20-28.5. Forfeiture of impounded ~~vehicle.~~ motor vehicle or
15 funds.

16 (a) Sale. -- ~~Unless a judge orders the vehicle returned to an~~
17 ~~innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S.~~
18 ~~20-28.4, the vehicle shall be ordered forfeited and sold or~~
19 ~~transferred to the school board in the county where the charges~~
20 ~~were filed. The sale of the vehicle shall be a judicial A motor~~
21 ~~vehicle ordered forfeited and sold shall be sold at a public sale~~
22 ~~conducted in accordance with the provisions of Parts 1 and 2 of~~
23 ~~Article 29A of Chapter 1 Article 12 of Chapter 160A of the~~
24 ~~General Statutes Statutes, applicable to sales authorized~~
25 ~~pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the~~
26 ~~notice requirements of this subsection, and shall be conducted by~~
27 ~~the county school board board of education or a person acting on~~
28 ~~its behalf. In addition to the notice requirements of Part 2 of~~
29 ~~Article 29A of Chapter 1 of the General Statutes, notice of sale~~
30 ~~Notice of sale, including the date, time, location, and manner of~~
31 ~~sale, shall also be given by certified mail, return receipt~~
32 ~~requested, first-class mail, to all motor vehicle owners at the~~
33 ~~address shown by the Division's records of the Division and at~~
34 ~~any other address of the motor vehicle owner as may be found in~~
35 ~~the criminal file in which the forfeiture was ordered. Notice~~
36 ~~Written notice of sale shall also be by certified mail, return~~
37 ~~receipt requested, given to all lienholders on file with the~~
38 ~~Division. Notice of sale shall be given to the Division in~~
39 ~~accordance with the procedures established by the Division.~~
40 ~~Notices required to be given under this subsection shall be~~
41 ~~mailed at least 14 days prior to the date of sale. A lienholder~~
42 ~~shall be permitted to purchase the motor vehicle at any such sale~~
43 ~~by bidding in the amount of its lien, if that should be the~~
44 ~~highest bid, without being required to tender any additional~~

1 funds, other than the towing and storage fees. The county board
2 of education, or its agent, shall not sell, give, or otherwise
3 transfer possession of the forfeited motor vehicle to the
4 defendant, the motor vehicle owner who owned the motor vehicle
5 immediately prior to forfeiture, and any person acting on the
6 defendant's or motor vehicle owner's behalf.

7 (b) Proceeds of Sale. -- Proceeds of any sale conducted under
8 this ~~section~~ section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3),
9 shall first be applied to the cost of sale and then to satisfy
10 towing and storage liens and the cost of sale costs. The
11 balance of the proceeds of sale, if any, shall be used to satisfy
12 any other existing liens of record that were properly recorded
13 with the Division prior to the date of initial seizure of the
14 vehicle. Any remaining balance shall be paid to the county school
15 fund in the county in which the motor vehicle was ordered
16 forfeited. If there is more than one school board in the county,
17 then the net proceeds of sale, after reimbursement to the county
18 board of education of reasonable administrative cost incurred in
19 connection with the forfeiture and sale of the motor vehicle,
20 shall be distributed in the same manner as fines and other
21 forfeitures. ~~Vehicles sold~~ The sale of a motor vehicle pursuant
22 to this section shall be deemed to extinguish all existing liens
23 on the motor vehicle and the motor vehicle shall be transferred
24 free and clear of any liens.

25 (c) Retention of Motor Vehicle. -- The county board of
26 education may, at its option, retain any forfeited motor vehicle
27 for its ~~use~~ use upon payment of towing and storage costs. If the
28 motor vehicle is retained, any valid lien of record at the time
29 of the initial seizure of the motor vehicle shall be satisfied by
30 the ~~school board~~ county board of education relieving the motor
31 vehicle owner of all liability for the obligation secured by the
32 motor vehicle. If there is more than one school board in the
33 county, and the motor vehicle is retained by the county board of
34 education, then the fair market value of the motor vehicle, less
35 the costs for towing, storage, reasonable administrative costs,
36 and liens paid, shall be used to determine and pay the share due
37 each of the school boards in the same manner as fines and other
38 forfeitures.

39 ~~(d) [Counties with Multiple School Boards.] -- If there is~~
40 ~~more than one school board in the county, then the fair market~~
41 ~~value of the vehicle shall be used to determine the share due~~
42 ~~each of the school boards in the same manner as fines and other~~
43 ~~forfeitures.~~

1 (e) Order of Forfeiture; Appeals. -- An order of forfeiture is
2 stayed pending appeal of a conviction for an offense that is the
3 basis for the order. When the conviction of an offense that is
4 the basis for an order of forfeiture is appealed from district
5 court, the issue of forfeiture shall be heard in superior court
6 de novo. Appeal from a final order of forfeiture shall be to the
7 Court of Appeals."

8 Section 6. G.S. 20-28.6 is repealed.

9 Section 7. G.S. 20-28.7 reads as rewritten:

10 "§ 20-28.7. Responsibility of Division of Motor Vehicles.

11 The Division shall establish procedures by rule to provide for
12 the orderly seizure, forfeiture, sale, and transfer of motor
13 vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-
14 28.4, ~~20-28.5, and 20-28.6,~~ and 20-28.5."

15 Section 8. Article 2 of Chapter 20 of the General
16 Statutes is amended by adding two new sections to read:

17 "§ 20-28.8. Reports to the Division.

18 In any case in which a vehicle has been seized pursuant to G.S.
19 20-28.3, in addition to any other information that must be
20 reported pursuant to this Chapter, the clerk of superior court
21 shall report to the Division by electronic means the execution of
22 an acknowledgement as defined in G.S. 20-28.2(a1)(1), the entry
23 of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and
24 the entry of an order of release as defined in G.S. 20-28.3 and
25 G.S. 20-28.4. Each report shall include any of the following
26 information that has not previously been reported to the Division
27 in the case: the name, address, and drivers license number of
28 the defendant; the name, address, and drivers license number of
29 the non-defendant motor vehicle owner, if known; and the make,
30 model, year, vehicle identification number, state of
31 registration, and vehicle registration plate number of the seized
32 vehicle, if known.

33 "§ 20-28.9. Authority for the Department of Public Instruction
34 to administer a statewide or regional towing, storage, and sales
35 program for driving while impaired vehicles forfeited.

36 (a) The Department of Public Instruction is authorized to
37 enter into a contract for a statewide service or contracts for
38 regional services to tow, store, process, maintain, and sell
39 motor vehicles seized pursuant to G.S. 20-28.3. All motor
40 vehicles seized under G.S. 20-28.3 shall be subject to contracts
41 entered into pursuant to this section. Contracts shall be let by
42 the Department of Public Instruction in accordance with the
43 provisions of Article 3 of Chapter 143 of the General Statutes.
44 All contracts shall ensure the safety of the motor vehicles while

1 held and any funds arising from the sale of any seized motor
2 vehicle. The contract shall require the contractor to maintain
3 and make available to the agency a computerized up-to-date
4 inventory of all motor vehicles held under the contract, together
5 with an accounting of all accrued charges, the status of the
6 vehicle, and the county school fund to which the proceeds of sale
7 are to be paid. The contract shall provide that the contractor
8 shall pay the towing and storage charges owed on a seized vehicle
9 to a commercial towing company at the time the seized vehicle is
10 obtained from the commercial towing company, with the contractor
11 being reimbursed this expense when the vehicle is released or
12 sold. The Department shall not enter into any contract under
13 this section under which the State will be obligated to pay an
14 deficiency arising from the sale of any forfeited motor vehicle.

15 (b) The Department, through its contractor or contractors
16 designated in accordance with subsection (a) of this section, may
17 charge a reasonable fee for storage not to exceed ten dollars
18 (\$10.00) per day for the storage of seized vehicles pursuant to
19 G.S. 20-28.3.

20 (c) In order to help defray the administrative costs
21 associated with the administration of this section, the
22 Department shall collect a ten dollar (\$10.00) administrative fee
23 from a person to whom a seized vehicle is released at the time
24 the motor vehicle is released, and shall collect a ten dollar
25 (\$10.00) administrative fee out of the proceeds of the sale of
26 any forfeited motor vehicle. The funds collected under this
27 subsection shall be paid to the General Fund."

28 Section 9. G.S. 20-54 reads as rewritten:

29 "§ 20-54. Authority for refusing registration or certificate of
30 title.

31 The Division shall refuse registration or issuance of a
32 certificate of title or any transfer of registration upon any of
33 the following grounds:

34 (1) The application contains a false or fraudulent
35 statement, the applicant has failed to furnish
36 required information or reasonable additional
37 information requested by the Division, or the
38 applicant is not entitled to the issuance of a
39 certificate of title or registration of the vehicle
40 under this Article.

41 (2) The vehicle is mechanically unfit or unsafe to be
42 operated or moved upon the highways.

43 (3) The Division has reasonable ground to believe that
44 the vehicle is a stolen or embezzled vehicle, or

1 that the granting of registration or the issuance
2 of a certificate of title would constitute a fraud
3 against the rightful owner or another person who
4 has a valid lien against the vehicle.

5 (4) The registration of the vehicle stands suspended or
6 revoked for any reason as provided in the motor
7 vehicle laws of this State.

8 (5) The required fee has not been paid.

9 (6) The vehicle is not in compliance with the emissions
10 inspection requirements of Part 2 of Article 3A of
11 this Chapter or a civil penalty assessed as a
12 result of the failure of the vehicle to comply with
13 that Part has not been paid.

14 (7) The Division has been notified that the motor
15 vehicle has been seized by a law enforcement
16 officer and is subject to forfeiture pursuant to
17 G.S. 20-28.2, et. seq., or any other statute."

18 Section 10. Part 2 of Article 3 of Chapter 20 of the
19 General Statutes is amended by adding a new section to read:

20 "§ 20-54.1. Forfeiture of right of registration.

21 (a) Upon receipt of notice of conviction of a violation of an
22 offense involving impaired driving while the person's license is
23 revoked as a result of a prior impaired driving license
24 revocation as defined in G.S. 20-28.2, the Division shall revoke
25 the registration of all motor vehicles registered in the
26 convicted person's name and shall not register a motor vehicle in
27 the convicted person's name until the convicted person's license
28 is restored. Upon receipt of notice of revocation of
29 registration from the Division, the convicted person shall
30 surrender the registration on all motor vehicles registered in
31 the convicted person's name to the Division within 10 days of the
32 date of the notice.

33 (b) Upon receipt of a notice of conviction under subsection
34 (a) of this section, the Division shall revoke the registration
35 of the motor vehicle seized and the owner shall not be allowed to
36 register the motor vehicle seized until the convicted operator's
37 drivers license has been restored. The Division shall not revoke
38 the registration of the owner of the seized motor vehicle if the
39 owner is determined to be an innocent owner. The Division shall
40 only revoke the owner's registration after the owner is given an
41 opportunity for a hearing to demonstrate that the owner is an
42 innocent owner as defined in G.S. 20-28.2. Upon receipt of
43 notice of revocation of registration from the Division, the owner

1 shall surrender the registration on the motor vehicle seized to
2 the Division within 10 days of the date of the notice."

3 Section 11. G.S. 20-55 reads as rewritten:

4 "§ 20-55. Examination of registration records and index of
5 seized, stolen and recovered vehicles.

6 The Division, upon receiving application for any transfer of
7 registration or for original registration of a vehicle, other
8 than a new vehicle sold by a North Carolina dealer, shall first
9 check the engine and serial numbers shown in the application with
10 its record of registered motor vehicles, and against the index
11 of seized, stolen and recovered motor vehicles required to be
12 maintained by this Article."

13 Section 12. G.S. 20-114(c) reads as rewritten:

14 "(c) It shall also be the duty of every ~~sheriff of every county~~
15 ~~of the State and of every police or peace officer of the State~~
16 law enforcement officer to make immediate report to the
17 Commissioner of all motor vehicles reported to ~~him~~ the officer as
18 abandoned or that are seized by ~~him~~ the officer for being used
19 for illegal transportation of alcoholic beverages or other
20 unlawful purposes, or seized and are subject to forfeiture
21 pursuant to G.S. 20-28.2, et. seq., or any other statute, and no
22 motor vehicle shall be sold by any sheriff, police or peace
23 officer, or by any person, firm or corporation claiming a
24 mechanic's or storage lien, or under judicial proceedings, until
25 notice on a form approved by the Commissioner shall have been
26 given the Commissioner at least 20 days before the date of such
27 sale."

28 Section 12.1. G. S. 20-166.1(h) reads as rewritten:

29 "(h) Forms. - The Division must provide forms to persons
30 required to make reports under this section and the reports must
31 be made on the forms provided. The forms must ask for the
32 following information about a reportable accident:

- 33 (1) The cause of the accident
34 (2) The conditions existing at the time of the
35 accident.
36 (3) The persons and vehicles involved.
37 (4) Whether the vehicle has been seized and is subject
38 to forfeiture under G.S. 20-28.2."

39 Section 13. G.S. 1-339.4 reads as rewritten:

40 "§ 1-339.4. Who may hold sale.

41 An order of sale may authorize the persons designated below to
42 hold the sale:

- 43 (1) In any proceeding, a commissioner specially
44 appointed therefor; or

- 1 (2) In a proceeding to sell property of a decedent, the
2 administrator, executor or collector of such
3 decedent's estate;
- 4 (3) In a proceeding to sell property of a minor, the
5 guardian of such minor's estate;
- 6 (4) In a proceeding to sell property of an incompetent,
7 the guardian or trustee of such incompetent's
8 estate;
- 9 (5) In a proceeding to sell property of an absent or
10 missing person, the administrator, collector,
11 conservator, or guardian of the estate of such
12 absent or missing person;
- 13 (6) In a proceeding to foreclose a deed of trust, the
14 trustee named in the deed of trust;
- 15 (7) In a receivership proceeding, the receiver;
- 16 (8) In a proceeding to sell property of a trust, the
17 trustee;
- 18 ~~(9) In a motor vehicle forfeiture proceeding pursuant~~
19 ~~to G.S. 20-28.5, the county school board or a~~
20 ~~person acting on its behalf."~~

21 Section 14. G.S. 44A-2(d) reads as rewritten:

22 "(d) Any person who repairs, services, tows, or stores motor
23 vehicles in the ordinary course of ~~his~~ the person's business
24 pursuant to an express or implied contract with an owner or legal
25 possessor of the motor ~~vehicle~~ vehicle, except for a motor
26 vehicle seized pursuant to G.S. 20-28.3, has a lien upon the
27 motor vehicle for reasonable charges for such repairs, servicing,
28 towing, storing, or for the rental of one or more substitute
29 vehicles provided during the repair, servicing, or storage. This
30 lien shall have priority over perfected and unperfected security
31 interests. Payment for towing and storing a motor vehicle seized
32 pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2
33 through G.S. 20-28.5."

34 Section 15. G.S. 44A-4(b)(1) reads as rewritten:

35 "(b) Notice and Hearings. --

- 36 (1) If the property upon which the lien is claimed is a
37 motor vehicle that is required to be registered,
38 the lienor following the expiration of the relevant
39 time period provided by subsection (a) shall give
40 notice to the Division of Motor Vehicles that a
41 lien is asserted and sale is proposed and shall
42 remit to the Division a fee of ten dollars
43 (\$10.00). The Division of Motor Vehicles shall
44 issue notice by registered or certified mail,

1 return receipt requested, ~~within 15 days of receipt~~
2 ~~of notice from the lienor,~~ to the person having
3 legal title to the property, if reasonably
4 ascertainable, to the person with whom the lienor
5 dealt if different, and to each secured party and
6 other person claiming an interest in the property
7 who is actually known to the Division or who can be
8 reasonably ascertained. The notice shall state that
9 a lien has been asserted against specific property
10 and shall identify the lienor, the date that the
11 lien arose, the general nature of the services
12 performed and materials used or sold for which the
13 lien is asserted, the amount of the lien, and that
14 the lienor intends to sell the property in
15 satisfaction of the lien. The notice shall inform
16 the recipient that the recipient has the right to a
17 judicial hearing at which time a determination will
18 be made as to the validity of the lien prior to a
19 sale taking place. The notice shall further state
20 that the recipient has a period of 10 days from the
21 date of receipt in which to notify the Division by
22 registered or certified mail, return receipt
23 requested, that a hearing is desired and that if
24 the recipient wishes to contest the sale of his
25 property pursuant to such lien, the recipient
26 should notify the Division that a hearing is
27 ~~desired and the Division shall notify lienor.~~
28 desired. The notice shall state the required
29 information in simplified terms and shall contain a
30 form whereby the recipient may notify the Division
31 that a hearing is desired by the return of such
32 form to the Division. The Division shall notify
33 the lienor whether such notice is timely received
34 by the Division. In lieu of the notice by the
35 lienor to the Division and the notices issued by
36 the Division described above, the lienor may issue
37 notice on a form approved by the Division pursuant
38 to the notice requirements above. If notice is
39 issued by the lienor, the recipient shall return
40 the form requesting a hearing to the lienor, and
41 not the Division, within 10 days from the date they
42 receive the notice if a judicial hearing is
43 requested. Failure of the recipient to notify the
44 Division or lienor, as specified in the notice,

1 within 10 days of the receipt of such notice that a
2 hearing is desired shall be deemed a waiver of the
3 right to a hearing prior to the sale of the
4 property against which the lien is asserted, ~~the~~
5 ~~Division shall notify the lienor,~~ and the lienor
6 may proceed to enforce the lien by public or
7 private sale as provided in this section and the
8 Division shall transfer title to the property
9 pursuant to such sale. If the Division or lienor,
10 as specified in the notice, is notified within the
11 10-day period provided above that a hearing is
12 desired prior to sale, the lien may be enforced by
13 sale as provided in this section and the Division
14 will transfer title only pursuant to the order of a
15 court of competent jurisdiction.

16 If the ~~Division notifies the lienor that the~~
17 registered or certified mail notice has been
18 returned as undeliverable, or if ~~the Division~~
19 ~~cannot ascertain~~ the name of the person having
20 legal title to the vehicle cannot reasonably be
21 ascertained and the fair market value of the
22 vehicle is less than eight hundred dollars
23 (\$800.00), the lienor may institute a special
24 proceeding in the county where the vehicle is being
25 held, for authorization to sell that vehicle.
26 Market value shall be determined by the schedule of
27 values adopted by the Commissioner under G.S. 105-
28 187.3.

29 In such a proceeding a lienor may include more
30 than one vehicle, but the proceeds of the sale of
31 each shall be subject only to valid claims against
32 that vehicle, and any excess proceeds of the sale
33 shall escheat to the State and be paid immediately
34 to the treasurer for disposition pursuant to
35 Chapter 116B of the General Statutes. A vehicle
36 owner or possessor claiming an interest in such
37 proceeds shall have a right of action under G.S.
38 116B-38.

39 The application to the clerk in such a special
40 proceeding shall contain the notice of sale
41 information set out in subsection (f) hereof. If
42 the application is in proper form the clerk shall
43 enter an order authorizing the sale on a date not
44 less than 14 days therefrom, and the lienor shall

1 cause the application and order to be sent
2 immediately by first-class mail pursuant to G.S.
3 1A-1, Rule 5, to each person to whom ~~the Division~~
4 ~~has mailed~~ notice was mailed pursuant to this
5 subsection. Following the authorized sale the
6 lienor shall file with the clerk a report in the
7 form of an affidavit, stating that the lienor has
8 complied with the public or private sale provisions
9 of G.S. 44A-4, the name, address, and bid of the
10 high bidder or person buying at a private sale, and
11 a statement of the disposition of the sale
12 proceeds. The clerk then shall enter an order
13 directing the Division to transfer title
14 accordingly.

15 If prior to the sale the owner or legal
16 possessor contests the sale or lien in a writing
17 filed with the clerk, the proceeding shall be
18 handled in accordance with G.S. 1-399."

19 Section 16. G.S. 58-71-1 reads as rewritten:

20 "§ 58-71-1. Definitions.

21 The following words when used in this Article shall have the
22 following meanings:

- 23 (1) 'Accommodation bondsman' is a natural person who
24 has reached the age of 18 years and is a bona fide
25 resident of this State and who, aside from love and
26 affection and release of the person concerned,
27 receives no consideration for action as surety and
28 who endorses the bail bond after providing
29 satisfactory evidences of ownership, value and
30 marketability of real or personal property to the
31 extent necessary to reasonably satisfy the official
32 taking bond that such real or personal property
33 will in all respects be sufficient to assure that
34 the full principal sum of the bond will be realized
35 in the event of breach of the conditions thereof.
36 "Consideration" as used in this subdivision does
37 not include the legal rights of a surety against a
38 principal by reason of breach of the conditions of
39 a bail bond nor does it include collateral
40 furnished to and securing the surety so long as the
41 value of the surety's rights in the collateral do
42 not exceed the principal's liability to the surety
43 by reason of a breach in the conditions of said
44 bail bond.

- 1 (2) 'Bail bond' shall mean an undertaking by the
2 principal to appear in court as required upon
3 penalty of forfeiting bail to the State in a stated
4 amount; and may include an unsecured appearance
5 bond, a premium-secured appearance bond, an
6 appearance bond secured by a cash deposit of the
7 full amount of the bond, an appearance bond secured
8 by a mortgage pursuant to G.S. 58-74-5, and an
9 appearance bond secured by at least one surety. A
10 bail bond may also include a bond securing the
11 return of a motor vehicle subject to forfeiture in
12 accordance with G.S. 20-28.3(e).
- 13 (3) 'Bail bondsman' shall mean a surety bondsman,
14 professional bondsman or an accommodation bondsman
15 as hereinafter defined.
- 16 (4) 'Commissioner' shall mean the Commissioner of
17 Insurance.
- 18 (5) 'Insurer' shall mean any domestic, foreign, or
19 alien surety company which has qualified generally
20 to transact surety business and specifically to
21 transact bail bond business in this State.
- 22 (6) 'Obligor' shall mean a principal or a surety on a
23 bail bond.
- 24 (7) 'Principal' shall mean a defendant or witness
25 obligated to appear in court as required upon
26 penalty of forfeiting bail under a bail ~~bond~~ bond
27 or a person obligated to return a motor vehicle
28 subject to forfeiture in accordance with G.S. 20-
29 28.3(e).
- 30 (8) 'Professional bondsman' shall mean any person who
31 is approved and licensed by the Commissioner and
32 who pledges cash or approved securities with the
33 Commissioner as security for bail bonds written in
34 connection with a judicial proceeding and receives
35 or is promised money or other things of value
36 therefor.
- 37 (9) 'Runner' shall mean a person employed by a bail
38 bondsman for the purpose of assisting the bail
39 bondsman in presenting the defendant in court when
40 required, or to assist in apprehension and
41 surrender of defendant to the court, or keeping
42 defendant under necessary surveillance, or to
43 execute bonds on behalf of the licensed bondsman
44 when the power of attorney has been duly recorded.

1 "Runner" does not include, however, a duly licensed
2 attorney-at-law or a law-enforcement officer
3 assisting a bondsman.

4 (10) 'Surety' shall mean one who, with the principal, is
5 liable for the amount of the bail bond upon
6 forfeiture of bail.

7 (11) 'Surety bondsman' means any person who is licensed
8 by the Commissioner as a surety bondsman under this
9 Article, is appointed by an insurer by power of
10 attorney to execute or countersign bail bonds for
11 the insurer in connection with judicial
12 proceedings, and receives or is promised
13 consideration for doing so."

14 Section 17. G.S. 58-71-35(a) reads as rewritten:

15 "(a) The Except for bonds issued to secure the return of a
16 motor vehicle subject to forfeiture in accordance with G.S. 20-
17 28.3(e), the procedure for forfeiture of bail shall be that
18 provided in Article 26 of Chapter 15A of the General Statutes and
19 all provisions of that Article shall continue in full force and
20 effect."

21 PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

22 Section 18. G.S. 20-16.2(a) reads as rewritten:

23 "(a) Basis for Charging Officer to Require Chemical Analysis;
24 Notification of Rights. -- Any person who drives a vehicle on a
25 highway or public vehicular area thereby gives consent to a
26 chemical analysis if charged with an implied-consent offense. The
27 charging officer shall designate the type of chemical analysis to
28 be administered, and it may be administered when the officer has
29 reasonable grounds to believe that the person charged has
30 committed the implied-consent offense.

31 Except as provided in this subsection or subsection (b), before
32 any type of chemical analysis is administered the person charged
33 shall be taken before a chemical analyst authorized to administer
34 a test of a person's breath, who shall inform the person orally
35 and also give the person a notice in writing that:

36 (1) The person has a right to refuse to be tested.

37 (2) Refusal to take any required test or tests will
38 result in an immediate revocation of the person's
39 driving privilege for at least 30 days and an
40 additional 12-month revocation by the Division of
41 Motor Vehicles.

42 (3) The test results, or the fact of the person's
43 refusal, will be admissible in evidence at trial on
44 the offense charged.

- 1 (4) The person's driving privilege will be revoked
2 immediately for at least 30 days if:
3 a. The test reveals an alcohol concentration of
4 0.08 or more; or
5 b. The person was driving a commercial motor
6 vehicle and the test reveals ~~an~~ any alcohol
7 ~~concentration of 0.04 or more.~~ concentration.
- 8 (5) The person may choose a qualified person to
9 administer a chemical test or tests in addition to
10 any test administered at the direction of the
11 charging officer.
- 12 (6) The person has the right to call an attorney and
13 select a witness to view for him or her the testing
14 procedures, but the testing may not be delayed for
15 these purposes longer than 30 minutes from the time
16 when the person is notified of his or her rights.
- 17 If the charging officer or an arresting officer is authorized to
18 administer a chemical analysis of a person's breath, the charging
19 officer or the arresting officer may give the person charged the
20 oral and written notice of rights required by this subsection.
21 This authority applies regardless of the type of chemical
22 analysis designated."
- 23 Section 19. G.S. 20-16.5(b) reads as rewritten:
24 "(b) Revocations for Persons Who Refuse Chemical Analyses or
25 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~
26 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~
27 Who Are Charged With Certain Implied Consent Offenses. -- A
28 person's driver's license is subject to revocation under this
29 section if:
- 30 (1) A charging officer has reasonable grounds to
31 believe that the person has committed an offense
32 subject to the implied-consent provisions of G.S.
33 20-16.2;
- 34 (2) The person is charged with that offense as provided
35 in G.S. 20-16.2(a);
- 36 (3) The charging officer and the chemical analyst
37 comply with the procedures of G.S. 20-16.2 and G.S.
38 20-139.1 in requiring the person's submission to or
39 procuring a chemical analysis; and
- 40 (4) The person:
41 a. Willfully refuses to submit to the chemical
42 analysis;
- 43 b. Has an alcohol concentration of 0.08 or more
44 within a relevant time after the driving; or

1 c. Has ~~an~~ any alcohol concentration ~~of 0.04 or~~
2 ~~more~~ at any relevant time after the driving of a
3 commercial vehicle."

4 Section 20. G.S. 20-16.5(b1) reads as rewritten:

5 "(b1) Precharge Test Results as Basis for Revocation. --
6 Notwithstanding the provisions of subsection (b), a person's
7 driver's license is subject to revocation under this section if:

- 8 (1) ~~He~~ The person requests a precharge chemical
9 analysis pursuant to G.S. 20-16.2(i); and
10 (2) ~~He~~ The person has:
11 a. An alcohol concentration of 0.08 or more at
12 any relevant time after driving; or
13 b. ~~An~~ Any alcohol concentration ~~of 0.04 or more~~
14 at any relevant time after driving a commercial
15 motor vehicle; and
16 (3) ~~He~~ The person is charged with an implied-consent
17 offense."

18 Section 21. G.S. 20-17(a) reads as rewritten:

19 "(a) The Division shall forthwith revoke the license of any
20 driver upon receiving a record of the driver's conviction for any
21 of the following offenses:

- 22 (1) Manslaughter (or negligent homicide) resulting from
23 the operation of a motor vehicle.
24 (2) Either of the following impaired driving offenses:
25 a. Impaired driving under G.S. 20-138.1.
26 b. Impaired driving under G.S. ~~20-138.2 when the~~
27 ~~person convicted did not take a chemical test at~~
28 ~~the time of the offense or the person took a~~
29 ~~chemical test at the time of the offense and the~~
30 ~~test revealed that the person had an alcohol~~
31 ~~concentration at any relevant time after driving of~~
32 ~~less than 0.04 or of 0.08 or more. 20-138.2.~~
33 (3) Any felony in the commission of which a motor
34 vehicle is used.
35 (4) Failure to stop and render aid in violation of G.S.
36 20-166(a) or (b).
37 (5) Perjury or the making of a false affidavit or
38 statement under oath to the Division under this
39 Article or under any other law relating to the
40 ownership of motor vehicles.
41 (6) Conviction upon two charges of reckless driving
42 committed within a period of 12 months.

- 1 (7) Conviction upon one charge of reckless driving
2 while engaged in the illegal transportation of
3 intoxicants for the purpose of sale.
- 4 (8) Conviction of using a false or fictitious name or
5 giving a false or fictitious address in any
6 application for a drivers license, or learner's
7 permit, or any renewal or duplicate thereof, or
8 knowingly making a false statement or knowingly
9 concealing a material fact or otherwise committing
10 a fraud in any such application or procuring or
11 knowingly permitting or allowing another to commit
12 any of the foregoing acts.
- 13 (9) Death by vehicle as defined in G.S. 20-141.4.
- 14 (10) Repealed by Session Laws 1997-443, s. 19.26(b).
- 15 (11) Conviction of assault with a motor vehicle.
- 16 (12) A second or subsequent conviction of transporting
17 an open container of alcoholic beverage under G.S.
18 20-138.7."

19 Section 22. G.S. 20-17.4 reads as rewritten:

20 "§ 20-17.4. Disqualification to drive a commercial motor
21 vehicle.

22 (a) One Year. -- Any of the following disqualifies a person
23 from driving a commercial motor vehicle for one year:

- 24 (1) A first conviction of G.S. 20-138.1, driving while
25 impaired, that occurred while the person was
26 driving a motor vehicle not a commercial motor
27 vehicle.
- 28 (2) A first conviction of G.S. 20-138.2, driving a
29 commercial motor vehicle while impaired.
- 30 (3) A first conviction of G.S. 20-166, hit and run,
31 involving a commercial motor vehicle driven by the
32 person.
- 33 (4) A first conviction of a felony in the commission of
34 which a commercial motor vehicle was used.
- 35 (5) Refusal to submit to a chemical test when charged
36 with an implied-consent offense, as defined in G.S.
37 20-16.2, that occurred while the person was driving
38 a commercial motor vehicle.

39 (b) Modified Life. -- A person who has been disqualified from
40 driving a commercial motor vehicle for a second conviction or
41 refusal described in subsection (a) who, as the result of a
42 separate incident, is subsequently convicted of an offense or
43 commits an act requiring disqualification under subsection (a) is
44 disqualified for life. The Division may adopt guidelines,

1 including conditions, under which a disqualification for life
2 under this subsection may be reduced to 10 years.

3 (b) Life Without Reduction. -- A person is disqualified from
4 driving a commercial motor vehicle for life, without the
5 possibility of reinstatement after 10 years, if that person is
6 convicted of a third or subsequent violation of G.S. 20-138.2 or
7 if the person refuses to submit to a chemical test a third time
8 when charged with an implied-consent offense, as defined in G.S.
9 20-16.2, that occurred while the person was driving a commercial
10 motor vehicle.

11 (c) Life. -- A person is disqualified from driving a
12 commercial motor vehicle for life if that person uses a
13 commercial motor vehicle in the commission of any felony
14 involving the manufacture, distribution, or dispensing of a
15 controlled substance, or possession with intent to manufacture,
16 distribute, or dispense a controlled substance.

17 (d) Less Than a Year. -- A person is disqualified from driving
18 a commercial motor vehicle for 60 days if that person is
19 convicted of two serious traffic violations, or 120 days if
20 convicted of three or more serious traffic violations, committed
21 in a commercial motor vehicle arising from separate incidents
22 occurring within a three-year period.

23 (e) Three Years. -- A person is disqualified from driving a
24 commercial motor vehicle for three years if that person is
25 convicted of an offense or commits an act requiring
26 disqualification under subsection (a) and the offense or act
27 occurred while the person was transporting a hazardous material
28 that required the motor vehicle driven to be placarded.

29 (f) Revocation Period. -- A person is disqualified from
30 driving a commercial motor vehicle for the period during which
31 the person's regular or commercial drivers license is revoked."

32 Section 23. G.S. 20-36 reads as rewritten:

33 "§ 20-36. Ten-year-old convictions not considered.

34 ~~No~~ Except for a second or subsequent conviction for violating
35 G.S. 20-138.2 or a second failure to submit to a chemical test
36 when charged with an implied-consent offense, as defined in G.S.
37 20-16.2, that occurred while the person was driving a commercial
38 motor vehicle, no conviction of any violation of the motor
39 vehicle laws shall be considered by the Division in determining
40 whether any person's driving privilege shall be suspended or
41 revoked or in determining the appropriate period of suspension or
42 revocation after 10 years has elapsed from the date of ~~such~~ that
43 conviction."

44 Section 24. G.S. 20-138.2(a) reads as rewritten:

1 "(a) Offense. -- A person commits the offense of impaired
2 driving in a commercial motor vehicle if ~~he~~ the person drives a
3 commercial motor vehicle upon any highway, any street, or any
4 public vehicular area within the State:

5 (1) While under the influence of an impairing
6 substance; or

7 (2) After having consumed sufficient alcohol that ~~he~~
8 the person has, at any relevant time after the
9 driving, ~~an any alcohol concentration of 0.04 or~~
10 ~~more~~ concentration."

11 Section 24.1. G.S. 20-138.2(e) reads as rewritten:

12 "(e) ~~Punishment; Effect When Impaired Driving Offense Also~~
13 ~~Charged.~~ Punishment. -- The offense in this section is a Class
14 1 misdemeanor and any defendant convicted under this section
15 shall be sentenced under G.S. 20-179. This offense is not a
16 lesser included offense of impaired driving under G.S. 20-138.1,
17 ~~but~~ and if a person is convicted under this section and of an
18 offense involving impaired driving under G.S. 20-138.1 arising
19 out of the same transaction, the aggregate punishment imposed by
20 the Court may not exceed the maximum punishment applicable to the
21 offense involving impaired driving under G.S. 20-138.1."

22 Section 24.2. GS 20-179.3(b) reads as rewritten:

23 "(b) Eligibility. --

24 (1) A person convicted of the offense of impaired
25 driving under G.S. 20-138.1 is eligible for a
26 limited driving privilege if:

27 a. At the time of the offense ~~he~~ the person held
28 either a valid ~~driver's~~ drivers license or a
29 license that had been expired for less than one
30 year;

31 b. At the time of the offense ~~he~~ the person had
32 not within the preceding seven years been convicted
33 of an offense involving impaired driving;

34 c. Punishment Level Three, Four, or Five was
35 imposed for the offense of impaired driving;

36 d. Subsequent to the offense ~~he~~ the person has
37 not been convicted of, or had an unresolved charge
38 lodged against him for, an offense involving
39 impaired driving; and

40 e. The person has obtained and filed with the
41 court a substance abuse assessment of the type
42 required by G.S. 20-17.6 for the restoration of a
43 drivers license.

1 A person whose North Carolina ~~driver's~~ drivers
2 license is revoked because of a conviction in
3 another jurisdiction substantially equivalent to
4 impaired driving under G.S. 20-138.1 is eligible
5 for a limited driving privilege if ~~he~~ the person
6 would be eligible for it had the conviction
7 occurred in North Carolina. Eligibility for a
8 limited driving privilege following a revocation
9 under G.S. 20-16.2(d) is governed by G.S. 20-
10 16.2(e1).

11 (1a) A person convicted of a first offense of impaired
12 driving in a commercial vehicle under G.S. 20-138.2
13 is eligible for a limited commercial driving
14 privilege if:

15 a. At the time of the offense the person held
16 either a valid commercial drivers license or a
17 commercial drivers license that had been
18 expired for less than one year;

19 b. At the time of the offense the person had not
20 within the preceding seven years been
21 convicted of an offense involving impaired
22 driving;

23 c. Punishment Level Three, Four, or Five was
24 imposed for the offense of impaired driving in
25 a commercial vehicle;

26 d. Subsequent to the offense the person has not
27 been convicted of, or had an unresolved charge
28 lodged against the person for, an offense
29 involving impaired driving; and

30 e. The person has obtained and filed with the
31 court a substance abuse assessment of the type
32 required by G.S. 20-17.6 for the restoration
33 of a drivers license.

34 A person whose North Carolina commercial drivers
35 license is revoked because of a conviction in
36 another jurisdiction substantially equivalent to
37 impaired driving under G.S. 20-138.2 is eligible
38 for a limited driving privilege if the person would
39 be eligible for it had the conviction occurred in
40 North Carolina. Eligibility for a limited driving
41 privilege following a revocation under G.S. 20-
42 16.2(d) is governed by G.S. 20-16.2(e1).

43 (2) Any person whose licensing privileges are forfeited
44 pursuant to G.S. 15A-1331A is eligible for a

1 limited driving privilege if the court finds that
2 at the time of the forfeiture, the person held
3 either a valid drivers license or a drivers license
4 that had been expired for less than one year and

5 a. The person is supporting existing dependents
6 or must have a drivers license to be gainfully
7 employed; or

8 b. The person has an existing dependent who
9 requires serious medical treatment and the
10 defendant is the only person able to provide
11 transportation to the dependent to the health
12 care facility where the dependent can receive
13 the needed medical treatment.

14 The limited driving privilege granted under this
15 subdivision must restrict the person to essential
16 driving related to the purposes listed above, and
17 any driving that is not related to those purposes
18 is unlawful even though done at times and upon
19 routes that may be authorized by the privilege."

20 PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS
21 OF CHILD CARE VEHICLES.

22 Section 25. G.S. 20-4.01(27) reads as rewritten:

23 "(27) Passenger Vehicles. --

24 a. Excursion passenger vehicles. -- Vehicles
25 transporting persons on sight-seeing or
26 travel tours.

27 b. For hire passenger vehicles. -- Vehicles
28 transporting persons for compensation.
29 This classification shall not include
30 vehicles operated as ambulances; vehicles
31 operated by the owner where the costs of
32 operation are shared by the passengers;
33 vehicles operated pursuant to a
34 ridesharing arrangement as defined in
35 G.S. 136-44.21; vehicles transporting
36 students for the public school system
37 under contract with the State Board of
38 Education or vehicles leased to the
39 United States of America or any of its
40 agencies on a nonprofit basis; or
41 vehicles used for human service or
42 volunteer transportation.

43 c. Common carriers of passengers. --
44 Vehicles operated under a certificate of

- 1 authority issued by the Utilities
2 Commission for operation on the highways
3 of this State between fixed termini or
4 over a regular route for the
5 transportation of persons for
6 compensation.
- 7 c1. Child care vehicles. -- Vehicles under
8 the direction and control of a child care
9 facility, as defined in G.S. 110-86(3),
10 and driven by an owner, employee, or
11 agent of the child care facility for the
12 primary purpose of transporting children
13 to and from the child care facility, or
14 to and from a place for participation in
15 an event or activity in connection with
16 the child care facility.
- 17 d. Motorcycles. -- Vehicles having a saddle
18 for the use of the rider and designed to
19 travel on not more than three wheels in
20 contact with the ground, including motor
21 scooters and motor-driven bicycles, but
22 excluding tractors and utility vehicles
23 equipped with an additional form of
24 device designed to transport property,
25 three-wheeled vehicles while being used
26 by law-enforcement agencies and mopeds as
27 defined in subdivision d1 of this
28 subsection.
- 29 d1. Moped. -- A vehicle that has two or three
30 wheels, no external shifting device, and
31 a motor that does not exceed 50 cubic
32 centimeters piston displacement and
33 cannot propel the vehicle at a speed
34 greater than 20 miles per hour on a level
35 surface.
- 36 d2. Motor home or house car. -- A vehicular
37 unit, designed to provide temporary
38 living quarters, built into as an
39 integral part, or permanently attached
40 to, a self-propelled motor vehicle
41 chassis or van. The vehicle must provide
42 at least four of the following
43 facilities: cooking, refrigeration or
44 icebox, self-contained toilet, heating or

- 1 air conditioning, a portable water supply
2 system including a faucet and sink,
3 separate 110-125 volt electrical power
4 supply, or an LP gas supply.
- 5 d3. School activity bus. -- A vehicle,
6 generally painted a different color from
7 a school bus, whose primary purpose is to
8 transport school students and others to
9 or from a place for participation in an
10 event other than regular classroom work.
11 The term includes a public, private, or
12 parochial vehicle that meets this
13 description.
- 14 d4. School bus. -- A vehicle whose primary
15 purpose is to transport school students
16 over an established route to and from
17 school for the regularly scheduled school
18 day, that is equipped with alternately
19 flashing red lights on the front and rear
20 and a mechanical stop signal, and that
21 bears the words "School Bus" on the front
22 and rear in letters at least 8 inches in
23 height. The term includes a public,
24 private, or parochial vehicle that meets
25 this description.
- 26 e. U-drive-it passenger vehicles. --
27 Vehicles rented or leased to be operated
28 by the lessee. This shall not include
29 vehicles of nine-passenger capacity or
30 less which are leased for a term of one
31 year or more to the same person or
32 vehicles leased or rented to public
33 school authorities for driver-training
34 instruction.
- 35 f. Ambulances. -- Vehicles equipped for
36 transporting wounded, injured, or sick
37 persons.
- 38 g. Private passenger vehicles. -- All other
39 passenger vehicles not included in the
40 above definitions."

41 Section 26. G.S. 20-16.2(a) reads as rewritten:
42 "(a) Basis for Charging Officer to Require Chemical Analysis;
43 Notification of Rights. -- Any person who drives a vehicle on a
44 highway or public vehicular area thereby gives consent to a

1 chemical analysis if charged with an implied-consent offense. The
2 charging officer shall designate the type of chemical analysis to
3 be administered, and it may be administered when the officer has
4 reasonable grounds to believe that the person charged has
5 committed the implied-consent offense.

6 Except as provided in this subsection or subsection (b), before
7 any type of chemical analysis is administered the person charged
8 shall be taken before a chemical analyst authorized to administer
9 a test of a person's breath, who shall inform the person orally
10 and also give the person a notice in writing that:

- 11 (1) The person has a right to refuse to be tested.
- 12 (2) Refusal to take any required test or tests will
13 result in an immediate revocation of the person's
14 driving privilege for at least 30 days and an
15 additional 12-month revocation by the Division of
16 Motor Vehicles.
- 17 (3) The test results, or the fact of the person's
18 refusal, will be admissible in evidence at trial on
19 the offense charged.
- 20 (4) The person's driving privilege will be revoked
21 immediately for at least 30 days if any of the
22 following occur:
 - 23 a. The test reveals an alcohol concentration of
24 0.08 or ~~more; or~~ more.
 - 25 b. The person was driving a commercial motor
26 vehicle and the test reveals an alcohol
27 concentration of 0.04 or more.
 - 28 c. The person was driving a school bus, a school
29 activity bus, or a child care vehicle while
30 transporting children and the test reveals any
31 alcohol concentration.
- 32 (5) The person may choose a qualified person to
33 administer a chemical test or tests in addition to
34 any test administered at the direction of the
35 charging officer.
- 36 (6) The person has the right to call an attorney and
37 select a witness to view for him or her the testing
38 procedures, but the testing may not be delayed for
39 these purposes longer than 30 minutes from the time
40 when the person is notified of his or her rights.

41 If the charging officer or an arresting officer is authorized to
42 administer a chemical analysis of a person's breath, the charging
43 officer or the arresting officer may give the person charged the
44 oral and written notice of rights required by this subsection.

1 This authority applies regardless of the type of chemical
2 analysis designated."

3 Section 27. G.S. 20-16.5(b) reads as rewritten:

4 "(b) Revocations for Persons Who Refuse Chemical Analyses or
5 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~
6 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~
7 Who Are Charged With Certain Implied Consent Offenses. -- A
8 person's driver's license is subject to revocation under this
9 section if:

- 10 (1) A charging officer has reasonable grounds to
11 believe that the person has committed an offense
12 subject to the implied-consent provisions of G.S.
13 20-16.2;
- 14 (2) The person is charged with that offense as provided
15 in G.S. 20-16.2(a);
- 16 (3) The charging officer and the chemical analyst
17 comply with the procedures of G.S. 20-16.2 and G.S.
18 20-139.1 in requiring the person's submission to or
19 procuring a chemical analysis; and
- 20 (4) The person:
- 21 a. Willfully refuses to submit to the chemical
22 analysis;
- 23 b. Has an alcohol concentration of 0.08 or more
24 within a relevant time after the driving; ~~or~~
- 25 c. Has an alcohol concentration of 0.04 or more
26 at any relevant time after the driving of a
27 commercial ~~vehicle-vehicle~~; or
- 28 d. Has any alcohol concentration at any relevant
29 time after transporting children in a school
30 bus, a school activity bus, or a child care
31 vehicle."

32 Section 28. G.S. 20-16.5(b1) reads as rewritten:

33 "(b1) Precharge Test Results as Basis for Revocation. --
34 Notwithstanding the provisions of subsection (b), a person's
35 driver's license is subject to revocation under this section if:

- 36 (1) ~~He~~ The person requests a precharge chemical
37 analysis pursuant to G.S. 20-16.2(i); and
- 38 (2) ~~He~~ The person has:
- 39 a. An alcohol concentration of 0.08 or more at
40 any relevant time after driving; ~~or~~
- 41 b. An alcohol concentration of 0.04 or more at
42 any relevant time after driving a commercial
43 motor ~~vehicle; and~~ vehicle; or

1 c. Any alcohol concentration at any relevant time
2 after transporting children in a school bus, a
3 school activity bus, or a child care vehicle;
4 and
5 (3) ~~He~~ The person is charged with an implied-consent
6 offense."

7 Section 29. G.S. 20-138.1(a) reads as rewritten:
8 "(a) Offense. -- A person commits the offense of impaired
9 driving if ~~he~~ the person drives any vehicle upon any highway, any
10 street, or any public vehicular area within this State:

11 (1) While under the influence of an impairing
12 substance; ~~or~~

13 (2) After having consumed sufficient alcohol that ~~he~~
14 the person has, at any relevant time after the
15 driving, an alcohol concentration of 0.08 or ~~more~~
16 more; or

17 (3) At any relevant time after the driving of a school
18 bus, a school activity bus, or a child care vehicle
19 transporting any children, any alcohol
20 concentration."

21 PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS
22 OF AGE.

23 Section 30. G.S. 20-16.2(a) reads as rewritten:

24 "(a) Basis for Charging Officer to Require Chemical Analysis;
25 Notification of Rights. -- Any person who drives a vehicle on a
26 highway or public vehicular area thereby gives consent to a
27 chemical analysis if charged with an implied-consent offense. The
28 charging officer shall designate the type of chemical analysis to
29 be administered, and it may be administered when the officer has
30 reasonable grounds to believe that the person charged has
31 committed the implied-consent offense.

32 Except as provided in this subsection or subsection (b), before
33 any type of chemical analysis is administered the person charged
34 shall be taken before a chemical analyst authorized to administer
35 a test of a person's breath, who shall inform the person orally
36 and also give the person a notice in writing that:

37 (1) The person has a right to refuse to be tested.

38 (2) Refusal to take any required test or tests will
39 result in an immediate revocation of the person's
40 driving privilege for at least 30 days and an
41 additional 12-month revocation by the Division of
42 Motor Vehicles.

- 1 (3) The test results, or the fact of the person's
2 refusal, will be admissible in evidence at trial on
3 the offense charged.
- 4 (4) The person's driving privilege will be revoked
5 immediately for at least 30 days if:
- 6 a. The test reveals an alcohol concentration of
7 0.08 or more; ~~or~~
- 8 b. The person was driving a commercial motor
9 vehicle and the test reveals an alcohol
10 concentration of 0.04 or ~~more~~ more; or
- 11 c. The person is under 21 years of age and the
12 test reveals any alcohol concentration."

13 Section 31. G.S. 20-16.5(b) reads as rewritten:

14 "(b) Revocations for Persons Who Refuse Chemical Analyses or
15 ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor~~
16 ~~Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~
17 Who Are Charged With Certain Implied Consent Offenses. -- A
18 person's driver's license is subject to revocation under this
19 section if:

- 20 (1) A charging officer has reasonable grounds to
21 believe that the person has committed an offense
22 subject to the implied-consent provisions of G.S.
23 20-16.2;
- 24 (2) The person is charged with that offense as provided
25 in G.S. 20-16.2(a);
- 26 (3) The charging officer and the chemical analyst
27 comply with the procedures of G.S. 20-16.2 and G.S.
28 20-139.1 in requiring the person's submission to or
29 procuring a chemical analysis; and
- 30 (4) The person:
- 31 a. Willfully refuses to submit to the chemical
32 analysis;
- 33 b. Has an alcohol concentration of 0.08 or more
34 within a relevant time after the driving; ~~or~~
- 35 c. Has an alcohol concentration of 0.04 or more
36 at any relevant time after the driving of a
37 commercial ~~vehicle~~ vehicle; or
- 38 d. Has any alcohol concentration at any relevant
39 time after the driving and the person is under
40 21 years of age."

41 Section 32. G.S. 20-16.5(b1) reads as rewritten:

42 "(b1) Precharge Test Results as Basis for Revocation. --
43 Notwithstanding the provisions of subsection (b), a person's
44 driver's license is subject to revocation under this section if:

- 1 (1) ~~He~~ The person requests a precharge chemical
2 analysis pursuant to G.S. 20-16.2(i); and
3 (2) ~~He~~ The person has:
4 a. An alcohol concentration of 0.08 or more at
5 any relevant time after driving; ~~or~~
6 b. An alcohol concentration of 0.04 or more at
7 any relevant time after driving a commercial
8 motor vehicle; ~~and~~ or
9 c. Any alcohol concentration at any relevant
10 time after driving and the person is under 21
11 years of age; and
12 (3) ~~He~~ The person is charged with an implied-consent
13 offense."

14 PART V. MISCELLANEOUS PROVISIONS.

15 Section 35. From funds of appropriated to the
16 Department of Public Instruction, the Department shall be
17 authorized to hire a part-time person to handle the
18 administration of a statewide contract, or regional contracts for
19 services to tow, store, process, maintain, and sell motor
20 vehicles seized pursuant to G.S. 20-28.9.

21 PART VI. EFFECTIVE DATE.

22 Section 36. Parts I and V of this act become effective
23 October 1, 1998 and apply to offenses committed, contracts
24 entered, and motor vehicles seized on or after that date. Parts
25 II, III, and IV of this act become effective December 1, 1998 and
26 apply to offenses committed on or after that date. The remainder
27 of this act is effective when it becomes law. The provisions of
28 G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in
29 Section 3 of the act shall also apply to vehicles held on or
30 after the effective date as a result of seizure that occurred
31 before, on, or after that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 14, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SECOND PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL
1336 - 1998 GOVERNOR'S DWI AMENDMENTS - Senator Odom - S1336-
CSRU-002.**

Senate Bill 1336 is a recommendation of the Joint Corrections and Crime Control Oversight Committee and the Governor's DWI Task Force. The bill would implement 5 recommendations of these two groups:

- Revise the DWI forfeiture laws and other related laws.
- Provide for expedited hearings of DWI's involving seized vehicles.
- Provide for zero alcohol tolerance for commercial drivers, school bus drivers, and day care vehicle drivers.
- Provide for the immediate 30-day revocation for drivers licenses of persons under 21 violating zero tolerance.
- Increase the penalty for 19 and 20 year old possessing or purchasing alcoholic beverages.

PART I - DWI FORFEITURE AMENDMENTS

Part I of the bill (Sections 1 through 17) amends the DWI forfeiture law to make changes and improvements in the law in seven major ways:

1. Expands coverage of the law.
2. Provides greater protections for innocent owners.
3. Provides more bonding options to obtain pre-trial temporary release of the vehicle to nondefendant owners.
4. Provides greater protections for lienholders.
5. Provides greater protections for school boards.
6. Clarifies the authority of law enforcement officers and magistrates in seizure situations.

7. Expedites the sale of some seized vehicles providing greater protections to all parties to avoid excessive storage costs.

Section 1 expands the definition of offenses involving impaired driving to include first degree murder when based on impaired driving and habitual impaired driving.

Section 2 (20-28.2) expands the definition of "impaired driving revocation" to include revocations for habitual impaired driving, commercial driving while impaired, and all vehicular homicides involving impaired driving.

Subsection (a1) includes in the definition of an "innocent owner" persons whose vehicle was reported stolen, persons who filed a police report for unauthorized use of the vehicle, and persons who rent cars that are driven by a person not authorized on the contract to drive.

Subsection (b) permits a forfeiture hearing to be held either at sentencing, at a subsequent hearing, or at an expedited hearing after the defendant fails to appear on the DWI charge and the order of arrest for failing to appear has not been set aside within 60 days.

Subsection (c1) provides that insurance proceeds due from a vehicle damaged in conjunction with the offense leading to the seizure are considered part of the value of the vehicle seized and the proceeds are made subject to forfeiture as well.

Subsection (d) is amended to allow the court to order forfeited collected insurance proceeds and the rights to claim unpaid insurance proceeds.

Subsection (e) provides for the vehicle to be returned to an innocent owner, including a lessor, upon payment of towing and storage charges.

Subsection (f) provides for the vehicle to be released to a lienholder if the vehicle owner is in default on the loan secured by the vehicle, to be sold in accordance with the repossession law, with any equity arising from the sale to be paid to the county board of education.

Section 3 (20-28.3) Subsections (b) does not require the officer to seize a vehicle reported stolen or a rental vehicle driven by a person not authorized on the rental agreement, and together with (b1) removes from arresting officer the duty to notify the relevant parties of the seizure of the vehicle and transfers that responsibility to a state agency designated by the Governor.

Subsection (c1) makes an order of seizure valid statewide and clarifies law enforcement's authority to effect the order of seizure.

Subsection (d) allows custody of seized vehicles to be held either through a state or regional central storage arrangement, or if none is available, by the local county board of education. Storage fees are raised from \$5 per day to \$10 per day, and school boards are allowed to charge for storage if cars are held on school property. Private commercial towing companies are entitled to payment for towing and storage charges prior to releasing the vehicle, unless other arrangements are agreed to by the towing company.

Subsection (e) expands the options for obtaining temporary release of a seized vehicle by a nondefendant owner pending trial by allowing property and bail bonds as collateral for the return of the vehicle at the forfeiture hearing.

Subsection (e1) allows a pretrial determination of innocent owner status by petition. Upon the filing of the petition a court hearing will be set within 10 days, during which time the district attorney may authorize the release of the vehicle if the district attorney determines that the vehicle will not be subject to forfeiture.

Subsection (e2) establishes a way for a defendant owner to have a pretrial hearing on the question of whether the vehicle is subject to forfeiture where the defendant contends that the defendant's license was not revoked for an impaired driving offense and the seizure was a mistake.

Subsection (e3) allows the lienholder to petition for pretrial release where the owner is in default on the loan. The lienholder is allowed to sell the vehicle in accordance with the repossession law and any equity arising from the sale is to be paid to the county board of education.

Subsection (h) provides for insurance proceeds to be seized pending forfeiture, allowing the school board attorney to negotiate the claim and allowing a vehicle determined to be a total loss to be released upon payment of the proceeds.

Subsection (i) provides for several circumstances where a seized vehicle may be sold prior to forfeiture in order to mitigate excessive storage charges. Those situations include 1) where the owner consents to the sale, 2) after 90 days if the vehicle is worth \$1,500 or less, and 3) anytime the towing and storage charges equal or exceed 85% of the worth of the vehicle.

Subsection (k) authorizes the school board attorney to take a more active and significant role in the forfeiture process.

Subsection (l) provides that the defendant be taxed with the cost of towing and storage as part of the restitution for the criminal offense.

Subsection (m) makes trials of DWI cases involving seized vehicles a higher priority and restricts grounds on which these cases can be continued to later dates.

Section 4 (20-28.4) makes conforming changes for other changes made in the bill.

Section 5 (20-28.5). Subsection (a) changes the sales process for forfeited vehicles from a judicial sale to a public sale with special notices as permitted for the disposal of surplus property by schools.

Subsection (c) clarifies how much the county school board should pay other school boards in the county if the county school board retains the forfeited vehicle.

Section 6 repeals restrictions on registration of vehicles for persons whose vehicles are forfeited. These provisions have been recodified in other sections of the law in Sections 9 and 10 of the bill.

Section 8 (20-28.8 and 20-28.9) clarify what information the clerk of court is required to report to DMV and authorizes the Department of Public Instruction to administer regional or statewide contracts for the towing, storage, and sale of seized

and forfeited vehicles. It also clarifies that storage fees up to \$10 per day may be charged for storage under a statewide or regional contract and that a \$10 per vehicle administrative fee will be collect to defray the costs for DPI to administer this program.

Sections 9 and 10 (20-54 and 20-54.1) recodify restrictions on registration of vehicles for persons whose vehicles are forfeited.

Section 12.1 requires DMV to modify the accident report form to provide for the investigative officer to indicate on the accident report if the vehicle involved in the accident was seized and subject to forfeiture.

Section 14 (44A-2(d)) amends the mechanics lien statute to exempt seized vehicle towed or stored from the mechanics lien statute and provides for payment of towing and storage through the seizure and forfeiture process where these costs are required to be paid when the vehicle is release or paid from the proceeds of sale

Section 15 (44A-4(b)(1)) amends the mechanics lien statute to permit another alternative for notice to be sent to a vehicle owner whose vehicle is subject to sale to satisfy an unpaid mechanics lien. Under this provision in addition to DMV sending the notice, the lienholder may send the notice directly.

Sections 16 and 17 (58-71-1 and 58-71-35) amend the bail bond statutes to allow bail bonds to be used to bond the release of seized vehicles.

PART II - ZERO TOLERANCE FOR COMMERCIAL DRIVERS

Sections 18 through 24 amend the laws for commercial driving while impaired offense by reducing the permissible alcohol level from less than 0.04 to no alcohol at all. These sections also revoke for life a commercial drivers license for a second or subsequent commercial DWI.

PART III - ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES

Sections 25 through 29 make it illegal to drive a school bus or a child care vehicle with any alcohol in the body. Currently, operators of larger vehicles are required to have commercial drivers licenses and are subject to a 0.04 blood alcohol limit. This change would make zero tolerance applicable not to just commercial drivers but also operators of small vehicles for which a commercial drivers license is not required.

PART IV - IMMEDIATE REVOCATION FOR UNDER 21 DRIVERS

Sections 30 through 32 makes the immediate 30-day civil revocation of a drivers license for DWI offenses also applicable for violations of zero tolerance for drivers under age 21.

PART V - INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLDS FOR PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 33 repeals the provision that makes purchase or possession of alcoholic beverages by 19 or 20 year olds an infraction, thereby increasing the punishment to a Class 1 misdemeanor.

Section 34 makes a conforming change to the expunction statute for this offense.

PART VI - MISCELLANEOUS PROVISIONS

Section 35 authorizes the Department of Public Instruction to hire a part-time person to administer the statewide or regional towing and storage contract for seized vehicles.

PART VII - EFFECTIVE DATE

The provisions in the bill changing the DWI forfeiture law would become effective October 1, 1998 and would apply to offenses committed on or after that date. The new provisions allowing for increase options to release a seized vehicle through bonding, an innocent owner petition, a defendant owner petition, a lienholder petition, insurance proceeds and expedited pre-trial sales would apply to vehicles currently held on the effective date. The Parts for zero tolerance violations, immediate revocation for under 21 zero tolerance violation, and increasing the penalty for 19 and 20 year old alcoholic beverages purchase or possession are effective December 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____

DATE 7-16-98

S. B. No. 1336-CSRU-003

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) Winner

Sen. ()

moves to amend the bill on page 9, line 42

by rewriting the line to read:

"rental contract, the officer shall not seize
the motor vehicle pursuant to this section."; and

on page 19, line 38 between the words
"vehicle" and "shall" by inserting the
words: "or insurance proceeds held by
the clerk of court pursuant to G.S. 20-28.2(c)
or G.S. 20-28.3(h)".

SIGNED Patricia Winner

ADOPTED FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____

DATE 7-16-98

S. B. No. 1336 - CSRU-003

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) Ballance
Sen.) _____

moves to amend the bill on page 19, line 42

by deleting "10" and substituting "30"

SIGNED Frank Ballance

ADOPTED FAILED TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1336

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of _____

S1336-ASE-001

Date 7-16, 1998

Comm. Sub. [YES]
Amends Title []
S1336-CSRU-001

Senator Moore

1 moves to amend the bill on page ⁴⁵~~43~~, lines ^{20 21}~~37~~ and 38,
2 by inserting between those lines the following:

3
4 "Section 35.1. The Joint Legislative Corrections Oversight
5 Committee shall study the effect of the DWI forfeiture provisions as
6 set forth in G.S. 20-28.2 through G.S. 28.9 and the financial impact
7 on county boards of education. The study shall include, among other
8 relevant information, a statistical analysis of the number of
9 vehicles seized, the length of time vehicles are held until
10 disposition by the court, the percentage of seized vehicles
11 forfeited, the sale price of seized vehicles sold, the average
12 towing and storage costs, and county school administrative costs
13 associated with the seizure and forfeiture of the vehicles. The
14 Committee shall recommend ways to make the procedure and process for
15 managing seized and forfeited vehicles more efficient and effective.
16 The Committee may report to the 1999 Session of the 1999 General
17 Assembly and the 2000 Session of the 1999 General Assembly."

SIGNED Sen Moore
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Withdrawn

They all pack the same punch per drink.

12 oz. = 5 oz. = 1½ oz.



Attachment #2

1996-1997 NC Reportable Crash Data Commercial Motor Vehicle

Factors	1996	1997	Total	Percent
No Alcohol	22483	21495	43978	99.4%
Alcohol	128	142	270	.6%
Total	22611	21637	44248	100%
No Speed	18844	18154	36998	83.6%
Speed	3767	3483	7250	16.4%
Total	22611	21637	44248	100%

Source: UNC Highway Safety Research Center

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. - Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. - The concentration of alcohol in a person, expressed either as:

- a. Grams of alcohol per 100 milliliters of blood; or
- b. Grams of alcohol per 210 liters of breath.

(1c) Business District. - The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. - As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud is void and terminated.

(2a) Class A Motor Vehicle. - A combination of motor vehicles that meets either of the following descriptions:

- a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
- b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. - Any of the following:

- a. A single motor vehicle that has a GVWR of at least 26,001 pounds.
- b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. - Any of the following:

- a. A single motor vehicle not included in Class B.
- b. A combination of motor vehicles not included in Class A or Class B.

(3) Repealed by Session Laws 1979, c. 667, s. 1.

(3a) Chemical Analysis. - A test or tests of the breath, blood, or other bodily fluid or substance of a person to determine the person's alcohol concentration or presence of an impairing substance, performed in accordance with G.S. 20-139.1, including duplicate or sequential analyses.

(3b) Chemical Analyst. - A person granted a permit by the Department of Health and Human Services under G.S. 20-139.1 to perform chemical analyses.

(3c) Commercial Drivers License (CDL). - A license issued by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A "nonresident commercial drivers license (NRCDL)" is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. - Any of the following motor vehicles that are designed or used to transport passengers or property:

a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

b. A Class B motor vehicle.

c. A Class C motor vehicle that meets either of the following descriptions:

1. Is designed to transport 16 or more passengers, including the driver.

2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

d. Any other motor vehicle included by federal regulation in the definition of commercial motor vehicle pursuant to 49 U.S.C. Appdx. § 2716.

(4) Commissioner. - The Commissioner of Motor Vehicles.

(4a) Conviction. - A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.

2. A determination that a person is responsible for an infraction, including a no contest plea.

3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.

4. A third or subsequent prayer for judgment continued within any five-year period.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.

2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.

3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.

4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(5) Dealer. - Every person engaged in the business of buying, selling, distributing, or

exchanging motor vehicles, trailers or semitrailers in this State, having an established place of business in this State and being subject to the tax levied by G.S. 105-89.

The terms "motor vehicle dealer," "new motor vehicle dealer," and "used motor vehicle dealer" shall have the meaning set forth in G.S. 20-286.

(5a) Disqualification. - A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. - The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. - The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(7a) Employer. - Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(8) Essential Parts. - All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. - Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. - Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. - Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(11a) For-Hire Motor Carrier. - A person who transports passengers or property by motor vehicle for compensation.

(12) Foreign Vehicle. - Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Gross Vehicle Weight Rating (GVWR). - The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units.

(12b) Hazardous Materials. - Materials designated as hazardous by the United States Secretary of Transportation under 49 U.S.C. § 1803.

(13) Highway. - The entire width between property or right-of-way lines of every way or

(22) Motorcycle. - A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. - Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

(24) Nonresident. - Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. - Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. Second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(25) Operator. - A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms "operator" and "driver" and their cognates are synonymous.

(25a) Out of Service Order. - A temporary prohibition against driving a commercial motor vehicle.

(26) Owner. - A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. -

a. Excursion passenger vehicles. - Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. - Vehicles transporting persons for compensation. This

classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. - Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

d. Motorcycles. - Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. - A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. - A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. - A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. - A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. - Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. - Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. - All other passenger vehicles not included in the above definitions.

(28) Person. - Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(29) Pneumatic Tire. - Every tire in which compressed air is designed to support the load.

(33) a. Flood Vehicle. - A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

b. Non-U.S.A. Vehicle. - A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

c. Reconstructed Vehicle. - A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

d. Salvage Motor Vehicle. - Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

e. Salvage Rebuilt Vehicle. - A salvage vehicle that has been rebuilt for title and registration.

f. Junk Vehicle. - A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. - Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(33b) Reportable Accident. - An accident or collision involving a motor vehicle that results in either of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars (\$1,000) or more.

(34) Resident. - Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. - The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. - Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(37) Road Tractors. - Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. - That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. - Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. - Written agreement which reserves or creates a security interest.

(41) Security Interest. - An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

(41a) Serious Traffic Violation. - A conviction of one of the following offenses when operating a commercial motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.

b. Careless and reckless driving.

c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.

d. Improper or erratic lane changes.

e. Following the vehicle ahead too closely.

(42) Solid Tire. - Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(43) Specially Constructed Vehicles. - Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.

(44) Special Mobile Equipment. - Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.

(45) State. - A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, or a province of Canada.

(46) Street. - A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(47) Suspension. - Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(48) Truck Tractors. - Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) Under the Influence of an Impairing Substance. - The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(49) Vehicle. - Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment.

(50) Wreckers. - Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed.

VISITOR REGISTRATION SHEET

Senate Judiciary 7/16/98
 Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Amy Jo Bain	Smith Anderson
Crispin Parker	Bone & Assoc.
Brian Smith	Forensic Tests for Alcohol Branch
LARRY TYSINGER	Forensic Tests for Alcohol Branch
Paul Glover	Forensic Tests for Alcohol Branch
AC EISELE	FORENSIC TESTS FOR ALCOHOL BR.
Bill Stout	Governor's Highway Safety Program
Vicki McBride	MATA
Wes Parker	GHSP
Bob Phillips	LT. GOV. OFFICE
Julie White	LT. GOV. OFFICE
Lura Forcum	GHSP
Susan Valami	Nationwide
Chris Valami	NC BAWA
Melissa Lovell	DOJ
Karyn Brown	MADD-NC
Cassie Bair	MADD-NC
Cheryl Jones	MADD-NC
Taylor Batten	Charlotte Observer
Jerry Myers	Smith Deban Naron & Myers, LLP
Paul Stock	NC Bankers Assn.

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Meredith Morris

Bentley & Associates

Capt. George May

NC DMV ENFORCEMENT

John Morgan

NC DMV

Christine Utter

NC DMV

George Reed

NC Council of Churches

Joe Dugdale

NC Crime Control & Public Safety

HARRY H. Russell

NC FORENSIC TESTS FOR ALCOHOL

James Andrews

NC State AFL-CIO

Donnis Patterson

AP

Jennifer Lakin

AOC

John L.

TDA

Karla Peel

NC Medical Society

Paul T. O'Connell

Press

Wanda Riddle

New Observer

Allison Schae

North Carolina School Boards Assn

David Ferrell

HMCCG, P.A.

Robert C. Watson

Governor Office

MINUTES
SENATE JUDICIARY COMMITTEE
July 21, 1998

The Senate Judiciary Committee met on Wednesday, July 21, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Odom, Vice Chairman, called the meeting to order and recognized Senator Dalton to explain Senate Bill 1228 - AN ACT TO ENHANCE THE CRIMINAL PROVISIONS FOR TAX VIOLATIONS.

Senator Miller moved to amend the bill on Page 1, Line 23. The motion carried by a majority voice vote. (See attached amendment.)

Senator Ballantine moved to give the bill a favorable report as amended and re-refer it to the Appropriations Committee. The motion carried by a majority voice vote.

With Senator Cooper presiding, Senator Dalton was recognized to explain Senate Bill 1277 - AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AND TO EXTEND THE CIVIL PROCEDURE STUDY COMMISSION.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 1277 for discussion. The motion carried by a majority voice vote.

Alan Briggs, Assistant Director of the Administrative Office of the Courts, Bill Scoggins with the N. C. Bar Association and Dick Taylor, Executive Director of the Academy of Trial Lawyers, were recognized to answer questions and comment on the bill.

After discussion by the Committee, Senator Cooper explained that the bill would be sent to a subcommittee for further work.

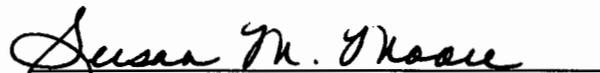
Senator Rand was recognized to explain Senate Bill 1244 - AN ACT TO PROVIDE THAT THE CHILD SUPPORT ENFORCEMENT AGENCY SHALL REPRESENT OBLIGEES IN IV-D UIFSA CASES AND TO APPROPRIATE FUNDS.

Gerry Robbins, with the Child Support Enforcement Division of the Attorney General's office, was recognized to comment on the bill and to answer questions from the Committee.

Senator Odom moved to give the bill a favorable report and re-refer it to the Appropriations Committee. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, LL Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate Judiciary Committee will meet at the following time:

Date: Tuesday, July 21, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 1228	Criminal Tax Violations	Dalton
SB 1244	Representation in UIFSA Cases	Rand
SB 1277	Civil Procedure Rules Changes	Dalton

Sen. Roy Cooper, III, Chairman

Posted: 07/16/98 11:57 AM

AGENDA
SENATE JUDICIARY COMMITTEE
July 21, 1998

SB 1228	Criminal Tax Violations	Dalton
SB 1244	IV-D UIFSA Cases/Represent.	Rand
SB 1277	Civil Procedure Rules Changes	Dalton



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 21, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **SENATE BILL 1228 - CRIMINAL PROVISIONS FOR TAX VIOLATIONS**
Senator Dalton

Senate Bill 1228 is a recommendation of the Revenue Laws Study Committee. The bill would increase the criminal penalties for tax violations.

According to the study, prior to 1995 a person who willfully attempted to evade paying the amount of tax due, or who willfully helped another taxpayer attempt to evade paying the amount of tax due, could be punished by an active prison sentence, a monetary fine, or both. Under structured sentencing, however, a person who commits these crimes may often only be punished by a monetary fine. In some cases, the amount of tax money due may be quite large. In others, the deception may be egregious. The committee found that some of the people charged with these crimes are charged with them repeatedly. According to the committee's report to the 1998 Session, the Criminal Investigations Division of the Department of Revenue does not believe that the current level of punishment is sufficient to deter many would-be tax evaders. The Revenue Laws Committee has therefore recommended changing the classification of these two crimes from a Class I felony to a Class H felony so that a sentencing judge would have the discretion to sentence defendants to active time if the circumstances justify such a punishment.

The attempt to evade or defeat a tax is presently a Class I felony, and punishment currently may include a fine up to \$25,000; aiding or assisting in the filing of a fraudulent or false return is also a Class I felony, for which a fine of up to \$10,000 may be imposed. The minimum presumptive sentence for a

Page Two
Summary - House Bill 344
Motor Vehicle Occupant Restraints

Class I felony is 4-6 months community punishment for a person with no prior record; active punishment becomes available as a sentencing option when a person reaches prior record level IV.

Section 1 of the bill makes attempting to evade or defeat a tax a Class H felony, and deletes the language limiting the amount of the fine; Section 2 makes the aiding and assistance offense a Class H felony, and also deletes the limitation on the amount of the fine. The minimum presumptive sentence for a Class H felony is 5-6 months community, intermediate, or active punishment for a person with no prior record. Under structured sentencing, any judgment that includes a sentence of imprisonment may also include a fine; if a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise specified, the amount of the fine is in the discretion of the court.

According to a fiscal analysis prepared by the Fiscal Research Division, the bill is expected to have no fiscal impact. A copy of the fiscal analysis memorandum is attached.

FISCAL ANALYSIS MEMORANDUM

DATE: April 20, 1998
TO: Revenue Laws Study Committee
FROM: Jim Mills
Fiscal Research Division
RE: Criminal Provisions for Tax Violations

FISCAL IMPACT

Yes () No (X) No Estimate Available ()

No fiscal impact – increase penalty to evade or defeat tax or assist with evasion

FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02 FY 2002-03

REVENUES

EXPENDITURES

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Revenue; Department of Correction; Judicial Department

EFFECTIVE DATE: November 1, 1998

BILL SUMMARY: This bill increases the penalty for attempting to evade or defeat tax from a Class I felony to Class H (G.S. 105-236(7) and 9(a)).

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

According to the Sentencing and Policy Advisory Commission, in 1996-97 there were only two convictions for attempting to evade or defeat a tax and one conviction for aid or assistance in doing so. Therefore it is estimated there would be no fiscal impact on the prison population. For example, if there were ten convictions it is estimated that only 3 inmates would be added to the system.

Judicial Department

Increases in criminal penalty bills or new crimes can increase court time and personnel costs. For example in this bill, an increase in punishment for attempting to evade or defeat a tax could make some defendants more likely to request a jury trial, thus increasing court time and costs. However, the number of offenses and convictions for the current Class I felonies are so few that any fiscal impact on the court system is unlikely.

TECHNICAL CONSIDERATIONS: None



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1228

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1228-ARV-001

Date 7-21, 1998

Comm. Sub. [
Amends Title [

Senator MILLER

1 moves to amend the bill on page 1, line 23,
2 by rewriting that line to read:
3 "Section 3. This act becomes effective December 1, 1998 and
4 applies to offenses occurring on or after that date."

SIGNED *Arvid St*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Monday, July 27, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	1228	Criminal Provisions for Tax Violations	
		Draft Number:	PCS A890
		Sequential Referral:	None
		Recommended Referral:	Appropriations
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

1 the date of the issuance of ~~summons, except that in tax and assessment foreclosures~~
2 ~~under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days.~~
3 summons. When a summons has been served upon every party named in the
4 summons, it shall be returned immediately to the clerk who issued it, with notation
5 thereon of its service.

6 Failure to make service within the time allowed or failure to return a summons to
7 the clerk after it has been served on every party named in the summons shall not
8 invalidate the summons. If the summons is not served within the time allowed upon
9 every party named in the summons, it shall be returned immediately upon the
10 expiration of such time by the officer to the clerk of the court who issued it with
11 notation thereon of its nonservice and the reasons therefor as to every such party not
12 served, but failure to comply with this requirement shall not invalidate the
13 summons."

14

15 **SERVICE BY PRIVATE MAIL DELIVERY (RULE 4(j)) AND CONFORMING**
16 **CHANGES TO PROOF OF SERVICE**

17 Section 3. G.S. 1A-1, Rule 4(j) reads as rewritten:

18 "(j) Process -- Manner of service to exercise personal jurisdiction. -- In any action
19 commenced in a court of this State having jurisdiction of the subject matter and
20 grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of
21 process within or without the State shall be as follows:

22 (1) Natural Person. -- Except as provided in subsection (2) below,
23 upon a natural ~~person:~~ person by one of the following:

24 a. By delivering a copy of the summons and of the complaint
25 to him or by leaving copies thereof at the defendant's
26 dwelling house or usual place of abode with some person of
27 suitable age and discretion then residing ~~therein;~~ or therein.

28 b. By delivering a copy of the summons and of the complaint
29 to an agent authorized by appointment or by law to be
30 served or to accept service of process or by serving process
31 upon such agent or the party in a manner specified by any
32 statute.

33 c. By mailing a copy of the summons and of the complaint,
34 registered or certified mail, return receipt requested,
35 addressed to the party to be served, and delivering to the
36 addressee.

37 d. By depositing with a private delivery service a copy of the
38 summons and complaint, addressed to the party to be
39 served, delivering to the addressee, and obtaining a delivery
40 receipt.

41 (2) Natural Person under Disability. -- Upon a natural person under
42 disability by serving process in any manner prescribed in this
43 section (j) for service upon a natural person and, in addition,

1 where required by paragraph a or b below, upon a person therein
2 designated.

3 a. Where the person under disability is a minor, process shall
4 be served separately in any manner prescribed for service
5 upon a natural person upon a parent or guardian having
6 custody of the child, or if there be none, upon any other
7 person having the care and control of the child. If there is
8 no parent, guardian, or other person having care and control
9 of the child when service is made upon the child, then
10 service of process must also be made upon a guardian ad
11 litem who has been appointed pursuant to Rule 17.

12 b. If the plaintiff actually knows that a person under disability
13 is under guardianship of any kind, process shall be served
14 separately upon his guardian in any manner applicable and
15 appropriate under this section (j). If the plaintiff does not
16 actually know that a guardian has been appointed when
17 service is made upon a person known to him to be
18 incompetent to have charge of his affairs, then service of
19 process must be made upon a guardian ad litem who has
20 been appointed pursuant to Rule 17.

21 (3) The State. -- Upon the State by personally delivering a copy of the
22 summons and of the complaint to the Attorney General or to a
23 deputy or assistant attorney ~~general or general~~; by mailing a copy
24 of the summons and of the complaint, registered or certified mail,
25 return receipt requested, addressed to the Attorney General or to a
26 deputy or assistant attorney ~~general~~; general; or by depositing with
27 a private delivery service a copy of the summons and complaint,
28 addressed to the Attorney General or to a deputy or assistant
29 attorney general, delivering to the addressee, and obtaining a
30 delivery receipt.

31 (4) An Agency of the State. --

32 a. Upon an agency of the State by personally delivering a copy
33 of the summons and of the complaint to the process agent
34 appointed by the agency in the manner hereinafter ~~provided~~
35 provided; ~~or~~ by mailing a copy of the summons and of the
36 complaint, registered or certified mail, return receipt
37 requested, addressed to said process ~~agent~~; agent; or by
38 depositing with a private delivery service a copy of the
39 summons and complaint, addressed to the process agent,
40 delivering to the addressee, and obtaining a delivery receipt.

41 b. Every agency of the State shall appoint a process agent by
42 filing with the Attorney General the name and address of an
43 agent upon whom process may be served.

1 c. If any agency of the State fails to comply with paragraph b
2 above, then service upon such agency may be made by
3 personally delivering a copy of the summons and of the
4 complaint to the Attorney General or to a deputy or
5 assistant attorney ~~general~~ general; by mailing a copy of
6 the summons and of the complaint, registered or certified
7 mail, return receipt requested, addressed to the Attorney
8 General, or to a deputy or assistant attorney ~~general~~
9 general; or by depositing with a private delivery service a
10 copy of the summons and complaint, addressed to the
11 Attorney General or to a deputy or assistant attorney
12 general, delivering to the addressee, and obtaining a delivery
13 receipt.

14 d. For purposes of this rule, the term "agency of the State"
15 includes every agency, institution, board, commission,
16 bureau, department, division, council, member of Council of
17 State, or officer of the State government of the State of
18 North Carolina, but does not include counties, cities, towns,
19 villages, other municipal corporations or political
20 subdivisions of the State, county or city boards of education,
21 other local public districts, units, or bodies of any kind, or
22 private corporations created by act of the General Assembly.

23 (5) Counties, Cities, Towns, Villages and Other Local Public Bodies. --

24 a. Upon a city, town, or village by personally delivering a copy
25 of the summons and of the complaint to its mayor, city
26 manager or ~~clerk~~ clerk; ~~or~~ by mailing a copy of the
27 summons and of the complaint, registered or certified mail,
28 return receipt requested, addressed to its mayor, city
29 manager or ~~clerk~~ clerk; or by depositing with a private
30 delivery service a copy of the summons and complaint,
31 addressed to the mayor, city manager, or clerk, delivering
32 to the addressee, and obtaining a delivery receipt.

33 b. Upon a county by personally delivering a copy of the
34 summons and of the complaint to its county manager or to
35 the chairman, clerk or any member of the board of
36 commissioners for such ~~county~~ county; by mailing a copy
37 of the summons and of the complaint, registered or certified
38 mail, return receipt requested, addressed to its county
39 manager or to the chairman, clerk, or any member of this
40 board of commissioners for such ~~county~~ county; or by
41 depositing with a private delivery service a copy of the
42 summons and complaint, addressed to the county manager
43 or to the chairman, clerk, or any member of the board of

- 1 commissioners of that county, delivering to the addressee,
2 and obtaining a delivery receipt.
- 3 c. Upon any other political subdivision of the State, any county
4 or city board of education, or other local public district,
5 unit, or body of any kind (i) by personally delivering a copy
6 of the summons and of the complaint to an officer or
7 director thereof, ~~or~~ (ii) by personally delivering a copy of
8 the summons and of the complaint to an agent or attorney-
9 in-fact authorized by appointment or by statute to be served
10 or to accept service in its behalf, ~~or~~ (iii) by mailing a copy
11 of the summons and of the complaint, registered or certified
12 mail, return receipt requested, addressed to the officer,
13 director, agent, or attorney-in-fact as specified in (i) and ~~(ii)~~:
14 (ii); or by depositing with a private delivery service a copy
15 of the summons and complaint, addressed to the officer,
16 director, agent, or attorney-in-fact as specified in (i) and (ii),
17 delivering to the addressee, and obtaining a delivery receipt.
- 18 d. In any case where none of the officials, officers or directors
19 specified in paragraphs a, b and c can, after due diligence,
20 be found in the State, and that fact appears by affidavit to
21 the satisfaction of the court, or a judge thereof, such court
22 or judge may grant an order that service upon the party
23 sought to be served may be made by personally delivering a
24 copy of the summons and of the complaint to the Attorney
25 General or any deputy or assistant attorney general of the
26 State of North ~~Carolina, or~~ Carolina; mailing a copy of the
27 summons and of the complaint, registered or certified mail,
28 return receipt requested, addressed to the Attorney General
29 or any deputy or assistant attorney general of the State of
30 North ~~Carolina.~~ Carolina; or by depositing with a private
31 delivery service a copy of the summons and complaint,
32 addressed to the Attorney General or any deputy or assistant
33 attorney general of the State of North Carolina, delivering to
34 the addressee, and obtaining a delivery receipt.
- 35 (6) Domestic or Foreign Corporation. -- Upon a domestic or foreign
36 corporation:
- 37 a. By delivering a copy of the summons and of the complaint
38 to an officer, director, or managing agent of the corporation
39 or by leaving copies thereof in the office of such officer,
40 director, or managing agent with the person who is
41 apparently in charge of the office; ~~or~~
- 42 b. By delivering a copy of the summons and of the complaint
43 to an agent authorized by appointment or by law to be
44 served or to accept service ~~or~~ of process or by serving

- 1 process upon such agent or the party in a manner specified
2 by any ~~statute~~; statute;
- 3 c. By mailing a copy of the summons and of the complaint,
4 registered or certified mail, return receipt requested,
5 addressed to the officer, director or agent to be served as
6 specified in paragraphs ~~a and b~~; a. and b.; or
- 7 d. By depositing with a private delivery service a copy of the
8 summons and complaint, addressed to the officer, director,
9 or agent to be served as specified in paragraphs a. and b.,
10 delivering to the addressee, and obtaining a delivery receipt.
- 11 (7) Partnerships. -- Upon a general or limited partnership:
- 12 a. By delivering a copy of the summons and of the complaint
13 to any general partner, or to any attorney-in-fact or agent
14 authorized by appointment or by law to be served or to
15 accept service of process in its ~~behalf~~, or behalf; by mailing
16 a copy of the summons and of the complaint, registered or
17 certified mail, return receipt requested, addressed to any
18 general partner, or to any attorney-in-fact or agent
19 authorized by appointment or by law to be served or to
20 accept service of process in its ~~behalf~~, or behalf; by
21 depositing with a private delivery service a copy of the
22 summons and complaint, addressed to any general partner
23 or to any attorney-in-fact or agent authorized by
24 appointment or by law to be served or to accept service of
25 process in its behalf, delivering to the addressee, and
26 obtaining a delivery receipt; or by leaving copies thereof in
27 the office of such general partner, attorney-in-fact or agent
28 with the person who is apparently in charge of the office.
- 29 b. If relief is sought against a partner specifically, a copy of the
30 summons and of the complaint must be served on such
31 partner as provided in this section (j).
- 32 (8) Other Unincorporated Associations and Their Officers. -- Upon
33 any unincorporated association, organization, or society other than
34 a partnership:
- 35 a. By delivering a copy of the summons and of the complaint
36 to an officer, director, managing agent or member of the
37 governing body of the unincorporated association,
38 organization or society, or by leaving copies thereof in the
39 office of such officer, director, managing agent or member
40 of the governing body with the person who is apparently in
41 charge of the office; ~~or~~
- 42 b. By delivering a copy of the summons and of the complaint
43 to an agent authorized by appointment or by law to be
44 served or to accept service of process or by serving process

- 1 upon such agent or the party in a manner specified by any
2 ~~statute.~~ statute;
3 c. By mailing a copy of the summons and of the complaint,
4 registered or certified mail, return receipt requested,
5 addressed to the officer, director, agent or member of the
6 governing body to be served as specified in paragraphs a
7 and ~~b.~~ a. and b.; or
8 d. By depositing with a private delivery service a copy of the
9 summons and complaint, addressed to the officer, director,
10 agent, or member of the governing body to be served as
11 specified in paragraphs a. and b., delivering to the
12 addressee, and obtaining a delivery receipt.
13 (9) Service upon a foreign state or a political subdivision, agency, or
14 instrumentality thereof shall be effected pursuant to 28 U.S.C. §
15 1608.

16 For purposes of this Rule, 'private delivery service' means a
17 private delivery service that has been certified by the
18 Administrative Office of the Courts for service of process pursuant
19 to this Rule."

20 Section 3.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:

21 "(j1) Service by publication' on party that cannot otherwise be served. -- A party
22 that cannot with due diligence be served by personal ~~delivery~~ or delivery, registered
23 or certified ~~mail~~ mail, or private delivery service may be served by publication.
24 Except in actions involving jurisdiction in rem or quasi in rem as provided in section
25 (k), service of process by publication shall consist of publishing a notice of service of
26 process by publication once a week for three successive weeks in a newspaper that is
27 qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and
28 circulated in the area where the party to be served is believed by the serving party to
29 be located, or if there is no reliable information concerning the location of the party
30 then in a newspaper circulated in the county where the action is pending. If the
31 party's post-office address is known or can with reasonable diligence be ascertained,
32 there shall be mailed to the party at or immediately prior to the first publication a
33 copy of the notice of service of process by publication. The mailing may be omitted if
34 the post-office address cannot be ascertained with reasonable diligence. Upon
35 completion of such service there shall be filed with the court an affidavit showing the
36 publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the
37 circumstances warranting the use of service by publication, and information, if any,
38 regarding the location of the party served.

39 The notice of service of process by publication shall (i) designate the court in
40 which the action has been commenced and the title of the action, which title may be
41 indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be
42 directed to the defendant sought to be served; (iii) state either that a pleading seeking
43 relief against the person to be served has been filed or has been required to be filed
44 therein not later than a date specified in the notice; (iv) state the nature of the relief

1 being sought; (v) require the defendant being so served to make defense to such
 2 pleading within 40 days after a date stated in the notice, exclusive of such date, which
 3 date so stated shall be the date of the first publication of notice, or the date when the
 4 complaint is required to be filed, whichever is later, and notify the defendant that
 5 upon his failure to do so the party seeking service of process by publication will
 6 apply to the court for the relief sought; (vi) in cases of attachment, state the
 7 information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service
 8 or his attorney and give the post-office address of such party or his attorney; and
 9 (viii) be substantially in the following form:

10 NOTICE OF SERVICE OF PROCESS BY PUBLICATION

11 STATE OF NORTH CAROLINA _____ COUNTY

12 In the _____ Court

13 [Title of action or special proceeding] To [Person to be served]:

14 Take notice that a pleading seeking relief against you (has been filed) (is required
 15 to be filed not later than _____, 19_____) in the above-entitled
 16 (action) (special proceeding). The nature of the relief being sought is as follows:
 17 (State nature).

18 You are required to make defense to such pleading not later than
 19 (_____, 19_____) and upon your failure to do so the party seeking
 20 service against you will apply to the court for the relief sought.

21 This, the _____ day of _____, 19_____

22 _____ (Attorney) (Party)

23 _____ (Address)".

24 Section 3.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:

25 "(j2) Proof of service. -- Proof of service of process shall be as follows:

26 (1) Personal Service. -- Before judgment by default may be had on
 27 personal service, proof of service must be provided in accordance
 28 with the requirements of G.S. 1-75.10(1).

29 (2) Registered or Certified ~~Mail~~ Mail or Private Delivery Service. --
 30 Before judgment by default may be had on service by registered or
 31 certified ~~mail~~, mail or by private delivery service with delivery
 32 receipt, the serving party shall file an affidavit with the court
 33 showing proof of such service in accordance with the requirements
 34 of ~~G.S. 1-75.10(4)~~ G.S. 1-75.10(4) or G.S. 1-75.10(5), as
 35 appropriate. This affidavit together with the return or delivery
 36 receipt signed by the person who received the mail or delivery if
 37 not the addressee raises a presumption that the person who
 38 received the mail or delivery and signed the receipt was an agent
 39 of the addressee authorized by appointment or by law to be served
 40 or to accept service of process or was a person of suitable age and
 41 discretion residing in the addressee's dwelling house or usual place
 42 of abode. In the event the presumption described in the preceding
 43 sentence is rebutted by proof that the person who received the
 44 receipt at the addressee's dwelling house or usual place of abode

1 was not a person of suitable age and discretion residing therein, the
2 statute of limitation may not be pleaded as a defense if the action
3 was initially commenced within the period of limitation and
4 service of process is completed within 60 days from the date the
5 service is declared invalid. Service shall be complete on the day
6 the summons and complaint are delivered to the address.

- 7 (3) Publication. -- Before judgment by default may be had on service
8 by publication, the serving party shall file an affidavit with the
9 court showing the circumstances warranting the use of service by
10 publication, information, if any, regarding the location of the party
11 served which was used in determining the area in which service by
12 publication was printed and proof of service in accordance with
13 G.S. 1-75.10(2)."

14 Section 3.3. G.S. 1-75.10 reads as rewritten:

15 **"§ 1-75.10. Proof of service of summons, defendant appearing in action.**

16 Where the defendant appears in the action and challenges the service of the
17 summons upon him, proof of the service of process shall be as follows:

- 18 (1) Personal Service or Substituted Personal Service. --
19 a. If served by the sheriff of the county or the lawful process
20 officer in this State where the defendant was found, by the
21 officer's certificate thereof, showing place, time and manner
22 of service; or
23 b. If served by any other person, his affidavit thereof, showing
24 place, time and manner of service; his qualifications to make
25 service under Rule 4(a) or Rule 4(j3) of the Rules of Civil
26 Procedure; that he knew the person served to be the party
27 mentioned in the summons and delivered to and left with
28 him a copy; and if the defendant was not personally served,
29 he shall state in such affidavit when, where and with whom
30 such copy was left. If such service is made outside this State,
31 the proof thereof may in the alternative be made in
32 accordance with the law of the place where such service is
33 made.
34 (2) Service of Publication. -- In the case of publication, by the affidavit
35 of the publisher or printer, or his foreman or principal clerk,
36 showing the same and specifying the date of the first and last
37 publication, and an affidavit of mailing of a copy of the complaint
38 or notice, as the case may require, made by the person who mailed
39 the same.
40 (3) Written Admission of Defendant. -- The written admission of the
41 defendant, whose signature or the subscription of whose name to
42 such admission shall be presumptive evidence of genuineness.

- 1 (4) Service by Registered or Certified Mail. -- In the case of service by
2 registered or certified mail, by affidavit of the serving party
3 averring:
4 a. That a copy of the summons and complaint was deposited in
5 the post office for mailing by registered or certified mail,
6 return receipt requested;
7 b. That it was in fact received as evidenced by the attached
8 registry receipt or other evidence satisfactory to the court of
9 delivery to the addressee; and
10 c. That the genuine receipt or other evidence of delivery is
11 attached.
- 12 (5) Service by Private Delivery Service. -- In the case of service by
13 private delivery service, by affidavit of the serving party averring:
14 a. That a copy of the summons and complaint was deposited
15 with a private delivery service certified by the
16 Administrative Office of the Courts, delivery receipt
17 requested;
18 b. That it was in fact received as evidenced by the attached
19 delivery receipt or other evidence satisfactory to the court of
20 delivery to the addressee; and
21 c. That the genuine receipt or other evidence of delivery is
22 attached."
23

24 **SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))**

25 Section 4. G.S. 1A-1, Rule 5(b) reads as rewritten:

26 "(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim
27 shall be filed with the court and a copy thereof shall be served on the party against
28 whom it is asserted or on his attorney of record. With respect to all pleadings
29 subsequent to the original complaint and other papers required or permitted to be
30 served, service with due return may be made in the manner provided for service and
31 return of process in Rule 4 and may be made upon either the party or, unless service
32 upon the party himself is ordered by the court, upon his attorney of record. With
33 respect to such other pleadings and papers, service upon the attorney or upon a party
34 may also be made by delivering a copy to him or by mailing it to him at his last
35 known address or, if no address is known, by filing it with the clerk of court. Delivery
36 of a copy within this rule means handing it to the attorney or to the ~~party, or party,~~
37 leaving it at the attorney's office with a partner or ~~employee.~~ employee, or by sending
38 it to the attorney's office by telefacsimile between 9:00 a.m. and 5:00 p.m. on a
39 regular business day. Service by mail shall be complete upon deposit of the pleading
40 or paper enclosed in a post-paid, properly addressed wrapper in a post office or
41 official depository under the exclusive care and custody of the United States Postal
42 Service."
43

44 **SERVICE OF BRIEFS AND MEMORANDA (RULE 5(f))**

1 Section 5. G.S. 1A-1, Rule 5 is amended by adding the following new
2 subsection:

3 "(f) Service of briefs and memoranda. -- To be considered by the presiding judge,
4 a brief or memorandum must be served upon the opposing party or the party's
5 attorney of record no later than the third business day preceding the scheduled
6 hearing date on the matter for which the brief or memorandum is submitted."

7

8 **ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION**
9 **(RULE 28(c))**

10 Section 6. G.S. 1A-1, Rule 28(c) reads as rewritten:

11 "(c) Disqualification for interest. -- No deposition shall be taken before a person
12 who is a relative or employee or attorney or counsel of any of the parties, or is a
13 relative or employee of such attorney or counsel, or is financially interested in the
14 action ~~unless~~ unless:

15 (1) ~~the~~ The parties agree otherwise by stipulation as provided in ~~Rule~~
16 ~~29.~~ Rule 29; or

17 (2) The deposition is taken by videotape in compliance with Rule
18 30(b)(4) and Rule 30(f), and the notice for the taking of the
19 deposition states the name of the person before whom the
20 deposition will be taken and that person's relationship, if any, to a
21 party or a party's attorney."

22

23 **MEDIATION OF DISCOVERY DISPUTES (RULE 37)**

24 Section 7. G.S. 1A-1, Rule 37(a) reads as rewritten:

25 "(a) Motion for order compelling discovery. -- A party, upon reasonable notice to
26 other parties and all persons affected thereby, may apply for an order compelling
27 discovery as follows:

28 (1) Appropriate Court. -- An application for an order to a party or a
29 deponent who is not a party may be made to a judge of the court
30 in which the action is pending, or, on matters relating to a
31 deposition where the deposition is being taken in this State, to a
32 judge of the court in the county where the deposition is being
33 taken, as defined by Rule 30(h).

34 (2) Motion. -- If a deponent fails to answer a question propounded or
35 submitted under Rules 30 or 31, or a corporation or other entity
36 fails to make a designation under Rule 30(b)(6) or 31(a), or a party
37 fails to answer an interrogatory submitted under Rule 33, or if a
38 party, in response to a request for inspection submitted under Rule
39 34, fails to respond that inspection will be permitted as requested
40 or fails to permit inspection as requested, the discovering party
41 may move for an order compelling an answer, or a designation, or
42 an order compelling inspection in accordance with the request.
43 The motion must include a certification that the movant has in
44 good faith conferred or attempted to confer with the person or

1 party failing to make the discovery in an effort to secure the
2 information or material without court action. When taking a
3 deposition on oral examination, the proponent of the question shall
4 complete the examination on all other matters before he adjourns
5 the examination in order to apply for an order. If the court denies
6 the motion in whole or in part, it may make such protective order
7 as it would have been empowered to make on a motion made
8 pursuant to Rule 26(c).

9 (3) Evasive or Incomplete Answer. -- For purposes of this subdivision
10 an evasive or incomplete answer is to be treated as a failure to
11 answer.

12 (4) Award of Expenses of Motion. -- If the motion is granted, the court
13 shall, after opportunity for hearing, require the party or deponent
14 whose conduct necessitated the motion or the party advising such
15 conduct or both of them to pay to the moving party the reasonable
16 expenses incurred in obtaining the order, including attorney's fees,
17 unless the court finds that the opposition to the motion was
18 substantially justified or that other circumstances make an award of
19 expenses unjust.

20 If the motion is denied, the court shall, after opportunity for
21 hearing, require the moving party to pay to the party or deponent
22 who opposed the motion the reasonable expenses incurred in
23 opposing the motion, including attorney's fees, unless the court
24 finds that the making of the motion was substantially justified or
25 that other circumstances make an award of expenses unjust.

26 If the motion is granted in part and denied in part, the court
27 may apportion the reasonable expenses incurred in relation to the
28 motion among the parties and persons in a just manner."
29

30 PRESERVING EXCEPTIONS TO RULINGS (RULE 46)

31 Section 8. G.S. 1A-1, Rule 46 reads as rewritten:

32 "Rule 46. Objections and exceptions.

33 (a) Rulings on admissibility of evidence. --

34 (1) When there is objection to the admission of evidence on the
35 ground that the witness is for a specified reason incompetent or not
36 qualified or disqualified, it shall be deemed that a like objection
37 has been made to any subsequent admission of evidence from the
38 witness in question. Similarly, when there is objection to the
39 admission of evidence involving a specified line of questioning, it
40 shall be deemed that a like objection has been taken to any
41 subsequent admission of evidence involving the same line of
42 questioning.

43 (2) If there is proper objection to the admission of evidence and the
44 objection is overruled, the ruling of the court shall be deemed

1 excepted to by the party making the objection. If an objection to
2 the admission of evidence is sustained or if the court for any
3 reason excludes evidence offered by a party, the ruling of the court
4 shall be deemed excepted to by the party offering the evidence.

- 5 (3) No objections are necessary with respect to questions propounded
6 to a witness by the court or a juror but it shall be deemed that
7 each such question has been properly objected to and that the
8 objection has been overruled and that an exception has been taken
9 to the ruling of the court by all parties to the action.

10 (b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial rulings, and other orders not
11 directed to the admissibility of evidence. -- With respect to ~~rulings~~ pretrial rulings,
12 interlocutory orders, trial rulings, and other orders of the court not directed to the
13 admissibility of evidence, formal objections and exceptions are unnecessary. In order
14 to preserve an exception to any such ruling or order or to the court's failure to make
15 any such ruling or order, it shall be sufficient if a party, at the time the ruling or
16 order is made or sought, makes known to the court ~~his~~ the party's objection to the
17 action of the court or makes known the action ~~which he~~ that the party desires the
18 court to take and ~~his ground therefor,~~ the party's grounds for its position, and ~~if~~ If a
19 party has no opportunity to object or except to a ruling or order at the time it is
20 made, the absence of an objection or exception does not thereafter prejudice ~~him.~~
21 that party; however, in order to preserve exceptions to these rulings and orders for
22 appellate review, a party shall promptly present to the court a request, objection, or
23 motion that states the specific grounds for the ruling that the party desires the court
24 to make upon having an opportunity to do so.

25 (c) ~~Instruction. -- If there is error, either in the refusal of the judge to grant a~~
26 ~~prayer for instructions, or in granting a prayer, or in his instructions generally, the~~
27 ~~same is deemed excepted to without the filing of any formal objections."~~

29 DEFAULT JUDGMENT WITHOUT HEARING (RULE 55(b))

30 Section 9. G.S. 1A-1, Rule 55(b) reads as rewritten:

31 "(b) Judgment. -- Judgment by default may be entered as follows:

- 32 (1) By the Clerk. -- When the plaintiff's claim against a defendant is
33 for a sum certain or for a sum which can by computation be made
34 certain, the clerk upon request of the plaintiff and upon affidavit of
35 the amount due shall enter judgment for that amount and costs
36 against the defendant, if ~~he~~ the defendant has been defaulted for
37 failure to appear and if ~~he~~ the defendant is not an infant or
38 incompetent person. A verified pleading may be used in lieu of an
39 affidavit when the pleading contains information sufficient to
40 determine or compute the sum certain. _____

41 In all cases wherein, pursuant to this rule, the clerk enters
42 judgment by default upon a claim for debt which is secured by any
43 pledge, mortgage, deed of trust or other contractual security in
44 respect of which foreclosure may be had, or upon a claim to

1 enforce a lien for unpaid taxes or assessments under G.S. 105-414,
2 the clerk may likewise make all further orders required to
3 consummate foreclosure in accordance with the procedure
4 provided in Article 29A of Chapter 1 of the General Statutes,
5 entitled "Judicial Sales."

6 (2) By the Judge. --

7 a. In all other cases the party entitled to a judgment by default
8 shall apply to the judge therefor; but no judgment by default
9 shall be entered against an infant or incompetent person
10 unless represented in the action by a guardian ad litem or
11 other such representative who has appeared therein. If the
12 party against whom judgment by default is sought has
13 appeared in the action, ~~he~~ that party (or, if appearing by
14 representative, ~~his~~ the representative) shall be served with
15 written notice of the application for judgment at least three
16 days prior to the hearing on such application. If, in order to
17 enable the judge to enter judgment or to carry it into effect,
18 it is necessary to take an account or to determine the
19 amount of damages or to establish the truth of any averment
20 by evidence or to take an investigation of any other matter,
21 the judge may conduct such hearings or order such
22 references as ~~he~~ the judge deems necessary and proper and
23 shall accord a right of trial by jury to the parties when and
24 as required by the Constitution or by any statute of North
25 Carolina. If the plaintiff seeks to establish paternity under
26 Article 3 of Chapter 49 of the General Statutes and the
27 defendant fails to appear, the judge shall enter judgment by
28 default.

29 b. A motion for judgment by default may be decided by the
30 court without a hearing if:

- 31 1. The motion specifically provides that the court will
32 decide the motion for judgment by default without a
33 hearing if the party against whom judgment is sought
34 fails to serve a written response, stating the grounds
35 for opposing the motion, within 30 days of service of
36 the motion; and
37 2. The party against whom judgment is sought fails to
38 serve the response in accordance with this sub-
39 subdivision."
40

41 **ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)**

42 Section 10. G.S. 1A-1, Rule 65(b) reads as rewritten:

43 "(b) Temporary restraining order; notice; hearing; duration. -- A temporary
44 restraining order may be granted without written or oral notice to the adverse party

1 or that party's attorney only if (i) it clearly appears from specific facts shown by
2 affidavit or by verified complaint that immediate and irreparable injury, loss, or
3 damage will result to the applicant before notice can be served and a hearing had
4 thereon. the adverse party or that party's attorney can be heard in opposition, and (ii)
5 the applicant's attorney certifies to the court in writing the efforts, if any, that have
6 been made to give the notice and the reasons supporting the claim that notice should
7 not be required. Every temporary restraining order granted without notice shall be
8 endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's
9 office and entered of record; shall define the injury and state why it is irreparable and
10 why the order was granted without notice; and shall expire by its terms within such
11 time after entry, not to exceed 10 days, as the judge fixes, unless within the time so
12 fixed the order, for good cause shown, is extended for a like period or unless the
13 party against whom the order is directed consents that it may be extended for a
14 longer period. The reasons for the extension shall be entered of record. In case a
15 temporary restraining order is granted without notice and a motion for a preliminary
16 injunction is made, it shall be set down for hearing at the earliest possible time and
17 takes precedence over all matters except older matters of the same character; and
18 when the motion comes on for hearing, the party who obtained the temporary
19 restraining order shall proceed with a motion for a preliminary injunction, and, if he
20 does not do so, the judge shall dissolve the temporary restraining order. On two days'
21 notice to the party who obtained the temporary restraining order without notice or
22 on such shorter notice to that party as the judge may prescribe, the adverse party may
23 appear and move its dissolution or modification and in that event the judge shall
24 proceed to hear and determine such motion as expeditiously as the ends of justice
25 require. Damages may be awarded in an order for dissolution as provided in section
26 (e)."

27

28 **OFFER OF JUDGMENT (RULES 68 and 84)**

29 Section 11. G.S. 1A-1, Rule 68 reads as rewritten:

30 **"Rule 68. Offer of judgment and disclaimer.**

31 (a) Offer of judgment. --

32 (1) At any time more than ~~40~~ 30 days before the trial begins, a party
33 defending against a claim may serve ~~upon the adverse party an a~~
34 written offer to allow judgment to be taken entered against him for
35 the money or property or to the effect specified in his offer, with
36 costs then accrued. the defending party and in favor of the adverse
37 party for the relief specified in the offer, plus any interest that has
38 accrued as of that date, and, as may be awarded by the court, costs
39 and statutorily authorized attorneys' fees incurred as of that date.
40 The defending party shall not file the written offer with the court
41 at this time.

42 (2) If within ~~40~~ 30 days after the service of the offer the adverse party
43 serves written notice that the offer is accepted, either party may
44 then file the offer and notice of acceptance together with proof of

1 ~~service thereof and thereupon the clerk shall enter judgment.~~
2 ~~thereof. The court shall determine costs, interest, and statutorily~~
3 ~~authorized attorneys' fees and enter judgment accordingly. An~~
4 ~~offer not accepted within 40 30 days after its service shall be~~
5 ~~deemed withdrawn and evidence of the offer is not admissible~~
6 ~~except in a proceeding to determine costs. The defending party~~
7 ~~shall file the offer deemed withdrawn prior to the proceeding to~~
8 ~~determine costs. If the judgment finally obtained by the offeree is~~
9 ~~not more favorable than the offer, the offeree must pay the costs~~
10 ~~incurred after the making service of the offer. offer and shall not~~
11 ~~be entitled to interest or attorneys' fees incurred after service of~~
12 ~~the offer. The fact that an offer is made served but not accepted~~
13 ~~does not preclude a subsequent offer.~~

14 (3) This subsection applies only to claims for monetary damages in
15 which any nonmonetary claims are ancillary and incidental to the
16 monetary claims.

17 (b) Conditional offer of judgment for damages. -- A party defending against a
18 claim arising in contract or quasi contract may, with his responsive pleading, serve
19 upon the claimant an offer in writing that if he fails in his defense, the damages shall
20 be assessed at a specified sum; and if the claimant signifies his acceptance thereof in
21 writing within 20 days of the service of such offer, and on the trial prevails, his
22 damages shall be assessed accordingly. If the claimant does not accept the offer, he
23 must prove his damages as if the offer had not been made. If the damages assessed in
24 the claimant's favor do not exceed the sum stated in the offer, the party defending
25 shall recover the costs in respect to the question of damages.

26 (c) Definitions. -- For purposes of this rule:

- 27 (1) 'Costs' mean the court costs that the court is authorized by law to
28 award. Costs do not include interest and attorneys' fees.
29 (2) 'Judgment finally obtained' means all relief to which the offeree is
30 finally adjudged entitled by the trial court, other than costs,
31 interest, and statutorily authorized attorneys' fees.
32 (3) 'Offer' means all relief tendered to the offeree pursuant to this
33 rule. Offer does not include costs, interest, or attorneys' fees.
34 Further, offer does not mean an offer of a lump sum that purports
35 to include any or all of the following: costs, interest, or attorneys'
36 fees."

37 Section 12. G.S. 1A-1, Rule 84 is amended by adding a form at the end
38 to read:

39 "(17) Offer of Judgment Under Rule 68(a).
40 Defendant offers that judgment be entered against it and in favor of Plaintiff for
41 \$ _____, plus interest that has accrued as of the time of service of this offer,
42 and, as may be awarded by the court, costs and statutorily authorized attorneys' fees
43 incurred as of the time of service of this offer."
44

1 **EXTEND CIVIL PROCEDURE STUDY COMMISSION AND INCREASE**
2 **MEMBERSHIP**

3 Section 13. Subsection (c) of Section 4.1 of Part IV of Chapter 17 of the
4 1996 Second Extra Session Laws reads as rewritten:

5 "(c) The Commission shall report to the General Assembly and the Chief Justice
6 no later than ~~April 1, 1998~~ February 1, 2001. The report shall be in writing and
7 shall set forth the Commission's findings, conclusions, and recommendations,
8 including any proposed legislation or court rules. Upon issuing its final report, the
9 Commission shall terminate."

10 Section 14. Subsection (a) of Section 4.1 of Part IV of Chapter 17 of the
11 1996 Second Extra Session Laws reads as rewritten:

12 "(a) The Civil Procedure Study Commission is created. The Commission shall
13 consist of ~~18~~ 24 voting members: ~~six~~ eight members to be appointed by the President
14 Pro Tempore of the Senate, ~~six~~ eight members to be appointed by the Speaker of the
15 House of Representatives, and ~~six~~ eight members to be appointed by the Chief Justice
16 of the North Carolina Supreme Court. No more than four members appointed by
17 the President Pro Tempore of the Senate and no more than four members appointed
18 by the Speaker of the House of Representatives may be members of the General
19 Assembly. No more than four of the members appointed by any one of the three
20 appointing authorities may be members of the same political party."

21 Section 14.1. Of the funds appropriated to the General Assembly for the
22 1998-99 fiscal year, the sum of twenty-five thousand dollars (\$25,000) shall be
23 allocated to implement the provisions of this act.

24

25 **EFFECTIVE DATE**

26 Section 15. Sections 1 through 12 of this act become effective October 1,
27 1998. Section 12 applies to offers of judgment made on or after that date. Sections 1
28 through 11 apply to actions filed on or after that date. Sections 13 and 14 of this act
29 and this section are effective when they become law. Section 14.1 becomes effective
30 July 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

S1277-CSRU-001.1
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1277
THIS IS A DRAFT 21-JUL-98 09:27:14
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Civil Procedure Rules Changes.

(Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AND TO EXTEND THE
3 CIVIL PROCEDURE STUDY COMMISSION; AND TO CLARIFY THE PUBLIC
4 DUTY DOCTRINE AND THE TORTS CLAIMS ACT.
5 The General Assembly of North Carolina enacts:
6
7 SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))
8 Section 1. G.S. 1A-1, Rule 4(c) reads as rewritten:
9 "(c) Summons -- Return. -- Personal service or substituted
10 personal service of summons as prescribed by Rule 4(j)(1) a and b
11 must be made within ~~30~~ 60 days after the date of the issuance of
12 ~~summons, except that in tax and assessment foreclosures under~~
13 ~~G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60~~
14 ~~days.~~ summons. When a summons has been served upon every party
15 named in the summons, it shall be returned immediately to the
16 clerk who issued it, with notation thereon of its service.
17 Failure to make service within the time allowed or failure to
18 return a summons to the clerk after it has been served on every
19 party named in the summons shall not invalidate the summons. If
20 the summons is not served within the time allowed upon every
21 party named in the summons, it shall be returned immediately upon

1 the expiration of such time by the officer to the clerk of the
2 court who issued it with notation thereon of its nonservice and
3 the reasons therefor as to every such party not served, but
4 failure to comply with this requirement shall not invalidate the
5 summons."

6

7 SERVICE BY PRIVATE MAIL DELIVERY (RULE 4(j)) AND CONFORMING
8 CHANGES TO PROOF OF SERVICE

9 Section 2. G.S. 1A-1, Rule 4(j) reads as rewritten:

10 "(j) Process -- Manner of service to exercise personal
11 jurisdiction. -- In any action commenced in a court of this State
12 having jurisdiction of the subject matter and grounds for
13 personal jurisdiction as provided in G.S. 1-75.4, the manner of
14 service of process within or without the State shall be as
15 follows:

16 (1) Natural Person. -- Except as provided in subsection
17 (2) below, upon a natural ~~person~~: person by one of
18 the following:

19 a. By delivering a copy of the summons and of the
20 complaint to him or by leaving copies thereof
21 at the defendant's dwelling house or usual
22 place of abode with some person of suitable
23 age and discretion then ~~residing therein; or~~
24 therein.

25 b. By delivering a copy of the summons and of the
26 complaint to an agent authorized by
27 appointment or by law to be served or to
28 accept service of process or by serving
29 process upon such agent or the party in a
30 manner specified by any statute.

31 c. By mailing a copy of the summons and of the
32 complaint, registered or certified mail,
33 return receipt requested, addressed to the
34 party to be served, and delivering to the
35 addressee.

36 d. By depositing with a private delivery service
37 a copy of the summons and complaint, addressed
38 to the party to be served, delivering to the
39 addressee, and obtaining a delivery receipt.

40 (2) Natural Person under Disability. -- Upon a natural
41 person under disability by serving process in any
42 manner prescribed in this section (j) for service
43 upon a natural person and, in addition, where

1 required by paragraph a or b below, upon a person
2 therein designated.

3 a. Where the person under disability is a minor,
4 process shall be served separately in any
5 manner prescribed for service upon a natural
6 person upon a parent or guardian having
7 custody of the child, or if there be none,
8 upon any other person having the care and
9 control of the child. If there is no parent,
10 guardian, or other person having care and
11 control of the child when service is made upon
12 the child, then service of process must also
13 be made upon a guardian ad litem who has been
14 appointed pursuant to Rule 17.

15 b. If the plaintiff actually knows that a person
16 under disability is under guardianship of any
17 kind, process shall be served separately upon
18 his guardian in any manner applicable and
19 appropriate under this section (j). If the
20 plaintiff does not actually know that a
21 guardian has been appointed when service is
22 made upon a person known to him to be
23 incompetent to have charge of his affairs,
24 then service of process must be made upon a
25 guardian ad litem who has been appointed
26 pursuant to Rule 17.

27 (3) The State. -- Upon the State by personally
28 delivering a copy of the summons and of the
29 complaint to the Attorney General or to a deputy or
30 assistant attorney ~~general or general~~; by mailing a
31 copy of the summons and of the complaint,
32 registered or certified mail, return receipt
33 requested, addressed to the Attorney General or to
34 a deputy or assistant attorney ~~general, general~~; or
35 by depositing with a private delivery service a
36 copy of the summons and complaint, addressed to the
37 Attorney General or to a deputy or assistant
38 attorney general, delivering to the addressee, and
39 obtaining a delivery receipt.

40 (4) An Agency of the State. --

41 a. Upon an agency of the State by personally
42 delivering a copy of the summons and of the
43 complaint to the process agent appointed by
44 the agency in the manner hereinafter ~~provided~~.

1 provided; ~~or~~ by mailing a copy of the summons
2 and of the complaint, registered or certified
3 mail, return receipt requested, addressed to
4 said process ~~agent~~, agent; or by depositing
5 with a private delivery service a copy of the
6 summons and complaint, addressed to the
7 process agent, delivering to the addressee,
8 and obtaining a delivery receipt.

9 b. Every agency of the State shall appoint a
10 process agent by filing with the Attorney
11 General the name and address of an agent upon
12 whom process may be served.

13 c. If any agency of the State fails to comply
14 with paragraph b above, then service upon such
15 agency may be made by personally delivering a
16 copy of the summons and of the complaint to
17 the Attorney General or to a deputy or
18 assistant attorney ~~general~~ or general; by
19 mailing a copy of the summons and of the
20 complaint, registered or certified mail,
21 return receipt requested, addressed to the
22 Attorney General, or to a deputy or assistant
23 attorney ~~general~~ general; or by depositing
24 with a private delivery service a copy of the
25 summons and complaint, addressed to the
26 Attorney General or to a deputy or assistant
27 attorney general, delivering to the addressee,
28 and obtaining a delivery receipt.

29 d. For purposes of this rule, the term "agency of
30 the State" includes every agency, institution,
31 board, commission, bureau, department,
32 division, council, member of Council of State,
33 or officer of the State government of the
34 State of North Carolina, but does not include
35 counties, cities, towns, villages, other
36 municipal corporations or political
37 subdivisions of the State, county or city
38 boards of education, other local public
39 districts, units, or bodies of any kind, or
40 private corporations created by act of the
41 General Assembly.

42 (5) Counties, Cities, Towns, Villages and Other Local
43 Public Bodies. --

- 1 a. Upon a city, town, or village by personally
2 delivering a copy of the summons and of the
3 complaint to its mayor, city manager or ~~clerk~~
4 clerk; or by mailing a copy of the summons and
5 of the complaint, registered or certified
6 mail, return receipt requested, addressed to
7 its mayor, city manager or ~~clerk~~, clerk; or by
8 depositing with a private delivery service a
9 copy of the summons and complaint, addressed
10 to the mayor, city manager, or clerk,
11 delivering to the addressee, and obtaining a
12 delivery receipt.
- 13 b. Upon a county by personally delivering a copy
14 of the summons and of the complaint to its
15 county manager or to the chairman, clerk or
16 any member of the board of commissioners for
17 such ~~county~~ or county; by mailing a copy of
18 the summons and of the complaint, registered
19 or certified mail, return receipt requested,
20 addressed to its county manager or to the
21 chairman, clerk, or any member of this board
22 of commissioners for such ~~county~~ county; or
23 by depositing with a private delivery service
24 a copy of the summons and complaint, addressed
25 to the county manager or to the chairman,
26 clerk, or any member of the board of
27 commissioners of that county, delivering to
28 the addressee, and obtaining a delivery
29 receipt.
- 30 c. Upon any other political subdivision of the
31 State, any county or city board of education,
32 or other local public district, unit, or body
33 of any kind (i) by personally delivering a
34 copy of the summons and of the complaint to an
35 officer or director thereof, ~~or~~ (ii) by
36 personally delivering a copy of the summons
37 and of the complaint to an agent or attorney-
38 in-fact authorized by appointment or by
39 statute to be served or to accept service in
40 its behalf, ~~or~~ (iii) by mailing a copy of the
41 summons and of the complaint, registered or
42 certified mail, return receipt requested,
43 addressed to the officer, director, agent, or
44 attorney-in-fact as specified in (i) and ~~(ii)~~.

1 (ii); or by depositing with a private delivery
2 service a copy of the summons and complaint,
3 addressed to the officer, director, agent, or
4 attorney-in-fact as specified in (i) and (ii),
5 delivering to the addressee, and obtaining a
6 delivery receipt.

7 d. In any case where none of the officials,
8 officers or directors specified in paragraphs
9 a, b and c can, after due diligence, be found
10 in the State, and that fact appears by
11 affidavit to the satisfaction of the court, or
12 a judge thereof, such court or judge may grant
13 an order that service upon the party sought to
14 be served may be made by personally delivering
15 a copy of the summons and of the complaint to
16 the Attorney General or any deputy or
17 assistant attorney general of the State of
18 ~~North Carolina, or~~ Carolina; mailing a copy of
19 the summons and of the complaint, registered
20 or certified mail, return receipt requested,
21 addressed to the Attorney General or any
22 deputy or assistant attorney general of the
23 State of ~~North Carolina,~~ Carolina; or by
24 depositing with a private delivery service a
25 copy of the summons and complaint, addressed
26 to the Attorney General or any deputy or
27 assistant attorney general of the State of
28 North Carolina, delivering to the addressee,
29 and obtaining a delivery receipt.

30 (6) Domestic or Foreign Corporation. -- Upon a domestic
31 or foreign corporation:

- 32 a. By delivering a copy of the summons and of the
33 complaint to an officer, director, or managing
34 agent of the corporation or by leaving copies
35 thereof in the office of such officer,
36 director, or managing agent with the person
37 who is apparently in charge of the office; ~~or~~
38 b. By delivering a copy of the summons and of the
39 complaint to an agent authorized by
40 appointment or by law to be served or to
41 accept service ~~or~~ of process or by serving
42 process upon such agent or the party in a
43 manner specified by any ~~statute,~~ statute;

- 1 c. By mailing a copy of the summons and of the
2 complaint, registered or certified mail,
3 return receipt requested, addressed to the
4 officer, director or agent to be served as
5 specified in paragraphs ~~a and b.~~ a. and b.; or
6 d. By depositing with a private delivery service
7 a copy of the summons and complaint, addressed
8 to the officer, director, or agent to be
9 served as specified in paragraphs a. and b.,
10 delivering to the addressee, and obtaining a
11 delivery receipt.

12 (7) Partnerships. -- Upon a general or limited
13 partnership:

- 14 a. By delivering a copy of the summons and of the
15 complaint to any general partner, or to any
16 attorney-in-fact or agent authorized by
17 appointment or by law to be served or to
18 accept service of process in its ~~benefit,~~
19 benefit; by mailing a copy of the summons and
20 of the complaint, registered or certified
21 mail, return receipt requested, addressed to
22 any general partner, or to any attorney-in-
23 fact or agent authorized by appointment or by
24 law to be served or to accept service of
25 process in its ~~benefit,~~ benefit; by
26 depositing with a private delivery service a
27 copy of the summons and complaint, addressed
28 to any general partner or to any attorney-in-
29 fact or agent authorized by appointment or by
30 law to be served or to accept service of
31 process in its benefit, delivering to the
32 addressee, and obtaining a delivery receipt;
33 or by leaving copies thereof in the office of
34 such general partner, attorney-in-fact or
35 agent with the person who is apparently in
36 charge of the office.
- 37 b. If relief is sought against a partner
38 specifically, a copy of the summons and of the
39 complaint must be served on such partner as
40 provided in this section (j).

41 (8) Other Unincorporated Associations and Their
42 Officers. -- Upon any unincorporated association,
43 organization, or society other than a partnership:

- 1 a. By delivering a copy of the summons and of the
2 complaint to an officer, director, managing
3 agent or member of the governing body of the
4 unincorporated association, organization or
5 society, or by leaving copies thereof in the
6 office of such officer, director, managing
7 agent or member of the governing body with the
8 person who is apparently in charge of the
9 office; ~~or~~
- 10 b. By delivering a copy of the summons and of the
11 complaint to an agent authorized by
12 appointment or by law to be served or to
13 accept service of process or by serving
14 process upon such agent or the party in a
15 manner specified by any ~~statute~~, statute;
- 16 c. By mailing a copy of the summons and of the
17 complaint, registered or certified mail,
18 return receipt requested, addressed to the
19 officer, director, agent or member of the
20 governing body to be served as specified in
21 paragraphs ~~a and b~~, a. and b.; or
- 22 d. By depositing with a private delivery service
23 a copy of the summons and complaint, addressed
24 to the officer, director, agent, or member of
25 the governing body to be served as specified
26 in paragraphs a. and b., delivering to the
27 addressee, and obtaining a delivery receipt.

- 28 (9) Service upon a foreign state or a political
29 subdivision, agency, or instrumentality thereof
30 shall be effected pursuant to 28 U.S.C. § 1608.

31 For purposes of this Rule, 'private delivery
32 service' means a private delivery service that has
33 been certified by the Administrative Office of the
34 Courts for service of process pursuant to this
35 Rule."

36 Section 2.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:

37 "(j1) Service by publication on party that cannot otherwise be
38 served. -- A party that cannot with due diligence be served by
39 ~~personal delivery or delivery, registered or certified mail mail,~~
40 or private delivery service may be served by publication. Except
41 in actions involving jurisdiction in rem or quasi in rem as
42 provided in section (k), service of process by publication shall
43 consist of publishing a notice of service of process by
44 publication once a week for three successive weeks in a newspaper.

1 that is qualified for legal advertising in accordance with G.S.
2 1-597 and G.S. 1-598 and circulated in the area where the party
3 to be served is believed by the serving party to be located, or
4 if there is no reliable information concerning the location of
5 the party then in a newspaper circulated in the county where the
6 action is pending. If the party's post-office address is known or
7 can with reasonable diligence be ascertained, there shall be
8 mailed to the party at or immediately prior to the first
9 publication a copy of the notice of service of process by
10 publication. The mailing may be omitted if the post-office
11 address cannot be ascertained with reasonable diligence. Upon
12 completion of such service there shall be filed with the court an
13 affidavit showing the publication and mailing in accordance with
14 the requirements of G.S. 1-75.10(2), the circumstances warranting
15 the use of service by publication, and information, if any,
16 regarding the location of the party served.

17 The notice of service of process by publication shall (i)
18 designate the court in which the action has been commenced and
19 the title of the action, which title may be indicated
20 sufficiently by the name of the first plaintiff and the first
21 defendant; (ii) be directed to the defendant sought to be served;
22 (iii) state either that a pleading seeking relief against the
23 person to be served has been filed or has been required to be
24 filed therein not later than a date specified in the notice; (iv)
25 state the nature of the relief being sought; (v) require the
26 defendant being so served to make defense to such pleading within
27 40 days after a date stated in the notice, exclusive of such
28 date, which date so stated shall be the date of the first
29 publication of notice, or the date when the complaint is required
30 to be filed, whichever is later, and notify the defendant that
31 upon his failure to do so the party seeking service of process by
32 publication will apply to the court for the relief sought; (vi)
33 in cases of attachment, state the information required by G.S. 1-
34 440.14; (vii) be subscribed by the party seeking service or his
35 attorney and give the post-office address of such party or his
36 attorney; and (viii) be substantially in the following form:

37 NOTICE OF SERVICE OF PROCESS BY PUBLICATION

38 STATE OF NORTH CAROLINA _____ COUNTY

39 In the _____ Court

40 [Title of action or special proceeding] To [Person to be served]:
41 Take notice that a pleading seeking relief against you (has
42 been filed) (is required to be filed not later than _____,
43 ~~19~~ _____) in the above-entitled (action) (special proceeding). The
44 nature of the relief being sought is as follows:

1 (State nature).

2 You are required to make defense to such pleading not later
3 than (_____, 19 ____) and upon your failure to do so the
4 party seeking service against you will apply to the court for the
5 relief sought.

6 This, the _____ day of _____, 19 ____
7 _____ (Attorney) (Party)
8 _____ (Address)".

9 Section 2.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:
10 "(j2) Proof of service. -- Proof of service of process shall
11 be as follows:

- 12 (1) Personal Service. -- Before judgment by default may
13 be had on personal service, proof of service must
14 be provided in accordance with the requirements of
15 G.S. 1-75.10(1).
- 16 (2) Registered or Certified Mail ~~Mail~~ Mail or Private
17 Delivery Service. -- Before judgment by default may
18 be had on service by registered or certified ~~mail~~
19 mail or by private delivery service with delivery
20 receipt, the serving party shall file an affidavit
21 with the court showing proof of such service in
22 accordance with the requirements of ~~G.S.~~
23 ~~1-75.10(4)~~ G.S. 1-75.10(4) or G.S. 1-75.10(5), as
24 appropriate. This affidavit together with the
25 return or delivery receipt signed by the person who
26 received the mail or delivery if not the addressee
27 raises a presumption that the person who received
28 the mail or delivery and signed the receipt was an
29 agent of the addressee authorized by appointment or
30 by law to be served or to accept service of process
31 or was a person of suitable age and discretion
32 residing in the addressee's dwelling house or usual
33 place of abode. In the event the presumption
34 described in the preceding sentence is rebutted by
35 proof that the person who received the receipt at
36 the addressee's dwelling house or usual place of
37 abode was not a person of suitable age and
38 discretion residing therein, the statute of
39 limitation may not be pleaded as a defense if the
40 action was initially commenced within the period of
41 limitation and service of process is completed
42 within 60 days from the date the service is
43 declared invalid. Service shall be complete on the

1 day the summons and complaint are delivered to the
2 address.

3 (3) Publication. -- Before judgment by default may be
4 had on service by publication, the serving party
5 shall file an affidavit with the court showing the
6 circumstances warranting the use of service by
7 publication, information, if any, regarding the
8 location of the party served which was used in
9 determining the area in which service by
10 publication was printed and proof of service in
11 accordance with G.S. 1-75.10(2)."

12 Section 2.3. G.S. 1-75.10 reads as rewritten:

13 "§ 1-75.10. Proof of service of summons, defendant appearing in
14 action.

15 Where the defendant appears in the action and challenges the
16 service of the summons upon him, proof of the service of process
17 shall be as follows:

18 (1) Personal Service or Substituted Personal Service.

19 --

20 a. If served by the sheriff of the county or the
21 lawful process officer in this State where the
22 defendant was found, by the officer's
23 certificate thereof, showing place, time and
24 manner of service; or

25 b. If served by any other person, his affidavit
26 thereof, showing place, time and manner of
27 service; his qualifications to make service
28 under Rule 4(a) or Rule 4(j3) of the Rules of
29 Civil Procedure; that he knew the person
30 served to be the party mentioned in the
31 summons and delivered to and left with him a
32 copy; and if the defendant was not personally
33 served, he shall state in such affidavit when,
34 where and with whom such copy was left. If
35 such service is made outside this State, the
36 proof thereof may in the alternative be made
37 in accordance with the law of the place where
38 such service is made.

39 (2) Service of Publication. -- In the case of
40 publication, by the affidavit of the publisher or
41 printer, or his foreman or principal clerk,
42 showing the same and specifying the date of the
43 first and last publication, and an affidavit of
44 mailing of a copy of the complaint or notice, as

1 the case may require, made by the person who mailed
2 the same.

3 (3) Written Admission of Defendant. -- The written
4 admission of the defendant, whose signature or the
5 subscription of whose name to such admission shall
6 be presumptive evidence of genuineness.

7 (4) Service by Registered or Certified Mail. -- In the
8 case of service by registered or certified mail, by
9 affidavit of the serving party averring:

10 a. That a copy of the summons and complaint was
11 deposited in the post office for mailing by
12 registered or certified mail, return receipt
13 requested;

14 b. That it was in fact received as evidenced by
15 the attached registry receipt or other
16 evidence satisfactory to the court of delivery
17 to the addressee; and

18 c. That the genuine receipt or other evidence of
19 delivery is attached.

20 (5) Service by Private Delivery Service. -- In the case
21 of service by private delivery service, by
22 affidavit of the serving party averring:

23 a. That a copy of the summons and complaint was
24 deposited with a private delivery service
25 certified by the Administrative Office of the
26 Courts, delivery receipt requested;

27 b. That it was in fact received as evidenced by
28 the attached delivery receipt or other
29 evidence satisfactory to the court of delivery
30 to the addressee; and

31 c. That the genuine receipt or other evidence of
32 delivery is attached."

33
34 SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))

35 Section 3. G.S. 1A-1, Rule 5(b) reads as rewritten:

36 "(b) Service -- How made. -- A pleading setting forth a
37 counterclaim or cross claim shall be filed with the court and a
38 copy thereof shall be served on the party against whom it is
39 asserted or on his attorney of record. With respect to all
40 pleadings subsequent to the original complaint and other papers
41 required or permitted to be served, service with due return may
42 be made in the manner provided for service and return of process
43 in Rule 4 and may be made upon either the party or, unless
44 service upon the party himself is ordered by the court, upon his

1 attorney of record. With respect to such other pleadings and
2 papers, service upon the attorney or upon a party may also be
3 made by delivering a copy to him or by mailing it to him at his
4 last known address or, if no address is known, by filing it with
5 the clerk of court. Delivery of a copy within this rule means
6 handing it to the attorney or to the ~~party; or party,~~ leaving it
7 at the attorney's office with a partner or ~~employee,~~ employee, or
8 by sending it to the attorney's office by telefacsimile between
9 9:00 a.m. and 5:00 p.m. Eastern Standard Time on a regular
10 business day. Service by mail shall be complete upon deposit of
11 the pleading or paper enclosed in a post-paid, properly addressed
12 wrapper in a post office or official depository under the
13 exclusive care and custody of the United States Postal Service."
14

15 SERVICE OF BRIEFS AND MEMORANDA (RULE 5(f))

16 Section 4. G.S. 1A-1, Rule 5 is amended by adding the
17 following new subsection:

18 "(f) Service of briefs and memoranda. -- To be considered by
19 the presiding judge, other than a magistrate, a brief or
20 memorandum must be served upon the opposing party or the party's
21 attorney of record no later than the third business day preceding
22 the scheduled hearing date on the matter for which the brief or
23 memorandum is submitted."
24

25 ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION
26 (RULE 28(c))

27 Section 5. G.S. 1A-1, Rule 28(c) reads as rewritten:

28 "(c) Disqualification for interest. -- No deposition shall be
29 taken before a person who is a relative or employee or attorney
30 or counsel of any of the parties, or is a relative or employee of
31 such attorney or counsel, or is financially interested in the
32 action ~~unless~~ unless:

- 33 (1) ~~the~~ The parties agree otherwise by stipulation as
34 provided in ~~Rule 29.~~ Rule 29; or
35 (2) The deposition is taken by videotape in compliance
36 with Rule 30(b)(4) and Rule 30(f), and the notice
37 for the taking of the deposition states the name of
38 the person before whom the deposition will be taken
39 and that person's relationship, if any, to a party
40 or a party's attorney."
41

42 MEDIATION OF DISCOVERY DISPUTES (RULE 37)

43 Section 6. G.S. 1A-1, Rule 37(a) reads as rewritten:

1 "(a) Motion for order compelling discovery. -- A party, upon
2 reasonable notice to other parties and all persons affected
3 thereby, may apply for an order compelling discovery as follows:

4 (1) Appropriate Court. -- An application for an order
5 to a party or a deponent who is not a party may be
6 made to a judge of the court in which the action is
7 pending, or, on matters relating to a deposition
8 where the deposition is being taken in this State,
9 to a judge of the court in the county where the
10 deposition is being taken, as defined by Rule
11 30(h).

12 (2) Motion. -- If a deponent fails to answer a question
13 propounded or submitted under Rules 30 or 31, or a
14 corporation or other entity fails to make a
15 designation under Rule 30(b)(6) or 31(a), or a
16 party fails to answer an interrogatory submitted
17 under Rule 33, or if a party, in response to a
18 request for inspection submitted under Rule 34,
19 fails to respond that inspection will be permitted
20 as requested or fails to permit inspection as
21 requested, the discovering party may move for an
22 order compelling an answer, or a designation, or an
23 order compelling inspection in accordance with the
24 request. The motion must include a certification
25 that the movant has in good faith conferred or
26 attempted to confer with the person or party
27 failing to make the discovery in an effort to
28 secure the information or material without court
29 action. When taking a deposition on oral
30 examination, the proponent of the question shall
31 complete the examination on all other matters
32 before he adjourns the examination in order to
33 apply for an order. If the court denies the motion
34 in whole or in part, it may make such protective
35 order as it would have been empowered to make on a
36 motion made pursuant to Rule 26(c).

37 (3) Evasive or Incomplete Answer. -- For purposes of
38 this subdivision an evasive or incomplete answer is
39 to be treated as a failure to answer.

40 (4) Award of Expenses of Motion. -- If the motion is
41 granted, the court shall, after opportunity for
42 hearing, require the party or deponent whose
43 conduct necessitated the motion or the party
44 advising such conduct or both of them to pay to the

1 moving party the reasonable expenses incurred in
2 obtaining the order, including attorney's fees,
3 unless the court finds that the opposition to the
4 motion was substantially justified or that other
5 circumstances make an award of expenses unjust.

6 If the motion is denied, the court shall,
7 after opportunity for hearing, require the moving
8 party to pay to the party or deponent who opposed
9 the motion the reasonable expenses incurred in
10 opposing the motion, including attorney's fees,
11 unless the court finds that the making of the
12 motion was substantially justified or that other
13 circumstances make an award of expenses unjust.

14 If the motion is granted in part and denied in
15 part, the court may apportion the reasonable
16 expenses incurred in relation to the motion among
17 the parties and persons in a just manner."
18

19 PRESERVING EXCEPTIONS TO RULINGS (RULE 46)

20 Section 7. G.S. 1A-1, Rule 46 reads as rewritten:

21 "Rule 46. Objections and exceptions.

22 (a) Rulings on admissibility of evidence. --

23 (1) When there is objection to the admission of
24 evidence on the ground that the witness is for a
25 specified reason incompetent or not qualified or
26 disqualified, it shall be deemed that a like
27 objection has been made to any subsequent admission
28 of evidence from the witness in question.
29 Similarly, when there is objection to the admission
30 of evidence involving a specified line of
31 questioning, it shall be deemed that a like
32 objection has been taken to any subsequent
33 admission of evidence involving the same line of
34 questioning.

35 (2) If there is proper objection to the admission of
36 evidence and the objection is overruled, the ruling
37 of the court shall be deemed excepted to by the
38 party making the objection. If an objection to the
39 admission of evidence is sustained or if the court
40 for any reason excludes evidence offered by a
41 party, the ruling of the court shall be deemed
42 excepted to by the party offering the evidence.

43 (3) No objections are necessary with respect to
44 questions propounded to a witness by the court or a

1 juror but it shall be deemed that each such
2 question has been properly objected to and that the
3 objection has been overruled and that an exception
4 has been taken to the ruling of the court by all
5 parties to the action.

6 (b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial
7 rulings, and other orders not directed to the admissibility of
8 evidence. -- With respect to ~~rulings~~ pretrial rulings,
9 interlocutory orders, trial rulings, and other orders of the
10 court not directed to the admissibility of evidence, formal
11 objections and exceptions are unnecessary. In order to preserve
12 an exception to any such ruling or order or to the court's
13 failure to make any such ruling or order, it shall be sufficient
14 if a party, at the time the ruling or order is made or sought,
15 makes known to the court ~~his~~ the party's objection to the action
16 of the court or makes known the action ~~which he~~ that the party
17 desires the court to take and ~~his ground therefor,~~ the party's
18 grounds for its position. ~~and if~~ If a party has no opportunity to
19 object or except to a ruling or order at the time it is made, the
20 absence of an objection or exception does not thereafter
21 prejudice ~~him.~~ that party; however, in order to preserve
22 exceptions to these rulings and orders for appellate review, a
23 party shall promptly present to the court a request, objection,
24 or motion that states the specific grounds for the ruling that
25 the party desires the court to make upon having an opportunity to
26 do so.

27 ~~(c) Instruction. -- If there is error, either in the refusal of~~
28 ~~the judge to grant a prayer for instructions, or in granting a~~
29 ~~prayer, or in his instructions generally, the same is deemed~~
30 ~~excepted to without the filing of any formal objections."~~

31
32 **DEFAULT JUDGMENT WITHOUT HEARING (RULE 55(b))**

33 Section 8. G.S. 1A-1, Rule 55(b) reads as rewritten:

34 "(b) Judgment. -- Judgment by default may be entered as
35 follows:

- 36 (1) By the Clerk. -- When the plaintiff's claim against
37 a defendant is for a sum certain or for a sum which
38 can by computation be made certain, the clerk upon
39 request of the plaintiff and upon affidavit of the
40 amount due shall enter judgment for that amount and
41 costs against the defendant, if ~~he~~ the defendant
42 has been defaulted for failure to appear and if ~~he~~
43 the defendant is not an infant or incompetent
44 person. A verified pleading may be used in lieu of

1 an affidavit when the pleading contains information
2 sufficient to determine or compute the sum certain.

3 In all cases wherein, pursuant to this rule, the
4 clerk enters judgment by default upon a claim for
5 debt which is secured by any pledge, mortgage, deed
6 of trust or other contractual security in respect
7 of which foreclosure may be had, or upon a claim to
8 enforce a lien for unpaid taxes or assessments
9 under G.S. 105-414, the clerk may likewise make all
10 further orders required to consummate foreclosure
11 in accordance with the procedure provided in
12 Article 29A of Chapter 1 of the General Statutes,
13 entitled "Judicial Sales."

14 (2) By the Judge. --

15 a. In all other cases the party entitled to a
16 judgment by default shall apply to the judge
17 therefor; but no judgment by default shall be
18 entered against an infant or incompetent
19 person unless represented in the action by a
20 guardian ad litem or other such representative
21 who has appeared therein. If the party against
22 whom judgment by default is sought has
23 appeared in the action, ~~he~~ that party (or, if
24 appearing by representative, ~~his~~ the
25 representative) shall be served with written
26 notice of the application for judgment at
27 least three days prior to the hearing on such
28 application. If, in order to enable the judge
29 to enter judgment or to carry it into effect,
30 it is necessary to take an account or to
31 determine the amount of damages or to
32 establish the truth of any averment by
33 evidence or to take an investigation of any
34 other matter, the judge may conduct such
35 hearings or order such references as ~~he~~ the
36 judge deems necessary and proper and shall
37 accord a right of trial by jury to the parties
38 when and as required by the Constitution or by
39 any statute of North Carolina. If the
40 plaintiff seeks to establish paternity under
41 Article 3 of Chapter 49 of the General
42 Statutes and the defendant fails to appear,
43 the judge shall enter judgment by default.

- 1 b. A motion for judgment by default may be
2 decided by the court without a hearing if:
3 1. The motion specifically provides that the
4 court will decide the motion for judgment
5 by default without a hearing if the party
6 against whom judgment is sought fails to
7 serve a written response, stating the
8 grounds for opposing the motion, within
9 30 days of service of the motion; and
10 2. The party against whom judgment is sought
11 fails to serve the response in accordance
12 with this sub-subdivision."
13

14 ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)

15 Section 9. G.S. 1A-1, Rule 65(b) reads as rewritten:

16 "(b) Temporary restraining order; notice; hearing; duration. --
17 A temporary restraining order may be granted without written or
18 oral notice to the adverse party or that party's attorney only if
19 (i) it clearly appears from specific facts shown by affidavit or
20 by verified complaint that immediate and irreparable injury,
21 loss, or damage will result to the applicant before notice can be
22 served and a hearing had thereon. the adverse party or that
23 party's attorney can be heard in opposition, and (ii) the
24 applicant's attorney certifies to the court in writing the
25 efforts, if any, that have been made to give the notice and the
26 reasons supporting the claim that notice should not be required.
27 Every temporary restraining order granted without notice shall be
28 endorsed with the date and hour of issuance; shall be filed
29 forthwith in the clerk's office and entered of record; shall
30 define the injury and state why it is irreparable and why the
31 order was granted without notice; and shall expire by its terms
32 within such time after entry, not to exceed 10 days, as the judge
33 fixes, unless within the time so fixed the order, for good cause
34 shown, is extended for a like period or unless the party against
35 whom the order is directed consents that it may be extended for a
36 longer period. The reasons for the extension shall be entered of
37 record. In case a temporary restraining order is granted without
38 notice and a motion for a preliminary injunction is made, it
39 shall be set down for hearing at the earliest possible time and
40 takes precedence over all matters except older matters of the
41 same character; and when the motion comes on for hearing, the
42 party who obtained the temporary restraining order shall proceed
43 with a motion for a preliminary injunction, and, if he does not
44 do so, the judge shall dissolve the temporary restraining order.

1 On two days' notice to the party who obtained the temporary
2 restraining order without notice or on such shorter notice to
3 that party as the judge may prescribe, the adverse party may
4 appear and move its dissolution or modification and in that event
5 the judge shall proceed to hear and determine such motion as
6 expeditiously as the ends of justice require. Damages may be
7 awarded in an order for dissolution as provided in section (e)."

8

9 **EXTEND CIVIL PROCEDURE STUDY COMMISSION AND INCREASE MEMBERSHIP**

10 Section 10. Subsection (c) of Section 4.1 of Part IV of
11 Chapter 17 of the 1996 Second Extra Session Laws reads as
12 rewritten:

13 "(c) The Commission shall report to the General Assembly and
14 the Chief Justice no later than ~~April 1, 1998~~, February 1, 2001.
15 The report shall be in writing and shall set forth the
16 Commission's findings, conclusions, and recommendations,
17 including any proposed legislation or court rules. Upon issuing
18 its final report, the Commission shall terminate."

19 Section 11. Subsection (a) of Section 4.1 of Part IV of
20 Chapter 17 of the 1996 Second Extra Session Laws reads as
21 rewritten:

22 "(a) The Civil Procedure Study Commission is created. The
23 Commission shall consist of ~~18~~ 24 voting members: ~~six~~ eight
24 members to be appointed by the President Pro Tempore of the
25 Senate, ~~six~~ eight members to be appointed by the Speaker of the
26 House of Representatives, and ~~six~~ eight members to be appointed
27 by the Chief Justice of the North Carolina Supreme Court. No
28 more than four members appointed by the President Pro Tempore of
29 the Senate and no more than four members appointed by the Speaker
30 of the House of Representatives may be members of the General
31 Assembly. No more than four of the members appointed by any one
32 of the three appointing authorities may be members of the same
33 political party."

34 Section 12. Of the funds appropriated to the General
35 Assembly for the 1998-99 fiscal year, the sum of twenty-five
36 thousand dollars (\$25,000) shall be allocated to implement the
37 provisions of this act.

38

39 **CLARIFY PUBLIC DUTY DOCTRINE AND THE TORTS CLAIMS ACT**

40 Section 13. G.S. 143-291(a) reads as rewritten:

41 "(a) The North Carolina Industrial Commission is hereby
42 constituted a court for the purpose of hearing and passing upon
43 tort claims against the State Board of Education, the Board of
44 Transportation, and all other departments, institutions and

1 agencies of the State. The Industrial Commission shall determine
2 whether or not each individual claim arose as a result of the
3 negligence of any officer, employee, involuntary servant or agent
4 of the State while acting within the scope of his office,
5 employment, service, agency or authority, under circumstances
6 where the State of North Carolina, if a private person, would be
7 liable to the claimant in accordance with the laws of North
8 Carolina. The "public duty doctrine" does not apply to bar
9 claims under this Article. If the Commission finds that there
10 was such negligence on the part of an officer, employee,
11 involuntary servant or agent of the State while acting within the
12 scope of his office, employment, service, agency or authority,
13 which was the proximate cause of the injury and that there was no
14 contributory negligence on the part of the claimant or the person
15 in whose behalf the claim is asserted, the Commission shall
16 determine the amount of damages which the claimant is entitled to
17 be paid, including medical and other expenses, and by appropriate
18 order direct the payment of such damages by the department,
19 institution or agency concerned, but in no event shall the amount
20 of damages awarded exceed the sum of one hundred fifty thousand
21 dollars (\$150,000) cumulatively to all claimants on account of
22 injury and damage to any one person. Community colleges and
23 technical colleges shall be deemed State agencies for purposes of
24 this Article. The fact that a claim may be brought under more
25 than one Article under this Chapter shall not increase the
26 foregoing maximum liability of the State."

27

28 EFFECTIVE DATE

29 Section 14. Sections 1 through 9 of this act become
30 effective October 1, 1998 and apply to actions filed on or after
31 that date. Sections 10 and 11 of this act and this section are
32 effective when they become law. Section 12 of this act becomes
33 effective July 1, 1998. Section 13 of this act becomes effective
34 October 1, 1998 and applies to claims pending on or after that
35 date.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gery F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 21, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 1277 - CIVIL PROCEDURE RULES CHANGES - Senator Dalton**

The Proposed Committee Substitute for Senate Bill 1277 incorporates some of the recommendations of the Civil Procedures Study Commission. The bill makes changes to the Rules of Civil Procedure to reduce the time required to dispose of civil actions and to simplify pretrial and trial procedures. The bill extends the life of a civil summons to 60 days, allows for service by private mail service, allows service of pleadings and papers by fax, requires advance service of briefs, allows video deposition by attorney's employee, requires informal mediation of discovery disputes, simplifies preservation of exceptions to rulings, allows default judgment without hearing, requires greater notice of temporary restraining orders (TRO's), and extends the Civil Procedures Study Commission to 2001 and increases the membership from 18 to 24 members.

Section 1 of the bill amends Rule 4(c) to extend the life of a civil summons from 30 to 60 days to allow for additional time for the summons to be served reducing the paperwork and time by the clerk to endorse the summons to extend the time.

Section 2 amends Rule 4(j) to allow as an optional method of service of process, delivery by a private delivery service, like Federal Express or UPS. Service must be evidenced by a delivery receipt and must be made by a company certified by the Administrative Office of the Courts. Sections 2.1, 2.2, and 2.3 make conforming changes to other statutes to reflect this new method of service, including proof of services statutes.

Section 3 amends Rule 5(b) to broaden the methods of service of pleadings and papers to allow service on the opposite attorney by fax during normal business hours.

Section 4 amends Rule 5 by adding a new subsection to require that an attorney filing a brief or memorandum must serve the other attorney with a copy at least two business days prior to the scheduled hearing when the brief or memorandum will be presented.

Section 5 amends Rule 28(c) to permit a videotaped deposition to be taken by an attorney's employee provided notice of the person and the relationship with the attorney is given to the opposite attorney at the time of the notice of the taking of the deposition.

Section 6 amends Rule 37(a) to require that before applying for an order compelling discovery, the moving party must confer with, or make a good faith attempt to confer with, the party failing to make discovery in order to obtain the information sought. The motion seeking an order to compel discovery must include a certification of the efforts or attempted efforts to confer.

Section 7 amends Rule 46(b) and (c) to clarify that no formal objection or exception is required to any court ruling, other than on evidentiary matters, including pretrial rulings, interlocutory orders, trial rulings or other orders. However to preserve the exception for appellate review, a party must present the court with a request, objection or motion that sets out the specific grounds for the ruling the party desires the court to make when the party has an opportunity to do so. Rule 46(c) is repealed to avoid a conflict with the Rules of Appellate Procedure (Rule 10(b)(2)) which requires formal objection to jury instructions to preserve the exceptions on appeal.

Section 8 amends Rule 55(b) to allow judgment by default to be entered by a court without a hearing when the motion for judgment by default specifically notifies the other party that the court will decide the motion without a hearing unless the other party files a written response stating the grounds for opposing the motion within 30 days of service of the motion, and the other party fails to respond within the time.

Section 9 amends Rule 65(b) to only allow a temporary restraining order to be issued without notice to the opposite party when the moving party shows that immediate and irreparable harm will result before the other party can be heard, and the moving party's attorney certifies in writing to the court the efforts, if any, made to give notice to the other party, and the reasons supporting why the notice should not be required. This change will conform to the current Federal Rule 65.

Sections 10, 11, and 12 would extend (retroactively) the life of the Civil Procedure Study Commission to February 1, 2001 (from April 1, 1998), would increase the membership from 18 to 24 members (2 additional members appointed each by the President ProTemp, the Speaker, and the Chief Justice), and allocates \$25,000 of the funds appropriated to the General Assembly to fund the study.

The changes to the Rules would be effective October 1, 1998 and would apply to actions filed on or after that date. The changes to Commission would be effective when the bill becomes law and the funding would be approved effective July 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1244

Short Title: IV-D UIFSA Cases/Represent.

(Public)

Sponsors: Senators Rand; and Odom.

Referred to: Judiciary.

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE CHILD SUPPORT ENFORCEMENT
3 AGENCY SHALL REPRESENT OBLIGEES IN IV-D UIFSA CASES AND TO
4 APPROPRIATE FUNDS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 52C-3-308 reads as rewritten:

7 "**§ 52C-3-308. Representation of obligee.**

8 ~~It shall be the duty of the district attorney to represent the obligee in proceedings~~
9 ~~authorized by this Chapter unless alternative arrangements are made by the obligee.~~
10 In a IV-D case, the support enforcement agency shall provide legal representation for
11 the obligee in proceedings authorized by this Chapter unless the obligee makes
12 alternative arrangements. In a non-IV-D case, the district attorney shall represent the
13 obligee in proceedings authorized by this Chapter unless the obligee makes
14 alternative arrangements. An obligee may employ private counsel to represent the
15 obligee in proceedings authorized by this Chapter."

16 Section 2. There is appropriated from the General Fund to the
17 Department of Health and Human Services the sum of four hundred twenty thousand
18 dollars (\$420,000) for the 1998-99 fiscal year to implement the provisions of this act,
19 to be distributed among both county and State child support agencies.

20 Section 3. This act becomes effective July 1, 1998.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
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Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
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Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Jo B. McCants

DATE: July 14, 1998

RE: SENATE BILL 1244 - Representation of Obligees in IV-D UIFSA Cases

Senate Bill 1244 is a recommendation of the North Carolina Courts Commission.

Senate Bill 1244 amends G.S. 52C-3-308 which reads, "[i]t shall be the duty of the district attorney to represent the obligee in proceedings authorized by this Chapter unless alternative arrangements are made by the obligee. An obligee may employ private counsel to represent the obligee in proceedings authorized by this Chapter." Senate Bill 1244 would require the local child support enforcement agencies to represent obligees in IV-D UIFSA cases.

The Courts Commission recommended Senate Bill 1244 because in 57 North Carolina counties, attorneys employed by, or under contract with, local departments of social services, handle the legal duties in IV-D Uniform Interstate Family Support Act (UIFSA) cases. Representatives from the Conference of District Attorneys and Child Support Enforcement told the Commission that child support attorneys are able to handle IV-D UIFSA cases more efficiently and effectively than district attorneys. The Commission decided that because the UIFSA proceedings are civil in nature and because local child support enforcement offices have better access than district attorneys to resources that allow them to collect child support payments, the responsibility of legal representation should be on the local child support enforcement agency.

Section 1.

Places the legal responsibility of handling IV-D UIFSA cases with the local child support enforcement agency, unless the obligee makes other arrangements. The district attorney will be responsible for handling all non-IV-D cases, unless the obligee makes other arrangements.

Section 2.

Appropriates \$420,000 to the Department of Health and Human Services for the 1998-99 fiscal year to implement the provisions of the act.

Section 3.

The act was to become effective on July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, July 21, 1998

SENATOR COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1244** IV-D UIFSA Cases/Represent.
 Sequential Referral: Appropriations
 Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1336** 1998 Gov. DWI Amendments
 Draft Number: PCS 3641
 Sequential Referral: None
 Recommended Referral: Finance
 Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Senate Judiciary 7/21
 Name of Committee _____ Date _____

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
John McMillan	Manning, Feltz & Skene P.A.
Rob Schofield	NCJCDC
Don Ab	Smith & Baker
Alan Niles	Bartley & Drown LLP
Cam Come	BPMHL
Theresa Little	DSS/CSE
Raymond Robbins	Dept of Justice
Dick Fink	NCAAL
Melissa Lovell	DOJ
Skansone	DSS
Jay C. Baker	Man of the Day - Math. School of Nursing
Jay Levy	Man of the Day - Charlotte
Ann Jo Bain	Smith Anderson
John Cyrus	N.C. State Strong
Jane Pinsky	AAA Carolinas
Carl Wilms	NCHBA
Mike Bepute	NCHBA

MINUTES
SENATE JUDICIARY COMMITTEE
JULY 23, 1998

The Senate Judiciary Committee met on Thursday, July 23, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

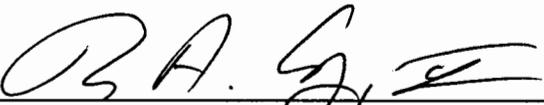
Senator Cooper called the meeting to order and recognized Representative Hackney to explain House Bill 581 - AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

Senator Rucho moved to adopt a Proposed Committee Substitute for House Bill 581 for discussion. The motion carried by a majority voice vote.

Catherine Hux, Executive Director of the North Carolina Psychiatric Association, was recognized to comment on the bill and to answer questions from the Committee.

Senator Cooper announced that a vote would not be taken on the bill today and that it would be brought back before the Committee at the next meeting.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, II, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, July 23, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

HB 581 Sex Exploitation Act Hackney

Sen. Roy Cooper, III, Chairman

Posted: 07/22/98 1:43 PM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 581
Committee Substitute Favorable 4/23/97

Short Title: Sex Exploitation Act.

(Public)

Sponsors:

Referred to:

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE
3 SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 90 of the General Statutes is amended by adding a
6 new Article to read:

7 "ARTICLE 1F.

8 "Psychotherapy Patient/Client Sexual Exploitation Act.

9 "§ 90-21.41. Definitions.

10 The following definitions apply in this Article:

- 11 (1) Client. -- A person who may also be called patient or counselee
12 who seeks or obtains psychotherapy, whether or not the person is
13 charged for the service. The term 'client' includes a former client.
14 (2) Psychotherapist. -- A physician, psychologist, nurse, counselor,
15 substance abuse counselor, social worker, member of the clergy,
16 marriage and family therapist, physician assistant, mental health
17 service provider, or other person, regardless of license,
18 certification, or registry status and regardless of employment
19 setting, who performs or purports to perform psychotherapy.
20 (3) Psychotherapy. -- The professional treatment or counseling of a
21 mental or emotional illness, symptom, condition, or problem of
22 living.
23 (4) Sexual exploitation. -- Either of the following:

1 a. Sexual contact which includes any of the following actions
2 whether or not they occurred with the consent of a client or
3 during any treatment, consultation, evaluation, interview, or
4 examination:

5 1. Sexual intercourse, cunnilingus, fellatio, anal
6 intercourse, or any intrusion, however slight, into the
7 oral, genital, or anal openings of the client's body by
8 any part of the psychotherapist's body or by any
9 object used by the psychotherapist for the purpose of
10 sexual stimulation or gratification of either the
11 psychotherapist or the client; or any intrusion,
12 however slight, into the oral, genital, or anal openings
13 of the psychotherapist's body by any part of the
14 client's body or by any object used by the client for
15 the purpose of sexual stimulation or gratification of
16 either the psychotherapist or the client, if agreed to,
17 or not resisted by the psychotherapist.

18 2. Kissing of, or the intentional touching by the
19 psychotherapist of, the client's lips, genital area,
20 groin, inner thigh, buttocks, or breast, or of the
21 clothing covering any of these body parts, or similar
22 activities by the client that have been agreed to or not
23 resisted by the psychotherapist.

24 b. Any act done or statement made by the psychotherapist for
25 the purpose of sexual stimulation or gratification of the
26 client or psychotherapist which includes any of the following
27 actions:

28 1. The psychotherapist's relating to the client the
29 psychotherapist's own sexual fantasies or the details
30 of the psychotherapist's own sexual life.

31 2. The uncovering or display of breasts or genitals of the
32 psychotherapist to the client.

33 3. The showing of sexually graphic pictures to the client
34 for purposes other than diagnosis or treatment.

35 4. Statements containing sexual innuendo, threats, or
36 suggestions regarding the relationship between the
37 psychotherapist and the client.

38 (5) Sexual history. -- Sexual activity of the client other than that
39 conduct alleged by the client to constitute sexual exploitation in an
40 action pursuant to this Article.

41 (6) Therapeutic deception. -- A representation by a psychotherapist
42 that sexual contact with the psychotherapist is consistent with or
43 part of the client's treatment.

44 "§ 90-21.42. Action for sexual exploitation.

1 Any client who is sexually exploited by the client's psychotherapist shall have
2 remedy by civil action for sexual exploitation if the sexual exploitation occurred:

3 (1) During the period the client was receiving psychotherapy from the
4 psychotherapist.

5 (2) Within three years after the termination of the psychotherapy.

6 (3) By means of therapeutic deception.

7 **"§ 90-21.43. Remedies.**

8 A person found to have been sexually exploited as provided under this Article
9 may recover from the defendant actual or nominal damages. The trier of fact may
10 award punitive damages in accordance with the provisions of Chapter 1D of the
11 General Statutes. In addition, if a person bringing an action pursuant to this Article
12 is found by the trier of fact to have been sexually exploited by the defendant, the
13 court may allow reasonable attorneys' fees to the plaintiff's attorney, to be taxed as
14 part of the court costs.

15 **"§ 90-21.44. Scope of discovery.**

16 (a) In an action under this Article, evidence of the plaintiff's sexual history is not
17 subject to discovery, except under the following conditions:

18 (1) The plaintiff claims impairment of sexual functioning.

19 (2) The defendant requests a hearing prior to conducting discovery
20 and makes an offer of proof of the relevancy of the evidence, and
21 the court finds that the information is relevant and that the
22 probative value of the history outweighs its prejudicial effect.

23 (b) The court shall allow the discovery only of specific information or examples of
24 the plaintiff's conduct that are determined by the court to be relevant. The court
25 order shall detail the information or conduct that is subject to discovery.

26 **"§ 90-21.45. Admissibility of evidence of sexual history.**

27 (a) At the trial of an action under this Article, evidence of the plaintiff's sexual
28 history is not admissible unless:

29 (1) The defendant requests a hearing prior to trial and makes an offer
30 of proof of the relevancy of the sexual history.

31 (2) The court finds that, in the interest of justice, the evidence is
32 relevant and that the probative value of the evidence substantially
33 outweighs its prejudicial effect.

34 (b) The court shall allow the admission only of specific information or examples of
35 instances of the plaintiff's conduct that are determined by the court to be relevant.
36 The court's order shall detail the conduct that is admissible, and no other such
37 evidence may be introduced.

38 (c) Sexual history otherwise admissible pursuant to this section may not be proved
39 by reputation or opinion.

40 (d) Violation of the terms of an order entered pursuant to this section may be
41 grounds for a new trial.

42 **"§ 90-21.46. Prohibited defense.**

43 It shall not be a defense in any action brought pursuant to this Article that the
44 client consented to the sexual exploitation or that the sexual contact with a client

1 occurred outside a therapy or treatment session or that it occurred off the premises
2 regularly used by the psychotherapist for therapy or treatment sessions.

3 **"§ 90-21.47. Statute of limitations.**

4 (a) An action for sexual exploitation must be commenced within three years after
5 the cause of action accrues. A cause of action for sexual exploitation accrues at the
6 later of either;

7 (1) The last act of the defendant giving rise to the cause of action.

8 (2) At the time the client discovers or reasonably should discover that
9 the client was injured as a result of the sexual exploitation;
10 however, no cause of action shall be commenced more than 15
11 years from the last act of the defendant giving rise to the cause of
12 action.

13 (b) If a person is unable to bring an action due to the effects of sexual exploitation
14 or due to any threats, instructions, or statements from the psychotherapist, the
15 duration of the period of inability shall not be included in the statute of limitations
16 for the commencement of the action for sexual exploitation.

17 **"§ 90-21.48. Agreements not to pursue complaint before licensing entity prohibited.**

18 It is prohibited for any person settling or compromising a claim involving the
19 conduct defined herein as sexual exploitation to request or agree, as a term of
20 settlement, not to pursue a complaint before the regulatory entity responsible for
21 overseeing the conduct or licensing of the defendant."

22 Section 2. This act becomes effective October 1, 1997, and applies to
23 exploitative conduct occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 581

PROPOSED SENATE JUDICIARY COMMITTEE SUBSTITUTE H581-CSSC-002

22-JUL-98/21:04:47

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Sex Exploitation Act.

(Public)

Sponsors:

Referred to:

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE
3 SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 90 of the General Statutes is
6 amended by adding a new Article to read:
7 "ARTICLE 1F.
8 "Psychotherapy Patient/Client Sexual Exploitation Act.
9 "§ 90-21.41. Definitions.
10 The following definitions apply in this Article:
11 (1) Client. -- A person who may also be called patient
12 or counselee who seeks or obtains psychotherapy,
13 whether or not the person is charged for the
14 service. The term 'client' includes a former
15 client.
16 (2) Psychotherapist. -- A physician, psychiatrist,
17 psychologist, nurse, counselor, substance abuse
18 counselor, social worker, member of the clergy,

- 1 marriage and family therapist, physician assistant,
2 or mental health service provider who performs or
3 purports to perform psychotherapy.
- 4 (3) Psychotherapy. -- The professional treatment or
5 professional counseling of a mental or emotional
6 condition.
- 7 (4) Sexual exploitation. -- Either of the following:
- 8 a. Sexual contact which includes any of the
9 following actions whether or not they occurred
10 with the consent of a client or during any
11 treatment, consultation, evaluation,
12 interview, or examination:
- 13 1. Sexual intercourse, cunnilingus,
14 fellatio, anal intercourse, or any
15 intrusion, however slight, into the oral,
16 genital, or anal openings of the client's
17 body by any part of the psychotherapist's
18 body or by any object used by the
19 psychotherapist for the purpose of sexual
20 stimulation or gratification of either
21 the psychotherapist or the client; or any
22 intrusion, however slight, into the oral,
23 genital, or anal openings of the
24 psychotherapist's body by any part of the
25 client's body or by any object used by
26 the client for the purpose of sexual
27 stimulation or gratification of either
28 the psychotherapist or the client, if
29 agreed to, or not resisted by the
30 psychotherapist.
- 31 2. Kissing of, or the intentional touching
32 by the psychotherapist of, the client's
33 lips, genital area, groin, inner thigh,
34 buttocks, or breast, or of the clothing
35 covering any of these body parts, or
36 kissing of, or the intentional touching
37 by the client of, the psychotherapist's
38 lips, genital area, groin, inner thigh,
39 buttocks, or breast, or of the clothing
40 covering any of these body parts, if
41 agreed to or not resisted by the
42 psychotherapist.
- 43 b. Any act done or statement made by the
44 psychotherapist for the purpose of sexual

1 stimulation or gratification of the client or
2 psychotherapist which includes any of the
3 following actions:

- 4 1. The psychotherapist's relating to the
5 client the psychotherapist's own sexual
6 fantasies or the details of the
7 psychotherapist's own sexual life.
- 8 2. The uncovering or display of breasts or
9 genitals of the psychotherapist to the
10 client.
- 11 3. The showing of sexually graphic pictures
12 to the client for purposes other than
13 diagnosis or treatment.
- 14 4. Statements containing sexual innuendo,
15 sexual threats, or sexual suggestions
16 regarding the relationship between the
17 psychotherapist and the client.

18 (5) Sexual history. -- Sexual activity of the client
19 other than that conduct alleged by the client to
20 constitute sexual exploitation in an action
21 pursuant to this Article.

22 (6) Therapeutic deception. -- A representation by a
23 psychotherapist that sexual contact with the
24 psychotherapist is consistent with or part of the
25 client's treatment.

26 "§ 90-21.42. Action for sexual exploitation.

27 Any client who is sexually exploited by the client's
28 psychotherapist shall have remedy by civil action for sexual
29 exploitation if the sexual exploitation occurred:

30 (1) At any time between and including the first date
31 and last date the client was receiving
32 psychotherapy from the psychotherapist.

33 (2) Within three years after the termination of the
34 psychotherapy.

35 (3) By means of therapeutic deception.

36 "§ 90-21.43. Remedies.

37 A person found to have been sexually exploited as provided
38 under this Article may recover from the psychotherapist actual or
39 nominal damages, and reasonable attorneys' fees as the court may
40 allow. The trier of fact may award punitive damages in
41 accordance with the provisions of Chapter 1D of the General
42 Statutes.

43 "§ 90-21.44. Scope of discovery.

1 (a) In an action under this Article, evidence of the client's
2 sexual history is not subject to discovery, except under the
3 following conditions:

- 4 (1) The client claims impairment of sexual functioning.
5 (2) The psychotherapist requests a hearing prior to
6 conducting discovery and makes an offer of proof of
7 the relevancy of the evidence, and the court finds
8 that the information is relevant and that the
9 probative value of the history outweighs its
10 prejudicial effect.

11 (b) The court shall allow the discovery only of specific
12 information or examples of the client's conduct that are
13 determined by the court to be relevant. The court order shall
14 detail the information or conduct that is subject to discovery.

15 "§ 90-21.45. Admissibility of evidence of sexual history.

16 (a) At the trial of an action under this Article, evidence of
17 the client's sexual history is not admissible unless:

- 18 (1) The psychotherapist requests a hearing prior to
19 trial and makes an offer of proof of the relevancy
20 of the sexual history; and,
21 (2) The court finds that, in the interest of justice,
22 the evidence is relevant and that the probative
23 value of the evidence substantially outweighs its
24 prejudicial effect.

25 (b) The court shall allow the admission only of specific
26 information or examples of instances of the client's conduct that
27 are determined by the court to be relevant. The court's order
28 shall detail the conduct that is admissible, and no other such
29 evidence may be introduced.

30 (c) Sexual history otherwise admissible pursuant to this
31 section may not be proved by reputation or opinion.

32 "§ 90-21.46. Prohibited defense.

33 It shall not be a defense in any action brought pursuant to
34 this Article that the client consented to the sexual exploitation
35 or that the sexual contact with a client occurred outside a
36 therapy or treatment session or that it occurred off the premises
37 regularly used by the psychotherapist for therapy or treatment
38 sessions.

39 "§ 90-21.47. Statute of limitations.

40 An action for sexual exploitation must be commenced within
41 three years after the cause of action accrues. A cause of action
42 for sexual exploitation accrues from the date of the last act of
43 the psychotherapist giving rise to the cause of action.

1 "§ 90-21.48. Agreements to not pursue complaint before licensing
2 entity void.

3 Any provision of a settlement agreement of a claim based in
4 whole or part on an allegation of sexual exploitation as defined
5 in this Article, which prohibits a party from initiating or
6 pursuing a complaint before the regulatory entity responsible for
7 overseeing the conduct or licensing of the psychotherapist, is
8 void."

9 Section 2. This act becomes effective October 1, 1998, and
10 applies to exploitative conduct occurring on or after that date.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 23, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 581 - SEX EXPLOITATION ACT - Representative Hackney**

The Proposed Senate Committee Substitute for House Bill 581 would create a new civil cause of action for damages suffered by a person who is sexually exploited by their psychotherapist.

The new Article defines a "psychotherapist" as a physician, psychiatrist, psychologist, nurse, counselor, social worker, clergy member, family therapist, physician assistant, or mental health service provider, who performs or purports to perform psychotherapy. "Psychotherapy" is defined as the professional treatment or professional counseling of a mental or emotional condition. A client is defined as someone who receives psychotherapy, whether or not the person is charged for the service, and includes a former client. The Act contains a definition of sexual contact which includes a variety of actions and statements by the psychotherapist.

A client may bring a civil action under the Act if the sexual exploitation occurred between and including the dates the psychotherapy began and ended, within 3 years after the termination of psychotherapy, or occurred by means of therapeutic deception. "Therapeutic deception" is defined as a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the client's treatment.

Under the Act, a client may seek civil remedies in the form of actual or nominal damages, and reasonable attorneys fees. Punitive damages may be obtained as permitted under Chapter 1D - Punitive Damages.

A client's sexual history is not subject to discovery under the Act except for cases in which the client claims impairment of sexual function, or the court determines in a hearing prior to the discovery that the information is relevant and that its probative value outweighs its prejudicial effect. Evidence of sexual history is not admissible at trial unless the court, at the request of the psychotherapist, makes the same determinations of relevancy and probative value prior to trial. Sexual history may not be proved by reputation or opinion.

Consent is not a defense to an action under the Act, nor is the fact that the sexual exploitation occurred outside of therapy or off the premises of the therapist.

The Act contains a three-year statute of limitation which begins to run from the last act of the psychotherapist.

Provisions in settlement agreements in which a party agrees not to pursue a complaint before the psychotherapist's licensing or regulatory entity are prohibited under the Act.

The bill becomes effective October 1, 1998 and applies to exploitative conduct occurring on or after that date.

VISITOR REGISTRATION SHEET

Senate Judiciary

7/23/98
Date

Name of Committee

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Kathy Boyd	National Association of Social Workers 412 Morsan St Raleigh, NC
Kathene Blum	NC Psychiatric Assoc Raleigh 27606
Brad Nisrow	NCPA
Koslyn Sawitt	Lobbyist
John Bowditch	Zeb Kelley P.A.
Cami Altro	Luter
Rebecca Fulk	NCATL
Rob Schiffrin	N CJCDC
Mike Crapster	NCSA
Bob Stocum	NCPA
Lucia Peck	NC Medical Society
Tara Keene	✓ ✓ ✓
Bill Scobbin	NCPA
Amy Jo Bain	Smith Anderson
Cam Crow	BPMAL
Janne Scho	NCNA

MINUTES
SENATE JUDICIARY COMMITTEE
July 28, 1998

The Senate Judiciary Committee met on Wednesday, July 28, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

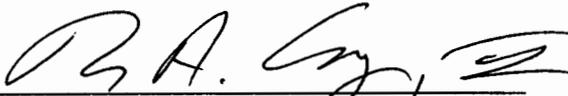
Senator Cooper called the meeting to order and recognized Representative Hackney to continue the discussion of the Proposed Committee Substitute for House Bill 581 - AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST from the meeting of July 23, 1998.

Katherine Hux, Executive Director of the Psychiatric Association was recognized to comment on her Association's support of the bill.

Dr. Nick Stratas, Past President of the Medical Ethics Board, was recognized to comment and answer questions from the Committee.

Senator Forrester moved to amend the Proposed Committee Substitute on Page 2, Line 6. (See attached amendment.) After discussion of the amendment, Senator Cooper referred it to a subcommittee.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, July 28, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

HB 581 Sex Exploitation Act Hackney

Sen. Roy Cooper, III, Chairman

Posted: 07/23/98 3:19 PM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 581

PROPOSED SENATE JUDICIARY COMMITTEE SUBSTITUTE H581-CSSC-002

22-JUL-98/21:04:47

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Sex Exploitation Act.

(Public)

Sponsors:

Referred to:

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE
3 SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 90 of the General Statutes is
6 amended by adding a new Article to read:
7 "ARTICLE 1F.
8 "Psychotherapy Patient/Client Sexual Exploitation Act.
9 "§ 90-21.41. Definitions.
10 The following definitions apply in this Article:
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12 or counselee who seeks or obtains psychotherapy,
13 whether or not the person is charged for the
14 service. The term 'client' includes a former
15 client.
16 (2) Psychotherapist. -- A physician, psychiatrist,
17 psychologist, nurse, counselor, substance abuse
18 counselor, social worker, member of the clergy,

- 1 marriage and family therapist, physician assistant,
2 or mental health service provider who performs or
3 purports to perform psychotherapy.
- 4 (3) Psychotherapy. -- The professional treatment or
5 professional counseling of a mental or emotional
6 condition.
- 7 (4) Sexual exploitation. -- Either of the following:
- 8 a. Sexual contact which includes any of the
9 following actions whether or not they occurred
10 with the consent of a client or during any
11 treatment, consultation, evaluation,
12 interview, or examination:
- 13 1. Sexual intercourse, cunnilingus,
14 fellatio, anal intercourse, or any
15 intrusion, however slight, into the oral,
16 genital, or anal openings of the client's
17 body by any part of the psychotherapist's
18 body or by any object used by the
19 psychotherapist for the purpose of sexual
20 stimulation or gratification of either
21 the psychotherapist or the client; or any
22 intrusion, however slight, into the oral,
23 genital, or anal openings of the
24 psychotherapist's body by any part of the
25 client's body or by any object used by
26 the client for the purpose of sexual
27 stimulation or gratification of either
28 the psychotherapist or the client, if
29 agreed to, or not resisted by the
30 psychotherapist.
- 31 2. Kissing of, or the intentional touching
32 by the psychotherapist of, the client's
33 lips, genital area, groin, inner thigh,
34 buttocks, or breast, or of the clothing
35 covering any of these body parts, or
36 kissing of, or the intentional touching
37 by the client of, the psychotherapist's
38 lips, genital area, groin, inner thigh,
39 buttocks, or breast, or of the clothing
40 covering any of these body parts, if
41 agreed to or not resisted by the
42 psychotherapist.
- 43 b. Any act done or statement made by the
44 psychotherapist for the purpose of sexual

1 stimulation or gratification of the client or
2 psychotherapist which includes any of the
3 following actions:

- 4 1. The psychotherapist's relating to the
5 client the psychotherapist's own sexual
6 fantasies or the details of the
7 psychotherapist's own sexual life.
8 2. The uncovering or display of breasts or
9 genitals of the psychotherapist to the
10 client.
11 3. The showing of sexually graphic pictures
12 to the client for purposes other than
13 diagnosis or treatment.
14 4. Statements containing sexual innuendo,
15 sexual threats, or sexual suggestions
16 regarding the relationship between the
17 psychotherapist and the client.

18 (5) Sexual history. -- Sexual activity of the client
19 other than that conduct alleged by the client to
20 constitute sexual exploitation in an action
21 pursuant to this Article.

22 (6) Therapeutic deception. -- A representation by a
23 psychotherapist that sexual contact with the
24 psychotherapist is consistent with or part of the
25 client's treatment.

26 "§ 90-21.42. Action for sexual exploitation.

27 Any client who is sexually exploited by the client's
28 psychotherapist shall have remedy by civil action for sexual
29 exploitation if the sexual exploitation occurred:

30 (1) At any time between and including the first date
31 and last date the client was receiving
32 psychotherapy from the psychotherapist.

33 (2) Within three years after the termination of the
34 psychotherapy.

35 (3) By means of therapeutic deception.

36 "§ 90-21.43. Remedies.

37 A person found to have been sexually exploited as provided
38 under this Article may recover from the psychotherapist actual or
39 nominal damages, and reasonable attorneys' fees as the court may
40 allow. The trier of fact may award punitive damages in
41 accordance with the provisions of Chapter 1D of the General
42 Statutes.

43 "§ 90-21.44. Scope of discovery.

1 (a) In an action under this Article, evidence of the client's
2 sexual history is not subject to discovery, except under the
3 following conditions:

4 (1) The client claims impairment of sexual functioning.
5 (2) The psychotherapist requests a hearing prior to
6 conducting discovery and makes an offer of proof of
7 the relevancy of the evidence, and the court finds
8 that the information is relevant and that the
9 probative value of the history outweighs its
10 prejudicial effect.

11 (b) The court shall allow the discovery only of specific
12 information or examples of the client's conduct that are
13 determined by the court to be relevant. The court order shall
14 detail the information or conduct that is subject to discovery.

15 "§ 90-21.45. Admissibility of evidence of sexual history.

16 (a) At the trial of an action under this Article, evidence of
17 the client's sexual history is not admissible unless:

18 (1) The psychotherapist requests a hearing prior to
19 trial and makes an offer of proof of the relevancy
20 of the sexual history; and,
21 (2) The court finds that, in the interest of justice,
22 the evidence is relevant and that the probative
23 value of the evidence substantially outweighs its
24 prejudicial effect.

25 (b) The court shall allow the admission only of specific
26 information or examples of instances of the client's conduct that
27 are determined by the court to be relevant. The court's order
28 shall detail the conduct that is admissible, and no other such
29 evidence may be introduced.

30 (c) Sexual history otherwise admissible pursuant to this
31 section may not be proved by reputation or opinion.

32 "§ 90-21.46. Prohibited defense.

33 It shall not be a defense in any action brought pursuant to
34 this Article that the client consented to the sexual exploitation
35 or that the sexual contact with a client occurred outside a
36 therapy or treatment session or that it occurred off the premises
37 regularly used by the psychotherapist for therapy or treatment
38 sessions.

39 "§ 90-21.47. Statute of limitations.

40 An action for sexual exploitation must be commenced within
41 three years after the cause of action accrues. A cause of action
42 for sexual exploitation accrues from the date of the last act of
43 the psychotherapist giving rise to the cause of action.

1 "§ 90-21.48. Agreements to not pursue complaint before licensing
2 entity void.

3 Any provision of a settlement agreement of a claim based in
4 whole or part on an allegation of sexual exploitation as defined
5 in this Article, which prohibits a party from initiating or
6 pursuing a complaint before the regulatory entity responsible for
7 overseeing the conduct or licensing of the psychotherapist, is
8 void."

9 Section 2. This act becomes effective October 1, 1998, and
10 applies to exploitative conduct occurring on or after that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 23, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 581 - SEX EXPLOITATION ACT - Representative Hackney**

The Proposed Senate Committee Substitute for House Bill 581 would create a new civil cause of action for damages suffered by a person who is sexually exploited by their psychotherapist.

The new Article defines a "psychotherapist" as a physician, psychiatrist, psychologist, nurse, counselor, social worker, clergy member, family therapist, physician assistant, or mental health service provider, who performs or purports to perform psychotherapy. "Psychotherapy" is defined as the professional treatment or professional counseling of a mental or emotional condition. A client is defined as someone who receives psychotherapy, whether or not the person is charged for the service, and includes a former client. The Act contains a definition of sexual contact which includes a variety of actions and statements by the psychotherapist.

A client may bring a civil action under the Act if the sexual exploitation occurred between and including the dates the psychotherapy began and ended, within 3 years after the termination of psychotherapy, or occurred by means of therapeutic deception. "Therapeutic deception" is defined as a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the client's treatment.

Under the Act, a client may seek civil remedies in the form of actual or nominal damages, and reasonable attorneys fees. Punitive damages may be obtained as permitted under Chapter 1D - Punitive Damages.

MEMORANDUM
HB 581 - PCS Summary
Page 2

A client's sexual history is not subject to discovery under the Act except for cases in which the client claims impairment of sexual function, or the court determines in a hearing prior to the discovery that the information is relevant and that its probative value outweighs its prejudicial effect. Evidence of sexual history is not admissible at trial unless the court, at the request of the psychotherapist, makes the same determinations of relevancy and probative value prior to trial. Sexual history may not be proved by reputation or opinion.

Consent is not a defense to an action under the Act, nor is the fact that the sexual exploitation occurred outside of therapy or off the premises of the therapist.

The Act contains a three-year statute of limitation which begins to run from the last act of the psychotherapist.

Provisions in settlement agreements in which a party agrees not to pursue a complaint before the psychotherapist's licensing or regulatory entity are prohibited under the Act.

The bill becomes effective October 1, 1998 and applies to exploitative conduct occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. _____

DATE 7/28/98

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

FORRESTER

1 moves to amend the bill on page 2, line 6

2 () WHICH CHANGES THE TITLE

3 by _____

4 deleting the word "condition" and

5 substituting the word "illness."

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Senate Judiciary

7/28

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Elizabeth Kuniholm

NCAITL

Bill Taylor

NCAITL

Dore Hove

South Aiken

Jane Pinney

AAA Carolinas

David Simmons

ZDA, PA

Anne L. Edwards Christian Service Comm. in Pub for NC

Joanne Schoen

nc nurses assoc.

Baron Cooney

Nurse of the Day

Zeb A. Long

ZDA PA

Cam Crowl

BPMHL

Kelli Kukura

DUPONT

Rob Schuttel

N.C. J.C.D.C

Lawrence Davis

Wimble Carlyle

Annie Johnson

Smith Anderson

Steve Uene

N.C.M.S.

Maureen Zucken

NCMS

BILL SUGGIN

NC BAR ASSOC.

Lucia Peel

NC Medical Society

Henry Garcia

Attorney Raleigh

Doreah Summers

NC Equity

Mike Carpenter

NCMSA

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Paul Wiers

NCOSA

Emily Howell

Sen. Basnight's Office

Gene Upchurch

CPEI

John McAlister

Duke Energy

MINUTES
SENATE JUDICIARY COMMITTEE
August 4, 1998

The Senate Judiciary Committee met on Wednesday, August 4, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Culpepper to explain House Bill 1405 - AN ACT TO AMEND SMALL CLAIMS PROCEDURE TO CLARIFY THAT THE DISTRICT COURT HAS AUTHORITY TO HEAR CERTAIN MOTIONS FOR RELIEF FROM MAGISTRATES' JUDGMENTS.

Senator Winner moved to adopt a Proposed Committee Substitute for House Bill 1405 for discussion. The motion carried by a majority voice vote.

Senator Rand moved to give the Proposed Committee Substitute a favorable report. The motion carried by a majority voice vote.

Representative Clary was recognized to explain House Bill 344 - AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

The following people were recognized to speak on the bill:

Joe Parker, with the Governor's Highway Safety Program
Peter West, the survivor of a head-on collision
Dr. Hub Garrison, a physician with Pitt County Memorial Hospital
Lt. Colonel Holden, with the N. C. Highway Patrol
Forrest Council, with the UNC Highway Safety Research Center

Senator Winner moved to amend the bill on Page 2, Line 16. The motion carried by a majority voice vote. (See attached amendment.)

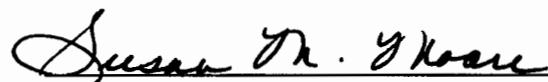
Senator Lucas moved to amend the bill on Page 2, Lines 8 and 19. The motion carried by a majority voice vote. (See attached amendment.)

Senator Odom moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.



Sen. Roy A. Cooper, III, Chairman



Susan M. Moore, Committee Clerk

AGENDA
SENATE JUDICIARY COMMITTEE
August 4, 1998

HB 344 Motor Vehicle Occup. Restr. Clary

HB 1405 Small Claims Judgments Culpepper

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, August 4, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

HB 1405	Small Claims Judgments	Culpepper
HB 344	Motor Vehicle Occup. Rest.	Clary

Sen. Roy Cooper, III, Chairman

Posted: 07/30/98 12:42 PM

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

2

HOUSE BILL 1405
Committee Substitute Favorable 6/30/98

Short Title: Small Claims Judgments.

(Public)

Sponsors:

Referred to:

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND SMALL CLAIMS PROCEDURE TO CLARIFY THAT THE
3 DISTRICT COURT HAS AUTHORITY TO HEAR CERTAIN MOTIONS FOR
4 RELIEF FROM MAGISTRATES' JUDGMENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 7A-228(a) reads as rewritten:
7 "(a) ~~With the consent of the chief district court judge, a magistrate may~~ The chief
8 district court judge may authorize magistrates to hear motions to set aside an order or
9 judgment for mistake or excusable neglect pursuant to G.S. 1A-1, Rule 60(b)(1) and
10 order a new trial before a magistrate. The exercise of the authority of the chief
11 district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be
12 construed to limit the authority of the district court to hear motions pursuant to Rule
13 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or
14 order entered by a magistrate and, if granted, to order a new trial before a magistrate.
15 After final disposition before the magistrate, the sole remedy for an aggrieved party is
16 appeal for trial de novo before a district court judge or a jury. Notice of appeal may
17 be given orally in open court upon announcement or after entry of judgment. If not
18 announced in open court, written notice of appeal must be filed in the office of the
19 clerk of superior court within 10 days after entry of judgment. The appeal must be
20 perfected in the manner set out in subsection (b). Upon announcement of the appeal
21 in open court or upon receipt of the written notice of appeal, the appeal shall be
22 noted upon the judgment. If the judgment was mailed to the parties, then the time
23 computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6."

1

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H1405

D

H1405-CSR-002
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1405
Committee Substitute Favorable 6/30/98
THIS IS A DRAFT 4-AUG-98 09:22:18
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Small Claims Judgments.

(Public)

Sponsors:

Referred to:

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND SMALL CLAIMS PROCEDURE TO CLARIFY THAT THE
3 DISTRICT COURT HAS AUTHORITY TO HEAR CERTAIN MOTIONS FOR RELIEF
4 FROM MAGISTRATES' JUDGMENTS, AND TO PROVIDE THAT A DISTRICT
5 COURT JUDGE OF THE THIRTEENTH JUDICIAL DISTRICT MAY PERFORM THE
6 MARRIAGE CEREMONY.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 7A-228(a) reads as rewritten:
9 "(a) ~~With the consent of the chief district court judge, a~~
10 ~~magistrate may~~ The chief district court judge may authorize
11 magistrates to hear motions to set aside an order or judgment for
12 ~~mistake or excusable neglect~~ pursuant to G.S. 1A-1, Rule 60(b)(1)
13 and order a new trial before a magistrate. The exercise of the
14 authority of the chief district court judge in allowing
15 magistrates to hear Rule 60(b)(1) motions shall not be construed
16 to limit the authority of the district court to hear motions
17 pursuant to Rule 60(b)(1) through (6) of the Rules of Civil

1 Procedure for relief from a judgment or order entered by a
2 magistrate and, if granted, to order a new trial before a
3 magistrate. After final disposition before the magistrate, the
4 sole remedy for an aggrieved party is appeal for trial de novo
5 before a district court judge or a jury. Notice of appeal may be
6 given orally in open court upon announcement or after entry of
7 judgment. If not announced in open court, written notice of
8 appeal must be filed in the office of the clerk of superior court
9 within 10 days after entry of judgment. The appeal must be
10 perfected in the manner set out in subsection (b). Upon
11 announcement of the appeal in open court or upon receipt of the
12 written notice of appeal, the appeal shall be noted upon the
13 judgment. If the judgment was mailed to the parties, then the
14 time computations for appeal of such judgment shall be pursuant
15 to G.S. 1A-1, Rule 6."

16 Section 2. G.S. 51-1 reads as rewritten:

17 "§51-1. Requisites of marriage; solemnization.

18 The consent of a male and female person who may lawfully marry,
19 presently to take each other as husband and wife, freely,
20 seriously and plainly expressed by each in the presence of the
21 other, and in the presence of an ordained minister of any
22 religious denomination, minister authorized by his church, or of
23 a district court judge or magistrate, and the consequent
24 declaration by such minister or officer that such persons are
25 husband and wife, shall be a valid and sufficient marriage:
26 Provided, that the rite of marriage among the Society of Friends,
27 according to a form and custom peculiar to themselves, shall not
28 be interfered with by the provisions of this Chapter: Provided
29 further, that marriages solemnized and witnessed by a local
30 spiritual assembly of the Baha'is, according to the usage of
31 their religious community, shall be valid; provided further,
32 marriages solemnized before March 9, 1909, by ministers of the
33 gospel licensed, but not ordained, are validated from their
34 consummation."

35 Section 3. This act is effective when it becomes law.
36 Section 2 of this act shall apply only to district court judges
37 of the Thirteenth Judicial District, and shall expire on July 31,
38 1999.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 30, 1998

MEMORANDUM

TO: Senator Roy Cooper, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Counsel

RE: **HOUSE BILL 1405 - SMALL CLAIMS JUDGMENTS**
2ND Edition
Proposed Senate Committee Substitute
Representative Culpepper

House Bill 1405 would amend small claims procedure to make it clear that G.S. 7A-228(a) does not limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate.

Current law specifies that, with consent of the chief district court judge, a magistrate may set aside an order or judgment for mistake or excusable neglect pursuant to 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. House Bill 1405 makes it clear that exercise of the authority to allow magistrates to hear Rule 60(b)(1) motions does not limit the authority of the district court to hear motions pursuant to all provisions of Rule 60(b), and if granted, to order a new trial before a magistrate.

(A copy of Rule 60(b) is provided on the reverse side of this memorandum)

Section 2 of the proposed committee substitute amends G.S. 51-1, regarding the solemnization of marriage, to provide that a district court judge may perform marriage ceremonies. The provision is a local modification which would apply only to district court judges of the Thirteenth Judicial District. Marriage ceremonies in this State may currently be performed by clergy and by magistrates. There are two similar existing local modifications with regard to the Mayor of the Town of Sparta (1969) and the Register of Deeds in Bertie County (1951). The provision would expire on July 31, 1999.

Section 3 makes the bill effective when it becomes law.

Rule 60. Relief from judgment or order.

(a) *Clerical mistakes.* - Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the judge at any time on his own initiative or on the motion of any party and after such notice, if any, as the judge orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate division, and thereafter while the appeal is pending may be so corrected with leave of the appellate division.

(b) *Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.* - On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void;

(5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this section does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment, order, or proceeding shall be by motion as prescribed in these rules or by an independent action.

(c) *Judgments rendered by the clerk.* - The clerk may, in respect of judgments rendered by himself, exercise the same powers authorized in sections (a) and (b). The judge has like powers in respect of such judgments. Where such powers are exercised by the clerk, appeals may be had to the judge in the manner provided by law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 344*
Committee Substitute Favorable 4/29/97
Committee Substitute #2 Favorable 4/30/97
Senate Transportation Committee Substitute Adopted 7/14/97

Short Title: Motor Vehicle Occupant Restraints.

(Public)

Sponsors:

Referred to:

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 20-135.2A(a) reads as rewritten:
5 "(a) Each ~~front seat~~ occupant who is 16 years of age or older and each driver of a
6 passenger motor vehicle manufactured with seat safety belts ~~in compliance with~~
7 ~~Federal Motor Vehicle Safety Standard No. 208~~ shall have such a safety belt properly
8 fastened about his body at all times when the vehicle is in forward motion on a street
9 or highway in this State. ~~Each driver of a passenger motor vehicle manufactured with~~
10 ~~seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208,~~
11 ~~who is transporting in the front seat a person who is (1) under 16 years of age and (2)~~
12 ~~not required to be restrained in accordance with G.S. 20-137.1, shall have the person~~
13 ~~secured by such a safety belt at all times when the vehicle is operated in forward~~
14 ~~motion on a street or highway in this State. Persons required to be restrained in~~
15 ~~accordance with G.S. 20-137.1 shall be secured as required by that section."~~
16 Section 2. G.S. 20-135.2A(e) reads as rewritten:
17 "(e) ~~Any person violating this section during the period from October 1, 1985, to~~
18 ~~December 31, 1986, shall be given a warning of violation only. Thereafter, any person~~
19 ~~violating~~ Any driver or passenger who fails to wear a seat belt as required by this
20 section shall have committed an infraction and shall pay a fine penalty of twenty-five
21 dollars (\$25.00). fifty dollars (\$50.00). ~~An infraction is an unlawful act that is not a~~

1 ~~crime. The procedure for charging and trying an infraction is the same as for a~~
2 ~~misdemeanor, but conviction of an infraction has no consequence other than payment~~
3 ~~of a fine. A person convicted of an infraction found responsible for a violation of~~
4 this section may not be assessed court costs."

5 Section 3. G.S. 20-137.1(a) reads as rewritten:

6 "(a) Every driver who is transporting a ~~child~~ passenger of less than ~~12~~ 16 years of
7 age shall have the ~~child~~ passenger properly secured in a ~~child~~ an age-appropriate
8 ~~child passenger restraint system (car safety seat) which meets federal standards~~
9 ~~applicable at the time of its manufacture. The requirements of this section may be~~
10 ~~met when the child is four years of age or older by securing the child in a seat safety~~
11 ~~belt system.~~

12 When a child is less than five years of age and less than 60 pounds in weight, the
13 requirements of this section shall be met by securing the child in a car safety seat
14 which meets federal standards applicable at the time of its manufacture. The car
15 safety seat shall be secured in a rear seat of the vehicle if the vehicle has a rear seat
16 that will accommodate a car safety seat.

17 When a child is five years of age or older or is 60 pounds or more in weight, the
18 requirements of this section may be met by securing the child in a seat safety belt."

19 Section 4. This act becomes effective July 1, 1998.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
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Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

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Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 30, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Counsel

RE: **HOUSE BILL 344 - MOTOR VEHICLE OCCUPANT RESTRAINTS**
Fourth Edition
Representative Clary

Section 1 of the bill amends G.S. 20-135.2A (Seat belt use mandatory) Under current law, passengers age 16 or older are required to wear seat belts only if they are in the front seat. The bill would require all passengers 16 years of age and older to wear a seat belt, regardless of where the passenger is seated in the car. Section 1 deletes obsolete language and also deletes the provisions regarding passengers between the ages of 12 and 16, as all passengers under 16 will now be covered by G.S. 20-137.1 as set out in Section 3 of the bill.

Section 2 of the bill increases the penalty for a violation of the mandatory seat belt law from \$25 to \$50, and makes other clarifying changes. Other than increasing the penalty, this section of the bill makes no substantive changes to existing law. It simply makes it clear that any *driver or passenger* who fails to wear a seat belt will be found to have committed an infraction, and will be subject to a \$50.00 penalty. As under current law, the driver is not responsible for the failure of an adult passenger to wear a seat belt.

Section 3 of the bill amends G.S. 20-137.1 to require that all passengers under the age of 16 years must be properly secured in an age-appropriate restraint system. Children who are at least 5 or weigh 60 pounds or more may wear a seat belt. Children who are under five and weigh less than 60 pounds must be in a car safety seat. The car safety seat must be located in the rear seat of the vehicle if the vehicle has a rear seat that will accommodate it. Under current law, it is the driver's responsibility to ensure that passengers under the age of 16 are properly secured.

A technical amendment, which also corrects a redlining error, would make the bill effective ~~October 1, 1998~~

1-1-99

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 344

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Winner
)
Sen.) _____

1 moves to amend the bill on page 2, line 16

2 () WHICH CHANGES THE TITLE

3 by _____

4 A rear seat includes a middle row seat
5 in a car or van that has more than two
6 rows of passenger seats.

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Win

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 344

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H344-ARV-005

Date 8-4, 1998

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Senator Lucas

- 1 moves to amend the bill on page 2, line 8,
- 2 by rewriting that line to read:
- 3 "~~passenger restraint system (car safety seat) which meets federal~~
- 4 ~~standards~~";
- 5
- 6 and on page 2, line 19,
- 7 by deleting "~~July~~" and substituting "~~October~~".

January 1, 1999.

"July 1, 1998"

SIGNED *Jeanne Lucas*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



The University of North Carolina
HIGHWAY SAFETY RESEARCH CENTER

CHARACTERISTICS OF DRIVERS NOT USING SEAT BELTS IN NORTH CAROLINA¹

A study was undertaken in North Carolina by the Insurance Institute for Highway Safety and the University of North Carolina Highway Safety Research Center to determine the characteristics of the minority (20%) of drivers who were not using seat belts following the initial *Click It or Ticket* campaign. The researchers were able to identify a sample of belted and unbelted drivers through observational surveys. Conviction and crash information from their driving records was obtained through the Division of Motor Vehicles. In addition, telephone surveys were conducted with a sample of belted and unbelted drivers to obtain additional information.

Nonuse of seat belts was strongly associated with poorer driving records. As shown in the following table, the unbelted drivers, in comparison to the belted drivers, were:

- 73% more likely to have been convicted of a traffic violation during the previous four years
- 79% more likely to have been convicted of a speeding violation during the previous four years
- 37% more likely to have been involved in a crash during the previous four years

	Conviction/Crash Rate [†]		
	Unbelted	Belted	% Difference
Overall Convictions	0.45	0.26	73%
Speeding Convictions	0.34	0.19	79%
Overall Crash Involvement	0.26	0.19	37%

[†]Number of convictions or crashes per driver

Telephone interviews with both unbelted and belted drivers indicate that unbelted drivers:

- Are twice as likely as belted drivers to have no health care insurance (12% vs 6%)
- Have higher estimated annual mileage (17,660 vs 15,470)
- Are more likely to engage in a variety of risk-taking behaviors

When asked in the interview what it would take to get them to wear their seat belts all of the time,

- 59% of the unbelted group said that no amount of fine would get them to do so, but
- 60% of the unbelted group said that they would always wear their seat belts if points on their drivers license were involved

¹Reinfurt, DW, Williams, AF, Wells, JA, and Rodgman, EA, "Characteristics of Drivers Not Using Seat Belts in a High Belt Use State". Insurance Institute for Highway Safety, Arlington, VA, September 1994.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Wednesday, August 05, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) 1405 Small Claims Judgments
 Draft Number: PCS A496
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1) 344 Motor Vehicle Occupant Restraints
 Draft Number: PCS 2407
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Senate Judiciary Aug 4 '98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

David R. Anders	PTF PIC
Doug Rogers	NC DOT
John Schmidt	NCJCPC
Kevin Howell	NCBA
Alan Miller	Barly & Dixon LLP
David Ferrell	Hoffa, McNamara, Caldwell & Co
LARRY W. CANNON	Asst. Assoc. of HC/Wilmington Asst Assoc
Jane Pinsky	AAA Carolinas
LT. Col. RW Holden	SHP RALEIGH
Joe Parker	Gov's Hwy Safety Center
Lawrence Davis	Womble Carly
Pat Sulerst	Gov's Hwy Safety Center
Robert M. Conrail	UNC HIGHWAY SAFETY RES. CENTER
Shannon Bullock	SHP
Thomas V. Bennett	NCCFTE
Ann Duncan	WCSR/AAA
Jim Miller	HRSP
Harold Garrison	ECU
Bob Taylor	NC State
William R. Kirk	DOH
Maria Reed	NC Medical Society
Dan...	Smith R...

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Amy Jo Bain	Smith Anderson
Susan Valcuni	Nationwide
Koslyn Seytt	Lobbyist
Sund Summus	NC Equity
Gene Casby	E-EBC
Kathy Powell	Triangle Apt. Assn.
Richard O'Brien	PARONE
Bill Brooks	NCFPC
Rep. Bobby HALL	STATE LEGISLATURE

MINUTES
SENATE JUDICIARY COMMITTEE
August 5, 1998

The Senate Judiciary Committee met on Wednesday, August 5, 1998 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members were present.

Senator Cooper called the meeting to order and recognized Senator Hartsell to explain Senate Bill 1279 - AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Hartsell moved to adopt a Proposed Committee Substitute to Senate Bill 1279 for discussion. The motion carried by a majority voice vote.

Senator Cooper asked that the bill be brought back to the Committee for further discussion and for a vote at the meeting scheduled for 1:00 p.m. today.

Senator Dalton was recognized to explain Senate Bill 1277 - AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AND TO EXTEND THE CIVIL PROCEDURE STUDY COMMISSION; AND TO CLARIFY THE PUBLIC DUTY DOCTRINE AND THE TORTS CLAIMS ACT.

Senator Miller moved to adopt a Proposed Committee Substitute to Senate Bill 1277 for discussion. The motion carried by a majority voice vote.

Alan Miles, a member of the Study Commission on the Rules of Civil Procedure, and Bill Scoggins, with the N. C. Bar Association, were recognized to answer questions concerning the Proposed Committee Substitute.

Senator Miller moved to amend the Proposed Committee Substitute on Page 15, Line 38, through Page 17, Line 6. The motion carried by a majority voice vote. (See attached amendment.)

Senator Rand moved to amend the Proposed Committee Substitute on Page 19, Line 28 through Page 20, Line 12. The motion carried by a majority voice vote. (See attached amendment.)

Jane Gray, with the Attorney General's office, and Dick Taylor, with the N. C. Academy of Trial Lawyers, were recognized to answer questions from the Committee and to comment on the bill.

Senator Cooper asked that a vote on the Proposed Committee Substitute be held until the meeting at 1:00 p.m.

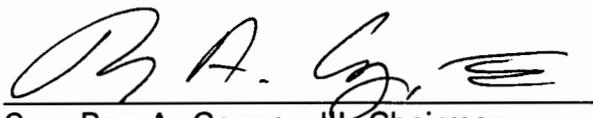
Senator Odom, acting Chairman, recognized Senator Cooper to explain House Bill 915 - AN ACT TO PROVIDE THAT FIREFIGHTERS WHO ENGAGE IN SOME FIRE INSPECTION ACTIVITIES AS A SECONDARY RESPONSIBILITY ARE NOT COVERED BY THE LAW PROHIBITING CONFLICTS OF INTEREST BY INSPECTION DEPARTMENTS.

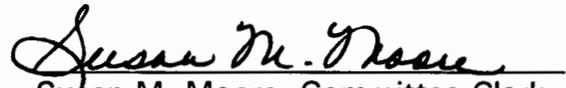
Senator Winner moved to adopt a Proposed Committee Substitute to House Bill 915 for discussion. The motion carried by a majority voice vote.

Dave Anders, with the Professional Firefighters Association, was recognized to answer questions from the Committee.

Senator Soles moved to give the Proposed Committee Substitute a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting was adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

AGENDA
SENATE JUDICIARY COMMITTEE
August 5, 1998
9:00 a.m.

HB 915	Firefighters/No Conflict	Mercer
SB 1277	Civil Procedure Rules Changes	Dalton
SB 1279	1998 Technical Changes	Hartsell

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1279

Short Title: 1998 Technical Corrections.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary.

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE
3 GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. (a) G.S. 14-408 reads as rewritten:

7 "**§ 14-408. Violation of § 14-406 or 14-407 a misdemeanor.**

8 Any person, firm, or corporation violating any of the provisions of G.S. 14-406 or
9 14-407 shall be guilty of a Class 2 misdemeanor."

10 (b) This section becomes effective December 1, 1998. Prosecutions for
11 offenses committed before the effective date of this section are not abated or affected
12 by this section and the statutes that would be applicable but for this section remain
13 applicable to those prosecutions.

14 Section 2. (a) G.S. 14-74 reads as rewritten:

15 "**§ 14-74. Larceny by servants and other employees.**

16 If any servant or other employee, to whom any money, goods or other chattels, or
17 any of the articles, securities or choses in action mentioned in ~~the following section;~~
18 G.S. 14-75, by his master shall be delivered safely to be kept to the use of his master,
19 shall withdraw himself from his master and go away with such money, goods or other
20 chattels, or any of the articles, securities or choses in action mentioned as aforesaid,
21 or any part thereof, with intent to steal the same and defraud his master thereof,
22 contrary to the trust and confidence in him reposed by his said master; or if any
23 servant, being in the service of his master, without the assent of his master, shall
24 embezzle such money, goods or other chattels, or any of the articles, securities or

1 choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the
2 same to his own use, with like purpose to steal them, or to defraud his master thereof,
3 the servant so offending shall be guilty of a felony: Provided, that nothing contained
4 in this section shall extend to apprentices or servants within the age of 16 years. If the
5 value of the money, goods, or other chattels, or any of the articles, securities, or
6 choses in action mentioned in G.S. 14-75, is one hundred thousand dollars (\$100,000)
7 or more, the person is guilty of a Class C felony. If the value of the money, goods, or
8 other chattels, or any of the articles, securities, or choses in action mentioned in G.S.
9 14-75, is less than one hundred thousand dollars (\$100,000), the person is guilty of a
10 Class H felony."

11 (b) G.S. 25-7-502 reads as rewritten:

12 "**§ 25-7-502. Rights acquired by due negotiation.**

13 (1) Subject to ~~the following section~~ G.S. 25-7-503 and to the provisions of G.S.
14 25-7-205 on fungible goods, a holder to whom a negotiable document of title has
15 been duly negotiated acquires thereby:

16 (a) title to the document;

17 (b) title to the goods;

18 (c) all rights accruing under the law of agency or estoppel, including
19 rights to goods delivered to the bailee after the document was
20 issued; and

21 (d) the direct obligation of the issuer to hold or deliver the goods
22 according to the terms of the document free of any defense or
23 claim by him except those arising under the terms of the document
24 or under this article. In the case of a delivery order the bailee's
25 obligation accrues only upon acceptance and the obligation
26 acquired by the holder is that the issuer and any indorser will
27 procure the acceptance of the bailee.

28 (2) Subject to ~~the following section~~, G.S. 25-7-503, title and rights so acquired are
29 not defeated by any stoppage of the goods represented by the document or by
30 surrender of such goods by the bailee, and are not impaired even though the
31 negotiation or any prior negotiation constituted a breach of duty or even though any
32 person has been deprived of possession of the document by misrepresentation, fraud,
33 accident, mistake, duress, loss, theft or conversion, or even though a previous sale or
34 other transfer of the goods or document has been made to a third person."

35 (c) G.S. 25-7-507 reads as rewritten:

36 "**§ 25-7-507. Warranties on negotiation or transfer of receipt or bill.**

37 Where a person negotiates or transfers a document of title for value otherwise than
38 as a mere intermediary under ~~the next following section~~, G.S. 25-7-508, then unless
39 otherwise agreed he warrants to his immediate purchaser only in addition to any
40 warranty made in selling the goods

41 (a) that the document is genuine; and

42 (b) that he has no knowledge of any fact which would impair its
43 validity or worth; and

1 (c) that his negotiation or transfer is rightful and fully effective with
2 respect to the title to the document and the goods it represents."

3 (d) G.S. 44A-21 reads as rewritten:

4 **"§ 44A-21. Pro rata payments.**

5 In the event that the funds in the hands of the obligor and the obligor's personal
6 liability, if any, under ~~the previous section~~ G.S. 44A-20 are less than the amount of
7 valid lien claims that have been filed with the obligor under this Article the parties
8 entitled to liens shall share the funds on a pro rata basis."

9 Section 3. G.S. 39-23.3(b) reads as rewritten:

10 "(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a
11 reasonably equivalent value if the person acquires an interest of the debtor in an asset
12 pursuant to a regularly conducted, ~~nonexclusive~~ noncollusive foreclosure sale or
13 execution of a power of sale for the acquisition or disposition of the interest of the
14 debtor upon default under a mortgage, deed of trust, or security agreement."

15 Section 4. G.S. 62-268 reads as rewritten:

16 **"§ 62-268. Security for protection of public; liability insurance.**

17 No certificate or broker's license shall be issued or remain in force until the
18 applicant shall have procured and filed with the Division of Motor Vehicles such
19 security bond, insurance or self-insurance for the protection of the public as the
20 Commission shall by regulation require. The Commission shall require that every
21 motor carrier for which a certificate or license is required by the ~~provision~~ provisions
22 of this Chapter, shall maintain liability insurance or satisfactory surety of at least fifty
23 thousand dollars (\$50,000) because of bodily injury to or death of one person in any
24 one accident and, subject to said limit for one person, one hundred thousand dollars
25 (\$100,000) because of bodily injury to or death of two or more persons in any one
26 accident, and fifty thousand dollars (\$50,000) because of injury to or destruction of
27 property of others in any one accident; and the Commission may require any greater
28 amount of insurance as may be necessary for the protection of the public.
29 Notwithstanding any rule or regulation to the contrary, the Commission shall not
30 require that any insurance procured and filed be provided in any single policy of
31 insurance or through a single insurer, if the insurers involved are otherwise qualified.
32 A motor carrier may satisfy the requirements of the Commission by procuring
33 insurance with coverage and limits of liability required by the Commission in one or
34 more policies of insurance issued by one or more insurers.

35 Notwithstanding any other provisions of this section or Chapter, bus companies
36 shall file with the Commission proof of financial responsibility in the form of bonds,
37 policies of insurance, or shall qualify as a self insurer, with minimum levels of
38 financial responsibility as prescribed for motor carriers of passengers pursuant to the
39 provisions of 49 U.S.C. § ~~10927(a)(1)~~ 31138. Provided, further, that no bus company
40 operating solely within the State of North Carolina and which is exempt from
41 regulation under the provisions of G.S. 62-260(a)(7) shall be required to file with the
42 Commission proof of the financial responsibility in excess of one million five hundred
43 thousand dollars (\$1,500,000)."

44 Section 5. G.S. 115C-404(a) reads as rewritten:

1 "(a) Written notifications received in accordance with ~~G.S. 7A-675.1~~ G.S. 7A-
2 675.2 are confidential records, are not public records as defined under G.S.132-1, and
3 shall not be made part of the student's official record under G.S. 115C-402.
4 Immediately upon receipt, the principal shall maintain these documents in a safe,
5 locked record storage that is separate from the student's other school records. The
6 principal shall maintain these documents until the principal receives notification that
7 the judge dismissed the petition under G.S. 7A-637, the judge transferred jurisdiction
8 over the student to superior court under G.S. 7A-608, or the judge granted the
9 student's petition for expunction of the records. At that time, the principal shall
10 shred, burn, or otherwise destroy the documents to protect the confidentiality of this
11 information. In no case shall the principal make a copy of these documents."

12 Section 6. (a) G.S. 139-3.1 is repealed.

13 (b) The repeal of this section shall not be construed to affect any
14 language currently in the General Statutes.

15 Section 7. G.S. 157-35 reads as rewritten:

16 "**§ 157-35. Creation of regional housing authority.**

17 If the board of county commissioners of each of two or more contiguous counties
18 having an aggregate population of more than 60,000 by resolution declares that there
19 is a need for one housing authority to be created for all of such counties to exercise
20 powers and other functions herein prescribed for a housing authority in such
21 counties, a public body corporate and politic to be known as a regional housing
22 authority for all of such counties ~~to exercise powers and other functions herein~~
23 ~~prescribed for a housing authority in such counties, a public body corporate and~~
24 ~~politic to be known as a regional housing authority for all of such counties~~ shall
25 (after the commissioners thereof file an application with the Secretary of State as
26 hereinafter provided) thereupon exist for and exercise its powers and other functions
27 in such counties; and thereupon any housing authority created for any of such
28 counties shall cease to exist except for the purpose of winding up its affairs and
29 executing a deed to the regional housing authority as hereinafter provided: Provided,
30 that the board of county commissioners shall not adopt a resolution as aforesaid if
31 there is a county housing authority created for such county which has any bonds or
32 notes outstanding unless first, all holders of such bonds and notes consent in writing
33 to the substitution of such regional housing authority in lieu of such county housing
34 authority on all such bonds and notes; and second, the commissioners of such county
35 housing authority adopt a resolution consenting to the transfer of all the rights,
36 contracts, obligations, and property, real and personal, of such county housing
37 authority to such regional housing authority as hereinafter provided: Provided,
38 further, that when the above conditions are complied with and such regional housing
39 authority is created and authorized to exercise its powers and other functions, all
40 rights, contracts, agreements, obligations, and property, real and personal, of such
41 county housing authority shall be in the name of and vest in such regional housing
42 authority, and all obligations of such county housing authority shall be the obligations
43 of such regional housing authority and all rights and remedies of any person against
44 such county housing authority may be asserted, enforced, and prosecuted against such

1 regional housing authority to the same extent as they might have been asserted,
2 enforced, and prosecuted against such county housing authority. When any real
3 property of a county housing authority vests in a regional housing authority as
4 provided above, the county housing authority shall execute a deed of such property
5 to the regional housing authority which thereupon shall file such deed in the office
6 provided for the filing of deeds: Provided, that nothing contained in this sentence
7 shall affect the vesting of property in the regional housing authority as provided
8 above.

9 The board of county commissioners of each of two or more said contiguous
10 counties shall by resolution declare that there is a need for one regional housing
11 authority to be created for all of such counties to exercise powers and other functions
12 herein prescribed in such counties, if such board of county commissioners finds (and
13 only if it finds)

14 (1) Insanitary or unsafe dwelling accommodations exist in the area of
15 its respective county and/or there is a lack of safe or sanitary
16 dwelling accommodations in the county available for all the
17 inhabitants thereof and

18 (2) That a regional housing authority for the proposed region would
19 be a more efficient or economical administrative unit than a
20 housing authority for an area having a smaller population to carry
21 out the purposes of the housing authorities law and any
22 amendments thereto, in such county.

23 In determining whether dwelling accommodations are unsafe or insanitary, the board
24 of county commissioners shall take into consideration the following: the physical
25 condition and age of the buildings; the degree of overcrowding; the percentage of
26 land coverage; the light and air available to the inhabitants of such dwelling
27 accommodations; the size and arrangement of the rooms; the sanitary facilities; and
28 the extent to which conditions exist in such buildings which endanger life or
29 property by fire or other causes.

30 If it shall determine that both (1) and (2) of the above enumerated conditions exist,
31 the board of county commissioners shall adopt a resolution so finding (which need
32 not go into any detail other than the mere finding). After the appointment, as
33 hereinafter provided, of the commissioners to act as the regional housing authority,
34 said authority shall be a public body and a body corporate and politic upon the
35 completion of the taking of the following proceedings:

36 The commissioners shall present to the Secretary of State an application signed by
37 them, which shall set forth (without any detail other than the mere recital)

38 (1) That the boards of county commissioners made the aforesaid
39 determination and that they have been appointed as
40 commissioners;

41 (2) The name, and official residence of each of the commissioners,
42 together with a certified copy of the appointment evidencing their
43 right to office, the date and place of induction into and taking oath

1 of office, and that they desire the housing authority to become a
2 public body and a body corporate and politic under this Article;
3 (3) The term of office of each of the commissioners;
4 (4) The name which is proposed for the corporation; and
5 (5) The location of the principal office of the proposed corporation.
6 The application shall be subscribed and sworn to by each of said commissioners
7 before an officer authorized by the laws of the State to take and certify oaths, who
8 shall certify upon the application that he personally knows the commissioners and
9 knows them to be the officers as asserted in the application, and that each subscribed
10 and swore thereto in the officer's presence. The Secretary of State shall examine the
11 application and if he finds that the name proposed for the corporation is not identical
12 with that of a person or of any other corporation of this State or so nearly similar as
13 to lead to confusion and uncertainty he shall receive and file it and shall record it in
14 an appropriate book of record in his office.
15 When the application has been made, filed and recorded, as herein provided, the
16 authority shall constitute a public body and a body corporate and politic under the
17 name proposed in the application; the Secretary of State shall make and issue to the
18 said commissioners, a certificate of incorporation pursuant to this Article, under the
19 seal of the State, and shall record the same with the application.
20 In any suit, action or proceeding involving the validity or enforcement of, or
21 relating to any contract of the regional housing authority, the regional housing
22 authority shall be conclusively deemed to have been established in accordance with
23 the provisions of this Article upon proof of the issuance of the aforesaid certificate by
24 the Secretary of State. A copy of such certificate, duly certified by the Secretary of
25 State, shall be admissible in evidence in any such suit, action or proceeding, and
26 shall be conclusive proof of the filing and contents thereof."
27 Section 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

S1279-CSSC-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1279
THIS IS A DRAFT 5-AUG-98 01:42:54
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 1998 Technical Corrections . (Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL
3 STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND
4 TO MAKE OTHER TECHNICAL CORRECTIONS AND OTHER CHANGES TO THE
5 GENERAL STATUTES AND SESSION LAWS.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 14-34.6(a)(2) reads as rewritten:
8 "(2) ~~As~~ A medical responder."
9 Section 2. G.S. 14-399(c) reads as rewritten:
10 "(c) Any person who violates this section in an amount not
11 exceeding 15 pounds and not for commercial purposes is guilty of
12 a Class 3 misdemeanor punishable by a fine of not less than one
13 hundred dollars (\$100.00) nor more than five hundred dollars
14 (\$500.00) for the first offense. In addition, the court may
15 require the violator to perform community service of not less
16 than eight hours nor more than 24 hours. The community service
17 required shall be to pick up litter if feasible, and; if not
18 feasible, to perform other labor commensurate with the offense
19 committed. Any second or subsequent offense within three years
20 after the date of a prior offense is punishable by a fine of not
21 less than one hundred dollars (\$100.00) nor more than one

1 thousand dollars (\$1,000). In addition, the court may require the
2 violator to perform community service of not less than 16 hours
3 nor more than 50 hours. The community service required shall be
4 to pick up litter if feasible, and if not feasible, to perform
5 other labor commensurate with the offense committed."

6 Section 3. (a) G.S. 14-408 reads as rewritten:

7 "§ 14-408. Violation of § 14-406 ~~or 14-407~~ a misdemeanor.

8 Any person, firm, or corporation violating any of the
9 provisions of G.S. 14-406 ~~or 14-407~~ shall be guilty of a Class 2
10 misdemeanor."

11 (b) This section becomes effective December 1, 1998.
12 Prosecutions for offenses committed before the effective date of
13 this section are not abated or affected by this section and the
14 statutes that would be applicable but for this section remain
15 applicable to those prosecutions.

16 Section 4. (a) G.S. 14-74 reads as rewritten:

17 "§ 14-74. Larceny by servants and other employees.

18 If any servant or other employee, to whom any money, goods or
19 other chattels, or any of the articles, securities or choses in
20 action mentioned in ~~the following section,~~ G.S. 14-75, by his
21 master shall be delivered safely to be kept to the use of his
22 master, shall withdraw himself from his master and go away with
23 such money, goods or other chattels, or any of the articles,
24 securities or choses in action mentioned as aforesaid, or any
25 part thereof, with intent to steal the same and defraud his
26 master thereof, contrary to the trust and confidence in him
27 reposed by his said master; or if any servant, being in the
28 service of his master, without the assent of his master, shall
29 embezzle such money, goods or other chattels, or any of the
30 articles, securities or choses in action mentioned as aforesaid,
31 or any part thereof, or otherwise convert the same to his own
32 use, with like purpose to steal them, or to defraud his master
33 thereof, the servant so offending shall be guilty of a felony:
34 Provided, that nothing contained in this section shall extend to
35 apprentices or servants within the age of 16 years. If the value
36 of the money, goods, or other chattels, or any of the articles,
37 securities, or choses in action mentioned in G.S. 14-75, is one
38 hundred thousand dollars (\$100,000) or more, the person is guilty
39 of a Class C felony. If the value of the money, goods, or other
40 chattels, or any of the articles, securities, or choses in action
41 mentioned in G.S. 14-75, is less than one hundred thousand
42 dollars (\$100,000), the person is guilty of a Class H felony."

43 (b) G.S. 25-7-502 reads as rewritten:

44 "§ 25-7-502. Rights acquired by due negotiation.

1 (1) Subject to ~~the following section~~ G.S. 25-7-503 and to the
2 provisions of G.S. 25-7-205 on fungible goods, a holder to whom a
3 negotiable document of title has been duly negotiated acquires
4 thereby:

- 5 (a) title to the document;
6 (b) title to the goods;
7 (c) all rights accruing under the law of agency or
8 estoppel, including rights to goods delivered to
9 the bailee after the document was issued; and
10 (d) the direct obligation of the issuer to hold or
11 deliver the goods according to the terms of the
12 document free of any defense or claim by him except
13 those arising under the terms of the document or
14 under this article. In the case of a delivery order
15 the bailee's obligation accrues only upon
16 acceptance and the obligation acquired by the
17 holder is that the issuer and any indorser will
18 procure the acceptance of the bailee.

19 (2) Subject to ~~the following section,~~ G.S. 25-7-503, title and
20 rights so acquired are not defeated by any stoppage of the goods
21 represented by the document or by surrender of such goods by the
22 bailee, and are not impaired even though the negotiation or any
23 prior negotiation constituted a breach of duty or even though any
24 person has been deprived of possession of the document by
25 misrepresentation, fraud, accident, mistake, duress, loss, theft
26 or conversion, or even though a previous sale or other transfer
27 of the goods or document has been made to a third person."

28 (c) G.S. 25-7-507 reads as rewritten:
29 "§ 25-7-507. Warranties on negotiation or transfer of receipt or
30 bill.

31 Where a person negotiates or transfers a document of title for
32 value otherwise than as a mere intermediary under ~~the next~~
33 ~~following section,~~ G.S. 25-7-508, then unless otherwise agreed he
34 warrants to his immediate purchaser only in addition to any
35 warranty made in selling the goods

- 36 (a) that the document is genuine; and
37 (b) that he has no knowledge of any fact which would
38 impair its validity or worth; and
39 (c) that his negotiation or transfer is rightful and
40 fully effective with respect to the title to the
41 document and the goods it represents."

42 (d) G.S. 44A-21 reads as rewritten:
43 "§ 44A-21. Pro rata payments.

1 In the event that the funds in the hands of the obligor and the
2 obligor's personal liability, if any, under ~~the previous section~~
3 G.S. 44A-20 are less than the amount of valid lien claims that
4 have been filed with the obligor under this Article the parties
5 entitled to liens shall share the funds on a pro rata basis."

6 Section 5. G.S. 25-8-103(a) reads as rewritten:

7 "(a) A share ~~of~~ or similar equity interest issued by a
8 corporation, business trust, joint stock company, or similar
9 entity is a security."

10 Section 6. G.S. 39-23.3(b) reads as rewritten:

11 "(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5,
12 a person gives a reasonably equivalent value if the person
13 acquires an interest of the debtor in an asset pursuant to a
14 regularly conducted, ~~nonexclusive~~ noncollusive foreclosure sale
15 or execution of a power of sale for the acquisition or
16 disposition of the interest of the debtor upon default under a
17 mortgage, deed of trust, or security agreement."

18 Section 7. Section #. G.S 50-11(e) and (f) read as rewritten:

19

20 " (e) An absolute divorce obtained within this State shall
21 destroy the right of a spouse to ~~an~~ equitable distribution ~~of~~
22 ~~the marital property~~ under G.S. 50-20 unless the right is
23 asserted prior to judgment of absolute divorce; except, the
24 defendant may bring an action or file a motion in the cause for
25 equitable distribution within six months from the date of the
26 judgment in such a case if service of process upon the defendant
27 was by publication pursuant to G.S. 1A-1, Rule 4 and the
28 defendant failed to appear in the action for divorce.

29 (f) An absolute divorce by a court that lacked personal
30 jurisdiction over the absent spouse or lacked jurisdiction to
31 dispose of the property shall not destroy the right of a spouse
32 to ~~an~~ equitable distribution ~~of marital property~~ under G.S. 50-
33 20 if an action or motion in the cause is filed within six months
34 after the judgment of divorce is entered. The validity of such
35 divorce may be attacked in the action for equitable
36 distribution."

37 (b) G.S 50-20 reads as rewritten:

38 "§ 50-20. Distribution by court of marital and divisible
39 property upon divorce.

40 (a) Upon application of a party, the court shall determine
41 what is the marital property and divisible property and shall
42 provide for an equitable distribution of the marital property and
43 divisible property between the parties in accordance with the
44 provisions of this section.

1 (b) For purposes of this section:

2 (1) "Marital property" means all real and personal
3 property acquired by either spouse or both spouses
4 during the course of the marriage and before the
5 date of the separation of the parties, and
6 presently owned, except property determined to be
7 separate property or divisible property in
8 accordance with subdivision (2) or (4) of this
9 subsection. Marital property includes all vested
10 and nonvested pension, retirement, and other
11 deferred compensation rights, and vested and
12 nonvested military pensions eligible under the
13 federal Uniformed Services Former Spouses'
14 Protection Act. It is presumed that all property
15 acquired after the date of marriage and before the
16 date of separation is marital property except
17 property which is separate property under
18 subdivision (2) of this subsection. This
19 presumption may be rebutted by the greater weight
20 of the evidence.

21 (2) "Separate property" means all real and personal
22 property acquired by a spouse before marriage or
23 acquired by a spouse by bequest, devise, descent,
24 or gift during the course of the marriage. However,
25 property acquired by gift from the other spouse
26 during the course of the marriage shall be
27 considered separate property only if such an
28 intention is stated in the conveyance. Property
29 acquired in exchange for separate property shall
30 remain separate property regardless of whether the
31 title is in the name of the husband or wife or both
32 and shall not be considered to be marital property
33 unless a contrary intention is expressly stated in
34 the conveyance. The increase in value of separate
35 property and the income derived from separate
36 property shall be considered separate property. All
37 professional licenses and business licenses which
38 would terminate on transfer shall be considered
39 separate property.

40 (3) "Distributive award" means payments that are
41 payable either in a lump sum or over a period of
42 time in fixed amounts, but shall not include
43 alimony payments or other similar payments for
44 support and maintenance which are treated as

1 ordinary income to the recipient under the Internal
2 Revenue Code.

3 (4) "Divisible property" means all real and personal
4 property as set forth below:

5 a. All appreciation and diminution in value of
6 marital property and divisible property of the
7 parties occurring after the date of separation
8 and prior to the date of distribution, except
9 that appreciation or diminution in value which
10 is the result of postseparation actions or
11 activities of a spouse shall not be treated as
12 divisible property.

13 b. All property, property rights, or any portion
14 thereof received after the date of separation
15 but before the date of distribution that was
16 acquired as a result of the efforts of either
17 spouse during the marriage and before the date
18 of separation, including, but not limited to,
19 commissions, bonuses, and contractual rights.

20 c. Passive income from marital property received
21 after the date of separation, including, but
22 not limited to, interest and dividends.

23 d. Increases in marital debt and financing
24 charges and interest related to marital debt.

25 (c) There shall be an equal division by using net value of
26 marital property and ~~not~~ net value of divisible property unless
27 the court determines that an equal division is not equitable. If
28 the court determines that an equal division is not equitable, the
29 court shall divide the marital property and divisible property
30 equitably. Factors the court shall consider under this subsection
31 are as follows:

32 (1) The income, property, and liabilities of each party
33 at the time the division of property is to become
34 effective;

35 (2) Any obligation for support arising out of a prior
36 marriage;

37 (3) The duration of the marriage and the age and
38 physical and mental health of both parties;

39 (4) The need of a parent with custody of a child or
40 children of the marriage to occupy or own the
41 marital residence and to use or own its household
42 effects;

- 1 (5) The expectation of pension, retirement, or other
2 deferred compensation rights that are not marital
3 property;
- 4 (6) Any equitable claim to, interest in, or direct or
5 indirect contribution made to the acquisition of
6 such marital property by the party not having
7 title, including joint efforts or expenditures and
8 contributions and services, or lack thereof, as a
9 spouse, parent, wage earner or homemaker;
- 10 (7) Any direct or indirect contribution made by one
11 spouse to help educate or develop the career
12 potential of the other spouse;
- 13 (8) Any direct contribution to an increase in value of
14 separate property which occurs during the course of
15 the marriage;
- 16 (9) The liquid or nonliquid character of all marital
17 ~~property; property and divisible property;~~
- 18 (10) The difficulty of evaluating any component asset or
19 any interest in a business, corporation or
20 profession, and the economic desirability of
21 retaining such asset or interest, intact and free
22 from any claim or interference by the other party;
- 23 (11) The tax consequences to each party;
- 24 (11a) Acts of either party to maintain, preserve,
25 develop, or expand; or to waste, neglect,
26 devalue or convert ~~such the marital property,~~
27 property or divisible property, or both,
28 during the period after separation of the
29 parties and before the time of distribution;
30 and
- 31 (12) Any other factor which the court finds to be just
32 and proper.
- 33 (c1) Notwithstanding any other provision of law, a second or
34 subsequent spouse acquires no interest in the marital property
35 and divisible property of his or her spouse from a former
36 marriage until a final determination of equitable distribution is
37 made in the marital property and divisible property of the
38 spouse's former marriage.
- 39 (d) Before, during or after marriage the parties may by
40 written agreement, duly executed and acknowledged in accordance
41 with the provisions of G.S. 52-10 and 52-10.1, or by a written
42 agreement valid in the jurisdiction where executed, provide for
43 distribution of the marital property or divisible property, or

1 both, in a manner deemed by the parties to be equitable and the
2 agreement shall be binding on the parties.

3 (e) Subject to the presumption of subsection (c) of this
4 section that an equal division is equitable, it shall be presumed
5 in every action that an in-kind distribution of marital or
6 divisible property is equitable. This presumption may be rebutted
7 by the greater weight of the evidence, or by evidence that the
8 property is a closely held business entity or is otherwise not
9 susceptible of division in-kind. In any action in which the
10 presumption is rebutted, the court in lieu of in-kind
11 distribution shall provide for a distributive award in order to
12 achieve equity between the parties. The court may provide for a
13 distributive award to facilitate, effectuate or supplement a
14 distribution of marital or divisible property. The court may
15 provide that any distributive award payable over a period of time
16 be secured by a lien on specific property.

17 (f) The court shall provide for an equitable distribution
18 without regard to alimony for either party or support of the
19 children of both parties. After the determination of an equitable
20 distribution, the court, upon request of either party, shall
21 consider whether an order for alimony or child support should be
22 modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

23 (g) If the court orders the transfer of real or personal
24 property or an interest therein, the court may also enter an
25 order which shall transfer title, as provided in G.S. 1A-1, Rule
26 70 and G.S. 1-228.

27 (h) If either party claims that any real property is marital
28 ~~property~~, property or divisible property, that party may cause a
29 notice of lis pendens to be recorded pursuant to Article 11 of
30 Chapter 1 of the General Statutes. Any person whose conveyance or
31 encumbrance is recorded or whose interest is obtained by descent,
32 prior to the filing of the lis pendens, shall take the real
33 property free of any claim resulting from the equitable
34 distribution proceeding. The court may cancel the notice of lis
35 pendens upon substitution of a bond with surety in an amount
36 determined by the court to be sufficient provided the court finds
37 that the claim of the spouse against property subject to the
38 notice of lis pendens can be satisfied by money damages.

39 (i) Upon filing an action or motion in the cause requesting an
40 equitable distribution or alleging that an equitable distribution
41 will be requested when it is timely to do so, a party may seek
42 injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1
43 Article 37, to prevent the disappearance, waste or conversion of
44 property alleged to be marital ~~property~~ property, divisible

1 property or separate property of the party seeking relief. The
2 court, in lieu of granting an injunction, may require a bond or
3 other assurance of sufficient amount to protect the interest of
4 the other spouse in the ~~marital or separate~~ property. Upon
5 application by the owner of separate property which was removed
6 from the marital home or possession of its owner by the other
7 spouse, the court may enter an order for reasonable counsel fees
8 and costs of court incurred to regain its possession, but such
9 fees shall not exceed the fair market value of the separate
10 property at the time it was removed.

11 (il) Unless good cause is shown that there should not be an
12 interim distribution, the court may, at any time after an action
13 for equitable distribution has been filed and prior to the final
14 judgment of equitable distribution, enter orders declaring what
15 is separate property and may also enter orders dividing part of
16 the marital property, divisible property or debt, or marital debt
17 between the parties. The partial distribution may provide for a
18 distributive award and may also provide for a distribution of
19 marital property, marital debt, divisible property, or divisible
20 debt. Any such orders entered shall be taken into consideration
21 at trial and proper credit given.

22 Hearings held pursuant to this subsection may be held at
23 sessions arranged by the chief district court judge pursuant to
24 G.S. 7A-146 and, if held at such sessions, shall not be subject
25 to the reporting requirements of G.S. 7A-198.

26 (j) In any order for the distribution of property made
27 pursuant to this section, the court shall make written findings
28 of fact that support the determination that the marital property
29 and divisible property has been equitably divided.

30 (k) The rights of the parties to an equitable distribution of
31 marital property and divisible property are a species of common
32 ownership, the rights of the respective parties vesting at the
33 time of the parties' separation."
34
35

36 Section 8. G.S. 62-268 reads as rewritten:

37 "§ 62-268. Security for protection of public; liability
38 insurance.

39 No certificate or broker's license shall be issued or remain in
40 force until the applicant shall have procured and filed with the
41 Division of Motor Vehicles such security bond, insurance or self-
42 insurance for the protection of the public as the Commission
43 shall by regulation require. The Commission shall require that
44 every motor carrier for which a certificate or license is

1 required by the ~~provision~~ provisions of this Chapter, shall
2 maintain liability insurance or satisfactory surety of at least
3 fifty thousand dollars (\$50,000) because of bodily injury to or
4 death of one person in any one accident and, subject to said
5 limit for one person, one hundred thousand dollars (\$100,000)
6 because of bodily injury to or death of two or more persons in
7 any one accident, and fifty thousand dollars (\$50,000) because of
8 injury to or destruction of property of others in any one
9 accident; and the Commission may require any greater amount of
10 insurance as may be necessary for the protection of the public.
11 Notwithstanding any rule or regulation to the contrary, the
12 Commission shall not require that any insurance procured and
13 filed be provided in any single policy of insurance or through a
14 single insurer, if the insurers involved are otherwise qualified.
15 A motor carrier may satisfy the requirements of the Commission by
16 procuring insurance with coverage and limits of liability
17 required by the Commission in one or more policies of insurance
18 issued by one or more insurers.

19 Notwithstanding any other provisions of this section or
20 Chapter, bus companies shall file with the Commission proof of
21 financial responsibility in the form of bonds, policies of
22 insurance, or shall qualify as a self insurer, with minimum
23 levels of financial responsibility as prescribed for motor
24 carriers of passengers pursuant to the provisions of 49 U.S.C. §
25 ~~10927(a)(1)~~ 31138. Provided, further, that no bus company
26 operating solely within the State of North Carolina and which is
27 exempt from regulation under the provisions of G.S. 62-260(a)(7)
28 shall be required to file with the Commission proof of the
29 financial responsibility in excess of one million five hundred
30 thousand dollars (\$1,500,000)."

31 Section 9. G.S. 78C-16(b) reads as rewritten:

32 "(b) It is unlawful for any person required to be registered
33 as an investment adviser under this Chapter to employ an
34 investment adviser representative unless the investment adviser
35 representative is registered under this Chapter. The registration
36 of an investment adviser representative is not effective during
37 any period when the investment adviser representative is not
38 employed by (i) an investment adviser registered under this
39 Chapter; or (ii) an investment adviser covered under federal law
40 who has made a notice filing pursuant to the provisions of G.S.
41 78C-17(a1). When an investment adviser representative begins or
42 terminates employment or association with an investment adviser
43 who is registered under this Chapter, the investment adviser
44 shall notify promptly the Administrator. When an investment

1 adviser representative begins or terminates employment or
2 association with an investment adviser covered under federal law,
3 the investment adviser representative shall, and the investment
4 adviser may, notify promptly the Administrator. ~~No investment~~
5 ~~adviser representative may be registered with more than one~~
6 ~~investment adviser unless each of the investment advisers which~~
7 ~~employs or associates the investment adviser representative is~~
8 ~~under common ownership or control.~~ No investment adviser
9 representative may be registered with more than one investment
10 adviser or investment adviser covered under federal law unless
11 each of the investment advisers which employs or associates the
12 investment adviser representative is under common ownership or
13 control."

14 Section 10. G.S. 90-113.40(a)(8) reads as rewritten:

15 "(8)The applicant for substance abuse counselor has
16 completed either a total of 6,000 hours of supervised experience
17 in the field, whether paid or volunteer, or, if a graduate of a
18 Board-approved master's degree program, a total of 3,000 hours of
19 supervised experience in the field, whether paid or volunteer.The
20 applicant for substance abuse prevention consultant has completed
21 a total of 10,000 hours supervised experience in the field,
22 whether paid or volunteer, or 4,000 hours if the applicant has at
23 least a bachelors degree in a human services field."

24 Section 11. G.S. 110-91(10) read as rewritten:

25 "(10) Each operator or staff member shall attend to any child
26 in a nurturing and appropriate manner, and in keeping with the
27 child's developmental needs.

28 Each ~~child~~ child care facility shall have a written policy
29 on discipline, describing the methods and practices used to
30 discipline children enrolled in that facility. This written
31 policy shall be discussed with, and a copy given to, each child's
32 parent prior to the first time the child attends the facility.
33 Subsequently, any change in discipline methods or practices shall
34 be communicated in writing to the parents prior to the effective
35 date of the change.

36 The use of corporal punishment as a form of discipline is
37 prohibited in ~~child~~ child care facilities and may not be used by
38 any operator or staff member of any child care facility, except
39 that corporal punishment may be used in ~~religious sponsored child~~
40 religious sponsored child care facilities as defined in G.S. 110-
41 106, only if (i) the ~~religious sponsored child~~ religious
42 sponsored child care facility files with the Department a notice
43 stating that corporal punishment is part of the religious
44 training of its program, and (ii) the ~~religious sponsored child~~

1 religious sponsored child care facility clearly states in its
2 written policy of discipline that corporal punishment is part of
3 the religious training of its program. The written policy on
4 discipline of ~~nonreligious sponsored child~~ nonreligious sponsored
5 child care facilities shall clearly state the prohibition on
6 corporal punishment."

7 Section 12. G.S. 115C-404(a) reads as rewritten:

8 "(a) Written notifications received in accordance with ~~G.S.~~
9 ~~7A-675.1~~ G.S. 7A-675.2 are confidential records, are not public
10 records as defined under G.S.132-1, and shall not be made part of
11 the student's official record under G.S. 115C-402. Immediately
12 upon receipt, the principal shall maintain these documents in a
13 safe, locked record storage that is separate from the student's
14 other school records. The principal shall maintain these
15 documents until the principal receives notification that the
16 judge dismissed the petition under G.S. 7A-637, the judge
17 transferred jurisdiction over the student to superior court under
18 G.S. 7A-608, or the judge granted the student's petition for
19 expunction of the records. At that time, the principal shall
20 shred, burn, or otherwise destroy the documents to protect the
21 confidentiality of this information. In no case shall the
22 principal make a copy of these documents."

23

24 Section 13. G.S. 130A-233 reads as rewritten:

25 "§ 130A-233. Definitions.

26 The following definitions apply to this Part:

- 27 (1) Coastal fishing ~~waters, as defined~~ waters. --
28 Defined in G.S. 113-129(4).
29 (2) Inland fishing ~~waters, as defined~~ waters. --
30 Defined in G.S. 113-129(9)."

31 Section 14. (a) G.S. 139-3.1 is repealed.

32 (b) The repeal of this section shall not be construed
33 to affect any language currently in the General Statutes.

34 Section 15. G.S. 143-53(a)(2) reads as rewritten:

35 "(2) Prescribing the routine, including consistent
36 contract language, for securing bids on items that
37 do not ~~not~~ exceed the bid value benchmark
38 established under the provisions of G.S. 143-53.1
39 or G.S. 116-31.10.

40 The purchasing delegation for securing ~~offers,~~
41 offers (excluding the special responsibility
42 constituent institutions of The University of North
43 Carolina), for each State department, institution,
44 agency, community college, and public school

1 administrative unit shall be determined by the
2 Director of the Division of Purchase and Contract.
3 For the State agencies this shall be done following
4 the Director's consultation with the State Budget
5 Officer and the State Auditor. The Director for the
6 Division of Purchase and Contract may set or lower
7 the delegation, or raise the delegation upon
8 written request by the agency, after consideration
9 of their overall capabilities, including staff
10 resources, purchasing compliance reviews, and audit
11 reports of the individual agency. The routine
12 prescribed by the Secretary shall include contract
13 award protest procedures and consistent
14 requirements for advertising of solicitations for
15 securing offers issued by State departments,
16 institutions, universities (including the special
17 responsibility constituent institutions of The
18 University of North Carolina), agencies, community
19 colleges, and the public school administrative
20 units."

21 Section 16. G.S. 143-129(f) reads as rewritten:

22 " (f) The provisions of this Article shall not apply to
23 purchases of apparatus, supplies, materials, or equipment when
24 performance or price competition for a product are not available;
25 when a needed product is available from only one source of
26 supply; or when standardization or compatibility is the
27 overriding consideration. Notwithstanding any other provision of
28 this section, the governing board of a municipality, county, or
29 other subdivision of the State shall approve ~~purchases made under~~
30 ~~this exception~~ the purchases listed in the preceding sentence
31 prior to the award of the contract. In the case of purchases by
32 hospitals, in addition to the other exceptions in this
33 subsection, the provisions of this Article shall not apply when a
34 particular medical item or prosthetic appliance is needed; when a
35 particular product is ordered by an attending physician for his
36 patients; when additional products are needed to complete an
37 ongoing job or task; when products are purchased for "over-the-
38 counter" resale; when a particular product is needed or desired
39 for experimental, developmental, or research work; or when
40 equipment is already installed, connected, and in service under a
41 lease or other agreement and the governing body of the hospital
42 determines that the equipment should be purchased. The governing
43 body of a hospital, municipality, county or other political
44 subdivision of the State shall keep a record of all purchases

1 made pursuant to this ~~exception~~ subsection. These records are
2 subject to public inspection."

3 Section 17. G.S. 143B-283(a)(8) reads as rewritten:

4 "(8) One who shall, at the time of appointment, be
5 actively employed by, or recently retired from, an
6 industrial manufacturing facility and knowledgeable
7 in ~~in~~ the field of industrial air and water
8 pollution control;"

9 Section 18. G.S. 143B-289.52(e) reads as rewritten:

10 "(e) The Commission may adopt rules to implement or comply
11 with a fisheries management plan adopted by the Atlantic States
12 Marine Fisheries Commission or an interstate fisheries management
13 council. Notwithstanding G.S. 150B-21.1(a), the Commission may
14 adopt temporary rules under this subsection at any time within
15 six months of the adoption of a fisheries management plan by the
16 Atlantic States Marine Fisheries ~~Council~~ Commission or an
17 interstate fisheries management council."

18 Section 19. G.S. 143B-433 reads as rewritten:

19 "§ 143B-433. Department of Commerce -- organization.

20 The Department of Commerce shall be organized to include:

21 ~~(a)~~ (1) The following agencies:

- 22 ~~(1)~~ a. The North Carolina Alcoholic Beverage Control
23 Commission,
24 ~~(2)~~ b. The North Carolina Utilities ~~Commission,~~
25 Commission.
26 ~~(3)~~ c. The Employment Security ~~Commission,~~
27 Commission.
28 ~~(4)~~ d. The North Carolina Industrial ~~Commission,~~
29 Commission.
30 ~~(5)~~ e. State Banking ~~Commission,~~ Commission.
31 ~~(6)~~ f. Savings and Loan Association ~~Division,~~
32 Division.
33 ~~(7)~~ g. The State Savings Institutions ~~Commission,~~
34 Commission.
35 ~~(8)~~ h. Credit Union ~~Commission,~~ Commission.
36 ~~(9)~~ i. The North Carolina Milk ~~Commission,~~
37 Commission.
38 ~~(10)~~ j. The North Carolina Mutual Burial Association
39 ~~Commission,~~ Commission.
40 ~~(11)~~ k. North Carolina Cemetery ~~Commission,~~
41 Commission.
42 ~~(12)~~ l. The North Carolina Rural Electrification
43 ~~Authority,~~ Authority.

1 except for the purpose of winding up its affairs and executing a
2 deed to the regional housing authority as hereinafter provided:
3 Provided, that the board of county commissioners shall not adopt
4 a resolution as aforesaid if there is a county housing authority
5 created for such county which has any bonds or notes outstanding
6 unless first, all holders of such bonds and notes consent in
7 writing to the substitution of such regional housing authority in
8 lieu of such county housing authority on all such bonds and
9 notes; and second, the commissioners of such county housing
10 authority adopt a resolution consenting to the transfer of all
11 the rights, contracts, obligations, and property, real and
12 personal, of such county housing authority to such regional
13 housing authority as hereinafter provided: Provided, further,
14 that when the above conditions are complied with and such
15 regional housing authority is created and authorized to exercise
16 its powers and other functions, all rights, contracts,
17 agreements, obligations, and property, real and personal, of such
18 county housing authority shall be in the name of and vest in such
19 regional housing authority, and all obligations of such county
20 housing authority shall be the obligations of such regional
21 housing authority and all rights and remedies of any person
22 against such county housing authority may be asserted, enforced,
23 and prosecuted against such regional housing authority to the
24 same extent as they might have been asserted, enforced, and
25 prosecuted against such county housing authority. When any real
26 property of a county housing authority vests in a regional
27 housing authority as provided above, the county housing authority
28 shall execute a deed of such property to the regional housing
29 authority which thereupon shall file such deed in the office
30 provided for the filing of deeds: Provided, that nothing
31 contained in this sentence shall affect the vesting of property
32 in the regional housing authority as provided above.

33 The board of county commissioners of each of two or more said
34 contiguous counties shall by resolution declare that there is a
35 need for one regional housing authority to be created for all of
36 such counties to exercise powers and other functions herein
37 prescribed in such counties, if such board of county
38 commissioners finds (and only if it finds)

39 (1) Insanitary or unsafe dwelling accommodations exist
40 in the area of its respective county and/or there
41 is a lack of safe or sanitary dwelling
42 accommodations in the county available for all the
43 inhabitants thereof and

1 (2) That a regional housing authority for the proposed
2 region would be a more efficient or economical
3 administrative unit than a housing authority for an
4 area having a smaller population to carry out the
5 purposes of the housing authorities law and any
6 amendments thereto, in such county.

7 In determining whether dwelling accommodations are unsafe or
8 insanitary, the board of county commissioners shall take into
9 consideration the following: the physical condition and age of
10 the buildings; the degree of overcrowding; the percentage of land
11 coverage; the light and air available to the inhabitants of such
12 dwelling accommodations; the size and arrangement of the rooms;
13 the sanitary facilities; and the extent to which conditions exist
14 in such buildings which endanger life or property by fire or
15 other causes.

16 If it shall determine that both (1) and (2) of the above
17 enumerated conditions exist, the board of county commissioners
18 shall adopt a resolution so finding (which need not go into any
19 detail other than the mere finding). After the appointment, as
20 hereinafter provided, of the commissioners to act as the regional
21 housing authority, said authority shall be a public body and a
22 body corporate and politic upon the completion of the taking of
23 the following proceedings:

24 The commissioners shall present to the Secretary of State an
25 application signed by them, which shall set forth (without any
26 detail other than the mere recital)

27 (1) That the boards of county commissioners made the
28 aforesaid determination and that they have been
29 appointed as commissioners;

30 (2) The name, and official residence of each of the
31 commissioners, together with a certified copy of
32 the appointment evidencing their right to office,
33 the date and place of induction into and taking
34 oath of office, and that they desire the housing
35 authority to become a public body and a body
36 corporate and politic under this Article;

37 (3) The term of office of each of the commissioners;

38 (4) The name which is proposed for the corporation; and

39 (5) The location of the principal office of the
40 proposed corporation.

41 The application shall be subscribed and sworn to by each of said
42 commissioners before an officer authorized by the laws of the
43 State to take and certify oaths, who shall certify upon the
44 application that he personally knows the commissioners and knows

1 them to be the officers as asserted in the application, and that
2 each subscribed and swore thereto in the officer's presence. The
3 Secretary of State shall examine the application and if he finds
4 that the name proposed for the corporation is not identical with
5 that of a person or of any other corporation of this State or so
6 nearly similar as to lead to confusion and uncertainty he shall
7 receive and file it and shall record it in an appropriate book of
8 record in his office.

9 When the application has been made, filed and recorded, as
10 herein provided, the authority shall constitute a public body and
11 a body corporate and politic under the name proposed in the
12 application; the Secretary of State shall make and issue to the
13 said commissioners, a certificate of incorporation pursuant to
14 this Article, under the seal of the State, and shall record the
15 same with the application.

16 In any suit, action or proceeding involving the validity or
17 enforcement of, or relating to any contract of the regional
18 housing authority, the regional housing authority shall be
19 conclusively deemed to have been established in accordance with
20 the provisions of this Article upon proof of the issuance of the
21 aforesaid certificate by the Secretary of State. A copy of such
22 certificate, duly certified by the Secretary of State, shall be
23 admissible in evidence in any such suit, action or proceeding,
24 and shall be conclusive proof of the filing and contents
25 thereof."

26 Section 21. Effective July 1, 1997, subsection (d) of
27 Section 18.22 of S.L. 1997-443 reads as rewritten:
28 "(d) ~~This act section~~ applies only to Columbus, Durham,
29 and Rockingham Counties."

30 Section 22. Effective July 1, 1997, subsection (e) of
31 Section 18.22 of S.L. 1997-443 reads as rewritten:
32 "(e) This ~~act section~~ becomes effective October 1,
33 1997, and expires June 30, 1998."

34 Section 23. The prefatory language of Section 6 of S.L.
35 1997-452 reads as rewritten:

36 "Section 6. Section 115.6(b) of the Charter of the City
37 of Durham, being Chapter 671 of the ~~1995~~ 1975 Session Laws, as
38 added by Chapter 476 of the 1989 Session Laws and rewritten by
39 Chapter 992 of the 1991 Session Laws, reads as rewritten:"

40 "Section 24. (a) Subsection (b) of G.S. 31B-1 reads as
41 rewritten:

42 ~~'(b) In no event shall the persons who succeed to the renounced~~
43 ~~interest receive from the renouncement a greater share than the~~
44 ~~renouncer would have received. This Chapter shall apply to all~~

1 renunciations of present and future interests, whether qualified
2 or non-qualified for federal and state inheritance, estate and
3 gift tax purposes, unless expressly provided otherwise in the
4 instrument creating the interest.'

5 (b) 31B-2(a) reads as rewritten:

6 '(a) To be a qualified disclaimer for federal and state
7 inheritance, estate and gift tax purposes, A an instrument
8 renouncing a present interest shall be filed within the time
9 period required under the applicable federal statute for a
10 renunciation to be given effect as a disclaimer for federal
11 estate tax purposes. If there is no such federal statute the
12 instrument shall be filed not later than nine months after the
13 death of the decedent or donee of the power, date the transfer of
14 the renounced interest to the renouncer was complete for the
15 purpose of such taxes.'

16 (c) G.S. 31B-3(a) reads as rewritten:

17 '(a) Unless the decedent ~~or~~ donee of the a power of
18 appointment, or creator of an interest under an inter vivos
19 instrument has otherwise provided in the instrument creating the
20 interest, the property or interest renounced devolves as follows:

21 (1) If the renunciation is filed within the time period
22 described in Section 31B-2(a), the property or
23 interest renounced devolves as if the renouncer had
24 predeceased the decedent or, if the renouncer is
25 designated to take under a power of appointment
26 exercised by a testamentary instrument, as if the
27 renouncer had predeceased the donee of the power
28 date the transfer of the renounced interest to the
29 renouncer was complete for the purpose of such
30 taxes, or, in the case of the renunciation of a
31 fiduciary right, power, privilege, or immunity, the
32 property or interest subject to the power devolves
33 as if the fiduciary right, power, privilege, or
34 immunity never existed. A future interest that
35 takes effect in possession or enjoyment after the
36 termination of the estate or interest renounced
37 takes effect as if the renouncer had predeceased
38 the decedent or the donee of the power. A Any such
39 renunciation relates back for all purposes to the
40 date of the death of the decedent or the donee of
41 the power, the date the transfer of the renounced
42 interest to the renouncer was complete for the
43 purpose of such taxes.

- 1 (2) If the renunciation is not filed within the time
2 period described in Section 31B-2(a), the property
3 or interest devolves as if the renouncer had died
4 on the date the renunciation is filed, or, in the
5 case of the renunciation of a fiduciary right,
6 power, privilege, or immunity, the property or
7 interest subject to the power devolves as if the
8 fiduciary right, power, privilege, or immunity
9 ceased to exist as of the date the renunciation is
10 filed.
- 11 3) Any future interest that takes effect in possession
12 or enjoyment after the terminator of the estate or
13 interest renounced takes effect as if the renouncer
14 had predeceased the decedent, or the donee of the
15 power, or creator died on the date determined under
16 paragraph (1) or (2) above, and upon the filing of
17 the renunciation the persons in being as of the
18 time the renouncer is deemed to have died will
19 immediately become entitled to possession or
20 enjoyment of any such future interest.'
- 21 (d) Subsection (3) of G.S. 31B-4(a) is repealed.
- 22 (e) G.S. 31B-4 is amended by adding the following new
23 subsection to read:
- 24 '(e) The right to renounce property or an interest in property
25 pursuant to this Chapter is not barred by an acceptance of the
26 property, interest, or benefit thereunder, provided, however, an
27 acceptance of the property, interest, or benefit thereunder may
28 preclude such renunciation from being a qualified renunciation
29 for federal and state inheritance, estate and gift tax purposes.'
- 30 (f) This section becomes effective when it becomes law.
31 This section shall apply to all renunciations executed on or
32 after the effective date of this act, whether qualified or non-
33 qualified for federal and state inheritance, estate and gift tax
34 purposes. This section shall not apply to any renunciation
35 executed before the effective date of this section whether
36 qualified or non-qualified for federal and state inheritance,
37 estate and gift tax purposes, of an interest in a testamentary or
38 inter vivos trust, unless the trustee within six months after the
39 effective date of this section executes and records with the
40 Clerk of Court of the county in which probate proceedings have
41 been commenced, if any, or the county in which the property is
42 located, an instrument evidencing the acceleration of the
43 possession and enjoyment of the renounced interest to persons in
44 esse at the time of the filing of the renunciation. This section

1 shall not apply to remove the rights of a current beneficiary who
2 has received an interest in a trust between the date of the
3 filing of a renunciation and the date of the filing by a Trustee
4 pursuant to the preceding sentence."

5 Section 25. G.S. 75E-3 reads as rewritten:

6 "§ 75E-3. Investigative and regulatory powers of the Attorney
7 General.

8 The Attorney General may conduct such investigations as the
9 Attorney General deems necessary to determine compliance by all
10 persons or entities with the provisions of Articles 9 and 9A of
11 Chapter 55 of the General ~~Statutes~~ Statutes; and the Attorney
12 General may exempt from the provisions of Article 9 of Chapter 55
13 of the General Statutes any business combination that is solely
14 an internal corporate restructuring which does not affect any
15 material change in the ultimate ownership of the corporation and
16 does not affect the ongoing applicability of that Article to the
17 corporation or any other entity. In performing any such
18 investigations, the Attorney General shall have all the powers
19 given him by G.S. 75-10. The provisions of G.S. 75-11 and G.S.
20 75-12 shall apply to this Chapter."

21 Section 26. (a) G.S. 90-113.38(b) reads as rewritten:

22 "(b) The fee to obtain a certificate of certification for a
23 clinical addictions specialist pursuant to ~~G.S. 90-113.41A~~ deemed
24 status may not exceed one hundred dollars (\$100.00). The fee to
25 renew a certificate may not exceed fifty dollars (\$50.00). The
26 fee to obtain a certificate of certification for a clinical
27 addictions specialist ~~under G.S. 90-113.40~~ pursuant to all other
28 procedures authorized by this Article may not exceed three
29 hundred twenty-five dollars (\$325.00). The fee to renew the
30 certificate may not exceed one hundred dollars (\$100.00)."

31 (b) Section 17 of S.L. 1997-492 reads as rewritten:

32 "Section 17. Notwithstanding G.S. 90-113.40(c), as enacted by
33 Section 9 of this act, the North Carolina Substance Abuse
34 Professional Certification Board (Board) may certify a person as
35 a 'Clinical Addictions Specialist' during a limited period of one
36 year after the effective date of this act upon completion of any
37 prescribed continuing education requirements that are required
38 during the course of this year from renewal of the original
39 certification, payment of the fee as required for renewal of the
40 original certification, payment of the clinical addictions
41 specialist certification fee and the submission of proof of one
42 of the following to the Board:

43 (1) Certification as a substance abuse counselor
44 holding a master's degree with a clinical

- 1 application in a human services field; the
2 equivalent of two years of full-time post-graduate
3 supervised substance abuse experience; and three
4 letters of reference from certified substance abuse
5 professionals who have master's degrees.
- 6 (2) Certification as a substance abuse counselor with a
7 bachelors degree in a human services field; the
8 equivalent of five years of full-time, post-
9 graduate, supervised substance abuse experience; a
10 passing score on a master's level written
11 examination; and submission of three letters of
12 reference from certified substance abuse
13 professionals who have master's degrees.
- 14 (3) Certification as a clinical supervisor; a master's
15 degree with a clinical application in a human
16 services field; and three letters of reference from
17 certified substance abuse professionals who have
18 master's degrees.
- 19 (4) Certification as a substance abuse counselor; a
20 master's degree with a clinical application in a
21 human services field with a substance abuse
22 specialty; and three letters of reference from
23 certified substance abuse professionals who have
24 master's degrees.
- 25 (5) Certification before July 1, 1994, as an alcohol
26 counselor, a drug and alcohol counselor, or a
27 substance abuse counselor; the equivalent of 10
28 years of documented full-time substance abuse work
29 experience; and three letters of reference from
30 certified substance abuse professionals who have
31 master's degrees.
- 32 (6) Certification, licensure, or membership in good
33 standing with a professional discipline that has
34 been granted deemed status under G.S. 90-113.41A,
35 as enacted by Section 11 of this act."
- 36 (c) Section 18 of S.L. 1997-492 reads as rewritten:
37 "Section 18. Notwithstanding G.S. 90-113.40(c), as
38 enacted by Section 9 of this act, the Board may certify an
39 applicant as a "Clinical Addictions Specialist" during a limited
40 period of three years beginning October 1, 1998, if the applicant
41 completes any prescribed continuing education requirements that
42 are required during the course of these years renewals of the
43 original certification, pays the fee as required for renewal of
44 the original certification, pays the clinical additions

1 specialist certification fee, and submits proof to the Board that
2 the applicant: (i) has been certified as a substance abuse
3 counselor; (ii) has the equivalent of 10 years of supervised,
4 full-time, substance abuse counseling experience; (iii) has
5 passed a master's level oral and written examination and; (iv)
6 submits three letters of reference from certified substance abuse
7 professionals who hold master's degrees."

8 (d) This section is effective on and after October 1, 1997.

9 Section 27. G.S. 95-97 is repealed.

10 Section 28. G.S. 95-128(3) and (4) read as rewritten:

11 (3) Employees whose safety and health are subject to
12 protection under the Federal Coal Mine Health and Safety Act of
13 1969 (30 U.S.C. 801) and the Federal Metal and Nonmetallic Mine
14 Safety Act (30 U.S.C. 725), or ~~the Federal Railroad Safety Act of~~
15 ~~1970 (45 U.S.C. 431-41)~~; Subtitle V of Title 49 of the United
16 States Code;

17 (4) Railroad employees whose safety and health are subject to
18 protection under ~~the Federal Safety Appliance Act (45 U.S.C.~~
19 ~~1-50), or the Federal Railroad Safety Act of 1970 (45 U.S.C.~~
20 ~~431-41)~~; Subtitle V of Title 49 of the United States Code;

21 Section 29. G.S. 95-174(k) reads as rewritten:

22 (k) "Hazardous chemical" shall mean any element, chemical
23 compound or mixture of elements and/or compounds which is a
24 physical hazard or health hazard as defined in subsection (c) of
25 the ~~NCOSHA OSHNC Standard~~ or a hazardous substance as defined in
26 ~~subsection (d)(3) of the NCOSHA Standard.~~ standards adopted by
27 the Occupational Safety and Health Division of the North Carolina
28 Department of Labor in Title 13, Chapter 7 of the North Carolina
29 Administrative Code (13 NCAC 7).

30 Section 30. G.S. 95-174(p) reads as rewritten:

31 (p) "Material Safety Data Sheets" or "MSDS" shall mean
32 chemical information sheets drawn up in conformity to standards
33 for material safety data sheets adopted by the Occupational
34 Safety and Health Division of the North Carolina Department of
35 Labor in Title 13, Chapter 7 of the North Carolina Administrative
36 Code (13 NCAC 7). ~~in 13 North Carolina Administrative Code 7C~~
37 ~~0101(a)(99) (hereinafter designated as 13 N.C.A.C. 7C~~
38 ~~0101(a)(99).~~

39 Section 31. G.S. 95-174(r) reads as rewritten:

40 (r) "~~NCOSHA OSHNC Standard~~" shall mean the ~~currently adopted~~
41 current Hazard Communication Standard adopted by the Occupational
42 Safety and Health Division of North Carolina Department of Labor
43 in Title 13, Chapter 7 of the North Carolina Administrative Code

1 ~~(13 NCAC 7). 13 North Carolina Administrative Code 7C~~
2 ~~.0101(a)(99), as amended.~~

3 Section 32. G.S. 95-198(b) reads as rewritten:

4 (b) In nonemergency situations, a chemical manufacturer, importer,
5 or employer shall, upon request, disclose a specific chemical
6 identity, otherwise permitted to be withheld under this section, to a
7 ~~health professional, responsible party,~~ as defined in ~~13 N.C.A.C. 7C~~
8 ~~.0101(a)(99),~~ the standards adopted in Title 13, Subchapter 7F of the
9 North Carolina Administrative Code (13 NCAC 7F), providing medical or
10 other occupational health services to exposed persons if the request
11 is in writing and states the medical need for the information. The
12 employer may require that the ~~health care provider~~ responsible party
13 sign a confidentiality agreement prior to release of the information.
14 The parties are not precluded from pursuing noncontractual remedies to
15 the extent permitted by law.

16 "Section 33. (a) G.S. 105-116(a), as amended by S.L. 1998-22,
17 reads as rewritten:

18 (a) Tax. -- An annual franchise or privilege tax is imposed on the
19 following:

20 (1) An electric power company engaged in the business of
21 furnishing electricity, electric lights, current, or power.

22 (2) ~~(Repealed effective July 1, 1999)~~ A natural gas company
23 engaged in the business of furnishing piped natural gas.

24 (2a) ~~(Repealed effective July 1, 1999)~~ A regional natural gas
25 district created under Article 28 of Chapter 160A of the General
26 Statutes.

27 (3) A water company engaged in owning or operating a water system
28 subject to regulation by the North Carolina Utilities Commission.

29 (4) A public sewerage company engaged in owning or operating a
30 public sewerage system.

31 The tax on an electric power company is three and twenty-two
32 hundredths percent (3.22%) of the company's taxable gross receipts
33 from the business of furnishing electricity, electric lights, current,
34 or power. ~~The tax on a regional natural gas district is three and~~
35 ~~twenty-two hundredths percent (3.22%) of the district's taxable gross~~
36 ~~receipts from the furnishing of piped natural gas.~~ The tax on a
37 water company is four percent (4%) of the company's taxable gross
38 receipts from owning or operating a water system subject to regulation
39 by the North Carolina Utilities Commission. The tax on a public
40 sewerage company is six percent (6%) of the company's taxable gross
41 receipts from owning or operating a public sewerage company. A
42 company's taxable gross receipts are its gross receipts from business
43 inside the State less the amount of gross receipts from sales reported
44 under subdivision (b)(2). A company that engages in more than one
45 business taxed under this section shall pay tax on each business. A
46 company is allowed a credit against the tax imposed by this section
47 for the company's investments in certain entities in accordance with
48 Division V of Article 4 of this Chapter.

49 (b) This section becomes effective July 1, 1999.

50 Section 34. G.S. 130A-24(b) reads as rewritten:

51 (b) Appeals concerning the enforcement of rules adopted by the
52 local board of health and concerning the imposition of administrative

1 penalties by a local health director shall be conducted in accordance
2 with this subsection and subsections (b), (c) and (d) of this
3 section. The aggrieved person shall give written notice of appeal to
4 the local health director within 30 days of the challenged action. The
5 notice shall contain the name and address of the aggrieved person, a
6 description of the challenged action and a statement of the reasons
7 why the challenged action is incorrect. Upon filing of the notice, the
8 local health director shall, within five working days, transmit to the
9 local board of health the notice of appeal and the papers and
10 materials upon which the challenged action was taken.

11 Section 35. G.S. 143B-475.1 is rewritten by adding a
12 new subsection to read:

13 (f) The Community Service Staff shall report to the court in
14 which the community service was ordered, a significant violation
15 of the terms of the probation, or deferred prosecution, related
16 to community service. The community service staff shall give
17 notice of the hearing to determine if there is a willful failure
18 to comply to the person who was ordered to perform the community
19 service. This notice shall be given by either personal delivery
20 to the person to be notified or by depositing the notice in the
21 United States Mail in an envelope with postage prepaid, addressed
22 to the person at the address shown on the records of the
23 community service staff. The notice shall be mailed at least ten
24 days prior to any hearing and shall state the basis of the
25 alleged willful failure to comply. The court shall then conduct
26 a hearing, even if the person ordered to perform the community
27 service fails to appear, to determine if there is a willful
28 failure to complete the work as ordered by the community service
29 staff within the applicable time limits. If the court determines
30 there is a willful failure to comply, it shall revoke any drivers
31 license issued to the person and notify the Division of Motor
32 vehicles to revoke any drivers license issued to the person until
33 the community service requirement has been met. In addition, if
34 the person is present, the court may take any further action
35 authorized by Article 82 of Chapter 15A of the General Statutes
36 for violation of a condition of probation."

37 Section 36. (a) G.S. 163-323(e) reads as rewritten:

38 "(e) Candidacy for More Than One Office Prohibited. -- No
39 person may file a notice of candidacy for more than one office or
40 group of offices described in subsection (b) of this ~~section~~
41 section, or for an office or group of offices described in
42 subsection (b) of this section and an office described in G.S.
43 163-106(c), for any one election. If a person has filed a notice
44 of candidacy with a board of elections under this section or
45 under G.S. 163-106(c) for one office or group of offices, then a

1 notice of candidacy may not later be filed for any other office
2 or group of offices under this section when the election is on
3 the same date unless the notice of candidacy for the first office
4 is withdrawn under subsection (c) of this section."

5 (b) This section is effective on and after August 2,
6 1996."

7 Section 37. The prefatory language of Section 1 of S.L.
8 1998-37 reads as rewritten:

9 "Section 1. G.S. 153A-335, as it applies to Stanly
10 County under Chapter 930 of the 1987 Session Laws, as amended by
11 Chapter 504 of the 1991 Session Laws and Chapter 574 of the 1993
12 Session Laws, reads as rewritten:"

13 Section 38. Section 5.1 of the Charter of the Town of
14 Forest Hills, being Section 1 of S.L. 1997-345. reads as
15 rewritten:

16 "Section 5.1. **Mayor-Council Plan.** The Village of Forest Hills
17 operates under the Mayor-Council Plan as provided by Part 3 of
18 Article 7 of Chapter ~~160B~~ 160A of the General Statutes. The
19 Mayor shall vote only in those cases necessary to break a tie."

20 Section 39. The prefatory language of Section 1 of S.L.
21 1998-72 reads as rewritten:

22 "Section 1. G.S. 115D-15 reads ~~are~~ as rewritten:"

23 Section 40. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

S1277-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1277
THIS IS A DRAFT 4-AUG-98 21:11:15
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Civil Procedure Rules Changes.

(Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AND TO EXTEND THE
3 CIVIL PROCEDURE STUDY COMMISSION; AND TO CLARIFY THE PUBLIC
4 DUTY DOCTRINE AND THE TORTS CLAIMS ACT.

5 The General Assembly of North Carolina enacts:

6

7 SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))

8 Section 1. G.S. 1A-1, Rule 4(c) reads as rewritten:

9 "(c) Summons -- Return. -- Personal service or substituted
10 personal service of summons as prescribed by Rule 4(j)(1) a and b
11 must be made within ~~30~~ 60 days after the date of the issuance of
12 ~~summons, except that in tax and assessment foreclosures under~~
13 ~~G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60~~
14 ~~days.~~ summons. When a summons has been served upon every party
15 named in the summons, it shall be returned immediately to the
16 clerk who issued it, with notation thereon of its service.

17 Failure to make service within the time allowed or failure to
18 return a summons to the clerk after it has been served on every
19 party named in the summons shall not invalidate the summons. If
20 the summons is not served within the time allowed upon every
21 party named in the summons, it shall be returned immediately upon

1 the expiration of such time by the officer to the clerk of the
2 court who issued it with notation thereon of its nonservice and
3 the reasons therefor as to every such party not served, but
4 failure to comply with this requirement shall not invalidate the
5 summons."

6

7 SERVICE BY PRIVATE MAIL DELIVERY (RULE 4(j)) AND CONFORMING
8 CHANGES TO PROOF OF SERVICE

9 Section 2. G.S. 1A-1, Rule 4(j) reads as rewritten:

10 "(j) Process -- Manner of service to exercise personal
11 jurisdiction. -- In any action commenced in a court of this State
12 having jurisdiction of the subject matter and grounds for
13 personal jurisdiction as provided in G.S. 1-75.4, the manner of
14 service of process within or without the State shall be as
15 follows:

16 (1) Natural Person. -- Except as provided in subsection
17 (2) below, upon a natural ~~person;~~ person by one of
18 the following:

19 a. By delivering a copy of the summons and of the
20 complaint to him or by leaving copies thereof
21 at the defendant's dwelling house or usual
22 place of abode with some person of suitable
23 age and discretion then ~~residing therein;~~ or
24 therein.

25 b. By delivering a copy of the summons and of the
26 complaint to an agent authorized by
27 appointment or by law to be served or to
28 accept service of process or by serving
29 process upon such agent or the party in a
30 manner specified by any statute.

31 c. By mailing a copy of the summons and of the
32 complaint, registered or certified mail,
33 return receipt requested, addressed to the
34 party to be served, and delivering to the
35 addressee.

36 d. By depositing with a private delivery service
37 a copy of the summons and complaint, addressed
38 to the party to be served, delivering to the
39 addressee, and obtaining a delivery receipt.

40 (2) Natural Person under Disability. -- Upon a natural
41 person under disability by serving process in any
42 manner prescribed in this section (j) for service
43 upon a natural person and, in addition, where

1 required by paragraph a or b below, upon a person
2 therein designated.

3 a. Where the person under disability is a minor,
4 process shall be served separately in any
5 manner prescribed for service upon a natural
6 person upon a parent or guardian having
7 custody of the child, or if there be none,
8 upon any other person having the care and
9 control of the child. If there is no parent,
10 guardian, or other person having care and
11 control of the child when service is made upon
12 the child, then service of process must also
13 be made upon a guardian ad litem who has been
14 appointed pursuant to Rule 17.

15 b. If the plaintiff actually knows that a person
16 under disability is under guardianship of any
17 kind, process shall be served separately upon
18 his guardian in any manner applicable and
19 appropriate under this section (j). If the
20 plaintiff does not actually know that a
21 guardian has been appointed when service is
22 made upon a person known to him to be
23 incompetent to have charge of his affairs,
24 then service of process must be made upon a
25 guardian ad litem who has been appointed
26 pursuant to Rule 17.

27 (3) The State. -- Upon the State by personally
28 delivering a copy of the summons and of the
29 complaint to the Attorney General or to a deputy or
30 assistant attorney ~~general~~ general; by mailing a
31 copy of the summons and of the complaint,
32 registered or certified mail, return receipt
33 requested, addressed to the Attorney General or to
34 a deputy or assistant attorney ~~general~~ general; or
35 by depositing with a private delivery service a
36 copy of the summons and complaint, addressed to the
37 Attorney General or to a deputy or assistant
38 attorney general, delivering to the addressee, and
39 obtaining a delivery receipt.

40 (4) An Agency of the State. --

41 a. Upon an agency of the State by personally
42 delivering a copy of the summons and of the
43 complaint to the process agent appointed by
44 the agency in the manner hereinafter ~~provided~~

- 1 provided; ~~or~~ by mailing a copy of the summons
2 and of the complaint, registered or certified
3 mail, return receipt requested, addressed to
4 said process ~~agent,~~ agent; or by depositing
5 with a private delivery service a copy of the
6 summons and complaint, addressed to the
7 process agent, delivering to the addressee,
8 and obtaining a delivery receipt.
- 9 b. Every agency of the State shall appoint a
10 process agent by filing with the Attorney
11 General the name and address of an agent upon
12 whom process may be served.
- 13 c. If any agency of the State fails to comply
14 with paragraph b above, then service upon such
15 agency may be made by personally delivering a
16 copy of the summons and of the complaint to
17 the Attorney General or to a deputy or
18 assistant attorney ~~general~~ general; by
19 mailing a copy of the summons and of the
20 complaint, registered or certified mail,
21 return receipt requested, addressed to the
22 Attorney General, or to a deputy or assistant
23 attorney ~~general~~ general; or by depositing
24 with a private delivery service a copy of the
25 summons and complaint, addressed to the
26 Attorney General or to a deputy or assistant
27 attorney general, delivering to the addressee,
28 and obtaining a delivery receipt.
- 29 d. For purposes of this rule, the term "agency of
30 the State" includes every agency, institution,
31 board, . commission, bureau, department,
32 division, council, member of Council of State,
33 or officer of the State government of the
34 State of North Carolina, but does not include
35 counties, cities, towns, villages, other
36 municipal corporations or political
37 subdivisions of the State, county or city
38 boards of education, other local public
39 districts, units, or bodies of any kind, or
40 private corporations created by act of the
41 General Assembly.
- 42 (5) Counties, Cities, Towns, Villages and Other Local
43 Public Bodies. --

- 1 a. Upon a city, town, or village by personally
2 delivering a copy of the summons and of the
3 complaint to its mayor, city manager or ~~clerk~~
4 clerk; or by mailing a copy of the summons and
5 of the complaint, registered or certified
6 mail, return receipt requested, addressed to
7 its mayor, city manager or ~~clerk.~~ clerk; or by
8 depositing with a private delivery service a
9 copy of the summons and complaint, addressed
10 to the mayor, city manager, or clerk,
11 delivering to the addressee, and obtaining a
12 delivery receipt.
- 13 b. Upon a county by personally delivering a copy
14 of the summons and of the complaint to its
15 county manager or to the chairman, clerk or
16 any member of the board of commissioners for
17 such ~~county~~ county; by mailing a copy of
18 the summons and of the complaint, registered
19 or certified mail, return receipt requested,
20 addressed to its county manager or to the
21 chairman, clerk, or any member of this board
22 of commissioners for such ~~county.~~ county; or
23 by depositing with a private delivery service
24 a copy of the summons and complaint, addressed
25 to the county manager or to the chairman,
26 clerk, or any member of the board of
27 commissioners of that county, delivering to
28 the addressee, and obtaining a delivery
29 receipt.
- 30 c. Upon any other political subdivision of the
31 State, any county or city board of education,
32 or other local public district, unit, or body
33 of any kind (i) by personally delivering a
34 copy of the summons and of the complaint to an
35 officer or director thereof, ~~or~~ (ii) by
36 personally delivering a copy of the summons
37 and of the complaint to an agent or attorney-
38 in-fact authorized by appointment or by
39 statute to be served or to accept service in
40 its behalf, ~~or~~ (iii) by mailing a copy of the
41 summons and of the complaint, registered or
42 certified mail, return receipt requested,
43 addressed to the officer, director, agent, or
44 attorney-in-fact as specified in (i) and ~~(ii).~~

- 1 (ii); or by depositing with a private delivery
2 service a copy of the summons and complaint,
3 addressed to the officer, director, agent, or
4 attorney-in-fact as specified in (i) and (ii),
5 delivering to the addressee, and obtaining a
6 delivery receipt.
- 7 d. In any case where none of the officials,
8 officers or directors specified in paragraphs
9 a, b and c can, after due diligence, be found
10 in the State, and that fact appears by
11 affidavit to the satisfaction of the court, or
12 a judge thereof, such court or judge may grant
13 an order that service upon the party sought to
14 be served may be made by personally delivering
15 a copy of the summons and of the complaint to
16 the Attorney General or any deputy or
17 assistant attorney general of the State of
18 ~~North Carolina, or~~ Carolina; mailing a copy of
19 the summons and of the complaint, registered
20 or certified mail, return receipt requested,
21 addressed to the Attorney General or any
22 deputy or assistant attorney general of the
23 State of ~~North Carolina.~~ Carolina; or by
24 depositing with a private delivery service a
25 copy of the summons and complaint, addressed
26 to the Attorney General or any deputy or
27 assistant attorney general of the State of
28 North Carolina, delivering to the addressee,
29 and obtaining a delivery receipt.
- 30 (6) Domestic or Foreign Corporation. -- Upon a domestic
31 or foreign corporation:
- 32 a. By delivering a copy of the summons and of the
33 complaint to an officer, director, or managing
34 agent of the corporation or by leaving copies
35 thereof in the office of such officer,
36 director, or managing agent with the person
37 who is apparently in charge of the office; ~~or~~
- 38 b. By delivering a copy of the summons and of the
39 complaint to an agent authorized by
40 appointment or by law to be served or to
41 accept service ~~or~~ of process or by serving
42 process upon such agent or the party in a
43 manner specified by any ~~statute.~~ statute;

- 1 c. By mailing a copy of the summons and of the
2 complaint, registered or certified mail,
3 return receipt requested, addressed to the
4 officer, director or agent to be served as
5 specified in paragraphs ~~a and b.~~ a. and b.; or
6 d. By depositing with a private delivery service
7 a copy of the summons and complaint, addressed
8 to the officer, director, or agent to be
9 served as specified in paragraphs a. and b.,
10 delivering to the addressee, and obtaining a
11 delivery receipt.
- 12 (7) Partnerships. -- Upon a general or limited
13 partnership:
- 14 a. By delivering a copy of the summons and of the
15 complaint to any general partner, or to any
16 attorney-in-fact or agent authorized by
17 appointment or by law to be served or to
18 accept service of process in its ~~behalf,~~ or
19 behalf; by mailing a copy of the summons and
20 of the complaint, registered or certified
21 mail, return receipt requested, addressed to
22 any general partner, or to any attorney-in-
23 fact or agent authorized by appointment or by
24 law to be served or to accept service of
25 process in its ~~behalf,~~ or behalf; by
26 depositing with a private delivery service a
27 copy of the summons and complaint, addressed
28 to any general partner or to any attorney-in-
29 fact or agent authorized by appointment or by
30 law to be served or to accept service of
31 process in its behalf, delivering to the
32 addressee, and obtaining a delivery receipt;
33 or by leaving copies thereof in the office of
34 such general partner, attorney-in-fact or
35 agent with the person who is apparently in
36 charge of the office.
- 37 b. If relief is sought against a partner
38 specifically, a copy of the summons and of the
39 complaint must be served on such partner as
40 provided in this section (j).
- 41 (8) Other Unincorporated Associations and Their
42 Officers. -- Upon any unincorporated association,
43 organization, or society other than a partnership:

- 1 a. By delivering a copy of the summons and of the
2 complaint to an officer, director, managing
3 agent or member of the governing body of the
4 unincorporated association, organization or
5 society, or by leaving copies thereof in the
6 office of such officer, director, managing
7 agent or member of the governing body with the
8 person who is apparently in charge of the
9 office; ~~or~~
- 10 b. By delivering a copy of the summons and of the
11 complaint to an agent authorized by
12 appointment or by law to be served or to
13 accept service of process or by serving
14 process upon such agent or the party in a
15 manner specified by any ~~statute.~~ statute;
- 16 c. By mailing a copy of the summons and of the
17 complaint, registered or certified mail,
18 return receipt requested, addressed to the
19 officer, director, agent or member of the
20 governing body to be served as specified in
21 paragraphs ~~a and b.~~ a. and b.; or
- 22 d. By depositing with a private delivery service
23 a copy of the summons and complaint, addressed
24 to the officer, director, agent, or member of
25 the governing body to be served as specified
26 in paragraphs a. and b., delivering to the
27 addressee, and obtaining a delivery receipt.

28 (9) Service upon a foreign state or a political
29 subdivision, agency, or instrumentality thereof
30 shall be effected pursuant to 28 U.S.C. § 1608.

31 For purposes of this Rule, 'private delivery service' means a
32 private delivery service that has been certified by the
33 Administrative Office of the Courts for service of process
34 pursuant to this Rule."

35 Section 2.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:
36 "(j1) Service by publication on party that cannot otherwise be
37 served. -- A party that cannot with due diligence be served by
38 ~~personal delivery or delivery,~~ registered or certified ~~mail~~ mail,
39 or private delivery service may be served by publication. Except
40 in actions involving jurisdiction in rem or quasi in rem as
41 provided in section (k), service of process by publication shall
42 consist of publishing a notice of service of process by
43 publication once a week for three successive weeks in a newspaper
44 that is qualified for legal advertising in accordance with G.S.

1 1-597 and G.S. 1-598 and circulated in the area where the party
2 to be served is believed by the serving party to be located, or
3 if there is no reliable information concerning the location of
4 the party then in a newspaper circulated in the county where the
5 action is pending. If the party's post-office address is known or
6 can with reasonable diligence be ascertained, there shall be
7 mailed to the party at or immediately prior to the first
8 publication a copy of the notice of service of process by
9 publication. The mailing may be omitted if the post-office
10 address cannot be ascertained with reasonable diligence. Upon
11 completion of such service there shall be filed with the court an
12 affidavit showing the publication and mailing in accordance with
13 the requirements of G.S. 1-75.10(2), the circumstances warranting
14 the use of service by publication, and information, if any,
15 regarding the location of the party served.

16 The notice of service of process by publication shall (i)
17 designate the court in which the action has been commenced and
18 the title of the action, which title may be indicated
19 sufficiently by the name of the first plaintiff and the first
20 defendant; (ii) be directed to the defendant sought to be served;
21 (iii) state either that a pleading seeking relief against the
22 person to be served has been filed or has been required to be
23 filed therein not later than a date specified in the notice; (iv)
24 state the nature of the relief being sought; (v) require the
25 defendant being so served to make defense to such pleading within
26 40 days after a date stated in the notice, exclusive of such
27 date, which date so stated shall be the date of the first
28 publication of notice, or the date when the complaint is required
29 to be filed, whichever is later, and notify the defendant that
30 upon his failure to do so the party seeking service of process by
31 publication will apply to the court for the relief sought; (vi)
32 in cases of attachment, state the information required by G.S. 1-
33 440.14; (vii) be subscribed by the party seeking service or his
34 attorney and give the post-office address of such party or his
35 attorney; and (viii) be substantially in the following form:

36 NOTICE OF SERVICE OF PROCESS BY PUBLICATION

37 STATE OF NORTH CAROLINA _____ COUNTY

38 In the _____ Court

39 [Title of action or special proceeding] To [Person to be served]:

40 Take notice that a pleading seeking relief against you (has
41 been filed) (is required to be filed not later than _____,
42 19 ____) in the above-entitled (action) (special proceeding). The
43 nature of the relief being sought is as follows:

44 (State nature).

1 You are required to make defense to such pleading not later
2 than (_____, 19 __) and upon your failure to do so the
3 party seeking service against you will apply to the court for the
4 relief sought.

5 This, the _____ day of _____, 19 ____
6 _____ (Attorney) (Party)
7 _____ (Address)".

8 Section 2.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:
9 "(j2) Proof of service. -- Proof of service of process shall
10 be as follows:

- 11 (1) Personal Service. -- Before judgment by default may
12 be had on personal service, proof of service must
13 be provided in accordance with the requirements of
14 G.S. 1-75.10(1).
- 15 (2) Registered or Certified ~~Mail~~ Mail or Private
16 Delivery Service. -- Before judgment by default may
17 be had on service by registered or certified ~~mail~~,
18 mail or by private delivery service with delivery
19 receipt, the serving party shall file an affidavit
20 with the court showing proof of such service in
21 accordance with the requirements of ~~G.S.~~
22 ~~1-75.10(4)~~ G.S. 1-75.10(4) or G.S. 1-75.10(5), as
23 appropriate. This affidavit together with the
24 return or delivery receipt signed by the person who
25 received the mail or delivery if not the addressee
26 raises a presumption that the person who received
27 the mail or delivery and signed the receipt was an
28 agent of the addressee authorized by appointment or
29 by law to be served or to accept service of process
30 or was a person of suitable age and discretion
31 residing in the addressee's dwelling house or usual
32 place of abode. In the event the presumption
33 described in the preceding sentence is rebutted by
34 proof that the person who received the receipt at
35 the addressee's dwelling house or usual place of
36 abode was not a person of suitable age and
37 discretion residing therein, the statute of
38 limitation may not be pleaded as a defense if the
39 action was initially commenced within the period of
40 limitation and service of process is completed
41 within 60 days from the date the service is
42 declared invalid. Service shall be complete on the
43 day the summons and complaint are delivered to the
44 address.

1 (3) Publication. -- Before judgment by default may be
2 had on service by publication, the serving party
3 shall file an affidavit with the court showing the
4 circumstances warranting the use of service by
5 publication, information, if any, regarding the
6 location of the party served which was used in
7 determining the area in which service by
8 publication was printed and proof of service in
9 accordance with G.S. 1-75.10(2)."

10 Section 2.3. G.S. 1-75.10 reads as rewritten:

11 "§ 1-75.10. Proof of service of summons, defendant appearing in
12 action.

13 Where the defendant appears in the action and challenges the
14 service of the summons upon him, proof of the service of process
15 shall be as follows:

16 (1) Personal Service or Substituted Personal Service.

17 --

18 a. If served by the sheriff of the county or the
19 lawful process officer in this State where the
20 defendant was found, by the officer's
21 certificate thereof, showing place, time and
22 manner of service; or

23 b. If served by any other person, his affidavit
24 thereof, showing place, time and manner of
25 service; his qualifications to make service
26 under Rule 4(a) or Rule 4(j3) of the Rules of
27 Civil Procedure; that he knew the person
28 served to be the party mentioned in the
29 summons and delivered to and left with him a
30 copy; and if the defendant was not personally
31 served, he shall state in such affidavit when,
32 where and with whom such copy was left. If
33 such service is made outside this State, the
34 proof thereof may in the alternative be made
35 in accordance with the law of the place where
36 such service is made.

37 (2) Service of Publication. -- In the case of
38 publication, by the affidavit of the publisher or
39 printer, or his foreman or principal clerk,
40 showing the same and specifying the date of the
41 first and last publication, and an affidavit of
42 mailing of a copy of the complaint or notice, as
43 the case may require, made by the person who mailed
44 the same.

- 1 (3) Written Admission of Defendant. -- The written
2 admission of the defendant, whose signature or the
3 subscription of whose name to such admission shall
4 be presumptive evidence of genuineness.
- 5 (4) Service by Registered or Certified Mail. -- In the
6 case of service by registered or certified mail, by
7 affidavit of the serving party averring:
- 8 a. That a copy of the summons and complaint was
9 deposited in the post office for mailing by
10 registered or certified mail, return receipt
11 requested;
- 12 b. That it was in fact received as evidenced by
13 the attached registry receipt or other
14 evidence satisfactory to the court of delivery
15 to the addressee; and
- 16 c. That the genuine receipt or other evidence of
17 delivery is attached.
- 18 (5) Service by Private Delivery Service. -- In the case
19 of service by private delivery service, by
20 affidavit of the serving party averring:
- 21 a. That a copy of the summons and complaint was
22 deposited with a private delivery service
23 certified by the Administrative Office of the
24 Courts, delivery receipt requested;
- 25 b. That it was in fact received as evidenced by
26 the attached delivery receipt or other
27 evidence satisfactory to the court of delivery
28 to the addressee; and
- 29 c. That the genuine receipt or other evidence of
30 delivery is attached."

31
32 **SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))**

33 Section 3. G.S. 1A-1, Rule 5(b) reads as rewritten:

34 "(b) Service -- How made. -- A pleading setting forth a
35 counterclaim or cross claim shall be filed with the court and a
36 copy thereof shall be served on the party against whom it is
37 asserted or on his attorney of record. With respect to all
38 pleadings subsequent to the original complaint and other papers
39 required or permitted to be served, service with due return may
40 be made in the manner provided for service and return of process
41 in Rule 4 and may be made upon either the party or, unless
42 service upon the party himself is ordered by the court, upon his
43 attorney of record. With respect to such other pleadings and
44 papers, service upon the attorney or upon a party may also be

1 made by delivering a copy to him or by mailing it to him at his
2 last known address or, if no address is known, by filing it with
3 the clerk of court. Delivery of a copy within this rule means
4 handing it to the attorney or to the ~~party; or party,~~ leaving it
5 at the attorney's office with a partner or ~~employee,~~ employee, or
6 by sending it to the attorney's office by telefacsimile between
7 9:00 a.m. and 5:00 p.m. Eastern Standard Time on a regular
8 business day. Service by mail shall be complete upon deposit of
9 the pleading or paper enclosed in a post-paid, properly addressed
10 wrapper in a post office or official depository under the
11 exclusive care and custody of the United States Postal Service."

12

13 SERVICE OF BRIEFS AND MEMORANDA (RULE 5(f))

14 Section 4. G.S. 1A-1, Rule 5 is amended by adding the
15 following new subsection:

16 "(f) Service of briefs and memoranda. -- Except by leave of
17 court or consent of the parties, to be considered by the
18 presiding judge, other than a magistrate, a brief or memorandum
19 in support of a motion shall be served by the moving party upon
20 the adverse party no later than the third business day preceding
21 the scheduled hearing date on the motion and a brief or
22 memorandum shall be served by the adverse party upon the moving
23 party prior to the scheduled hearing date on the motion."

24

25 MOTION STATED WITH PARTICULARITY (RULE 7(b))

26 Section 4.1. G.S. 1A-1, Rule 7(b) reads as rewritten:

27 "(b) Motions and other papers. --

28 (1) An application to the court for an order shall be by
29 motion which, unless made during a hearing or trial or
30 at a session at which a cause is on the calendar for
31 that session, shall be made in writing, shall state
32 with reasonable particularity the grounds therefor, and
33 shall set forth the relief or order sought. The
34 requirement of writing is fulfilled if the motion is
35 stated in a written notice of the hearing of the
36 motion.

37 (2) The rules applicable to captions, signing, and other
38 matters of form of pleadings apply to all motions and
39 other papers provided for by these rules.

40 (3) A motion to transfer under G.S. 7A-258 shall comply
41 with the directives therein specified but the relief
42 thereby obtainable may also be sought in a responsive
43 pleading pursuant to Rule 12(b)."

1 ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION
2 (RULE 28(c))

3 Section 5. G.S. 1A-1, Rule 28(c) reads as rewritten:

4 "(c) Disqualification for interest. -- No deposition shall be
5 taken before a person who is a relative or employee or attorney
6 or counsel of any of the parties, or is a relative or employee of
7 such attorney or counsel, or is financially interested in the
8 action ~~unless~~ unless:

9 (1) ~~the~~ The parties agree otherwise by stipulation as
10 provided in ~~Rule 29~~, Rule 29; or

11 (2) The deposition is taken by videotape in compliance
12 with Rule 30(b)(4) and Rule 30(f), and the notice
13 for the taking of the deposition states the name of
14 the person before whom the deposition will be taken
15 and that person's relationship, if any, to a party
16 or a party's attorney."

17

18 DISCOVERY DISPUTES (RULE 37)

19 Section 6. G.S. 1A-1, Rule 37(a) reads as rewritten:

20 "(a) Motion for order compelling discovery. -- A party, upon
21 reasonable notice to other parties and all persons affected
22 thereby, may apply for an order compelling discovery as follows:

23 (1) Appropriate Court. -- An application for an order
24 to a party or a deponent who is not a party may be
25 made to a judge of the court in which the action is
26 pending, or, on matters relating to a deposition
27 where the deposition is being taken in this State,
28 to a judge of the court in the county where the
29 deposition is being taken, as defined by Rule
30 30(h).

31 (2) Motion. -- If a deponent fails to answer a question
32 propounded or submitted under Rules 30 or 31, or a
33 corporation or other entity fails to make a
34 designation under Rule 30(b)(6) or 31(a), or a
35 party fails to answer an interrogatory submitted
36 under Rule 33, or if a party, in response to a
37 request for inspection submitted under Rule 34,
38 fails to respond that inspection will be permitted
39 as requested or fails to permit inspection as
40 requested, the discovering party may move for an
41 order compelling an answer, or a designation, or an
42 order compelling inspection in accordance with the
43 request. The motion must include a certification
44 that the movant has in good faith conferred or

1 attempted to confer with the person or party
2 failing to make the discovery in an effort to
3 secure the information or material without court
4 action. When taking a deposition on oral
5 examination, the proponent of the question shall
6 complete the examination on all other matters
7 before he adjourns the examination in order to
8 apply for an order. If the court denies the motion
9 in whole or in part, it may make such protective
10 order as it would have been empowered to make on a
11 motion made pursuant to Rule 26(c).

12 (3) Evasive or Incomplete Answer. -- For purposes of
13 this subdivision an evasive or incomplete answer is
14 to be treated as a failure to answer.

15 (4) Award of Expenses of Motion. -- If the motion is
16 granted, the court shall, after opportunity for
17 hearing, require the party or deponent whose
18 conduct necessitated the motion or the party
19 advising such conduct or both of them to pay to the
20 moving party the reasonable expenses incurred in
21 obtaining the order, including attorney's fees,
22 unless the court finds that the opposition to the
23 motion was substantially justified or that other
24 circumstances make an award of expenses unjust.

25 If the motion is denied, the court shall,
26 after opportunity for hearing, require the moving
27 party to pay to the party or deponent who opposed
28 the motion the reasonable expenses incurred in
29 opposing the motion, including attorney's fees,
30 unless the court finds that the making of the
31 motion was substantially justified or that other
32 circumstances make an award of expenses unjust.

33 If the motion is granted in part and denied in
34 part, the court may apportion the reasonable
35 expenses incurred in relation to the motion among
36 the parties and persons in a just manner."
37

38 **PRESERVING EXCEPTIONS TO RULINGS (RULE 46)**

39 Section 7. G.S. 1A-1, Rule 46 reads as rewritten:

40 **"Rule 46. Objections and exceptions.**

41 (a) Rulings on admissibility of evidence. --

42 (1) When there is objection to the admission of
43 evidence on the ground that the witness is for a
44 specified reason incompetent or not qualified or

1 disqualified, it shall be deemed that a like
2 objection has been made to any subsequent admission
3 of evidence from the witness in question.
4 Similarly, when there is objection to the admission
5 of evidence involving a specified line of
6 questioning, it shall be deemed that a like
7 objection has been taken to any subsequent
8 admission of evidence involving the same line of
9 questioning.

10 (2) If there is proper objection to the admission of
11 evidence and the objection is overruled, the ruling
12 of the court shall be deemed excepted to by the
13 party making the objection. If an objection to the
14 admission of evidence is sustained or if the court
15 for any reason excludes evidence offered by a
16 party, the ruling of the court shall be deemed
17 excepted to by the party offering the evidence.

18 (3) No objections are necessary with respect to
19 questions propounded to a witness by the court or a
20 juror but it shall be deemed that each such
21 question has been properly objected to and that the
22 objection has been overruled and that an exception
23 has been taken to the ruling of the court by all
24 parties to the action.

25 (b) Rulings Pretrial rulings, interlocutory orders, trial
26 rulings, and other orders not directed to the admissibility of
27 evidence. -- With respect to rulings pretrial rulings,
28 interlocutory orders, trial rulings, and other orders of the
29 court not directed to the admissibility of evidence, formal
30 objections and exceptions are unnecessary. In order to preserve
31 an exception to any such ruling or order or to the court's
32 failure to make any such ruling or order, it shall be sufficient
33 if a party, at the time the ruling or order is made or sought,
34 makes known to the court ~~his~~ the party's objection to the action
35 of the court or makes known the action ~~which he~~ that the party
36 desires the court to take and ~~his ground therefor;~~ the party's
37 grounds for its position. and if If a party has no opportunity to
38 object or except to a ruling or order at the time it is made, the
39 absence of an objection or exception does not thereafter
40 prejudice ~~him~~ that party; however, in order to preserve
41 exceptions to these rulings and orders for appellate review, a
42 party shall promptly present to the court a request, objection,
43 or motion that states the specific grounds for the ruling that

1 the party desires the court to make upon having an opportunity to
2 do so.

3 ~~(c) Instruction. -- If there is error, either in the refusal of~~
4 ~~the judge to grant a prayer for instructions, or in granting a~~
5 ~~prayer, or in his instructions generally, the same is deemed~~
6 ~~excepted to without the filing of any formal objections."~~

7
8 DEFAULT JUDGMENT WITHOUT HEARING (RULE 55(b))

9 Section 8. G.S. 1A-1, Rule 55(b) reads as rewritten:--

10 "(b) Judgment. -- Judgment by default may be entered as
11 follows:

12 (1) By the Clerk. -- When the plaintiff's claim against
13 a defendant is for a sum certain or for a sum which
14 can by computation be made certain, the clerk upon
15 request of the plaintiff and upon affidavit of the
16 amount due shall enter judgment for that amount and
17 costs against the defendant, if ~~he~~ the defendant
18 has been defaulted for failure to appear and if ~~he~~
19 the defendant is not an infant or incompetent
20 person. A verified pleading may be used in lieu of
21 an affidavit when the pleading contains information
22 sufficient to determine or compute the sum certain.

23 In all cases wherein, pursuant to this rule, the
24 clerk enters judgment by default upon a claim for
25 debt which is secured by any pledge, mortgage, deed
26 of trust or other contractual security in respect
27 of which foreclosure may be had, or upon a claim to
28 enforce a lien for unpaid taxes or assessments
29 under G.S. 105-414, the clerk may likewise make all
30 further orders required to consummate foreclosure
31 in accordance with the procedure provided in
32 Article 29A of Chapter 1 of the General Statutes,
33 entitled "Judicial Sales."

34 (2) By the Judge. --

35 a. In all other cases the party entitled to a
36 judgment by default shall apply to the judge
37 therefor; but no judgment by default shall be
38 entered against an infant or incompetent
39 person unless represented in the action by a
40 guardian ad litem or other such representative
41 who has appeared therein. If the party against
42 whom judgment by default is sought has
43 appeared in the action, ~~he~~ that party (or, if
44 appearing by representative, ~~his~~ the

1 representative) shall be served with written
2 notice of the application for judgment at
3 least three days prior to the hearing on such
4 application. If, in order to enable the judge
5 to enter judgment or to carry it into effect,
6 it is necessary to take an account or to
7 determine the amount of damages or to
8 establish the truth of any averment by
9 evidence or to take an investigation of any
10 other matter, the judge may conduct such
11 hearings or order such references as ~~he~~ the
12 judge deems necessary and proper and shall
13 accord a right of trial by jury to the parties
14 when and as required by the Constitution or by
15 any statute of North Carolina. If the
16 plaintiff seeks to establish paternity under
17 Article 3 of Chapter 49 of the General
18 Statutes and the defendant fails to appear,
19 the judge shall enter judgment by default.

20 b. A motion for judgment by default may be
21 decided by the court without a hearing if:

- 22 1. The motion specifically provides that the
23 court may decide the motion for judgment
24 by default without a hearing if the party
25 against whom judgment is sought fails to
26 serve a written response, stating the
27 grounds for opposing the motion, within
28 30 days of service of the motion; and
- 29 2. The party against whom judgment is sought
30 fails to serve the response in accordance
31 with this sub-subdivision."

32
33 **ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)**

34 Section 9. G.S. 1A-1, Rule 65(b) reads as rewritten:

35 "(b) Temporary restraining order; notice; hearing; duration. --
36 A temporary restraining order may be granted without written or
37 oral notice to the adverse party or that party's attorney only if
38 (i) it clearly appears from specific facts shown by affidavit or
39 by verified complaint that immediate and irreparable injury,
40 loss, or damage will result to the applicant before ~~notice can be~~
41 ~~served and a hearing had thereon.~~ the adverse party or that
42 party's attorney can be heard in opposition, and (ii) the
43 applicant's attorney certifies to the court in writing the
44 efforts, if any, that have been made to give the notice and the

1 reasons supporting the claim that notice should not be required.
2 Every temporary restraining order granted without notice shall be
3 endorsed with the date and hour of issuance; shall be filed
4 forthwith in the clerk's office and entered of record; shall
5 define the injury and state why it is irreparable and why the
6 order was granted without notice; and shall expire by its terms
7 within such time after entry, not to exceed 10 days, as the judge
8 fixes, unless within the time so fixed the order, for good cause
9 shown, is extended for a like period or unless the party against
10 whom the order is directed consents that it may be extended for a
11 longer period. The reasons for the extension shall be entered of
12 record. In case a temporary restraining order is granted without
13 notice and a motion for a preliminary injunction is made, it
14 shall be set down for hearing at the earliest possible time and
15 takes precedence over all matters except older matters of the
16 same character; and when the motion comes on for hearing, the
17 party who obtained the temporary restraining order shall proceed
18 with a motion for a preliminary injunction, and, if he does not
19 do so, the judge shall dissolve the temporary restraining order.
20 On two days' notice to the party who obtained the temporary
21 restraining order without notice or on such shorter notice to
22 that party as the judge may prescribe, the adverse party may
23 appear and move its dissolution or modification and in that event
24 the judge shall proceed to hear and determine such motion as
25 expeditiously as the ends of justice require. Damages may be
26 awarded in an order for dissolution as provided in section (e)."

27

28 **EXTEND CIVIL PROCEDURE STUDY COMMISSION AND INCREASE MEMBERSHIP**

29 Section 10. Subsection (c) of Section 4.1 of Part IV of
30 Chapter 17 of the 1996 Second Extra Session Laws reads as
31 rewritten:

32 "(c) The Commission shall report to the General Assembly and
33 the Chief Justice no later than ~~April 1, 1998~~, February 1, 2001.
34 The report shall be in writing and shall set forth the
35 Commission's findings, conclusions, and recommendations,
36 including any proposed legislation or court rules. Upon issuing
37 its final report, the Commission shall terminate."

38 Section 11. Subsection (a) of Section 4.1 of Part IV of
39 Chapter 17 of the 1996 Second Extra Session Laws reads as
40 rewritten:

41 "(a) The Civil Procedure Study Commission is created. The
42 Commission shall consist of ~~18~~ 24 voting members: ~~six~~ eight
43 members to be appointed by the President Pro Tempore of the
44 Senate, ~~six~~ eight members to be appointed by the Speaker of the

1 House of Representatives, and ~~six~~ eight members to be appointed
2 by the Chief Justice of the North Carolina Supreme Court. No
3 more than four members appointed by the President Pro Tempore of
4 the Senate and no more than four members appointed by the Speaker
5 of the House of Representatives may be members of the General
6 Assembly. No more than four of the members appointed by any one
7 of the three appointing authorities may be members of the same
8 political party."

9 Section 12. - Of the funds appropriated to the General
10 Assembly for the 1998-99 fiscal year, the sum of twenty-five
11 thousand dollars (\$25,000) shall be allocated to implement the
12 provisions of this act.

13

14 CLARIFY PUBLIC DUTY DOCTRINE AND THE TORTS CLAIMS ACT

15 Section 13. G.S. 143-291(a) reads as rewritten:

16 "(a) The North Carolina Industrial Commission is hereby
17 constituted a court for the purpose of hearing and passing upon
18 tort claims against the State Board of Education, the Board of
19 Transportation, and all other departments, institutions and
20 agencies of the State. The Industrial Commission shall determine
21 whether or not each individual claim arose as a result of the
22 negligence of any officer, employee, involuntary servant or agent
23 of the State while acting within the scope of his office,
24 employment, service, agency or authority, under circumstances
25 where the State of North Carolina, if a private person, would be
26 liable to the claimant in accordance with the laws of North
27 Carolina. Negligence, within this section, is the failure to use
28 ordinary care in following a duty imposed by law, whether the
29 duty is for the benefit of a specific person or of the general
30 public. If the Commission finds that there was such negligence
31 on the part of an officer, employee, involuntary servant or agent
32 of the State while acting within the scope of his office,
33 employment, service, agency or authority, which was the proximate
34 cause of the injury and that there was no contributory negligence
35 on the part of the claimant or the person in whose behalf the
36 claim is asserted, the Commission shall determine the amount of
37 damages which the claimant is entitled to be paid, including
38 medical and other expenses, and by appropriate order direct the
39 payment of such damages by the department, institution or agency
40 concerned, but in no event shall the amount of damages awarded
41 exceed the sum of one hundred fifty thousand dollars (\$150,000)
42 cumulatively to all claimants on account of injury and damage to
43 any one person. Community colleges and technical colleges shall
44 be deemed State agencies for purposes of this Article. The fact

1 that a claim may be brought under more than one Article under
2 this Chapter shall not increase the foregoing maximum liability
3 of the State."

4

5 **OFFICIAL COMMENTS**

6 Section 14. The Revisor of Statutes shall cause to be
7 printed along with this act the following statement to the
8 official Comment for G.S. 1A-1, Rule 5(b):

9 "To be considered by the presiding judge on a motion calendar
10 for a Monday, for example, a brief or memorandum must be served
11 by the close of business on the preceding Wednesday. The rule
12 does not require the filing of a brief or memorandum; it only
13 governs instances in which a brief or memorandum is filed. The
14 rule would not preclude a party from providing the judge with
15 copies of cases or statutes at the hearing."

16

17 **EFFECTIVE DATE**

18 Section 15. Sections 1 through 9 of this act become
19 effective October 1, 1998 and apply to actions filed on or after
20 that date. Sections 10, 11 and 14 of this act and this section
21 are effective when they become law. Section 12 of this act
22 becomes effective July 1, 1998. Section 13 of this act becomes
23 effective October 1, 1998 and applies to claims pending on or
24 after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 8-5-98

S. B. No. 51277-CSRU-00Z

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Miller
Sen.)

1 moves to amend the bill on page 15, line 38
2 () WHICH CHANGES THE TITLE through page 17, line 6
3 by deleting those lines in their entirety,
4 and by renumbering the remaining
5 sections of the bill

6
7
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11
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19

SIGNED Bred S

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. 51277-CSRU-002

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE

Rep.)
)
Sen.)

Rand

1 moves to amend the bill on page 19, line 28

2 () WHICH CHANGES THE TITLE through page 20, line 12

3 by _____

4 deleting those lines in their entirety &
5 by renumbering the remaining sections
6 of the bill.

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Tony Rand

ADOPTED FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 915

Short Title: Firefighters/No Conflict.

(Public)

Sponsors: Representatives Mercer; Moore, Baddour, and Mosley.

Referred to: Judiciary II.

April 10, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE THAT FIREFIGHTERS WHO ENGAGE IN SOME FIRE
3 INSPECTION ACTIVITIES AS A SECONDARY RESPONSIBILITY ARE NOT
4 COVERED BY THE LAW PROHIBITING CONFLICTS OF INTEREST BY
5 INSPECTION DEPARTMENTS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 160A-415 reads as rewritten:

8 "**§ 160A-415. Conflicts of interest.**

9 No member of an inspection department or other individual contracting with a city
10 to conduct inspections shall be financially interested or employed by a business that is
11 financially interested in the furnishing of labor, material, or appliances for the
12 construction, alteration, or maintenance of any building within the city's jurisdiction
13 or any part or system thereof, or in the making of plans or specifications therefor,
14 unless he is the owner of the building. No member of an inspection department or
15 other individual contracting with a city to conduct inspections shall engage in any
16 work that is inconsistent with his duties or with the interest of the city. The
17 provisions of this section do not apply to firefighters whose primary duties are fire
18 protection and rescue, but who engage in some fire inspection activities as a
19 secondary responsibility of their employment."

20 Section 2. This act is effective when it becomes law.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 5, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 1277 - CIVIL PROCEDURE RULES CHANGES - Senator Dalton - S1277-CSRU-002**

The Proposed Committee Substitute for Senate Bill 1277 incorporates some of the recommendations of the Civil Procedures Study Commission. The bill makes changes to the Rules of Civil Procedure to reduce the time required to dispose of civil actions and to simplify pretrial and trial procedures. The bill extends the life of a civil summons to 60 days, allows for service by private mail service, allows service of pleadings and papers by fax, requires advance service of briefs, allows video deposition by attorney's employee, requires informal mediation of discovery disputes, simplifies preservation of exceptions to rulings, allows default judgment without hearing, requires greater notice of temporary restraining orders (TRO's), and extends the Civil Procedures Study Commission to 2001 and increases the membership from 18 to 24 members, and clarifies the public duty doctrine under the Torts Claims Act.

Section 1 of the bill amends Rule 4(c) to extend the life of a civil summons from 30 to 60 days to allow for additional time for the summons to be served reducing the paperwork and time by the clerk to endorse the summons to extend the time.

Section 2 amends Rule 4(j) to allow as an optional method of service of process, delivery by a private delivery service, like Federal Express or UPS. Service must be evidenced by a delivery receipt and must be made by a company certified by the Administrative Office of the Courts. Sections 2.1, 2.2, and 2.3 make conforming changes to other statutes to reflect this new method of service, including proof of services statutes.

Section 3 amends Rule 5(b) to broaden the methods of service of pleadings and papers to allow service on the opposite attorney by fax during normal business hours.

Section 4 amends Rule 5 by adding a new subsection to require that a brief or memorandum in support of a motion must serve on the adverse party at least two business days prior to the scheduled hearing when the brief or memorandum will be presented and the

adverse party must serve their brief at least the day before the hearing, unless the judge allows otherwise or the parties otherwise consent.

Section 4.1 amends Rule 7(b) to require that motion shall state with reasonable particularity the grounds for the motion.

Section 5 amends Rule 28(c) to permit a videotaped deposition to be taken by an attorney's employee provided notice of the person and the relationship with the attorney is given to the opposite attorney at the time of the notice of the taking of the deposition.

Section 6 amends Rule 37(a) to require that before applying for an order compelling discovery, the moving party must confer with, or make a good faith attempt to confer with, the party failing to make discovery in order to obtain the information sought. The motion seeking an order to compel discovery must include a certification of the efforts or attempted efforts to confer.

Section 7 amends Rule 46(b) and (c) to clarify that no formal objection or exception is required to any court ruling, other than on evidentiary matters, including pretrial rulings, interlocutory orders, trial rulings or other orders. However to preserve the exception for appellate review, a party must present the court with a request, objection or motion that sets out the specific grounds for the ruling the party desires the court to make when the party has an opportunity to do so. Rule 46(c) is repealed to avoid a conflict with the Rules of Appellate Procedure (Rule 10(b)(2)) which requires formal objection to jury instructions to preserve the exceptions on appeal.

Section 8 amends Rule 55(b) to allow judgment by default to be entered by a court without a hearing when the motion for judgment by default specifically notifies the other party that the court will decide the motion without a hearing unless the other party files a written response stating the grounds for opposing the motion within 30 days of service of the motion, and the other party fails to respond within the time.

Section 9 amends Rule 65(b) to only allow a temporary restraining order to be issued without notice to the opposite party when the moving party shows that immediate and irreparable harm will result before the other party can be heard, and the moving party's attorney certifies in writing to the court the efforts, if any, made to give notice to the other party, and the reasons supporting why the notice should not be required. This change will conform to the current Federal Rule 65.

Sections 10, 11, and 12 would extend (retroactively) the life of the Civil Procedure Study Commission to February 1, 2001 (from April 1, 1998), would increase the membership from 18 to 24 members (2 additional members appointed each by the President ProTemp, the Speaker, and the Chief Justice), and allocates \$25,000 of the funds appropriated to the General Assembly to fund the study.

Section 13 would clarify the relationship between the Torts Claims Act and the "public duty doctrine" by stating specifically that the negligence applicable under this law is the

MEMORANDUM
S1277 - PCS Summary
Page 3

failure to use ordinary care in following a duty imposed by law, whether the duty is for the benefit of a specific person or of the general public.

Section 14 requires the Revisor of Statutes to add to the official Comment for Rule 5(b) explaining the meaning of the requirement to serve briefs in advance of a motion hearing.

The changes to the Rules would be effective October 1, 1998 and would apply to actions filed on or after that date. The changes to Commission would be effective when the bill becomes law and the funding would be approved effective July 1, 1998. Changes to the Torts Claim Act would be effective October 1, 1998 and would apply to claims pending on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

H915-CSRU-004

PROPOSED SENATE COMMITTEE SUBSTITUTE

HOUSE BILL 915

THIS IS A DRAFT 4-AUG-98 21:21:45

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Firefighters/No Conflict.

(Public)

Sponsors:

Referred to:

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT FIREFIGHTERS WHO ENGAGE IN SOME FIRE
3 INSPECTION ACTIVITIES AS A SECONDARY RESPONSIBILITY ARE NOT
4 COVERED BY THE LAW PROHIBITING CONFLICTS OF INTEREST BY
5 INSPECTION DEPARTMENTS UNDER SOME CIRCUMSTANCES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 160A-415 reads as rewritten:

8 "§ 160A-415. Conflicts of interest.

9 No member of an inspection department or other individual
10 contracting with a city to conduct inspections shall be
11 financially interested or employed by a business that is
12 financially interested in the furnishing of labor, material, or
13 appliances for the construction, alteration, or maintenance of
14 any building within the city's jurisdiction or any part or system
15 thereof, or in the making of plans or specifications therefor,
16 unless he is the owner of the building. No member of an
17 inspection department or other individual contracting with a city
18 to conduct inspections shall engage in any work that is
19 inconsistent with his that person's duties or with the interest
20 of the city. The provisions of this section do not apply to a
21 firefighter whose primary duties are fire suppression and rescue,

1 but who engages in some fire inspection activities as a secondary
2 responsibility of the firefighter's employment as a firefighter,
3 except no firefighter may inspect any work actually done, or
4 materials or appliances supplied, by the firefighter or the
5 firefighter's business within the preceding six years."

6 Section 2. This act is effective when it becomes law.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
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(919) 733-6660

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Raleigh, NC 27603-5925
(919) 733-4910

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Raleigh, NC 27603-5925
(919) 733-6834

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Research Division
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300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 5, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 915 -
FIREFIGHTERS/NO CONFLICT - Representative Mercer**

The Proposed Senate Committee Substitute for House Bill 915 would permit persons primarily employed as a firefighter to also engage in fire inspection activities without it constituting a conflict of interest under the inspections statute under certain circumstances.

The bill amends G.S. 160A-415 which governs conflicts of interest of inspections departments. Under current law, a member of an inspections department, or an individual contracting with a city to conduct inspections, may not be financially interested in the furnishing of labor, material, or appliances for construction, alteration, or maintenance of any building within the city's jurisdiction, unless he or she owns the building.

This bill would create an exception from this provision for firefighters whose primary duties are fire suppression and rescue, but who engage in some fire inspection activities as a secondary responsibility of employment, provided that the firefighter may not inspect work done by the firefighter, or materials or appliances supplied by the firefighter or the firefighter's company within the previous six years.

The bill becomes effective when it becomes law.

H915-SMRU-002

§160A-411.1. Qualifications of inspectors.

On and after the applicable date set forth in the schedule in G.S. 160A-411, no city shall employ an inspector to enforce the State Building Code as a member of a city or joint inspection department who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position: (i) a probationary certificate, valid for one year only; (ii) a standard certificate; or (iii) a limited certificate which shall be valid only as an authorization for him to continue in the position held on the date specified in G.S. 143-151.13(c) and which shall become invalid if he does not successfully complete in-service training specified by the Qualification Board within the period specified in G.S. 143-151.13(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position. (1977, c. 531, s. 6.)

§160A-412. Duties and responsibilities.

The duties and responsibilities of an inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction State and local laws relating to

- (1) The construction of buildings and other structures;
- (2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;
- (3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition;
- (4) Other matters that may be specified by the city council.

These duties shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The city council shall have the authority to enact reasonable and appropriate provisions governing the enforcement of those laws. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Thursday, August 06, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.	915	Firefighters/No Conflict	
		Draft Number:	PCS 9019
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Senate Judiciary 8/5/98 9:00 AM
Name of Committee _____ Date _____

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

NAME	FIRM OR STATE AGENCY AND ADDRESS
<i>Dick Taylor</i>	<i>NCAAZ</i>
<i>Charles Cromer</i>	<i>NCA TL</i>
<i>Mr Osborne</i>	<i>AOC</i>
<i>Eddie Caldwell</i>	<i>H, H, C, C, P.A.</i>
<i>David Ferrell</i>	<i>"</i>
<i>Jane P. Gray</i>	<i>DOJ</i>
<i>John McMillan</i>	<i>MF&S P.A.</i>

MINUTES
SENATE JUDICIARY COMMITTEE
August 5, 1998

The Senate Judiciary Committee met on Wednesday, August 5, 1998 at 1:00 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order at 1:10 p.m.

The discussion of the Proposed Committee Substitute to Senate Bill 1279 - AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION was continued from the meeting held at 9:00 a.m.

Senator Winner moved to amend the Proposed Committee Substitute on Page 4, Line 18; Page 6, Line 26; Page 20, Line 29; Page 21, Line 38 and Page 22, Line 42. The motion carried by a majority voice vote. (See attached amendment.)

Senator Rand moved to amend the Proposed Committee Substitute on Page 25, Lines 36 and 37. The motion carried by a majority voice vote. (See attached amendment.)

Senator Hartsell moved to give the Proposed Committee Substitute a favorable report as amended. The motion carried by a majority voice vote.

Senator Rand was recognized to explain Senate Bill 1554 - AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.

The following people were recognized to speak on the bill:

Jack Henderson, Sheriff of Yadkin County and President of the N. C. Sheriff's Association

Bob Cansler, Chief of the Concord Police Department and President of the N. C. Association of Chiefs of Police

Jane Gray, Attorney General's office

Hampton Dellinger, Attorney General's office

Senator Gulley moved to give the bill a favorable report. The motion carried by a majority voice vote.

Representative Capps was recognized to explain House Bill 1071 - AN ACT TO REQUIRE TENANTS TO PAY TO THE CLERK OF COURT THE AMOUNT OF RENT IN ARREARS TO STAY THE EXECUTION OF JUDGMENT FOR SUMMARY

EJECTION PENDING APPEAL TO DISTRICT COURT AND TO POST A BOND FOR ANY FURTHER APPEALS.

Senator Soles moved to adopt a Proposed Committee Substitute to House Bill 1071 for discussion. The motion carried by a majority voice vote.

Senator Odom moved to amend the Proposed Committee Substitute on Page 2, Line 42 and Page 2, Lines 14 and 15. The motion carried by a majority voice vote. (See attached amendment.)

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended. The motion carried by a majority voice vote.

There being no further business, the meeting was adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Wednesday, August 5, 1998
Time: 1:00 p.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

HB 1071	Pay Rent to Stay Ejectment	Capps
HB 1094	Repeal/Recodify Railroad Laws	Culpepper
SB 1554	Modify Controlled Sub. Tax	Rand

Sen. Roy Cooper, III, Chairman

Posted: 08/04/98 12:15 PM

AGENDA
SENATE JUDICIARY COMMITTEE
August 5, 1998
1:00 p.m.

HB 1071 Pay Rent to Stay Ejectment Capps

SB 1554 Modify Controlled Subs. Tax Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

S1279-CSSC-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1279
THIS IS A DRAFT 5-AUG-98 01:42:54
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 1998 Technical Corrections . (Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL
3 STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND
4 TO MAKE OTHER TECHNICAL CORRECTIONS AND OTHER CHANGES TO THE
5 GENERAL STATUTES AND SESSION LAWS.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 14-34.6(a)(2) reads as rewritten:
8 "(2) ~~An~~ A medical responder."
9 Section 2. G.S. 14-399(c) reads as rewritten:
10 "(c) Any person who violates this section in an amount not
11 exceeding 15 pounds and not for commercial purposes is guilty of
12 a Class 3 misdemeanor punishable by a fine of not less than one
13 hundred dollars (\$100.00) nor more than five hundred dollars
14 (\$500.00) for the first offense. In addition, the court may
15 require the violator to perform community service of not less
16 than eight hours nor more than 24 hours. The community service
17 required shall be to pick up litter if feasible, and; if not
18 feasible, to perform other labor commensurate with the offense
19 committed. Any second or subsequent offense within three years
20 after the date of a prior offense is punishable by a fine of not
21 less than one hundred dollars (\$100.00) nor more than one

1 thousand dollars (\$1,000). In addition, the court may require the
2 violator to perform community service of not less than 16 hours
3 nor more than 50 hours. The community service required shall be
4 to pick up litter if feasible, and if not feasible, to perform
5 other labor commensurate with the offense committed."

6 Section 3. (a) G.S. 14-408 reads as rewritten:

7 "**§ 14-408. Violation of § 14-406 ~~or 14-407~~ a misdemeanor.**

8 Any person, firm, or corporation violating any of the
9 provisions of G.S. 14-406 ~~or 14-407~~ shall be guilty of a Class 2
10 misdemeanor."

11 (b) This section becomes effective December 1, 1998.
12 Prosecutions for offenses committed before the effective date of
13 this section are not abated or affected by this section and the
14 statutes that would be applicable but for this section remain
15 applicable to those prosecutions.

16 Section 4. (a) G.S. 14-74 reads as rewritten:

17 "**§ 14-74. Larceny by servants and other employees.**

18 If any servant or other employee, to whom any money, goods or
19 other chattels, or any of the articles, securities or choses in
20 action mentioned in ~~the following section~~, G.S. 14-75, by his
21 master shall be delivered safely to be kept to the use of his
22 master, shall withdraw himself from his master and go away with
23 such money, goods or other chattels, or any of the articles,
24 securities or choses in action mentioned as aforesaid, or any
25 part thereof, with intent to steal the same and defraud his
26 master thereof, contrary to the trust and confidence in him
27 reposed by his said master; or if any servant, being in the
28 service of his master, without the assent of his master, shall
29 embezzle such money, goods or other chattels, or any of the
30 articles, securities or choses in action mentioned as aforesaid,
31 or any part thereof, or otherwise convert the same to his own
32 use, with like purpose to steal them, or to defraud his master
33 thereof, the servant so offending shall be guilty of a felony:
34 Provided, that nothing contained in this section shall extend to
35 apprentices or servants within the age of 16 years. If the value
36 of the money, goods, or other chattels, or any of the articles,
37 securities, or choses in action mentioned in G.S. 14-75, is one
38 hundred thousand dollars (\$100,000) or more, the person is guilty
39 of a Class C felony. If the value of the money, goods, or other
40 chattels, or any of the articles, securities, or choses in action
41 mentioned in G.S. 14-75, is less than one hundred thousand
42 dollars (\$100,000), the person is guilty of a Class H felony."

43 (b) G.S. 25-7-502 reads as rewritten:

44 "**§ 25-7-502. Rights acquired by due negotiation.**

1 (1) Subject to ~~the following section~~ G.S. 25-7-503 and to the
2 provisions of G.S. 25-7-205 on fungible goods, a holder to whom a
3 negotiable document of title has been duly negotiated acquires
4 thereby:

- 5 (a) title to the document;
6 (b) title to the goods;
7 (c) all rights accruing under the law of agency or
8 estoppel, including rights to goods delivered to
9 the bailee after the document was issued; and
10 (d) the direct obligation of the issuer to hold or
11 deliver the goods according to the terms of the
12 document free of any defense or claim by him except
13 those arising under the terms of the document or
14 under this article. In the case of a delivery order
15 the bailee's obligation accrues only upon
16 acceptance and the obligation acquired by the
17 holder is that the issuer and any indorser will
18 procure the acceptance of the bailee.

19 (2) Subject to ~~the following section,~~ G.S. 25-7-503, title and
20 rights so acquired are not defeated by any stoppage of the goods
21 represented by the document or by surrender of such goods by the
22 bailee, and are not impaired even though the negotiation or any
23 prior negotiation constituted a breach of duty or even though any
24 person has been deprived of possession of the document by
25 misrepresentation, fraud, accident, mistake, duress, loss, theft
26 or conversion, or even though a previous sale or other transfer
27 of the goods or document has been made to a third person."

28 (c) G.S. 25-7-507 reads as rewritten:
29 "§ 25-7-507. Warranties on negotiation or transfer of receipt or
30 bill.

31 Where a person negotiates or transfers a document of title for
32 value otherwise than as a mere intermediary under ~~the next~~
33 ~~following section,~~ G.S. 25-7-508, then unless otherwise agreed he
34 warrants to his immediate purchaser only in addition to any
35 warranty made in selling the goods

- 36 (a) that the document is genuine; and
37 (b) that he has no knowledge of any fact which would
38 impair its validity or worth; and
39 (c) that his negotiation or transfer is rightful and
40 fully effective with respect to the title to the
41 document and the goods it represents."

42 (d) G.S. 44A-21 reads as rewritten:
43 "§ 44A-21. Pro rata payments.

1 In the event that the funds in the hands of the obligor and the
2 obligor's personal liability, if any, under ~~the previous section~~
3 G.S. 44A-20 are less than the amount of valid lien claims that
4 have been filed with the obligor under this Article the parties
5 entitled to liens shall share the funds on a pro rata basis."

6 Section 5. G.S. 25-8-103(a) reads as rewritten:

7 "(a) A share ~~of~~ or similar equity interest issued by a
8 corporation, business trust, joint stock company, or similar
9 entity is a security."

10 Section 6. G.S. 39-23.3(b) reads as rewritten:

11 "(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5,
12 a person gives a reasonably equivalent value if the person
13 acquires an interest of the debtor in an asset pursuant to a
14 regularly conducted, ~~nonexclusive~~ noncollusive foreclosure sale
15 or execution of a power of sale for the acquisition or
16 disposition of the interest of the debtor upon default under a
17 mortgage, deed of trust, or security agreement."

18 Section 7. Section #. G.S 50-11(e) and (f) read as rewritten:

19

20 " (e) An absolute divorce obtained within this State shall
21 destroy the right of a spouse to ~~an~~ equitable distribution ~~of~~
22 ~~the marital property~~ under G.S. 50-20 unless the right is
23 asserted prior to judgment of absolute divorce; except, the
24 defendant may bring an action or file a motion in the cause for
25 equitable distribution within six months from the date of the
26 judgment in such a case if service of process upon the defendant
27 was by publication pursuant to G.S. 1A-1, Rule 4 and the
28 defendant failed to appear in the action for divorce.

29 (f) An absolute divorce by a court that lacked personal
30 jurisdiction over the absent spouse or lacked jurisdiction to
31 dispose of the property shall not destroy the right of a spouse
32 to ~~an~~ equitable distribution ~~of marital property~~ under G.S. 50-
33 20 if an action or motion in the cause is filed within six months
34 after the judgment of divorce is entered. The validity of such
35 divorce may be attacked in the action for equitable
36 distribution."

37 (b) G.S 50-20 reads as rewritten:

38 "§ 50-20. Distribution by court of marital and divisible
39 property upon divorce.

40 (a) Upon application of a party, the court shall determine
41 what is the marital property and divisible property and shall
42 provide for an equitable distribution of the marital property and
43 divisible property between the parties in accordance with the
44 provisions of this section.

1 (b) For purposes of this section:

2 (1) "Marital property" means all real and personal
3 property acquired by either spouse or both spouses
4 during the course of the marriage and before the
5 date of the separation of the parties, and
6 presently owned, except property determined to be
7 separate property or divisible property in
8 accordance with subdivision (2) or (4) of this
9 subsection. Marital property includes all vested
10 and nonvested pension, retirement, and other
11 deferred compensation rights, and vested and
12 nonvested military pensions eligible under the
13 federal Uniformed Services Former Spouses'
14 Protection Act. It is presumed that all property
15 acquired after the date of marriage and before the
16 date of separation is marital property except
17 property which is separate property under
18 subdivision (2) of this subsection. This
19 presumption may be rebutted by the greater weight
20 of the evidence.

21 (2) "Separate property" means all real and personal
22 property acquired by a spouse before marriage or
23 acquired by a spouse by bequest, devise, descent,
24 or gift during the course of the marriage. However,
25 property acquired by gift from the other spouse
26 during the course of the marriage shall be
27 considered separate property only if such an
28 intention is stated in the conveyance. Property
29 acquired in exchange for separate property shall
30 remain separate property regardless of whether the
31 title is in the name of the husband or wife or both
32 and shall not be considered to be marital property
33 unless a contrary intention is expressly stated in
34 the conveyance. The increase in value of separate
35 property and the income derived from separate
36 property shall be considered separate property. All
37 professional licenses and business licenses which
38 would terminate on transfer shall be considered
39 separate property.

40 (3) "Distributive award" means payments that are
41 payable either in a lump sum or over a period of
42 time in fixed amounts, but shall not include
43 alimony payments or other similar payments for
44 support and maintenance which are treated as

1 ordinary income to the recipient under the Internal
2 Revenue Code.

3 (4) "Divisible property" means all real and personal
4 property as set forth below:

5 a. All appreciation and diminution in value of
6 marital property and divisible property of the
7 parties occurring after the date of separation
8 and prior to the date of distribution, except
9 that appreciation or diminution in value which
10 is the result of postseparation actions or
11 activities of a spouse shall not be treated as
12 divisible property.

13 b. All property, property rights, or any portion
14 thereof received after the date of separation
15 but before the date of distribution that was
16 acquired as a result of the efforts of either
17 spouse during the marriage and before the date
18 of separation, including, but not limited to,
19 commissions, bonuses, and contractual rights.

20 c. Passive income from marital property received
21 after the date of separation, including, but
22 not limited to, interest and dividends.

23 d. Increases in marital debt and financing
24 charges and interest related to marital debt.

25 (c) There shall be an equal division by using net value of
26 marital property and ~~net~~ net value of divisible property unless
27 the court determines that an equal division is not equitable. If
28 the court determines that an equal division is not equitable, the
29 court shall divide the marital property and divisible property
30 equitably. Factors the court shall consider under this subsection
31 are as follows:

32 (1) The income, property, and liabilities of each party
33 at the time the division of property is to become
34 effective;

35 (2) Any obligation for support arising out of a prior
36 marriage;

37 (3) The duration of the marriage and the age and
38 physical and mental health of both parties;

39 (4) The need of a parent with custody of a child or
40 children of the marriage to occupy or own the
41 marital residence and to use or own its household
42 effects;

- 1 (5) The expectation of pension, retirement, or other
2 deferred compensation rights that are not marital
3 property;
- 4 (6) Any equitable claim to, interest in, or direct or
5 indirect contribution made to the acquisition of
6 such marital property by the party not having
7 title, including joint efforts or expenditures and
8 contributions and services, or lack thereof, as a
9 spouse, parent, wage earner or homemaker;
- 10 (7) Any direct or indirect contribution made by one
11 spouse to help educate or develop the career
12 potential of the other spouse;
- 13 (8) Any direct contribution to an increase in value of
14 separate property which occurs during the course of
15 the marriage;
- 16 (9) The liquid or nonliquid character of all marital
17 ~~property;~~ property and divisible property;
- 18 (10) The difficulty of evaluating any component asset or
19 any interest in a business, corporation or
20 profession, and the economic desirability of
21 retaining such asset or interest, intact and free
22 from any claim or interference by the other party;
- 23 (11) The tax consequences to each party;
- 24 (11a) Acts of either party to maintain, preserve,
25 develop, or expand; or to waste, neglect,
26 devalue or convert ~~such the marital property,~~
27 property or divisible property, or both,
28 during the period after separation of the
29 parties and before the time of distribution;
30 and
- 31 (12) Any other factor which the court finds to be just
32 and proper.
- 33 (c1) Notwithstanding any other provision of law, a second or
34 subsequent spouse acquires no interest in the marital property
35 and divisible property of his or her spouse from a former
36 marriage until a final determination of equitable distribution is
37 made in the marital property and divisible property of the
38 spouse's former marriage.
- 39 (d) Before, during or after marriage the parties may by
40 written agreement, duly executed and acknowledged in accordance
41 with the provisions of G.S. 52-10 and 52-10.1, or by a written
42 agreement valid in the jurisdiction where executed, provide for
43 distribution of the marital property or divisible property, or

1 both, in a manner deemed by the parties to be equitable and the
2 agreement shall be binding on the parties.

3 (e) Subject to the presumption of subsection (c) of this
4 section that an equal division is equitable, it shall be presumed
5 in every action that an in-kind distribution of marital or
6 divisible property is equitable. This presumption may be rebutted
7 by the greater weight of the evidence, or by evidence that the
8 property is a closely held business entity or is otherwise not
9 susceptible of division in-kind. In any action in which the
10 presumption is rebutted, the court in lieu of in-kind
11 distribution shall provide for a distributive award in order to
12 achieve equity between the parties. The court may provide for a
13 distributive award to facilitate, effectuate or supplement a
14 distribution of marital or divisible property. The court may
15 provide that any distributive award payable over a period of time
16 be secured by a lien on specific property.

17 (f) The court shall provide for an equitable distribution
18 without regard to alimony for either party or support of the
19 children of both parties. After the determination of an equitable
20 distribution, the court, upon request of either party, shall
21 consider whether an order for alimony or child support should be
22 modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

23 (g) If the court orders the transfer of real or personal
24 property or an interest therein, the court may also enter an
25 order which shall transfer title, as provided in G.S. 1A-1, Rule
26 70 and G.S. 1-228.

27 (h) If either party claims that any real property is marital
28 ~~property~~, property or divisible property, that party may cause a
29 notice of lis pendens to be recorded pursuant to Article 11 of
30 Chapter 1 of the General Statutes. Any person whose conveyance or
31 encumbrance is recorded or whose interest is obtained by descent,
32 prior to the filing of the lis pendens, shall take the real
33 property free of any claim resulting from the equitable
34 distribution proceeding. The court may cancel the notice of lis
35 pendens upon substitution of a bond with surety in an amount
36 determined by the court to be sufficient provided the court finds
37 that the claim of the spouse against property subject to the
38 notice of lis pendens can be satisfied by money damages.

39 (i) Upon filing an action or motion in the cause requesting an
40 equitable distribution or alleging that an equitable distribution
41 will be requested when it is timely to do so, a party may seek
42 injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1,
43 Article 37, to prevent the disappearance, waste or conversion of
44 property alleged to be marital ~~property~~ property, divisible

1 property or separate property of the party seeking relief. The
2 court, in lieu of granting an injunction, may require a bond or
3 other assurance of sufficient amount to protect the interest of
4 the other spouse in the ~~marital or separate~~ property. Upon
5 application by the owner of separate property which was removed
6 from the marital home or possession of its owner by the other
7 spouse, the court may enter an order for reasonable counsel fees
8 and costs of court incurred to regain its possession, but such
9 fees shall not exceed the fair market value of the separate
10 property at the time it was removed.

11 (il) Unless good cause is shown that there should not be an
12 interim distribution, the court may, at any time after an action
13 for equitable distribution has been filed and prior to the final
14 judgment of equitable distribution, enter orders declaring what
15 is separate property and may also enter orders dividing part of
16 the marital property, divisible property or debt, or marital debt
17 between the parties. The partial distribution may provide for a
18 distributive award and may also provide for a distribution of
19 marital property, marital debt, divisible property, or divisible
20 debt. Any such orders entered shall be taken into consideration
21 at trial and proper credit given.

22 Hearings held pursuant to this subsection may be held at
23 sessions arranged by the chief district court judge pursuant to
24 G.S. 7A-146 and, if held at such sessions, shall not be subject
25 to the reporting requirements of G.S. 7A-198.

26 (j) In any order for the distribution of property made
27 pursuant to this section, the court shall make written findings
28 of fact that support the determination that the marital property
29 and divisible property has been equitably divided.

30 (k) The rights of the parties to an equitable distribution of
31 marital property and divisible property are a species of common
32 ownership, the rights of the respective parties vesting at the
33 time of the parties' separation."
34
35

36 Section 8. G.S. 62-268 reads as rewritten:

37 "§ 62-268. Security for protection of public; liability
38 insurance.

39 No certificate or broker's license shall be issued or remain in
40 force until the applicant shall have procured and filed with the
41 Division of Motor Vehicles such security bond, insurance or self-
42 insurance for the protection of the public as the Commission
43 shall by regulation require. The Commission shall require that
44 every motor carrier for which a certificate or license is

1 required by the ~~provision~~ provisions of this Chapter, shall
2 maintain liability insurance or satisfactory surety of at least
3 fifty thousand dollars (\$50,000) because of bodily injury to or
4 death of one person in any one accident and, subject to said
5 limit for one person, one hundred thousand dollars (\$100,000)
6 because of bodily injury to or death of two or more persons in
7 any one accident, and fifty thousand dollars (\$50,000) because of
8 injury to or destruction of property of others in any one
9 accident; and the Commission may require any greater amount of
10 insurance as may be necessary for the protection of the public.
11 Notwithstanding any rule or regulation to the contrary, the
12 Commission shall not require that any insurance procured and
13 filed be provided in any single policy of insurance or through a
14 single insurer, if the insurers involved are otherwise qualified.
15 A motor carrier may satisfy the requirements of the Commission by
16 procuring insurance with coverage and limits of liability
17 required by the Commission in one or more policies of insurance
18 issued by one or more insurers.

19 Notwithstanding any other provisions of this section or
20 Chapter, bus companies shall file with the Commission proof of
21 financial responsibility in the form of bonds, policies of
22 insurance, or shall qualify as a self insurer, with minimum
23 levels of financial responsibility as prescribed for motor
24 carriers of passengers pursuant to the provisions of 49 U.S.C. §
25 ~~10927(a)(1)~~ 31138. Provided, further, that no bus company
26 operating solely within the State of North Carolina and which is
27 exempt from regulation under the provisions of G.S. 62-260(a)(7)
28 shall be required to file with the Commission proof of the
29 financial responsibility in excess of one million five hundred
30 thousand dollars (\$1,500,000)."

31 Section 9. G.S. 78C-16(b) reads as rewritten:

32 "(b) It is unlawful for any person required to be registered
33 as an investment adviser under this Chapter to employ an
34 investment adviser representative unless the investment adviser
35 representative is registered under this Chapter. The registration
36 of an investment adviser representative is not effective during
37 any period when the investment adviser representative is not
38 employed by (i) an investment adviser registered under this
39 Chapter; or (ii) an investment adviser covered under federal law
40 who has made a notice filing pursuant to the provisions of G.S.
41 78C-17(a1). When an investment adviser representative begins or
42 terminates employment or association with an investment adviser
43 who is registered under this Chapter, the investment adviser
44 shall notify promptly the Administrator. When an investment

1 adviser representative begins or terminates employment or
2 association with an investment adviser covered under federal law,
3 the investment adviser representative shall, and the investment
4 adviser may, notify promptly the Administrator. ~~No investment~~
5 ~~adviser representative may be registered with more than one~~
6 ~~investment adviser unless each of the investment advisers which~~
7 ~~employs or associates the investment adviser representative is~~
8 ~~under common ownership or control.~~ No investment adviser
9 representative may be registered with more than one investment
10 adviser or investment adviser covered under federal law unless
11 each of the investment advisers which employs or associates the
12 investment adviser representative is under common ownership or
13 control."

14 Section 10. G.S. 90-113.40(a)(8) reads as rewritten:

15 "(8)The applicant for substance abuse counselor has
16 completed either a total of 6,000 hours of supervised experience
17 in the field, whether paid or volunteer, or, if a graduate of a
18 Board-approved master's degree program, a total of 3,000 hours of
19 supervised experience in the field, whether paid or volunteer.The
20 applicant for substance abuse prevention consultant has completed
21 a total of 10,000 hours supervised experience in the field,
22 whether paid or volunteer, or 4,000 hours if the applicant has at
23 least a bachelors degree in a human services field."

24 Section 11. G.S. 110-91(10) read as rewritten:

25 "(10) Each operator or staff member shall attend to any child
26 in a nurturing and appropriate manner, and in keeping with the
27 child's developmental needs.

28 Each ~~child~~ child care facility shall have a written policy
29 on discipline, describing the methods and practices used to
30 discipline children enrolled in that facility. This written
31 policy shall be discussed with, and a copy given to, each child's
32 parent prior to the first time the child attends the facility.
33 Subsequently, any change in discipline methods or practices shall
34 be communicated in writing to the parents prior to the effective
35 date of the change.

36 The use of corporal punishment as a form of discipline is
37 prohibited in ~~child~~ child care facilities and may not be used by
38 any operator or staff member of any child care facility, except
39 that corporal punishment may be used in ~~religious sponsored child~~
40 religious sponsored child care facilities as defined in G.S. 110-
41 106, only if (i) the ~~religious sponsored child~~ religious
42 sponsored child care facility files with the Department a notice
43 stating that corporal punishment is part of the religious
44 training of its program, and (ii) the ~~religious sponsored child~~

1 religious sponsored child care facility clearly states in its
2 written policy of discipline that corporal punishment is part of
3 the religious training of its program. The written policy on
4 discipline of ~~nonreligious sponsored child~~ nonreligious sponsored
5 child care facilities shall clearly state the prohibition on
6 corporal punishment."

7 Section 12. G.S. 115C-404(a) reads as rewritten:

8 "(a) Written notifications received in accordance with ~~G.S.~~
9 ~~7A-675.1~~ G.S. 7A-675.2 are confidential records, are not public
10 records as defined under G.S.132-1, and shall not be made part of
11 the student's official record under G.S. 115C-402. Immediately
12 upon receipt, the principal shall maintain these documents in a
13 safe, locked record storage that is separate from the student's
14 other school records. The principal shall maintain these
15 documents until the principal receives notification that the
16 judge dismissed the petition under G.S. 7A-637, the judge
17 transferred jurisdiction over the student to superior court under
18 G.S. 7A-608, or the judge granted the student's petition for
19 expunction of the records. At that time, the principal shall
20 shred, burn, or otherwise destroy the documents to protect the
21 confidentiality of this information. In no case shall the
22 principal make a copy of these documents."

23

24 Section 13. G.S. 130A-233 reads as rewritten:

25 "§ 130A-233. Definitions.

26 The following definitions apply to this Part:

- 27 (1) Coastal fishing ~~waters, as defined~~ waters. --
28 Defined in G.S. 113-129(4).
29 (2) Inland fishing ~~waters, as defined~~ waters. --
30 Defined in G.S. 113-129(9)."

31 Section 14. (a) G.S. 139-3.1 is repealed.

32 (b) The repeal of this section shall not be construed
33 to affect any language currently in the General Statutes.

34 Section 15. G.S. 143-53(a)(2) reads as rewritten:

35 "(2) Prescribing the routine, including consistent
36 contract language, for securing bids on items that
37 do not ~~not~~ exceed the bid value benchmark
38 established under the provisions of G.S. 143-53.1
39 or G.S. 116-31.10.

40 The purchasing delegation for securing ~~offers,~~
41 offers (excluding the special responsibility
42 constituent institutions of The University of North
43 Carolina), for each State department, institution,
44 agency, community college, and public school

1 administrative unit shall be determined by the
2 Director of the Division of Purchase and Contract.
3 For the State agencies this shall be done following
4 the Director's consultation with the State Budget
5 Officer and the State Auditor. The Director for the
6 Division of Purchase and Contract may set or lower
7 the delegation, or raise the delegation upon
8 written request by the agency, after consideration
9 of their overall capabilities, including staff
10 resources, purchasing compliance reviews, and audit
11 reports of the individual agency. The routine
12 prescribed by the Secretary shall include contract
13 award protest procedures and consistent
14 requirements for advertising of solicitations for
15 securing offers issued by State departments,
16 institutions, universities (including the special
17 responsibility constituent institutions of The
18 University of North Carolina), agencies, community
19 colleges, and the public school administrative
20 units."

21 Section 16. G.S. 143-129(f) reads as rewritten:

22 " (f) The provisions of this Article shall not apply to
23 purchases of apparatus, supplies, materials, or equipment when
24 performance or price competition for a product are not available;
25 when a needed product is available from only one source of
26 supply; or when standardization or compatibility is the
27 overriding consideration. Notwithstanding any other provision of
28 this section, the governing board of a municipality, county, or
29 other subdivision of the State shall approve ~~purchases made under~~
30 ~~this exception~~ the purchases listed in the preceding sentence
31 prior to the award of the contract. In the case of purchases by
32 hospitals, in addition to the other exceptions in this
33 subsection, the provisions of this Article shall not apply when a
34 particular medical item or prosthetic appliance is needed; when a
35 particular product is ordered by an attending physician for his
36 patients; when additional products are needed to complete an
37 ongoing job or task; when products are purchased for "over-the-
38 counter" resale; when a particular product is needed or desired
39 for experimental, developmental, or research work; or when
40 equipment is already installed, connected, and in service under a
41 lease or other agreement and the governing body of the hospital
42 determines that the equipment should be purchased. The governing
43 body of a hospital, municipality, county or other political
44 subdivision of the State shall keep a record of all purchases

1 made pursuant to this ~~exception~~ subsection. These records are
2 subject to public inspection."

3 Section 17. G.S. 143B-283(a)(8) reads as rewritten:

4 "(8) One who shall, at the time of appointment, be
5 actively employed by, or recently retired from, an
6 industrial manufacturing facility and knowledgeable
7 in ~~in~~ the field of industrial air and water
8 pollution control;"

9 Section 18. G.S. 143B-289.52(e) reads as rewritten:

10 "(e) The Commission may adopt rules to implement or comply
11 with a fisheries management plan adopted by the Atlantic States
12 Marine Fisheries Commission or an interstate fisheries management
13 council. Notwithstanding G.S. 150B-21.1(a), the Commission may
14 adopt temporary rules under this subsection at any time within
15 six months of the adoption of a fisheries management plan by the
16 Atlantic States Marine Fisheries ~~Council~~ Commission or an
17 interstate fisheries management council."

18 Section 19. G.S. 143B-433 reads as rewritten:

19 "§ 143B-433. Department of Commerce -- organization.

20 The Department of Commerce shall be organized to include:

21 ~~(a)~~ (1) The following agencies:

- 22 ~~(1)~~ a. The North Carolina Alcoholic Beverage Control
23 Commission,
24 ~~(2)~~ b. The North Carolina Utilities ~~Commission,~~
25 Commission.
26 ~~(3)~~ c. The Employment Security ~~Commission,~~
27 Commission.
28 ~~(4)~~ d. The North Carolina Industrial ~~Commission,~~
29 Commission.
30 ~~(5)~~ e. State Banking ~~Commission,~~ Commission.
31 ~~(6)~~ f. Savings and Loan Association ~~Division,~~
32 Division.
33 ~~(7)~~ g. The State Savings Institutions ~~Commission,~~
34 Commission.
35 ~~(8)~~ h. Credit Union ~~Commission,~~ Commission.
36 ~~(9)~~ i. The North Carolina Milk ~~Commission,~~
37 Commission.
38 ~~(10)~~ j. The North Carolina Mutual Burial Association
39 ~~Commission,~~ Commission.
40 ~~(11)~~ k. North Carolina Cemetery ~~Commission,~~
41 Commission.
42 ~~(12)~~ l. The North Carolina Rural Electrification
43 ~~Authority,~~ Authority.

1 except for the purpose of winding up its affairs and executing a
2 deed to the regional housing authority as hereinafter provided:
3 Provided, that the board of county commissioners shall not adopt
4 a resolution as aforesaid if there is a county housing authority
5 created for such county which has any bonds or notes outstanding
6 unless first, all holders of such bonds and notes consent in
7 writing to the substitution of such regional housing authority in
8 lieu of such county housing authority on all such bonds and
9 notes; and second, the commissioners of such county housing
10 authority adopt a resolution consenting to the transfer of all
11 the rights, contracts, obligations, and property, real and
12 personal, of such county housing authority to such regional
13 housing authority as hereinafter provided: Provided, further,
14 that when the above conditions are complied with and such
15 regional housing authority is created and authorized to exercise
16 its powers and other functions, all rights, contracts,
17 agreements, obligations, and property, real and personal, of such
18 county housing authority shall be in the name of and vest in such
19 regional housing authority, and all obligations of such county
20 housing authority shall be the obligations of such regional
21 housing authority and all rights and remedies of any person
22 against such county housing authority may be asserted, enforced,
23 and prosecuted against such regional housing authority to the
24 same extent as they might have been asserted, enforced, and
25 prosecuted against such county housing authority. When any real
26 property of a county housing authority vests in a regional
27 housing authority as provided above, the county housing authority
28 shall execute a deed of such property to the regional housing
29 authority which thereupon shall file such deed in the office
30 provided for the filing of deeds: Provided, that nothing
31 contained in this sentence shall affect the vesting of property
32 in the regional housing authority as provided above.

33 The board of county commissioners of each of two or more said
34 contiguous counties shall by resolution declare that there is a
35 need for one regional housing authority to be created for all of
36 such counties to exercise powers and other functions herein
37 prescribed in such counties, if such board of county
38 commissioners finds (and only if it finds)

39 (1) Insanitary or unsafe dwelling accommodations exist
40 in the area of its respective county and/or there
41 is a lack of safe or sanitary dwelling
42 accommodations in the county available for all the
43 inhabitants thereof and

1 (2) That a regional housing authority for the proposed
2 region would be a more efficient or economical
3 administrative unit than a housing authority for an
4 area having a smaller population to carry out the
5 purposes of the housing authorities law and any
6 amendments thereto, in such county.

7 In determining whether dwelling accommodations are unsafe or
8 insanitary, the board of county commissioners shall take into
9 consideration the following: the physical condition and age of
10 the buildings; the degree of overcrowding; the percentage of land
11 coverage; the light and air available to the inhabitants of such
12 dwelling accommodations; the size and arrangement of the rooms;
13 the sanitary facilities; and the extent to which conditions exist
14 in such buildings which endanger life or property by fire or
15 other causes.

16 If it shall determine that both (1) and (2) of the above
17 enumerated conditions exist, the board of county commissioners
18 shall adopt a resolution so finding (which need not go into any
19 detail other than the mere finding). After the appointment, as
20 hereinafter provided, of the commissioners to act as the regional
21 housing authority, said authority shall be a public body and a
22 body corporate and politic upon the completion of the taking of
23 the following proceedings:

24 The commissioners shall present to the Secretary of State an
25 application signed by them, which shall set forth (without any
26 detail other than the mere recital)

27 (1) That the boards of county commissioners made the
28 aforesaid determination and that they have been
29 appointed as commissioners;

30 (2) The name, and official residence of each of the
31 commissioners, together with a certified copy of
32 the appointment evidencing their right to office,
33 the date and place of induction into and taking
34 oath of office, and that they desire the housing
35 authority to become a public body and a body
36 corporate and politic under this Article;

37 (3) The term of office of each of the commissioners;

38 (4) The name which is proposed for the corporation; and

39 (5) The location of the principal office of the
40 proposed corporation.

41 The application shall be subscribed and sworn to by each of said
42 commissioners before an officer authorized by the laws of the
43 State to take and certify oaths, who shall certify upon the
44 application that he personally knows the commissioners and knows

1 them to be the officers as asserted in the application, and that
2 each subscribed and swore thereto in the officer's presence. The
3 Secretary of State shall examine the application and if he finds
4 that the name proposed for the corporation is not identical with
5 that of a person or of any other corporation of this State or so
6 nearly similar as to lead to confusion and uncertainty he shall
7 receive and file it and shall record it in an appropriate book of
8 record in his office.

9 When the application has been made, filed and recorded, as
10 herein provided, the authority shall constitute a public body and
11 a body corporate and politic under the name proposed in the
12 application; the Secretary of State shall make and issue to the
13 said commissioners, a certificate of incorporation pursuant to
14 this Article, under the seal of the State, and shall record the
15 same with the application.

16 In any suit, action or proceeding involving the validity or
17 enforcement of, or relating to any contract of the regional
18 housing authority, the regional housing authority shall be
19 conclusively deemed to have been established in accordance with
20 the provisions of this Article upon proof of the issuance of the
21 aforesaid certificate by the Secretary of State. A copy of such
22 certificate, duly certified by the Secretary of State, shall be
23 admissible in evidence in any such suit, action or proceeding,
24 and shall be conclusive proof of the filing and contents
25 thereof."

26 Section 21. Effective July 1, 1997, subsection (d) of
27 Section 18.22 of S.L. 1997-443 reads as rewritten:

28 "~~(d)~~ This act section applies only to Columbus, Durham,
29 and Rockingham Counties."

30 Section 22. Effective July 1, 1997, subsection (e) of
31 Section 18.22 of S.L. 1997-443 reads as rewritten:

32 "(e) This act section becomes effective October 1,
33 1997, and expires June 30, 1998."

34 Section 23. The prefatory language of Section 6 of S.L.
35 1997-452 reads as rewritten:

36 "Section 6. Section 115.6(b) of the Charter of the City
37 of Durham, being Chapter 671 of the ~~1995~~ 1975 Session Laws, as
38 added by Chapter 476 of the 1989 Session Laws and rewritten by
39 Chapter 992 of the 1991 Session Laws, reads as rewritten:"

40 "Section 24. (a) Subsection (b) of G.S. 31B-1 reads as
41 rewritten:

42 ~~'(b) In no event shall the persons who succeed to the renounced~~
43 ~~interest receive from the renouncement a greater share than the~~
44 ~~renouncer would have received. This Chapter shall apply to all~~

1 renunciations of present and future interests, whether qualified
2 or non-qualified for federal and state inheritance, estate and
3 gift tax purposes, unless expressly provided otherwise in the
4 instrument creating the interest.'

5 (b) 31B-2(a) reads as rewritten:

6 '(a) To be a qualified disclaimer for federal and state
7 inheritance, estate and gift tax purposes, A an instrument
8 renouncing a present interest shall be filed within the time
9 period required under the applicable federal statute for a
10 renunciation to be given effect as a disclaimer for federal
11 estate tax purposes. If there is no such federal statute the
12 instrument shall be filed not later than nine months after the
13 death of the decedent or donee of the power, date the transfer of
14 the renounced interest to the renouncer was complete for the
15 purpose of such taxes.'

16 (c) G.S. 31B-3(a) reads as rewritten:

17 '(a) Unless the decedent or donee of the a power of
18 appointment, or creator of an interest under an inter vivos
19 instrument has otherwise provided in the instrument creating the
20 interest, the property or interest renounced devolves as follows:

21 (1) If the renunciation is filed within the time period
22 described in Section 31B-2(a), the property or
23 interest renounced devolves as if the renouncer had
24 predeceased the decedent or, if the renouncer is
25 designated to take under a power of appointment
26 exercised by a testamentary instrument, as if the
27 renouncer had predeceased the donee of the power
28 date the transfer of the renounced interest to the
29 renouncer was complete for the purpose of such
30 taxes, or, in the case of the renunciation of a
31 fiduciary right, power, privilege, or immunity, the
32 property or interest subject to the power devolves
33 as if the fiduciary right, power, privilege, or
34 immunity never existed. A future interest that
35 takes effect in possession or enjoyment after the
36 termination of the estate or interest renounced
37 takes effect as if the renouncer had predeceased
38 the decedent or the donee of the power. A Any such
39 renunciation relates back for all purposes to the
40 date of the death of the decedent or the donee of
41 the power, the date the transfer of the renounced
42 interest to the renouncer was complete for the
43 purpose of such taxes.

1 (2) If the renunciation is not filed within the time
2 period described in Section 31B-2(a), the property
3 or interest devolves as if the renouncer had died
4 on the date the renunciation is filed, or, in the
5 case of the renunciation of a fiduciary right,
6 power, privilege, or immunity, the property or
7 interest subject to the power devolves as if the
8 fiduciary right, power, privilege, or immunity
9 ceased to exist as of the date the renunciation is
10 filed.

11 3) Any future interest that takes effect in possession
12 or enjoyment after the terminator of the estate or
13 interest renounced takes effect as if the renouncer
14 had predeceased the decedent, or the donee of the
15 power, or creator died on the date determined under
16 paragraph (1) or (2) above, and upon the filing of
17 the renunciation the persons in being as of the
18 time the renouncer is deemed to have died will
19 immediately become entitled to possession or
20 enjoyment of any such future interest.'

21 (d) Subsection (3) of G.S. 31B-4(a) is repealed.

22 (e) G.S. 31B-4 is amended by adding the following new
23 subsection to read:

24 '(e) The right to renounce property or an interest in property
25 pursuant to this Chapter is not barred by an acceptance of the
26 property, interest, or benefit thereunder, provided, however, an
27 acceptance of the property, interest, or benefit thereunder may
28 preclude such renunciation from being a qualified renunciation
29 for federal and state inheritance, estate and gift tax purposes.'

30 (f) This section becomes effective when it becomes law.
31 This section shall apply to all renunciations executed on or
32 after the effective date of this act, whether qualified or non-
33 qualified for federal and state inheritance, estate and gift tax
34 purposes. This section shall not apply to any renunciation
35 executed before the effective date of this section whether
36 qualified or non-qualified for federal and state inheritance,
37 estate and gift tax purposes, of an interest in a testamentary or
38 inter vivos trust, unless the trustee within six months after the
39 effective date of this section executes and records with the
40 Clerk of Court of the county in which probate proceedings have
41 been commenced, if any, or the county in which the property is
42 located, an instrument evidencing the acceleration of the
43 possession and enjoyment of the renounced interest to persons in
44 esse at the time of the filing of the renunciation. This section

1 shall not apply to remove the rights of a current beneficiary who
2 has received an interest in a trust between the date of the
3 filing of a renunciation and the date of the filing by a Trustee
4 pursuant to the preceding sentence."

5 Section 25. G.S. 75E-3 reads as rewritten:

6 "§ 75E-3. Investigative and regulatory powers of the Attorney
7 General.

8 The Attorney General may conduct such investigations as the
9 Attorney General deems necessary to determine compliance by all
10 persons or entities with the provisions of Articles 9 and 9A of
11 Chapter 55 of the General ~~Statutes~~ Statutes; and the Attorney
12 General may exempt from the provisions of Article 9 of Chapter 55
13 of the General Statutes any business combination that is solely
14 an internal corporate restructuring which does not affect any
15 material change in the ultimate ownership of the corporation and
16 does not affect the ongoing applicability of that Article to the
17 corporation or any other entity. In performing any such
18 investigations, the Attorney General shall have all the powers
19 given him by G.S. 75-10. The provisions of G.S. 75-11 and G.S.
20 75-12 shall apply to this Chapter."

21 Section 26. (a) G.S. 90-113.38(b) reads as rewritten:

22 "(b) The fee to obtain a certificate of certification for a
23 clinical addictions specialist pursuant to ~~G.S. 90-113.41A~~ deemed
24 status may not exceed one hundred dollars (\$100.00). The fee to
25 renew a certificate may not exceed fifty dollars (\$50.00). The
26 fee to obtain a certificate of certification for a clinical
27 addictions specialist ~~under G.S. 90-113.40~~ pursuant to all other
28 procedures authorized by this Article may not exceed three
29 hundred twenty-five dollars (\$325.00). The fee to renew the
30 certificate may not exceed one hundred dollars (\$100.00)."

31 (b) Section 17 of S.L. 1997-492 reads as rewritten:

32 "Section 17. Notwithstanding G.S. 90-113.40(c), as enacted by
33 Section 9 of this act, the North Carolina Substance Abuse
34 Professional Certification Board (Board) may certify a person as
35 a 'Clinical Addictions Specialist' during a limited period of one
36 year after the effective date of this act upon completion of any
37 prescribed continuing education requirements that are required
38 during the course of this year from renewal of the original
39 certification, payment of the fee as required for renewal of the
40 original certification, payment of the clinical addictions
41 specialist certification fee and the submission of proof of one
42 of the following to the Board:

43 (1) Certification as a substance abuse counselor
44 holding a master's degree with a clinical

- 1 application in a human services field; the
2 equivalent of two years of full-time post-graduate
3 supervised substance abuse experience; and three
4 letters of reference from certified substance abuse
5 professionals who have master's degrees.
- 6 (2) Certification as a substance abuse counselor with a
7 bachelors degree in a human services field; the
8 equivalent of five years of full-time, post-
9 graduate, supervised substance abuse experience; a
10 passing score on a master's level written
11 examination; and submission of three letters of
12 reference from certified substance abuse
13 professionals who have master's degrees.
- 14 (3) Certification as a clinical supervisor; a master's
15 degree with a clinical application in a human
16 services field; and three letters of reference from
17 certified substance abuse professionals who have
18 master's degrees.
- 19 (4) Certification as a substance abuse counselor; a
20 master's degree with a clinical application in a
21 human services field with a substance abuse
22 specialty; and three letters of reference from
23 certified substance abuse professionals who have
24 master's degrees.
- 25 (5) Certification before July 1, 1994, as an alcohol
26 counselor, a drug and alcohol counselor, or a
27 substance abuse counselor; the equivalent of 10
28 years of documented full-time substance abuse work
29 experience; and three letters of reference from
30 certified substance abuse professionals who have
31 master's degrees.
- 32 (6) Certification, licensure, or membership in good
33 standing with a professional discipline that has
34 been granted deemed status under G.S. 90-113.41A,
35 as enacted by Section 11 of this act."
- 36 (c) Section 18 of S.L. 1997-492 reads as rewritten:
37 "Section 18. Notwithstanding G.S. 90-113.40(c), as
38 enacted by Section 9 of this act, the Board may certify an
39 applicant as a "Clinical Addictions Specialist" during a limited
40 period of three years beginning October 1, 1998, if the applicant
41 completes any prescribed continuing education requirements that
42 are required during the course of these years renewals of the
43 original certification, pays the fee as required for renewal of
44 the original certification, pays the clinical additions

1 specialist certification fee, and submits proof to the Board that
2 the applicant: (i) has been certified as a substance abuse
3 counselor; (ii) has the equivalent of 10 years of supervised,
4 full-time, substance abuse counseling experience; (iii) has
5 passed a master's level oral and written examination and; (iv)
6 submits three letters of reference from certified substance abuse
7 professionals who hold master's degrees."

8 (d) This section is effective on and after October 1, 1997.

9 Section 27. G.S. 95-97 is repealed.

10 Section 28. G.S. 95-128(3) and (4) read as rewritten:

11 (3) Employees whose safety and health are subject to
12 protection under the Federal Coal Mine Health and Safety Act of
13 1969 (30 U.S.C. 801) and the Federal Metal and Nonmetallic Mine
14 Safety Act (30 U.S.C. 725), or ~~the Federal Railroad Safety Act of~~
15 ~~1970 (45 U.S.C. 431-41)~~; Subtitle V of Title 49 of the United
16 States Code;

17 (4) Railroad employees whose safety and health are subject to
18 protection under ~~the Federal Safety Appliance Act (45 U.S.C.~~
19 ~~1-50), or the Federal Railroad Safety Act of 1970 (45 U.S.C.~~
20 ~~431-41)~~; Subtitle V of Title 49 of the United States Code;

21 Section 29. G.S. 95-174(k) reads as rewritten:

22 (k) "Hazardous chemical" shall mean any element, chemical
23 compound or mixture of elements and/or compounds which is a
24 physical hazard or health hazard as defined in subsection (c) of
25 the NCOSHA OSHNC Standard or a hazardous substance as defined in
26 ~~subsection (d)(3) of the NCOSHA Standard.~~ standards adopted by
27 the Occupational Safety and Health Division of the North Carolina
28 Department of Labor in Title 13, Chapter 7 of the North Carolina
29 Administrative Code (13 NCAC 7).

30 Section 30. G.S. 95-174(p) reads as rewritten:

31 (p) "Material Safety Data Sheets" or "MSDS" shall mean
32 chemical information sheets drawn up in conformity to standards
33 for material safety data sheets adopted by the Occupational
34 Safety and Health Division of the North Carolina Department of
35 Labor in Title 13, Chapter 7 of the North Carolina Administrative
36 Code (13 NCAC 7). ~~in 13 North Carolina Administrative Code 7C~~
37 ~~0101(a)(99) (hereinafter designated as 13 N.C.A.C. 7C~~
38 ~~0101(a)(99).~~

39 Section 31. G.S. 95-174(r) reads as rewritten:

40 (r) "NCOSHA OSHNC Standard" shall mean the ~~currently adopted~~
41 current Hazard Communication Standard adopted by the Occupational
42 Safety and Health Division of North Carolina Department of Labor
43 in Title 13, Chapter 7 of the North Carolina Administrative Code

1 ~~(13 NCAC 7). 13 North Carolina Administrative Code 7C~~
2 ~~0101(a)(99), as amended.~~

3 Section 32. G.S. 95-198(b) reads as rewritten:

4 (b) In nonemergency situations, a chemical manufacturer, importer,
5 or employer shall, upon request, disclose a specific chemical
6 identity, otherwise permitted to be withheld under this section, to a
7 ~~health professional,~~ responsible party, as defined in ~~13 N.C.A.C. 7C~~
8 ~~0101(a)(99),~~ the standards adopted in Title 13, Subchapter 7F of the
9 North Carolina Administrative Code (13 NCAC 7F), providing medical or
10 other occupational health services to exposed persons if the request
11 is in writing and states the medical need for the information. The
12 employer may require that the ~~health care provider~~ responsible party
13 sign a confidentiality agreement prior to release of the information.
14 The parties are not precluded from pursuing noncontractual remedies to
15 the extent permitted by law.

16 "Section 33. (a) G.S. 105-116(a), as amended by S.L. 1998-22,
17 reads as rewritten:

18 (a) Tax. -- An annual franchise or privilege tax is imposed on the
19 following:

20 (1) An electric power company engaged in the business of
21 furnishing electricity, electric lights, current, or power.

22 (2) ~~(Repealed effective July 1, 1999)~~ A natural gas company
23 engaged in the business of furnishing piped natural gas.

24 (2a) ~~(Repealed effective July 1, 1999)~~ A regional natural gas
25 district created under Article 28 of Chapter 160A of the General
26 Statutes.

27 (3) A water company engaged in owning or operating a water system
28 subject to regulation by the North Carolina Utilities Commission.

29 (4) A public sewerage company engaged in owning or operating a
30 public sewerage system.

31 The tax on an electric power company is three and twenty-two
32 hundredths percent (3.22%) of the company's taxable gross receipts
33 from the business of furnishing electricity, electric lights, current,
34 or power. ~~The tax on a regional natural gas district is three and~~
35 ~~twenty-two hundredths percent (3.22%) of the district's taxable gross~~
36 ~~receipts from the furnishing of piped natural gas.~~ The tax on a
37 water company is four percent (4%) of the company's taxable gross
38 receipts from owning or operating a water system subject to regulation
39 by the North Carolina Utilities Commission. The tax on a public
40 sewerage company is six percent (6%) of the company's taxable gross
41 receipts from owning or operating a public sewerage company. A
42 company's taxable gross receipts are its gross receipts from business
43 inside the State less the amount of gross receipts from sales reported
44 under subdivision (b)(2). A company that engages in more than one
45 business taxed under this section shall pay tax on each business. A
46 company is allowed a credit against the tax imposed by this section
47 for the company's investments in certain entities in accordance with
48 Division V of Article 4 of this Chapter.

49 (b) This section becomes effective July 1, 1999.

50 Section 34. G.S. 130A-24(b) reads as rewritten:

51 (b) Appeals concerning the enforcement of rules adopted by the
52 local board of health and concerning the imposition of administrative

1 penalties by a local health director shall be conducted in accordance
2 with this subsection and subsections (b), (c) and (d) of this
3 section. The aggrieved person shall give written notice of appeal to
4 the local health director within 30 days of the challenged action. The
5 notice shall contain the name and address of the aggrieved person, a
6 description of the challenged action and a statement of the reasons
7 why the challenged action is incorrect. Upon filing of the notice, the
8 local health director shall, within five working days, transmit to the
9 local board of health the notice of appeal and the papers and
10 materials upon which the challenged action was taken.

11 Section 35. G.S. 143B-475.1 is rewritten by adding a
12 new subsection to read:

13 (f) The Community Service Staff shall report to the court in
14 which the community service was ordered, a significant violation
15 of the terms of the probation, or deferred prosecution, related
16 to community service. The community service staff shall give
17 notice of the hearing to determine if there is a willful failure
18 to comply to the person who was ordered to perform the community
19 service. This notice shall be given by either personal delivery
20 to the person to be notified or by depositing the notice in the
21 United States Mail in an envelope with postage prepaid, addressed
22 to the person at the address shown on the records of the
23 community service staff. The notice shall be mailed at least ten
24 days prior to any hearing and shall state the basis of the
25 alleged willful failure to comply. The court shall then conduct
26 a hearing, even if the person ordered to perform the community
27 service fails to appear, to determine if there is a willful
28 failure to complete the work as ordered by the community service
29 staff within the applicable time limits. If the court determines
30 there is a willful failure to comply, it shall revoke any drivers
31 license issued to the person and notify the Division of Motor
32 vehicles to revoke any drivers license issued to the person until
33 the community service requirement has been met. In addition, if
34 the person is present, the court may take any further action
35 authorized by Article 82 of Chapter 15A of the General Statutes
36 for violation of a condition of probation."

37 Section 36. (a) G.S. 163-323(e) reads as rewritten:

38 "(e) Candidacy for More Than One Office Prohibited. -- No
39 person may file a notice of candidacy for more than one office or
40 group of offices described in subsection (b) of this section
41 section, or for an office or group of offices described in
42 subsection (b) of this section and an office described in G.S.
43 163-106(c), for any one election. If a person has filed a notice
44 of candidacy with a board of elections under this section or
45 under G.S. 163-106(c) for one office or group of offices, then a

1 notice of candidacy may not later be filed for any other office
2 or group of offices under this section when the election is on
3 the same date unless the notice of candidacy for the first office
4 is withdrawn under subsection (c) of this section."

5 (b) This section is effective on and after August 2,
6 1996."

7 Section 37. The prefatory language of Section 1 of S.L.
8 1998-37 reads as rewritten:

9 "Section 1. G.S. 153A-335, as it applies to Stanly
10 County under Chapter 930 of the 1987 Session Laws, as amended by
11 Chapter 504 of the 1991 Session Laws and Chapter 574 of the 1993
12 Session Laws, reads as rewritten:"

13 Section 38. Section 5.1 of the Charter of the Town of
14 Forest Hills, being Section 1 of S.L. 1997-345. reads as
15 rewritten:

16 "Section 5.1. **Mayor-Council Plan.** The Village of Forest Hills
17 operates under the Mayor-Council Plan as provided by Part 3 of
18 Article 7 of Chapter ~~160B~~ 160A of the General Statutes. The
19 Mayor shall vote only in those cases necessary to break a tie."

20 Section 39. The prefatory language of Section 1 of S.L.
21 1998-72 reads as rewritten:

22 "Section 1. G.S. 115D-15 reads ~~are~~ as rewritten:"

23 Section 40. This act is effective when it becomes law.



STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: August 3, 1998

RE: Senate Bill ~~1260~~⁴⁷⁹ (1998 Technical Corrections)

General Comments

This bill makes corrections of a technical nature to various sections of the General Statutes. The amendments recommended by the General Statutes Commission correct typographical, grammatical, redlining, and other obvious drafting errors, make technical conforming changes, update or correct statutory references, and repeal an obsolete provision.

Specific Comments

Section 1. This section amends G.S. 14-34.6(a)(2) to change "An" to "A" before the word "medical".

Section 2. This section amends G.S. 14-399(c) to insert the word "In", which was inadvertently not underlined in a 1997 amendment.

Section 3. Subsection (a) of this section amends G.S. 14-408 to delete the references in this section to G.S. 14-407, which was repealed effective March 21, 1997. Subsection (b) is the applications provision normally found in criminal law amendments.

Section 4. This section makes essentially the same amendment to G.S. 14-74, 25-7-502, and 25-7-507 and a comparable amendment to G.S. 44A-21. G.S. 14-74, 25-7-502, and 25-7-507 (amended in subsections (a), (b), and (c) of this section) contain a reference to the "following section", and G.S. 44A-21 (amended in subsection (d)) has a reference to the "previous" section. This drafting construction is no longer used, because it invites later error when a new section is inserted between a section containing such language and the referenced (but not cited) section. The amendments in this section delete the problem-causing language and

substitute for it the appropriate citation (which currently appears in brackets in the published version of each section).

Section 5. This section amends G.S. 25-8-103(a) to correct a typographical error. The phrase "share of similar equity interest" should read "share or similar equity interest."

Section 6. This section amends G.S. 39-23.3 to correct an obvious drafting error. This section is part of the Uniform Fraudulent Transfer Act, enacted for this State in the last legislative session. The word "nonexclusive" should read "noncollusive".

Section 7. This section makes conforming amendments to G.S. 50-11 and G.S. 50-20. In the 1997 legislative session, G.S. 50-20 was amended to include a new definition of property termed "divisible property", which was to be divisible in the same general manner as marital property in an equitable distribution action or proceeding. Conforming references to divisible property were inadvertently omitted throughout G.S. 50-20 and in G.S. 50-11. This section inserts these references in the appropriate places or changes a reference to "marital property" to a more generic term to avoid the need for future conforming amendments.

Section 8. This section amends G.S. 62-268 to update the citation and to correct a syntax error. In the United States Code, 49 U.S.C. § 10927(a)(1) has been replaced by 49 U.S.C. § 31138. In addition, the phrase "required by the provision of this Chapter" should read, "required by the provisions of this Chapter".

Section 9. This section amends G.S. 78C-16(b) to delete an inadvertent near-duplication. The last sentence of the subsection contains the next-to-last sentence plus the references to investment advisers covered under federal law; the next-to-last sentence is therefore redundant and should be deleted.

Section 10. This section amends G.S. 90-113.40(a)(8) to insert the missing word "for", which was inadvertently not underlined in a 1997 amendment.

Section 11. This section amends G.S. 110-91(10) to delete duplicated phrases.

Section 12. This section amends G.S. 115C-404(a) to correct a typographical error in a citation. "G.S. 7A-675.1" should read "G.S. 7A-675.2".

Section 13. This section amends G.S. 130A-233 to conform the style to the currently used style for this type of definition.

Section 14. Subsection (a) of this section repeals G.S. 139-3.1, which is obsolete. G.S. 139-3.1 was part of a 1961 act that replacing the former State Soil Conservation Committee with a State Soil and Water Conservation Committee. G.S. 139-3.1 directs the substitution throughout the General Statutes of terms that were being changed in that 1961 act, including the

throughout the General Statutes of terms that were being changed in that 1961 act, including the substitution of the then-new committee name for the former name. However, any remaining references to the old committee that remain in the General Statutes are historical ones that should not be changed. Moreover, the committee created by the 1961 act has itself been replaced by a commission. Under today's practices, G.S. 139-3.1 would not have been codified.

Subsection (b) of this section specifies that the repeal of G.S. 139-3.1 does not cause anything in the General Statutes to revert to pre-1961 terms.

Section 15. This section amends G.S. 143-53(a) to insert the missing word "the", to delete a duplicate word ("not"), and to delete an incorrect comma.

Section 16. This section amends G.S. 143-129(f) to correct a technical drafting problem in a 1997 amendment to the subsection. G.S. 143-129(f) historically excepted hospitals from certain purchase and contract requirements. The 1997 amendment extended the exception to purchases of certain items by local governments, so long as the local governments obtain prior approval from their governing body, a requirement that never existed for hospitals. Because the word "exception" is used in the subsection to refer to different things, however, the language of the subsection needs to be made more consistent.

Section 17. This section amends G.S. 143B-283(a)(8) to delete a duplicate word ("in").

Section 18. This section amends G.S. 143B-289.52(e) to correct a proper name. The "Atlantic States Marine Fisheries Council" is actually the "Atlantic States Marine Fisheries Commission".

Section 19. This section amends G.S. 143B-433 to correct the codification and to standardize the punctuation of the different subdivisions.

Section 20. This section amends G.S. 157-35 to remove a duplicated phrase.

Sections 21 and 22. These sections amend Section 18.22 of S.L. 1997-443. Section 18.22 was originally drafted as a free-standing local bill. It was incorporated into S.L. 1997-443 (last year's budget bill), but in the process, the words "This act" were inadvertently not changed to "This section". The effective date of the correction is backdated to the effective date of S.L. 1997-443.

Section 23. This section amends Section 6 of S.L. 1997-452, a local bill, to correct a typographical error. "1995" should have read "1975".



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 5, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Brenda Carter, and Jo McCants, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 1279 - 1998
TECHNICAL CORRECTIONS - Senator Hartsell**

The Proposed Committee Substitute for Senate Bill 1279 is primarily a recommendation of the General Statutes Commission to correct technical errors and to make conforming changes to various statutes and session laws. Sections 1 through 23 were recommended by the General Statutes Commission and have been summarized in a separate document by the Commission's staff. This summary will cover the remaining sections of the bill. The changes beginning with Section 24 have been identified by legislative, agency staff, and others, many of which are correcting errors made in laws adopted during the 1997 Session.

Section 24 amends the Renunciation of Property and Renunciation of Fiduciary Powers Act to clarify that the Act applies to all renunciations of present and future interests, whether qualified or non-qualified for federal and state inheritance, estate or gift tax purposes, unless expressly provided otherwise in the instrument creating the interest.

Section 25 amends G.S. 75E-3 to clarify that the Attorney General, as enforcer of the Shareholder Protection Act (Article 9 of Chapter 55), may exempt from the Shareholders Protection Act any business combination that is solely an internal corporate restructuring which does not affect any material change in the ultimate ownership of the corporation and does not affect the ongoing applicability of the Shareholders Protection Act to the corporation or any other entity.

Section 26 amends the North Carolina Substance Abuse Professional Certification Act to clarify which certification fees apply to certifications as clinical addictions specialists and to clarify the requirements for the grandfather provisions enacted in 1997.

Section 27 repeals G.S. 95-97. This law which prohibited police officers and firemen from joining unions has been held unconstitutional and is therefore being repealed.

Section 28 amends G.S. 95-128 to reflect current applicable federal law. The Federal Railroad Safety Act of 1970 and the Federal Safety Appliance Act were repealed effective July 5, 1994. The contents of these acts was recodified in Title 49 of the U.S. Code. This changes conforms the law to the current federal citations.

Sections 29 through 31 amends G.S. 95-174 and 95-198 to reflect the current North Carolina Administrative Code citations. In 1993, 13 NCAC 7C was repealed and recodified within 13 NCAC 7F. Also, the acronym NCOSHA has been changed to OSHNC for consistency with general use and reference to the Occupational Safety and Health Division of North Carolina. The change conforms the statutes to the current rules and laws.

Section 32 amends G.S. 95-198(b) to reflect the current terms used in federal regulations that have been adopted in state rules. It replaces the term "health professional" with the term "responsible party" since the term "responsible party" is a defined term in the Code of Federal Regulations standards adopted in 13 NCAC 7F.

Section 33 removes the franchise tax rate applicable to piped natural gas sold by a regional natural gas district because the franchise tax on piped natural gas sold by a regional natural gas district is repealed, effective July 1, 1999 in S.L. 1998-22 which repealed the tax, but failed to remove the tax rate. The tax rate will not apply after the tax is repealed. This section is effective July 1, 1999 when the tax is repealed.

Section 34 changes a reference within the law governing appeals concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director.

Section 35 corrects a redlining error in a bill that was ratified last year. A new subsection (f) was to be added to G.S. 143B-475.1 (Deferred prosecution, community service restitution, and volunteer program.) The new provision was not underlined in the coded bill drafting format to indicate that it was a newly added section, so it is not set out in the text of the General Statutes, but is shown in the Editor's note. The provision sets out the procedure for notice and hearing regarding willful failure to comply with terms of probation related to community service.

Section 36 closes the apparently unintentional loophole that allows a candidate for Superior Court judge to run for a Superior Court seat and for one other office at the same time.

Section 37 makes it clear that an amendment to the definition of "subdivision" in the law governing subdivision regulation in Chapter 153A is a local modification applicable to Stanly County.

Section 38 corrects an incorrect Chapter reference in the charter of the Town of Forest Hills which was incorrectly sited as Chapter 160B instead of Chapter 160A.

Section 39 corrects a typographical error in the prefatory language of the Session Laws rewriting G.S. 115D-15 regarding the sale, exchange, or lease of property by community colleges.

Unless otherwise specifically provided, the bill will become effective when it becomes law.



STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: August 3, 1998

RE: Senate Bill 1260 (1998 Technical Corrections)

General Comments

This bill makes corrections of a technical nature to various sections of the General Statutes. The amendments recommended by the General Statutes Commission correct typographical, grammatical, redlining, and other obvious drafting errors, make technical conforming changes, update or correct statutory references, and repeal an obsolete provision.

Specific Comments

Section 1. This section amends G.S. 14-34.6(a)(2) to change "An" to "A" before the word "medical".

Section 2. This section amends G.S. 14-399(c) to insert the word "In", which was inadvertently not underlined in a 1997 amendment.

Section 3. Subsection (a) of this section amends G.S. 14-408 to delete the references in this section to G.S. 14-407, which was repealed effective March 21, 1997. Subsection (b) is the applications provision normally found in criminal law amendments.

Section 4. This section makes essentially the same amendment to G.S. 14-74, 25-7-502, and 25-7-507 and a comparable amendment to G.S. 44A-21. G.S. 14-74, 25-7-502, and 25-7-507 (amended in subsections (a), (b), and (c) of this section) contain a reference to the "following section", and G.S. 44A-21 (amended in subsection (d)) has a reference to the "previous" section. This drafting construction is no longer used, because it invites later error when a new section is inserted between a section containing such language and the referenced (but not cited) section. The amendments in this section delete the problem-causing language and

substitute for it the appropriate citation (which currently appears in brackets in the published version of each section).

Section 5. This section amends G.S. 25-8-103(a) to correct a typographical error. The phrase "share of similar equity interest" should read "share or similar equity interest."

Section 6. This section amends G.S. 39-23.3 to correct an obvious drafting error. This section is part of the Uniform Fraudulent Transfer Act, enacted for this State in the last legislative session. The word "nonexclusive" should read "noncollusive".

Section 7. This section makes conforming amendments to G.S. 50-11 and G.S. 50-20. In the 1997 legislative session, G.S. 50-20 was amended to include a new definition of property termed "divisible property", which was to be divisible in the same general manner as marital property in an equitable distribution action or proceeding. Conforming references to divisible property were inadvertently omitted throughout G.S. 50-20 and in G.S. 50-11. This section inserts these references in the appropriate places or changes a reference to "marital property" to a more generic term to avoid the need for future conforming amendments.

Section 8. This section amends G.S. 62-268 to update the citation and to correct a syntax error. In the United States Code, 49 U.S.C. § 10927(a)(1) has been replaced by 49 U.S.C. § 31138. In addition, the phrase "required by the provision of this Chapter" should read, "required by the provisions of this Chapter".

Section 9. This section amends G.S. 78C-16(b) to delete an inadvertent near-duplication. The last sentence of the subsection contains the next-to-last sentence plus the references to investment advisers covered under federal law; the next-to-last sentence is therefore redundant and should be deleted.

Section 10. This section amends G.S. 90-113.40(a)(8) to insert the missing word "for", which was inadvertently not underlined in a 1997 amendment.

Section 11. This section amends G.S. 110-91(10) to delete duplicated phrases.

Section 12. This section amends G.S. 115C-404(a) to correct a typographical error in a citation. "G.S. 7A-675.1" should read "G.S. 7A-675.2".

Section 13. This section amends G.S. 130A-233 to conform the style to the currently used style for this type of definition.

Section 14. Subsection (a) of this section repeals G.S. 139-3.1, which is obsolete. G.S. 139-3.1 was part of a 1961 act that replacing the former State Soil Conservation Committee with a State Soil and Water Conservation Committee. G.S. 139-3.1 directs the substitution throughout the General Statutes of terms that were being changed in that 1961 act, including the

throughout the General Statutes of terms that were being changed in that 1961 act, including the substitution of the then-new committee name for the former name. However, any remaining references to the old committee that remain in the General Statutes are historical ones that should not be changed. Moreover, the committee created by the 1961 act has itself been replaced by a commission. Under today's practices, G.S. 139-3.1 would not have been codified.

Subsection (b) of this section specifies that the repeal of G.S. 139-3.1 does not cause anything in the General Statutes to revert to pre-1961 terms.

Section 15. This section amends G.S. 143-53(a) to insert the missing word "the", to delete a duplicate word ("not"), and to delete an incorrect comma.

Section 16. This section amends G.S. 143-129(f) to correct a technical drafting problem in a 1997 amendment to the subsection. G.S. 143-129(f) historically excepted hospitals from certain purchase and contract requirements. The 1997 amendment extended the exception to purchases of certain items by local governments, so long as the local governments obtain prior approval from their governing body, a requirement that never existed for hospitals. Because the word "exception" is used in the subsection to refer to different things, however, the language of the subsection needs to be made more consistent.

Section 17. This section amends G.S. 143B-283(a)(8) to delete a duplicate word ("in").

Section 18. This section amends G.S. 143B-289.52(e) to correct a proper name. The "Atlantic States Marine Fisheries Council" is actually the "Atlantic States Marine Fisheries Commission".

Section 19. This section amends G.S. 143B-433 to correct the codification and to standardize the punctuation of the different subdivisions.

Section 20. This section amends G.S. 157-35 to remove a duplicated phrase.

Sections 21 and 22. These sections amend Section 18.22 of S.L. 1997-443. Section 18.22 was originally drafted as a free-standing local bill. It was incorporated into S.L. 1997-443 (last year's budget bill), but in the process, the words "This act" were inadvertently not changed to "This section". The effective date of the correction is backdated to the effective date of S.L. 1997-443.

Section 23. This section amends Section 6 of S.L. 1997-452, a local bill, to correct a typographical error. "1995" should have read "1975".

#2



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1279

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

S1279-ASE-002

Date _____, 1998

Comm. Sub. [YES]
Amends Title []
S1279-CSSC-001

Senator _____

1 moves to amend the bill on page 25, lines 36 and 37 by inserting
2 between those lines the following new section:
3 Section 35.1. G.S. 146-12(c) reads as rewritten:
4 "(c) Voluntary Easement Applications for Existing Structures. --
5 Riparian or littoral property owners of existing structures may
6 voluntarily obtain an easement under subsection (b) of this section
7 in accordance with the procedures set forth in this section. For
8 purposes of this section, the term "existing structures" means all
9 presently existing piers, docks, marinas, wharves, and other
10 structures located over or upon State-owned lands covered by
11 navigable waters. Applications for voluntary easements shall be
12 received by the State Property Office within ~~36 months of the~~
13 effective date of this section, no later than 1 October 2001."

SIGNED Tom Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1554

Short Title: Modify Controlled Substances Tax.

(Public)

Sponsors: Senators Rand; Cooper, Hoyle, Lee, Odom, Perdue, Plyler, Soles, and Winner.

Referred to: Finance.

June 1, 1998

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.

3 Whereas, North Carolina enacted the Controlled Substances Tax Act in
4 1989 for the purpose of levying an excise tax to generate revenue for State and local
5 law enforcement agencies and the General Fund and to collect taxes from persons
6 engaged in a highly profitable activity that had escaped taxation; and

7 Whereas, the intent of the General Assembly in enacting this tax
8 continues to be to raise revenue through a civil tax on this highly profitable activity;
9 and

10 Whereas, the intent of the General Assembly in enacting this tax is not to
11 create a criminal penalty, other than for nonpayment of the tax, above and beyond
12 the criminal sanctions in the criminal code; and

13 Whereas, upon constitutional challenge on double jeopardy grounds by a
14 defendant who had been assessed for the tax and also convicted of criminal drug
15 charges, the North Carolina Court of Appeals held that the tax "was not predicated
16 upon whether the taxpayer in possession of the controlled substance has been
17 arrested or charged with criminal conduct, nor is it assessed on property that
18 necessarily has been confiscated or destroyed;" and

19 Whereas, the court further held that the statute "is a legitimate and
20 remedial effort to recover revenue from those persons who would otherwise escape
21 taxation when engaging in the highly profitable, but illicit and sometimes deadly
22 activity of possessing, delivering, selling, or manufacturing large quantities of
23 controlled drugs" and that the statute "does not have such fundamentally punitive

1 characteristics as to render it violative of the prohibition against multiple punishments
2 for the same offense contained in the Double Jeopardy Clause;" and

3 Whereas, that decision was affirmed on appeal to the North Carolina
4 Supreme Court and not disturbed by the United States Supreme Court; and

5 Whereas, upon further challenge in the federal courts, the controlled
6 substance tax has been found to be a criminal penalty, and a petition for certiorari is
7 now pending in the United States Supreme Court; and

8 Whereas, it is, therefore, the intent of the North Carolina General
9 Assembly to modify the tax during the pendency of the appeal so that the tax may
10 continue to be assessed in a manner consistent with the opinion now in effect, but to
11 reinstate it as it read on January 12, 1998, if the United States Supreme Court
12 reverses the lower court decision and finds the tax constitutional; and

13 Whereas, it is also the intent of the General Assembly that if the lower
14 court decision is reversed, the higher tax rate should be reinstated retroactively and
15 collected; Now, therefore,

16 The General Assembly of North Carolina enacts:

17 Section 1. G.S. 105-113.107(a) reads as rewritten:

18 "(a) Controlled Substances. -- An excise tax is levied on controlled substances
19 possessed, either actually or constructively, by dealers at the following rates:

20 (1) At the rate of forty cents (40¢) for each gram, or fraction thereof,
21 of harvested marijuana stems and stalks that have been separated
22 from and are not mixed with any other parts of the marijuana
23 plant.

24 (1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or
25 fraction thereof, of marijuana, other than separated stems and
26 stalks taxed under subdivision (1) of this section.

27 (1b) At the rate of fifty dollars (\$50.00) for each gram, or fraction
28 thereof, of cocaine.

29 (2) At the rate of two hundred dollars (\$200.00) for each gram, or
30 fraction thereof, of any other controlled substance that is sold by
31 weight.

32 (2a) At the rate of fifty dollars (\$50.00) for each 10 dosage units, or
33 fraction thereof, of any low-street-value drug that is not sold by
34 weight.

35 (3) At the rate of ~~four hundred dollars (\$400.00)~~ two hundred dollars
36 (\$200.00) for each 10 dosage units, or fraction thereof, of any other
37 controlled substance that is not sold by weight.

38 (a1) Weight. -- A quantity of marijuana or other controlled substance is measured
39 by the weight of the substance whether pure or impure or dilute, or by dosage units
40 when the substance is not sold by weight, in the dealer's possession. A quantity of a
41 controlled substance is dilute if it consists of a detectable quantity of pure controlled
42 substance and any excipients or fillers."

43 Section 2. In collecting the tax on controlled substances levied in Article
44 2D of Chapter 105 of the General Statutes, the Secretary of Revenue shall assure that

1 every affected taxpayer is notified that the lower tax rates apply only until the tax is
2 upheld by the United States Supreme Court, and that the higher rates will then be
3 collected on any tax that accrued before the Court's ruling upholding the tax.

4 Section 3. This act is effective when it becomes law. If the United States
5 Supreme Court rules in Lynn, et al. v. West, et al., that the provisions of Article 2D
6 of Chapter 105 of the General Statutes, as they existed on January 12, 1998, are
7 constitutional, then this act is repealed retroactively as of the date it became law.



NORTH CAROLINA SHERIFFS' ASSOCIATION
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS
OF NORTH CAROLINA



President
SHERIFF J. WALLACE PERRY
Bertie County
Secretary-Treasurer
SHERIFF WAYNE V. GAY
Wilson County

1st Vice President
SHERIFF JACK HENDERSON
Yadkin County

2nd Vice President
SHERIFF BILLY SMITH
Lenoir County

Chairman Executive Committee
SHERIFF R. TOM ALEXANDER
Haywood County

Executive Director
DONNA MAYNARD

Telephone: (919) 783-8899 • Fax (919) 783-5272

Mail Address: P. O. Box 2717 • Raleigh, N. C. 27602
Cumberland Bldg. • Suite 208 • 3739 National Drive • Raleigh, N. C. 27612

NORTH CAROLINA SHERIFFS' ASSOCIATION RESOLUTION

REGARDING SB 1554, MODIFIED CONTROLLED SUBSTANCES TAX

WHEREAS, North Carolina enacted the Controlled Substances Tax in 1989 for the purpose of generating revenue for State and local law enforcement agencies and the State's General fund, as well as to collect taxes from persons engaged in a highly profitable activity that has previously escaped taxation; and

WHEREAS, since enactment in 1989, the Controlled Substances Tax has effectively served these purposes; and

WHEREAS, the funds collected from the Controlled Substances Tax that have been allocated to Sheriffs' Offices throughout our State, as well as other law enforcement agencies, have been extremely important in the fight against unlawful drugs; and

WHEREAS, unlawful drugs and the people who distribute them are a menace and threat to our society; and

WHEREAS, North Carolina's Controlled Substances Tax was ruled unconstitutional by the Fourth Circuit United States Court of Appeals effective January 12, 1998; and

WHEREAS, Senate Bill 1554, Modify Controlled Substances Tax, was introduced in the 1998 Session of the General Assembly to reenact North Carolina's Controlled Substances Tax in a manner consistent with the Court of Appeals decision, pending potential review of the case by the United States Supreme Court upon the request of the North Carolina Attorney General; and

WHEREAS, enactment of Senate Bill 1554 would greatly aid the Sheriffs of North Carolina and all law enforcement agencies in their fight against unlawful drugs in their communities;



NORTH CAROLINA SHERIFFS' ASSOCIATION
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS
OF NORTH CAROLINA



President
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Bertie County
Secretary-Treasurer
SHERIFF WAYNE V. GAY
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1st Vice President
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Yadkin County

2nd Vice President
SHERIFF BILLY SMITH
Lenoir County

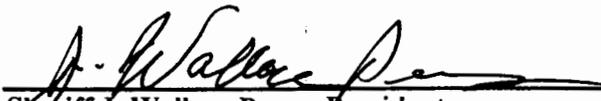
Chairman Executive Committee
SHERIFF R. TOM ALEXANDER
Haywood County
Executive Director
DONNA MAYNARD

Telephone (919) 783-8899 • Fax (919) 783-5272

Mail Address: P. O. Box 2717 • Raleigh, N. C. 27602
Cumberland Bldg. • Suite 208 • 3739 National Drive • Raleigh, N. C. 27612

NOW THEREFORE BE IT RESOLVED, by the North Carolina Sheriffs' Association, Inc., assembled at its 76th Annual Conference, held in Mecklenburg County, North Carolina, THAT THE NORTH CAROLINA SHERIFFS' ASSOCIATION, INC. FULLY SUPPORTS THE ENACTMENT OF SENATE BILL 1554 BY THE NORTH CAROLINA GENERAL ASSEMBLY.

ADOPTED, THIS THE 28TH DAY OF JULY, 1998.



Sheriff J. Wallace Perry, President
North Carolina Sheriffs' Association, Inc.

ATTESTED TO BY THOSE SHERIFFS WHO HAVE AFFIXED THEIR SIGNATURE HERETO AS SET FORTH ATTACHED:

Wayne P. Gray Sheriff of Wilson County

Ervin Russell Sheriff of Gaston County

E. T. Chapman Sheriff of HAYWOOD County

Jack Henderson Sheriff of Gaelling County

W. Billy Smith Sheriff of Lenoir County

Ed Brown Sheriff of Onslow County

Bert Austin Sheriff of Dare County

Jed Smith Sheriff of Caswell County

Johnny Williams Sheriff of Warren County

Ronald E. Hewitt Sheriff of BRUSWICK County

Jerry R. Monte Sheriff of CRAVEN County

North L. Hill Sheriff of Durham County

Connie R. Watson Sheriff of Swain County

Ed Ward Sheriff of Rowan County

Robert M. Conday Sheriff of Cabarrus County

Mike Joyce

Sheriff of Stokes County

James L Knight

Sheriff of Edgecombe County

Juan L. Vaughan, Sr.

Sheriff of Hertford County

Roger L. Hitchings

Sheriff of Caldwell County

W. D. Banner

Sheriff of Pender County

Ted D. Sauls

Sheriff of Greene County

Daniel A. Miller

Sheriff of Lenoir County

Robert B. Mason

Sheriff of Jones County

Jeff Jordan

Sheriff of Montgomery County

Randy Cartwright

Sheriff of Pasquotank County

Keith Roach

Sheriff of Martin County

Richard King

Sheriff of Alamance County

Glenn Humbergans

Sheriff of Orange County

Paul Kelly

Sheriff of Anson County

Jim Hartley

Sheriff of Ashe County

John C. Red Jones

Sheriff of WATAUGA County

Joseph M. Queen Jr.

Sheriff of New Hanover County

Nelson L. Sheppard

Sheriff of Beaufort County

John P. Pappas

Sheriff of ROBESON County

Barbara Sickers

Sheriff of Lincoln County

Don Martin

Sheriff of Wilkes County

Phil Richmond

Sheriff of Fredell County

Alfred White

Sheriff of CHATHAM County

Billy A. Bryant

Sheriff of Lee County

Wendy

Sheriff of Mecklenburg County

Litchard Hurley

Sheriff of Randolph County

Tom H. Spence

Sheriff of Chowan County

J. J. J.

Sheriff of Camden County

Carroll P. Pringle

Sheriff of Wayne County

Richard Egle

Sheriff of Burke County

David Huffman

Sheriff of Catawba County

Kermit Banks

Sheriff of Yancey County

Dan Good

Sheriff of RUTHERFORD County

J. Dedrick Brown

Sheriff of Madison County

E. Elmo Denton

Sheriff of GATES County

R. Thomas Brudlowe

Sheriff of Vance County

Jeff P. Frozier

Sheriff of Halifax County

William A. Whitaker

Sheriff of Davie County

George H. S., Jr.

Sheriff of HENDERSON County

Stephen Bunn

Sheriff of BLADEN County

Eugene Moore Butler

Sheriff of Camberland County

Dan Crawford

Sheriff of Cleveland County

Jimmy Ferguson

Sheriff of Columbus County

Larry Mott

Sheriff of HARNETT County

Lud Hermitage

Sheriff of Swain County

C. S. Vernon

Sheriff of Rockingham County

Dennis M. Doherty

Sheriff of Person County

Sheriff of _____ County

**JOINT RESOLUTION OF
THE NC ASSOCIATION OF CHIEFS OF POLICE
AND THE NC POLICE EXECUTIVES ASSOCIATION**

WHEREAS, Controlling drug related crime is one of the most difficult challenges facing local law enforcement agencies in this state; and

WHEREAS, The NC Controlled Substance Tax has provided much needed revenues which have greatly assisted us in our crime fighting mission; and

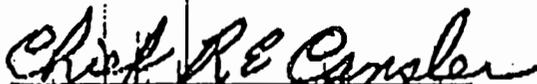
WHEREAS, The Fourth Circuit Court of Appeals in Lynn v West has had a tangible negative impact on our efforts; and

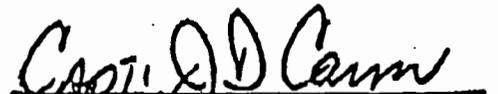
WHEREAS, There is no certainty that the US Supreme Court would agree to hear Lynn v West or reverse the decision of the Fourth Circuit Court of Appeals after hearing; and

WHEREAS, Senate Bill 1554 makes changes in the Controlled Substance Tax Law necessary to conform the law to the decision of the Fourth Circuit Court of Appeals but restores prior law automatically if upheld by the US Supreme Court; and

WHEREAS, Delay in taking action on Senate Bill 1554 is costing NC law enforcement agencies hundreds of thousands of dollars in much needed revenue in combating drug related crime.

NOW THEREFORE, the NC Association of Chiefs of Police and the NC Police Executives Association at their general membership meeting in Atlantic Beach, NC on July 13 and July 15, 1998 respectively does hereby endorse Senate Bill 1554 and calls upon the NC General Assembly currently in session to take all action necessary for ratification as soon as possible during this legislative session.


Chief R.E. Conner, President, NC
Association of Chiefs of Police


Captain J.D. Carver, President, NC
Police Executives Association

The following law enforcement executives hereby support and endorse the passage of Senate Bill 1554 and calls upon the NC General Assembly currently in session to take all action necessary for ratification.

Signature

Agency

Chief Ken Beach

Denton Co. Police Dept

Chief Ronald McKinney

Plymouth Police Dept.

Capt. John W. Butler

Cornelous P.D.

William D. Comer

Greensboro

Off. M. Mowbray

Charlotte-Mecklenburg P.D.

Laura C. Hale

Hendersonville P.D.

R.P. Wood, Jr.

WARSAW, P. D.

F.B. WREN

ATLANTIC BEACH RD

JACK L. CARVER

Spindale Police Dept.

John M. Allen

Burlington P.D.

Sam Rubinson

Kannapolis P.D.

Wendy Carter

Kannapolis P.D.

Monica Wozniak

Edin P.D.

Joseph Butler

Mt. Holly P.D.

Cliff Hays

Waxhaw P.D.

Denis M. Longford

Greensboro, N.C. PD

John Hinch

Tryon P.D.

Stacy Lee

Clinton PD

Kay Levine

Morganton Public Safety

The following law enforcement executives hereby support and endorse the passage of Senate Bill 1554 and calls upon the NC General Assembly currently in session to take all action necessary for ratification.

<u>Signature</u>	<u>Agency</u>
<u>Chap. Livingston</u>	<u>White Forest Police Dept</u>
<u>Paul Clark</u>	<u>Weldon Police Dept</u>
<u>Chief Terry Hat</u>	<u>Fairmont Police Dept.</u>
<u>Chief Ricky J. Thompson</u>	<u>Bolton Police Dept.</u>
<u>Chief Bob S. Traver</u>	<u>Northwest Police Dept.</u>
<u>Ward Raymond W. Wiley</u>	<u>NC SHP</u>
<u>Lt. J. L. Red Holman</u>	<u>N.C. SHP</u>
<u>Chief Norman L. Eubank</u>	<u>St. Ives Bridge Rd</u>
<u>Chief Bob Blakely</u>	<u>Norwood Police Dept.</u>
<u>Lt. D.K. Agnew</u>	<u>Elon College P.D.</u>
<u>Chief Robert L. Uney</u>	<u>Wadesboro P. D.</u>
<u>Chief Doug Johnson</u>	<u>CONOVER P. D.</u>
<u>Capt. Steven W. Brewer</u>	<u>CONOVER P.D.</u>
<u>Chief Thomas D. Moss</u>	<u>GARNER P. D.</u>
<u>A. Lee Hatfield</u>	<u>GARNER P. D.</u>
<u>Joseph V. Brown</u>	<u>Rocky Mount P. D.</u>
<u>Thomas Ferguson</u>	<u>Raley ATF</u>
<u>Gregg Platt</u>	<u>ATF - GREENSBORO</u>
<u>R.M. Hazelwood</u>	<u>Patrol Inspector - Charlotte, N.C.</u>

The following law enforcement executives hereby support and endorse the passage of Senate Bill 1554 and calls upon the NC General Assembly currently in session to take all action necessary for ratification.

Signature

Agency

F.W. Lucas

HICKORY POLICE

M. Warrick

Goldsboro Police Dept

James F. Dean Jr

Roseville Police Dept.

JERRY MONROE

FAYETTEVILLE STATE UNIV. POLICE

W. Donald Tuck

North Carolina Central Univ Police

James H. Duley

Madison Police Dept.

Allen R. Phillips

Rosemont Police

Daniel E. Gilbert

N.C. SBI (RET.)

~~James F. Dean Jr~~

Lenoir Police Department

Nancy Chapman

Forest City Police

George H. Swartz

Winston-Salem Police Dept.

Jimmy L. Hill

Roxboro Police Dept.

Dennis L. Parks

Hendersonville Police Dept.

Paul W. Johnson

Pilot Mtn. Police Dept.

BT Bottoms

Pilot Mtn. Police Dept.

Chief Bob Casler

Concord Police Dept.

Tommy Cunningham

NC STATE BUREAU OF INVESTIGATION

Chris Buzge

Southern Pines Police Dept.

Small Halloway

Southern Pines Police Dept

The following law enforcement executives hereby support and endorse the passage of Senate Bill 1554 and calls upon the NC General Assembly currently in session to take all action necessary for ratification.

Signature

Agency

Jan D. Mel
James L. McCall
Houston Gernon
Richard Reynolds
Johnny Davis
William C. Boone
Lewis S. Phillips
Robert T. Jones Jr.
Ken Burroughs
Ernest Ballitt
Gene Mathis
Stephen G. Hays
Aineth Murray
Cathy Smith
Ray F. Smith
Laura Mufson
Chuck McFarlane
Ray W. Cook
Loj Phillips

W. Asperity Police Dept
Morganton Police Dept
King's Mt. P.D.
King's Mt. P.D.
Stanley P.D.
Salisbury P.D.
Siler City P.D.
AUROBA P.D.
Wacheseville P.D.
Roseville P.D.
North Topsail Beach P.D.
Statesville P.D.
Durham Police Dept.
Durham Police Dept.
Treat Woods P.D.
Thomasville P.D.
Albemarle P.D.
Jays P.D.
Thomasville P.D.

The following law enforcement executives hereby support and endorse the passage of Senate Bill 1554 and calls upon the NC General Assembly currently in session to take all action necessary for ratification.

Signature

Agency

<u>[Signature]</u> CHIEF	<u>HENDERSON POLICE DEPT.</u>
<u>[Signature]</u> CAPTAIN	<u>Eden Police Dept</u>
<u>[Signature]</u> CAPTAIN	<u>Durham Police Dept.</u>
<u>[Signature]</u> CHIEF	<u>DURHAM POLICE DEPARTMENT</u>
<u>[Signature]</u> SGT.	<u>Atlantic Beach Police Dept</u>
<u>[Signature]</u>	<u>Atlantic Beach PD</u>
<u>[Signature]</u> DET.	<u>Atlantic Beach Police Dept.</u>
<u>[Signature]</u> DET.	<u>ATLANTIC BEACH POLICE DEPT.</u>
<u>[Signature]</u> SGT.	<u>Atlantic Beach Police Dept</u>
<u>[Signature]</u> MAJOR	<u>DURHAM POLICE DEPT</u>
<u>[Signature]</u> SGT	<u>WAKE FOREST POLICE DEPT</u>
<u>[Signature]</u>	<u>Capit. Cabintown P.D.</u>
<u>[Signature]</u>	<u>Chief Graham P.D.</u>
<u>[Signature]</u>	<u>Chief Wain of Elon College P.D.</u>
<u>[Signature]</u>	<u>Chief, Brevard PD</u>
<u>[Signature]</u> MAJOR	<u>GROSSBORO POLICE DEPT</u>
<u>[Signature]</u>	<u>Chief - Town of Apex</u>
<u>[Signature]</u>	<u>Chief, BOSTON PD</u>
<u>[Signature]</u>	<u>Chief, Whiteville P.D.</u>

The following law enforcement executives hereby support and endorse the passage of Senate Bill 1564 and calls upon the NC General Assembly currently in session to take all action necessary for ratification.

Signature

Agency

<u>RC Fro</u>	<u>ATR Charlotte</u>
<u>Greg Jarvis</u>	<u>Chapel Hill Police Dept.</u>
<u>[Signature]</u>	<u>News Box Police Dept.</u>
<u>Donna E. Waters</u>	<u>Zebulon Police Dept.</u>
<u>D. Van Brou</u>	<u>UNC Charlotte Police</u>
<u>Duke [Signature]</u>	<u>River Bend P. D.</u>
<u>Uma Arden</u>	<u>ECU Police Dept.</u>
<u>James D. Carr</u>	<u>CARY Police Dept.</u>
<u>Brad Hudson</u>	<u>Cary Police Department</u>
<u>Giulio Dattaro</u>	<u>Raidville Police Dept.</u>
<u>John [Signature]</u>	<u>State Capitol Police</u>
<u>[Signature]</u>	<u>Wicoupari Police Dept.</u>
<u>Michael P. Cherry</u>	<u>Alamance County Dept.</u>
<u>Steve [Signature]</u>	<u>Ahoskie Police Dept.</u>
<u>[Signature]</u>	<u>WASHINGTON POLICE</u>
<u>[Signature]</u>	<u>Hudson Police Dept.</u>
<u>Lawrence C. Shelton</u>	<u>Maywood Police Dept.</u>
<u>David [Signature]</u>	<u>Wendover Police Dept.</u>
<u>[Signature]</u>	<u>" " "</u>

SUMMARY OF PROPOSED CONTROLLED SUBSTANCE TAX ACT CHANGES

This proposed legislation is offered so that, pending the State's appeal of Lynn, et al. v. West, et al. to the United States Supreme Court, the Department of Revenue and law enforcement agencies can continue to enforce the controlled substance tax in a manner consistent with the recent decision of the Fourth Circuit Court of Appeals. If the U. S. Supreme Court agrees with the state's legal argument and finds the tax to be constitutional, this proposal would automatically reinstate the prior law. The legislation does the following:

- emphasizes that the legislative intent behind the enactment of the Controlled Substance Tax Act is to raise revenue through a civil tax on a highly profitable activity that, due to its illicit nature, goes unreported for tax purposes
- emphasizes that the purpose of the Controlled Substance Tax is not to create any criminal penalties (other than for non-payment of the Tax) separate and apart from those that already exist in the criminal code
- reduces the tax rates in the Controlled Substance Tax statute to meet the objections raised in the court decision
- automatically reinstates the language of the Act as it existed on January 12, 1998, upon a favorable ruling by the United States Supreme Court in Lynn
- puts dealers on notice that the rate differential between the pre-Lynn drug tax and the interim tax will be collected if Lynn reversed

* Not included in the draft legislation, but also being considered, are amendments to conform the administrative collection procedures of this tax to that of other civil taxes.

The Controlled Substance Tax Act was overwhelmingly approved by the General Assembly in 1989. Since taking effect in 1990 approximately \$30 million dollars has been assessed and collected for the benefit of our state.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1071

Short Title: Pay Rent Arrears to Stay Ejectment.

(Public)

Sponsors: Representative Capps.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO REQUIRE TENANTS TO PAY TO THE CLERK OF COURT THE
3 AMOUNT OF RENT IN ARREARS TO STAY THE EXECUTION OF
4 JUDGMENT FOR SUMMARY EJECTMENT PENDING APPEAL TO
5 DISTRICT COURT AND TO POST A BOND FOR ANY FURTHER APPEALS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 42-34 reads as rewritten:

8 "§ 42-34. Undertaking on appeal and order staying execution.

9 (a) Upon appeal to the district court, either party may demand that the case be
10 tried at the first session of the court after the appeal is docketed, but the presiding
11 judge, in his discretion, may first try any pending case in which the rights of the
12 parties or the public demand it.

13 (b) It shall be sufficient to stay execution of a judgment for ejectment ~~that~~ if the
14 defendant appellant ~~sign~~ pays any rent in arrears and signs an undertaking that he or
15 she will pay into the office of the clerk of superior court the amount of the contract
16 rent as it becomes due periodically after the judgment was entered and, where
17 applicable, comply with subdivision (c) below. Any magistrate, clerk, or district
18 court judge shall order stay of execution upon ~~such undertaking.~~ the defendant
19 appellant's paying the rent in arrears and signing the undertaking. If either party
20 disputes the amount of the payment or the due date in ~~such~~ the undertaking, the
21 aggrieved party may move for modification of the terms of the undertaking before the
22 clerk of superior court or the district court. Upon such motion and upon notice to all
23 interested parties, the clerk or court shall hold a hearing and determine what
24 modifications, if any, are appropriate.

1 (c) In an ejectment action based upon alleged nonpayment of rent where the
 2 judgment is entered more than five working days before the day when the next rent
 3 will be due under the lease, the appellant shall make an additional undertaking to
 4 stay execution pending appeal. Such additional undertaking shall be the payment of
 5 the prorated rent for the days between the day that the judgment was entered and the
 6 next day when the rent will be due under the lease. ~~Notwithstanding, such additional~~
 7 ~~undertaking shall not be required of an indigent appellant who prosecutes his appeal~~
 8 ~~with an in forma pauperis affidavit that meets the requirements of G.S. 1-288.~~

9 (c1) Notwithstanding the provisions of subsections (b) and (c) of this section, an
 10 indigent defendant appellant who prosecutes his or her appeal with an in forma
 11 pauperis affidavit that meets the requirement of G.S. 1-288 shall not be required to
 12 pay rent in arrears or to enter into an additional undertaking to stay execution
 13 pending appeal.

14 (d) The undertaking by the appellant and the order staying execution may be
 15 substantially in the following form:

16 'State of North Carolina,
 17 'County of
 18 '..... , Plaintiff

19
 20 vs.

21 '..... , Defendant

Bond to
 Stay Execution
 On Appeal to
 District Court

24 'Now comes the defendant in the above entitled action and respectfully shows the
 25 court that judgment for summary ejectment was entered against the defendant and for
 26 the plaintiff on the..... day of, 19..., by the Magistrate. Defendant has appealed
 27 the judgment to the District Court.

28 'Pursuant to the terms of the lease between plaintiff and defendant, defendant is
 29 obligated to pay rent in the amount of \$..... per, due on the day of each

30 'Where the payment of rent in arrears or an additional undertaking is required by
 31 G.S. 42-34(e), G.S. 42-34(b) or (c), the defendant hereby tenders \$..... to the Court as
 32 required.

33 'Defendant hereby undertakes to pay the periodic rent hereinafter due according
 34 to the aforesaid terms of the lease and moves the Court to stay execution on the
 35 judgment for summary ejectment until this matter is heard on appeal by the District
 36 Court.

37 'This the day of....., 19.....

38
 39 Defendant

40 'Upon execution of the above bond, execution on said judgment for summary
 41 ejectment is hereby stayed until the action is heard on appeal in the District Court. If
 42 defendant fails to make any rental payment to the clerk's office within five days of
 43 the due date, upon application of the plaintiff, the stay of execution shall dissolve and
 44 the sheriff may dispossess the defendant.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

H1071-CSRU-004
PROPOSED SENATE JUDICIARY COMMITTEE SUBSTITUTE
HOUSE BILL 1071
THIS IS A DRAFT 5-AUG-98 12:31:39
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Pay Rent Arrears to Stay Ejectment. (Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE TENANTS TO PAY TO THE CLERK OF COURT THE AMOUNT
3 OF RENT IN ARREARS TO STAY THE EXECUTION OF JUDGMENT FOR
4 SUMMARY EJECTMENT PENDING APPEAL TO DISTRICT COURT AND TO POST
5 A BOND FOR ANY FURTHER APPEALS.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 42-34 reads as rewritten:
8 "§ 42-34. Undertaking on appeal and order staying execution.
9 (a) Upon appeal to the district court, either party may demand
10 that the case be tried at the first session of the court after
11 the appeal is docketed, but the presiding judge, in his
12 discretion, may first try any pending case in which the rights of
13 the parties or the public demand it.
14 (b) ~~It~~ During an appeal to district court, it shall be
15 sufficient to stay execution of a judgment for ejectment that if
16 the defendant appellant sign pays to the clerk of superior court
17 any rent in arrears as determined by the magistrate and signs an
18 undertaking that he or she will pay into the office of the clerk
19 of superior court the amount of the contract rent as it becomes
20 due periodically after the judgment was entered and, where
21 applicable, comply with subdivision (c) below. Provided however,

1 when the magistrate makes a finding in the record, based on
2 evidence presented in court, that there is an actual dispute as
3 to the amount of rent in arrears that is due and the magistrate
4 specifies the specific amount of rent in arrears in dispute, in
5 order to stay execution of a judgment for ejectment, the
6 defendant appellant shall not be required to pay to the clerk of
7 superior court the amount of rent in arrears found by the
8 magistrate to be in dispute, even if the magistrate's judgment
9 includes this amount in the amount of rent found to be in
10 arrears. If a defendant appellant appeared at the hearing before
11 the magistrate and the magistrate found an amount of rent in
12 arrears that was not in dispute, and if an attorney representing
13 the defendant appellant on appeal to the district court signs a
14 pleading stating that new evidence exists that was not presented
15 before the magistrate that indicates that there is evidence of an
16 actual dispute as to the amount of rent in arrears, then the
17 defendant appellant shall not be required to pay the rent in
18 arrears alleged to be in dispute to stay execution of a judgment
19 for ejectment pending appeal. Any magistrate, clerk, or district
20 court judge shall order stay of execution upon ~~such undertaking.~~
21 the defendant appellant's paying the undisputed rent in arrears
22 to the clerk and signing the undertaking. If either party
23 disputes the amount of the payment or the due date in ~~such the~~
24 undertaking, the aggrieved party may move for modification of the
25 terms of the undertaking before the clerk of superior court or
26 the district court. Upon such motion and upon notice to all
27 interested parties, the clerk or court shall hold a hearing and
28 determine what modifications, if any, are appropriate.

29 (c) In an ejectment action based upon alleged nonpayment of
30 rent where the judgment is entered more than five working days
31 before the day when the next rent will be due under the lease,
32 the appellant shall make an additional undertaking to stay
33 execution pending appeal. Such additional undertaking shall be
34 the payment of the prorated rent for the days between the day
35 that the judgment was entered and the next day when the rent will
36 be due under the lease. ~~Notwithstanding, such additional~~
37 ~~undertaking shall not be required of an indigent appellant who~~
38 ~~prosecutes his appeal with an in forma pauperis affidavit that~~
39 ~~meets the requirements of G.S. 1-288.~~

40 (c1) Notwithstanding the provisions of subsection (b) of this
41 section, an indigent defendant appellant, as set forth in G.S. 1-
42 110, who prosecutes his or her appeal with as an indigent and who
43 meets the requirement of G.S. 1-288 shall pay the amount of the
44 contract rent as it becomes periodically due as set forth in

1 subsection (b) of this section, but shall not be required to pay
2 rent in arrears as set forth in subsection (b) of this section in
3 order to stay execution pending appeal.

4 (d) The undertaking by the appellant and the order staying
5 execution may be substantially in the following form:

6 'State of North Carolina,
7 'County of
8 '..... , Plaintiff

9
10 vs.
11 '..... , Defendant

Bond to
Stay Execution
On Appeal to
District Court

12
13
14 'Now comes the defendant in the above entitled action and
15 respectfully shows the court that judgment for summary ejection
16 was entered against the defendant and for the plaintiff on
17 the..... day of, 19..., by the Magistrate. Defendant
18 has appealed the judgment to the District Court.

19 'Pursuant to the terms of the lease between plaintiff and
20 defendant, defendant is obligated to pay rent in the amount of
21 \$..... per, due on the day of each

22 'Where the payment of rent in arrears or an additional
23 undertaking is required by G.S. 42-34(c), G.S. 42-34, the
24 defendant hereby tenders \$..... to the Court as required.

25 'Defendant hereby undertakes to pay the periodic rent
26 hereinafter due according to the aforesaid terms of the lease and
27 moves the Court to stay execution on the judgment for summary
28 ejection until this matter is heard on appeal by the District
29 Court.

30
31 'This the
32 day of....., 19.....
33

Defendant

34
35 'Upon execution of the above bond, execution on said judgment
36 for summary ejection is hereby stayed until the action is heard
37 on appeal in the District Court. If defendant fails to make any
38 rental payment to the clerk's office within five days of the due
39 date, upon application of the plaintiff, the stay of execution
40 shall dissolve and the sheriff may dispossess the defendant.

41 'This day of
42, 19.....
43

1 Assistant Clerk of Superior
2 Court.'

3 (e) Upon application of the plaintiff, the clerk of superior
4 court shall pay to the plaintiff any amount of the rental
5 payments paid by the defendant into the clerk's office which are
6 not claimed by the defendant in any pleadings.

7 (f) If the defendant fails to make a payment within five days
8 of the due date according to the undertaking and order staying
9 execution, the clerk, upon application of the plaintiff, shall
10 issue execution on the judgment for possession.

11 (g) When it appears by stipulation executed by all of the
12 parties or by final order of the court that the appeal has been
13 resolved, the clerk of court shall disburse any accrued moneys
14 of the undertaking remaining in the clerk's office according to
15 the terms of the stipulation or order."

16 Section 2. Article 3 of Chapter 42 of the General
17 Statutes is amended by adding the following new section:

18 "§ 42-34.1. Rent pending execution of judgment; post bond
19 pending appeal.

20 (a) If the judgment in district court is against the defendant
21 appellant and the defendant appellant does not appeal the
22 judgment, the defendant appellant shall pay rent to the plaintiff
23 for the time the defendant appellant remains in possession of the
24 premises after the judgment is given. Rent shall be prorated if
25 the judgment is executed before the day rent would become due
26 under the terms of the lease. The clerk of court shall disperse
27 any rent in arrears paid by the defendant appellant in accordance
28 with a stipulation executed by all parties or, if there is no
29 stipulation, in accordance with the judge's order.

30 (b) If the judgment in district court is against the defendant
31 appellant and the defendant appellant appeals the judgment, it
32 shall be sufficient to stay execution of the judgment if the
33 defendant appellant posts a bond as provided in G.S. 1-292. If
34 the defendant appellant fails to perfect the appeal or the
35 appellate court upholds the judgment of the district court, the
36 execution of the judgment shall proceed. The clerk of court
37 shall not disperse any rent in arrears paid by the defendant
38 appellant until all appeals have been resolved."

39 Section 3. The Administrative Office of the Courts
40 shall amend the Small Claims form entitled "Judgment In Action
41 For Summary Ejectment" to provided for a block in the
42 magistrate's findings to designate in accordance with G.S. 42-
43 34(b) that either there is no actual dispute as to the amount of

1 rent in arrears, or if there is an actual dispute of the amount
2 of rent in arrears, the amount found to be in dispute.

3 Section 4. This act becomes effective October 1, 1998
4 and applies to actions for summary ejectment filed on or after
5 that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 5, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 1071 - PAY RENT ARREARS TO STAY EJECTMENT - Representative Capps - H1071-CSRU-003.**

The Proposed Senate Committee Substitute for House Bill 1071 amends the law governing staying execution of a judgment for ejectment of a tenant during appeal from a magistrate's decision to district court by requiring that undisputed rent in arrears be paid, and provides that if the district court's decision is appealed a bond must be posted and rent will be due until the tenant vacates the premises.

Section 1 of the bill provides that during an appeal from a magistrate's decision in Small Claims Court granting an ejectment judgment against a tenant, the tenant must not only pay rent as it becomes due pending the appeal, but the tenant must also pay uncontested back rent found by the magistrate to be due. If the magistrate finds that there is an actual dispute over the amount of back rent due, even if the magistrate finds that the rent is owed, the tenant would not have to pay the disputed rent pending the appeal. This section also finds that after the magistrate hearing if an attorney representing the tenant on appeal files a pleading alleging new evidence of a dispute over back due rent, the tenant would not have to pay that rent pending the appeal. An indigent tenant filing in the forma pauperis would not be required to pay back due rent pending the appeal, only the future rent as it becomes due.

Section 2 adds a new section to Chapter 42 to make it clear that the tenant is obligated for the rent through the time of vacating the premises, including the time from the judgment. If tenant appeals the judgment of the district court, a bond must be posted for the appeal but all rents held by the clerk shall be held until all appeals are exhausted.

MEMORANDUM
HB 1071 - PCS Summary
Page 2

Section 3 directs the Administrative Office of the Courts to modify the standard magistrate summary ejectment judgment form to include blocks indicating whether or not there is an actual dispute of the amount of rent in arrears, and if so, the amount of rent in dispute.

The bill becomes effective October 1, 1998 and applies to actions for summary ejectment filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1071

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Odom
Sen.) _____

1 moves to amend the bill on page 2, line 42

2 () WHICH CHANGES THE TITLE

3 by deleting the word "with"; and on
4 page 2, lines 14 and 15 by rewriting
5 those lines to read:

6
7 "pleading stating that ~~evidence~~ exists that
8 there is evidence of an"

9
10
11
12
13
14
15
16
17
18
19

SIGNED



ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Senate Judiciary 8/5/98

1:00

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Bill Sogard	NCBA
Rob Schofield	NCJCDC
Doc Taylor	NCATL
Charles Croner	NCATL
Sheriff Jerry Martin	N.C. Sheriff's Assoc.
Sheriff Conroy Winder	N.C. Sheriff's Assoc. - Wayne County
J.M. Wareick	Goldsboro Police Dept
Timothy J. Bell	Goldsboro Police Dept.
Ann Christie	NC SARC B
Matt Osborne	AOC
Johnny Wilkins	Sheriff Wayne County
David Smith	Sheriff Granville Co.
R. Thomas Breedlove	Sheriff Vance County
Litchard Hupley	Sheriff Randolph County
Phil Raymond	Sheriff Iredell Co.
Susan Valauri	Nationwide
John McMillan	MFOS, BA
Harry W. Cantrons	Asst Assoc of NC : Wilmington Art Assoc
Jim Blackburn	NC ASSOC. County Commissioners
Andy Romanet	N.C.L.M.
Leitha R. Idell	DER
15 Billy Smith	Lenoir Co Sheriff Office

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Ted D Aauls	Arcene County Sheriff's Office
JOHN WINSTEAD	WAYNE COUNTY SHERIFF'S OFFICE
Eul Balle G	Cumberland County
Earl R Butler	Sheriff Cumberland Co
Larry Moore	Sheriff Harnett County
THOMAS LANDERT	CAPTAIN CATAWBA CO SHERIFF
TONY KELLER	Lt. Catawba County S.O. / NCNEOA
Phillip Little	Bladen Co. Sheriff's Office / NCNEOA
Alan Biggs	AUC

MINUTES
SENATE JUDICIARY COMMITTEE
August 6, 1998

The Senate Judiciary Committee met on Thursday, August 6, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order at 10:05 a.m.

The discussion of a Proposed Committee Substitute (002) to Senate Bill 1277 - AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AND TO EXTEND THE CIVIL PROCEDURE STUDY COMMISSION was resumed from the meeting on August 5th at 9:00 a.m.

Senator Miller moved to adopt a new Proposed Committee Substitute (003) to Senate Bill 1277 for discussion. The motion carried by a majority voice vote.

Senator Miller moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Appropriations Committee. The motion carried by a majority voice vote.

Representative Culpepper was recognized to explain House Bill 1094 - AN ACT TO REPEAL OBSOLETE OR PREEMPTED PROVISIONS OF THE GENERAL STATUTES AFFECTING RAILROADS, TO RECODIFY CERTAIN RAILROAD STATUTES, AND TO MAKE CONFORMING CHANGES AND CLARIFYING CHANGES.

Senator Kerr moved to reconsider the vote on the amendment adopted at a previous meeting. The motion carried by a majority voice vote.

Senator Ballance moved to amend the bill on Page 7, Line 19. The motion carried by a majority voice vote. (See attached amendment.)

Senator Odom moved to amend the bill on Page 6, Line 21. The motion carried by a majority voice vote. (See attached amendment.)

Senator Rand moved to give the bill a favorable report as amended. The motion carried by a majority voice vote.

House Bill 534 - AN ACT REGARDING THE CONTRACTUAL OBLIGATIONS OF SPOUSES, THE TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO ENFORCE SUPPORT ORDERS, AND THE AWARDED OF ALIMONY, AS

RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION was brought before the Committee for discussion.

Senator Rand moved to adopt a Proposed Committee Substitute to House Bill 534 for discussion. The motion carried by a majority voice vote.

Bill Scoggins, with the N. C. Bar Association, was recognized to explain the Proposed Committee Substitute in the absence of Representative Hackney, sponsor of the bill.

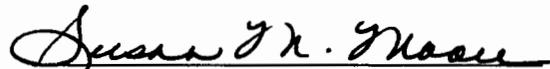
Senator Odom moved to amend the Proposed Committee Substitute on Page 1 Lines 6 through 17 and Page 2, Lines 2 through 7. The motion carried by a majority voice vote.

Senator Soles moved to amend the Proposed Committee Substitute on Page 5, Line 6 and page 5, Lines 10 and 11. The motion carried by a majority voice vote.

Senator Kerr moved to give the Proposed Committee Substitute a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting was adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, August 6, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

HB 581	Sex Exploitation Act	Hackney
HB 908	Modify Decedent's Spouses Rights	Baddour
HB 1094	Repeal/Recod. RR Laws	Culpepper
SB 1532	Adoption & Safe Fam. Act/Funds	W. Martin

Sen. Roy Cooper, III, Chairman

Posted: 08/04/98 3:19 PM

AGENDA
SENATE JUDICIARY COMMITTEE
August 6, 1998
10:00 a.m.

HB 534 Support Orders Enforcement Hackney
HB 1094 Repeal/Recodify Railroad Laws Culpepper
SB 1277 Civil Procedure Rules Changes Dalton

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

S1277-CSRU-002

PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL 1277

THIS IS A DRAFT 4-AUG-98 21:11:15

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Civil Procedure Rules Changes.

(Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE AND TO EXTEND THE
3 CIVIL PROCEDURE STUDY COMMISSION; AND TO CLARIFY THE PUBLIC
4 DUTY DOCTRINE AND THE TORTS CLAIMS ACT.

5 The General Assembly of North Carolina enacts:

6

7 SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))

8 Section 1. G.S. 1A-1, Rule 4(c) reads as rewritten:

9 "(c) Summons -- Return. -- Personal service or substituted
10 personal service of summons as prescribed by Rule 4(j)(1) a and b
11 must be made within ~~30~~ 60 days after the date of the issuance of
12 ~~summons, except that in tax and assessment foreclosures under~~
13 ~~C.S. 47-108.25 or C.S. 105-374 the time allowed for service is 60~~
14 ~~days.~~ summons. When a summons has been served upon every party
15 named in the summons, it shall be returned immediately to the
16 clerk who issued it, with notation thereon of its service.

17 Failure to make service within the time allowed or failure to
18 return a summons to the clerk after it has been served on every
19 party named in the summons shall not invalidate the summons. If
20 the summons is not served within the time allowed upon every
21 party named in the summons, it shall be returned immediately upon

1 the expiration of such time by the officer to the clerk of the
2 court who issued it with notation thereon of its nonservice and
3 the reasons therefor as to every such party not served, but
4 failure to comply with this requirement shall not invalidate the
5 summons."

6

7 SERVICE BY PRIVATE MAIL DELIVERY (RULE 4(j)) AND CONFORMING
8 CHANGES TO PROOF OF SERVICE

9 Section 2. G.S. 1A-1, Rule 4(j) reads as rewritten:

10 "(j) Process -- Manner of service to exercise personal
11 jurisdiction. -- In any action commenced in a court of this State
12 having jurisdiction of the subject matter and grounds for
13 personal jurisdiction as provided in G.S. 1-75.4, the manner of
14 service of process within or without the State shall be as
15 follows:

16 (1) Natural Person. -- Except as provided in subsection
17 (2) below, upon a natural ~~person;~~ person by one of
18 the following:

19 a. By delivering a copy of the summons and of the
20 complaint to him or by leaving copies thereof
21 at the defendant's dwelling house or usual
22 place of abode with some person of suitable
23 age and discretion then ~~residing therein;~~ or
24 therein.

25 b. By delivering a copy of the summons and of the
26 complaint to an agent authorized by
27 appointment or by law to be served or to
28 accept service of process or by serving
29 process upon such agent or the party in a
30 manner specified by any statute.

31 c. By mailing a copy of the summons and of the
32 complaint, registered or certified mail,
33 return receipt requested, addressed to the
34 party to be served, and delivering to the
35 addressee.

36 d. By depositing with a private delivery service
37 a copy of the summons and complaint, addressed
38 to the party to be served, delivering to the
39 addressee, and obtaining a delivery receipt.

40 (2) Natural Person under Disability. -- Upon a natural
41 person under disability by serving process in any
42 manner prescribed in this section (j) for service
43 upon a natural person and, in addition, where

1 required by paragraph a or b below, upon a person
2 therein designated.

3 a. Where the person under disability is a minor,
4 process shall be served separately in any
5 manner prescribed for service upon a natural
6 person upon a parent or guardian having
7 custody of the child, or if there be none,
8 upon any other person having the care and
9 control of the child. If there is no parent,
10 guardian, or other person having care and
11 control of the child when service is made upon
12 the child, then service of process must also
13 be made upon a guardian ad litem who has been
14 appointed pursuant to Rule 17.

15 b. If the plaintiff actually knows that a person
16 under disability is under guardianship of any
17 kind, process shall be served separately upon
18 his guardian in any manner applicable and
19 appropriate under this section (j). If the
20 plaintiff does not actually know that a
21 guardian has been appointed when service is
22 made upon a person known to him to be
23 incompetent to have charge of his affairs,
24 then service of process must be made upon a
25 guardian ad litem who has been appointed
26 pursuant to Rule 17.

27 (3) The State. -- Upon the State by personally
28 delivering a copy of the summons and of the
29 complaint to the Attorney General or to a deputy or
30 assistant attorney ~~general or general~~; by mailing a
31 copy of the summons and of the complaint,
32 registered or certified mail, return receipt
33 requested, addressed to the Attorney General or to
34 a deputy or assistant attorney ~~general~~ general; or
35 by depositing with a private delivery service a
36 copy of the summons and complaint, addressed to the
37 Attorney General or to a deputy or assistant
38 attorney general, delivering to the addressee, and
39 obtaining a delivery receipt.

40 (4) An Agency of the State. --

41 a. Upon an agency of the State by personally
42 delivering a copy of the summons and of the
43 complaint to the process agent appointed by
44 the agency in the manner hereinafter ~~provided~~

- 1 provided; ~~or~~ by mailing a copy of the summons
2 and of the complaint, registered or certified
3 mail, return receipt requested, addressed to
4 said process ~~agent~~ agent; or by depositing
5 with a private delivery service a copy of the
6 summons and complaint, addressed to the
7 process agent, delivering to the addressee,
8 and obtaining a delivery receipt.
- 9 b. Every agency of the State shall appoint a
10 process agent by filing with the Attorney
11 General the name and address of an agent upon
12 whom process may be served.
- 13 c. If any agency of the State fails to comply
14 with paragraph b above, then service upon such
15 agency may be made by personally delivering a
16 copy of the summons and of the complaint to
17 the Attorney General or to a deputy or
18 assistant attorney ~~general~~ general; by
19 mailing a copy of the summons and of the
20 complaint, registered or certified mail,
21 return receipt requested, addressed to the
22 Attorney General, or to a deputy or assistant
23 attorney ~~general~~ general; or by depositing
24 with a private delivery service a copy of the
25 summons and complaint, addressed to the
26 Attorney General or to a deputy or assistant
27 attorney general, delivering to the addressee,
28 and obtaining a delivery receipt.
- 29 d. For purposes of this rule, the term "agency of
30 the State" includes every agency, institution,
31 board, commission, bureau, department,
32 division, council, member of Council of State,
33 or officer of the State government of the
34 State of North Carolina, but does not include
35 counties, cities, towns, villages, other
36 municipal corporations or political
37 subdivisions of the State, county or city
38 boards of education, other local public
39 districts, units, or bodies of any kind, or
40 private corporations created by act of the
41 General Assembly.
- 42 (5) Counties, Cities, Towns, Villages and Other Local
43 Public Bodies. --

- 1 a. Upon a city, town, or village by personally
2 delivering a copy of the summons and of the
3 complaint to its mayor, city manager or ~~clerk~~
4 clerk; or by mailing a copy of the summons and
5 of the complaint, registered or certified
6 mail, return receipt requested, addressed to
7 its mayor, city manager or ~~clerk~~, clerk; or by
8 depositing with a private delivery service a
9 copy of the summons and complaint, addressed
10 to the mayor, city manager, or clerk,
11 delivering to the addressee, and obtaining a
12 delivery receipt.
- 13 b. Upon a county by personally delivering a copy
14 of the summons and of the complaint to its
15 county manager or to the chairman, clerk or
16 any member of the board of commissioners for
17 such ~~county~~ county; by mailing a copy of
18 the summons and of the complaint, registered
19 or certified mail, return receipt requested,
20 addressed to its county manager or to the
21 chairman, clerk, or any member of this board
22 of commissioners for such ~~county~~, county; or
23 by depositing with a private delivery service
24 a copy of the summons and complaint, addressed
25 to the county manager or to the chairman,
26 clerk, or any member of the board of
27 commissioners of that county, delivering to
28 the addressee, and obtaining a delivery
29 receipt.
- 30 c. Upon any other political subdivision of the
31 State, any county or city board of education,
32 or other local public district, unit, or body
33 of any kind (i) by personally delivering a
34 copy of the summons and of the complaint to an
35 officer or director thereof, ~~or~~ (ii) by
36 personally delivering a copy of the summons
37 and of the complaint to an agent or attorney-
38 in-fact authorized by appointment; or by
39 statute to be served or to accept service in
40 its behalf, ~~or~~ (iii) by mailing a copy of the
41 summons and of the complaint, registered or
42 certified mail, return receipt requested,
43 addressed to the officer, director, agent, or
44 attorney-in-fact as specified in (i) and ~~(ii)~~.

- 1 (ii); or by depositing with a private delivery
2 service a copy of the summons and complaint,
3 addressed to the officer, director, agent, or
4 attorney-in-fact as specified in (i) and (ii),
5 delivering to the addressee, and obtaining a
6 delivery receipt.
- 7 d. In any case where none of the officials,
8 officers or directors specified in paragraphs
9 a, b and c can, after due diligence, be found
10 in the State, and that fact appears by
11 affidavit to the satisfaction of the court, or
12 a judge thereof, such court or judge may grant
13 an order that service upon the party sought to
14 be served may be made by personally delivering
15 a copy of the summons and of the complaint to
16 the Attorney General or any deputy or
17 assistant attorney general of the State of
18 ~~North Carolina, or~~ Carolina; mailing a copy of
19 the summons and of the complaint, registered
20 or certified mail, return receipt requested,
21 addressed to the Attorney General or any
22 deputy or assistant attorney general of the
23 State of ~~North Carolina,~~ Carolina; or by
24 depositing with a private delivery service a
25 copy of the summons and complaint, addressed
26 to the Attorney General or any deputy or
27 assistant attorney general of the State of
28 North Carolina, delivering to the addressee,
29 and obtaining a delivery receipt.
- 30 (6) Domestic or Foreign Corporation. -- Upon a domestic
31 or foreign corporation:
- 32 a. By delivering a copy of the summons and of the
33 complaint to an officer, director, or managing
34 agent of the corporation or by leaving copies
35 thereof in the office of such officer,
36 director, or managing agent with the person
37 who is apparently in charge of the office; ~~or~~
- 38 b. By delivering a copy of the summons and of the
39 complaint to an agent authorized by
40 appointment or by law to be served or to
41 accept service ~~or~~ of process or by serving
42 process upon such agent or the party in a
43 manner specified by any ~~statute,~~ statute;

- 1 c. By mailing a copy of the summons and of the
2 complaint, registered or certified mail,
3 return receipt requested, addressed to the
4 officer, director or agent to be served as
5 specified in paragraphs ~~a and b~~, a. and b.; or
6 d. By depositing with a private delivery service
7 a copy of the summons and complaint, addressed
8 to the officer, director, or agent to be
9 served as specified in paragraphs a. and b.,
10 delivering to the addressee, and obtaining a
11 delivery receipt.
- 12 (7) Partnerships. -- Upon a general or limited
13 partnership:
- 14 a. By delivering a copy of the summons and of the
15 complaint to any general partner, or to any
16 attorney-in-fact or agent authorized by
17 appointment or by law to be served or to
18 accept service of process in its ~~behalf, or~~
19 behalf; by mailing a copy of the summons and
20 of the complaint, registered or certified
21 mail, return receipt requested, addressed to
22 any general partner, or to any attorney-in-
23 fact or agent authorized by appointment or by
24 law to be served or to accept service of
25 process in its ~~behalf, or~~ behalf; by
26 depositing with a private delivery service a
27 copy of the summons and complaint, addressed
28 to any general partner or to any attorney-in-
29 fact or agent authorized by appointment or by
30 law to be served or to accept service of
31 process in its behalf, delivering to the
32 addressee, and obtaining a delivery receipt;
33 or by leaving copies thereof in the office of
34 such general partner, attorney-in-fact or
35 agent with the person who is apparently in
36 charge of the office.
- 37 b. If relief is sought against a partner
38 specifically, a copy of the summons and of the
39 complaint must be served on such partner as
40 provided in this section (j).
- 41 (8) Other Unincorporated Associations and Their
42 Officers. -- Upon any unincorporated association,
43 organization, or society other than a partnership:

- 1 a. By delivering a copy of the summons and of the
2 complaint to an officer, director, managing
3 agent or member of the governing body of the
4 unincorporated association, organization or
5 society, or by leaving copies thereof in the
6 office of such officer, director, managing
7 agent or member of the governing body with the
8 person who is apparently in charge of the
9 office; ~~or~~
- 10 b. By delivering a copy of the summons and of the
11 complaint to an agent authorized by
12 appointment or by law to be served or to
13 accept service of process or by serving
14 process upon such agent or the party in a
15 manner specified by any ~~statute~~ statute;
- 16 c. By mailing a copy of the summons and of the
17 complaint, registered or certified mail,
18 return receipt requested, addressed to the
19 officer, director, agent or member of the
20 governing body to be served as specified in
21 paragraphs ~~a and b~~ a. and b.; or
- 22 d. By depositing with a private delivery service
23 a copy of the summons and complaint, addressed
24 to the officer, director, agent, or member of
25 the governing body to be served as specified
26 in paragraphs a. and b., delivering to the
27 addressee, and obtaining a delivery receipt.
- 28 (9) Service upon a foreign state or a political
29 subdivision, agency, or instrumentality thereof
30 shall be effected pursuant to 28 U.S.C. § 1608.

31 For purposes of this Rule, 'private delivery service' means a
32 private delivery service that has been certified by the
33 Administrative Office of the Courts for service of process
34 pursuant to this Rule."

35 Section 2.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:
36 "(j1) Service by publication on party that cannot otherwise be
37 served. -- A party that cannot with due diligence be served by
38 ~~personal delivery or delivery,~~ registered or certified ~~mail~~ mail,
39 or private delivery service may be served by publication. Except
40 in actions involving jurisdiction in rem or quasi in rem as
41 provided in section (k), service of process by publication shall
42 consist of publishing a notice of service of process by
43 publication once a week for three successive weeks in a newspaper
44 that is qualified for legal advertising in accordance with G.S.

1 1-597 and G.S. 1-598 and circulated in the area where the party
2 to be served is believed by the serving party to be located, or
3 if there is no reliable information concerning the location of
4 the party then in a newspaper circulated in the county where the
5 action is pending. If the party's post-office address is known or
6 can with reasonable diligence be ascertained, there shall be
7 mailed to the party at or immediately prior to the first
8 publication a copy of the notice of service of process by
9 publication. The mailing may be omitted if the post-office
10 address cannot be ascertained with reasonable diligence. Upon
11 completion of such service there shall be filed with the court an
12 affidavit showing the publication and mailing in accordance with
13 the requirements of G.S. 1-75.10(2), the circumstances warranting
14 the use of service by publication, and information, if any,
15 regarding the location of the party served.

16 The notice of service of process by publication shall (i)
17 designate the court in which the action has been commenced and
18 the title of the action, which title may be indicated
19 sufficiently by the name of the first plaintiff and the first
20 defendant; (ii) be directed to the defendant sought to be served;
21 (iii) state either that a pleading seeking relief against the
22 person to be served has been filed or has been required to be
23 filed therein not later than a date specified in the notice; (iv)
24 state the nature of the relief being sought; (v) require the
25 defendant being so served to make defense to such pleading within
26 40 days after a date stated in the notice, exclusive of such
27 date, which date so stated shall be the date of the first
28 publication of notice, or the date when the complaint is required
29 to be filed, whichever is later, and notify the defendant that
30 upon his failure to do so the party seeking service of process by
31 publication will apply to the court for the relief sought; (vi)
32 in cases of attachment, state the information required by G.S. 1-
33 440.14; (vii) be subscribed by the party seeking service or his
34 attorney and give the post-office address of such party or his
35 attorney; and (viii) be substantially in the following form:

36 NOTICE OF SERVICE OF PROCESS BY PUBLICATION

37 STATE OF NORTH CAROLINA _____ COUNTY

38 In the _____ Court

39 [Title of action or special proceeding] To [Person to be served]:
40 Take notice that a pleading seeking relief against you (has
41 been filed) (is required to be filed not later than _____,
42 19 ____) in the above-entitled (action) (special proceeding). The
43 nature of the relief being sought is as follows:
44 (State nature).

1 You are required to make defense to such pleading not later
2 than (_____, 19 ____) and upon your failure to do so the
3 party seeking service against you will apply to the court for the
4 relief sought.

5 This, the _____ day of _____, 19 ____
6 _____ (Attorney) (Party)
7 _____ (Address)".

8 Section 2.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:
9 "(j2) Proof of service. -- Proof of service of process shall
10 be as follows:

11 (1) Personal Service. -- Before judgment by default may
12 be had on personal service, proof of service must
13 be provided in accordance with the requirements of
14 G.S. 1-75.10(1).

15 (2) Registered or Certified ~~Mail~~, Mail or Private
16 Delivery Service. -- Before judgment by default may
17 be had on service by registered or certified ~~mail~~,
18 mail or by private delivery service with delivery
19 receipt, the serving party shall file an affidavit
20 with the court showing proof of such service in
21 accordance with the requirements of ~~G.S.~~
22 ~~1-75.10(4)~~, G.S. 1-75.10(4) or G.S. 1-75.10(5), as
23 appropriate. This affidavit together with the
24 return or delivery receipt signed by the person who
25 received the mail or delivery if not the addressee
26 raises a presumption that the person who received
27 the mail or delivery and signed the receipt was an
28 agent of the addressee authorized by appointment or
29 by law to be served or to accept service of process
30 or was a person of suitable age and discretion
31 residing in the addressee's dwelling house or usual
32 place of abode. In the event the presumption
33 described in the preceding sentence is rebutted by
34 proof that the person who received the receipt at
35 the addressee's dwelling house or usual place of
36 abode was not a person of suitable age and
37 discretion residing therein, the statute of
38 limitation may not be pleaded as a defense if the
39 action was initially commenced within the period of
40 limitation and service of process is completed
41 within 60 days from the date the service is
42 declared invalid. Service shall be complete on the
43 day the summons and complaint are delivered to the
44 address.

1 (3) Publication. -- Before judgment by default may be
2 had on service by publication, the serving party
3 shall file an affidavit with the court showing the
4 circumstances warranting the use of service by
5 publication, information, if any, regarding the
6 location of the party served which was used in
7 determining the area in which service by
8 publication was printed and proof of service in
9 accordance with G.S. 1-75.10(2)."

10 Section 2.3. G.S. 1-75.10 reads as rewritten:

11 "§ 1-75.10. Proof of service of summons, defendant appearing in
12 action.

13 Where the defendant appears in the action and challenges the
14 service of the summons upon him, proof of the service of process
15 shall be as follows:

16 (1) Personal Service or Substituted Personal Service.

17 --

18 a. If served by the sheriff of the county or the
19 lawful process officer in this State where the
20 defendant was found, by the officer's
21 certificate thereof, showing place, time and
22 manner of service; or

23 b. If served by any other person, his affidavit
24 thereof, showing place, time and manner of
25 service; his qualifications to make service
26 under Rule 4(a) or Rule 4(j3) of the Rules of
27 Civil Procedure; that he knew the person
28 served to be the party mentioned in the
29 summons and delivered to and left with him a
30 copy; and if the defendant was not personally
31 served, he shall state in such affidavit when,
32 where and with whom such copy was left. If
33 such service is made outside this State, the
34 proof thereof may in the alternative be made
35 in accordance with the law of the place where
36 such service is made.

37 (2) Service of Publication. -- In the case of
38 publication, by the affidavit of the publisher or
39 printer, or his foreman or principal clerk,
40 showing the same and specifying the date of the
41 first and last publication, and an affidavit of
42 mailing of a copy of the complaint or notice, as
43 the case may require, made by the person who mailed
44 the same.

- 1 (3) Written Admission of Defendant. -- The written
2 admission of the defendant, whose signature or the
3 subscription of whose name to such admission shall
4 be presumptive evidence of genuineness.
- 5 (4) Service by Registered or Certified Mail. -- In the
6 case of service by registered or certified mail, by
7 affidavit of the serving party averring:
- 8 a. That a copy of the summons and complaint was
9 deposited in the post office for mailing by
10 registered or certified mail, return receipt
11 requested;
- 12 b. That it was in fact received as evidenced by
13 the attached registry receipt or other
14 evidence satisfactory to the court of delivery
15 to the addressee; and
- 16 c. That the genuine receipt or other evidence of
17 delivery is attached.
- 18 (5) Service by Private Delivery Service. -- In the case
19 of service by private delivery service, by
20 affidavit of the serving party averring:
- 21 a. That a copy of the summons and complaint was
22 deposited with a private delivery service
23 certified by the Administrative Office of the
24 Courts, delivery receipt requested;
- 25 b. That it was in fact received as evidenced by
26 the attached delivery receipt or other
27 evidence satisfactory to the court of delivery
28 to the addressee; and
- 29 c. That the genuine receipt or other evidence of
30 delivery is attached."

31
32 SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))

33 Section 3. G.S. 1A-1, Rule 5(b) reads as rewritten:

34 "(b) Service -- How made. -- A pleading setting forth a
35 counterclaim or cross claim shall be filed with the court and a
36 copy thereof shall be served on the party against whom it is
37 asserted or on his attorney of record. With respect to all
38 pleadings subsequent to the original complaint and other papers
39 required or permitted to be served, service with due return may
40 be made in the manner provided for service and return of process
41 in Rule 4 and may be made upon either the party or, unless
42 service upon the party himself is ordered by the court, upon his
43 attorney of record. With respect to such other pleadings and
44 papers, service upon the attorney or upon a party may also be

1 made by delivering a copy to him or by mailing it to him at his
2 last known address or, if no address is known, by filing it with
3 the clerk of court. Delivery of a copy within this rule means
4 handing it to the attorney or to the ~~party; or party,~~ leaving it
5 at the attorney's office with a partner or ~~employee, employee, or~~
6 by sending it to the attorney's office by telefacsimile between
7 9:00 a.m. and 5:00 p.m. Eastern Standard Time on a regular
8 business day. Service by mail shall be complete upon deposit of
9 the pleading or paper enclosed in a post-paid, properly addressed
10 wrapper in a post office or official depository under the
11 exclusive care and custody of the United States Postal Service."

12

13 SERVICE OF BRIEFS AND MEMORANDA (RULE 5(f))

14 Section 4. G.S. 1A-1, Rule 5 is amended by adding the
15 following new subsection:

16 "(f) Service of briefs and memoranda. -- Except by leave of
17 court or consent of the parties, to be considered by the
18 presiding judge, other than a magistrate, a brief or memorandum
19 in support of a motion shall be served by the moving party upon
20 the adverse party no later than the third business day preceding
21 the scheduled hearing date on the motion and a brief or
22 memorandum shall be served by the adverse party upon the moving
23 party prior to the scheduled hearing date on the motion."

24

25 MOTION STATED WITH PARTICULARITY (RULE 7(b))

26 Section 4.1. G.S. 1A-1, Rule 7(b) reads as rewritten:

27 "(b) Motions and other papers. --

28 (1) An application to the court for an order shall be by
29 motion which, unless made during a hearing or trial or
30 at a session at which a cause is on the calendar for
31 that session, shall be made in writing, shall state
32 with reasonable particularity the grounds therefor, and
33 shall set forth the relief or order sought. The
34 requirement of writing is fulfilled if the motion is
35 stated in a written notice of the hearing of the
36 motion.

37 (2) The rules applicable to captions, signing, and other
38 matters of form of pleadings apply to all motions and
39 other papers provided for by these rules.

40 (3) A motion to transfer under G.S. 7A-258 shall comply
41 with the directives therein specified but the relief
42 thereby obtainable may also be sought in a responsive
43 pleading pursuant to Rule 12(b)."

1 ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION
2 (RULE 28(c))

3 Section 5. G.S. 1A-1, Rule 28(c) reads as rewritten:

4 "(c) Disqualification for interest. -- No deposition shall be
5 taken before a person who is a relative or employee or attorney
6 or counsel of any of the parties, or is a relative or employee of
7 such attorney or counsel, or is financially interested in the
8 action ~~unless~~ unless:

- 9 (1) ~~the~~ The parties agree otherwise by stipulation as
10 provided in Rule 29, Rule 29; or
11 (2) The deposition is taken by videotape in compliance
12 with Rule 30(b)(4) and Rule 30(f), and the notice
13 for the taking of the deposition states the name of
14 the person before whom the deposition will be taken
15 and that person's relationship, if any, to a party
16 or a party's attorney."

17

18 DISCOVERY DISPUTES (RULE 37)

19 Section 6. G.S. 1A-1, Rule 37(a) reads as rewritten:

20 "(a) Motion for order compelling discovery. -- A party, upon
21 reasonable notice to other parties and all persons affected
22 thereby, may apply for an order compelling discovery as follows:

- 23 (1) Appropriate Court. -- An application for an order
24 to a party or a deponent who is not a party may be
25 made to a judge of the court in which the action is
26 pending, or, on matters relating to a deposition
27 where the deposition is being taken in this State,
28 to a judge of the court in the county where the
29 deposition is being taken, as defined by Rule
30 30(h).
- 31 (2) Motion. -- If a deponent fails to answer a question
32 propounded or submitted under Rules 30 or 31, or a
33 corporation or other entity fails to make a
34 designation under Rule 30(b)(6) or 31(a), or a
35 party fails to answer an interrogatory submitted
36 under Rule 33, or if a party, in response to a
37 request for inspection submitted under Rule 34,
38 fails to respond that inspection will be permitted
39 as requested or fails to permit inspection as
40 requested, the discovering party may move for an
41 order compelling an answer, or a designation, or an
42 order compelling inspection in accordance with the
43 request. The motion must include a certification
44 that the movant has in good faith conferred or

1 attempted to confer with the person or party
2 failing to make the discovery in an effort to
3 secure the information or material without court
4 action. When taking a deposition on oral
5 examination, the proponent of the question shall
6 complete the examination on all other matters
7 before he adjourns the examination in order to
8 apply for an order. If the court denies the motion
9 in whole or in part, it may make such protective
10 order as it would have been empowered to make on a
11 motion made pursuant to Rule 26(c).

12 (3) Evasive or Incomplete Answer. -- For purposes of
13 this subdivision an evasive or incomplete answer is
14 to be treated as a failure to answer.

15 (4) Award of Expenses of Motion. -- If the motion is
16 granted, the court shall, after opportunity for
17 hearing, require the party or deponent whose
18 conduct necessitated the motion or the party
19 advising such conduct or both of them to pay to the
20 moving party the reasonable expenses incurred in
21 obtaining the order, including attorney's fees,
22 unless the court finds that the opposition to the
23 motion was substantially justified or that other
24 circumstances make an award of expenses unjust.

25 If the motion is denied, the court shall,
26 after opportunity for hearing, require the moving
27 party to pay to the party or deponent who opposed
28 the motion the reasonable expenses incurred in
29 opposing the motion, including attorney's fees,
30 unless the court finds that the making of the
31 motion was substantially justified or that other
32 circumstances make an award of expenses unjust.

33 If the motion is granted in part and denied in
34 part, the court may apportion the reasonable
35 expenses incurred in relation to the motion among
36 the parties and persons in a just manner."
37

38 **PRESERVING EXCEPTIONS TO RULINGS (RULE 46)**

39 Section 7. G.S. 1A-1, Rule 46 reads as rewritten:

40 **"Rule 46. Objections and exceptions.**

41 (a) Rulings on admissibility of evidence. --

42 (1) When there is objection to the admission of
43 evidence on the ground that the witness is for a
44 specified reason incompetent or not qualified or

1 disqualified, it shall be deemed that a like
2 objection has been made to any subsequent admission
3 of evidence from the witness in question.
4 Similarly, when there is objection to the admission
5 of evidence involving a specified line of
6 questioning, it shall be deemed that a like
7 objection has been taken to any subsequent
8 admission of evidence involving the same line of
9 questioning.

10 (2) If there is proper objection to the admission of
11 evidence and the objection is overruled, the ruling
12 of the court shall be deemed excepted to by the
13 party making the objection. If an objection to the
14 admission of evidence is sustained or if the court
15 for any reason excludes evidence offered by a
16 party, the ruling of the court shall be deemed
17 excepted to by the party offering the evidence.

18 (3) No objections are necessary with respect to
19 questions propounded to a witness by the court or a
20 juror but it shall be deemed that each such
21 question has been properly objected to and that the
22 objection has been overruled and that an exception
23 has been taken to the ruling of the court by all
24 parties to the action.

25 (b) Rulings Pretrial rulings, interlocutory orders, trial
26 rulings, and other orders not directed to the admissibility of
27 evidence. -- With respect to rulings pretrial rulings,
28 interlocutory orders, trial rulings, and other orders of the
29 court not directed to the admissibility of evidence, formal
30 objections and exceptions are unnecessary. In order to preserve
31 an exception to any such ruling or order or to the court's
32 failure to make any such ruling or order, it shall be sufficient
33 if a party, at the time the ruling or order is made or sought,
34 makes known to the court his the party's objection to the action
35 of the court or makes known the action which he that the party
36 desires the court to take and his ground therefor; the party's
37 grounds for its position. and if If a party has no opportunity to
38 object or except to a ruling or order at the time it is made, the
39 absence of an objection or exception does not thereafter
40 prejudice him- that party; however, in order to preserve
41 exceptions to these rulings and orders for appellate review, a
42 party shall promptly present to the court a request, objection,
43 or motion that states the specific grounds for the ruling that

1 the party desires the court to make upon having an opportunity to
2 do so.

3 ~~(c) Instruction. -- If there is error, either in the refusal of~~
4 ~~the judge to grant a prayer for instructions, or in granting a~~
5 ~~prayer, or in his instructions generally, the same is deemed~~
6 ~~excepted to without the filing of any formal objections."~~

7
8 **DEFAULT JUDGMENT WITHOUT HEARING (RULE 55(b))**

9 Section 8. G.S. 1A-1, Rule 55(b) reads as rewritten:

10 "(b) Judgment. -- Judgment by default may be entered as
11 follows:

12 (1) By the Clerk. -- When the plaintiff's claim against
13 a defendant is for a sum certain or for a sum which
14 can by computation be made certain, the clerk upon
15 request of the plaintiff and upon affidavit of the
16 amount due shall enter judgment for that amount and
17 costs against the defendant, if ~~he~~ the defendant
18 has been defaulted for failure to appear and if ~~he~~
19 the defendant is not an infant or incompetent
20 person. A verified pleading may be used in lieu of
21 an affidavit when the pleading contains information
22 sufficient to determine or compute the sum certain.

23 In all cases wherein, pursuant to this rule, the
24 clerk enters judgment by default upon a claim for
25 debt which is secured by any pledge, mortgage, deed
26 of trust or other contractual security in respect
27 of which foreclosure may be had, or upon a claim to
28 enforce a lien for unpaid taxes or assessments
29 under G.S. 105-414, the clerk may likewise make all
30 further orders required to consummate foreclosure
31 in accordance with the procedure provided in
32 Article 29A of Chapter 1 of the General Statutes,
33 entitled "Judicial Sales."

34 (2) By the Judge. --
35 a. In all other cases the party entitled to a
36 judgment by default shall apply to the judge
37 therefor; but no judgment by default shall be
38 entered against an infant or incompetent
39 person unless represented in the action by a
40 guardian ad litem or other such representative
41 who has appeared therein. If the party against
42 whom judgment by default is sought has
43 appeared in the action, ~~he~~ that party (or, if
44 appearing by representative, ~~his~~ the

1 representative) shall be served with written
2 notice of the application for judgment at
3 least three days prior to the hearing on such
4 application. If, in order to enable the judge
5 to enter judgment or to carry it into effect,
6 it is necessary to take an account or to
7 determine the amount of damages or to
8 establish the truth of any averment by
9 evidence or to take an investigation of any
10 other matter, the judge may conduct such
11 hearings or order such references as ~~he~~ the
12 judge deems necessary and proper and shall
13 accord a right of trial by jury to the parties
14 when and as required by the Constitution or by
15 any statute of North Carolina. If the
16 plaintiff seeks to establish paternity under
17 Article 3 of Chapter 49 of the General
18 Statutes and the defendant fails to appear,
19 the judge shall enter judgment by default.

20 b. A motion for judgment by default may be
21 decided by the court without a hearing if:

22 1. The motion specifically provides that the
23 court may decide the motion for judgment
24 by default without a hearing if the party
25 against whom judgment is sought fails to
26 serve a written response, stating the
27 grounds for opposing the motion, within
28 30 days of service of the motion; and

29 2. The party against whom judgment is sought
30 fails to serve the response in accordance
31 with this sub-subdivision."
32

33 ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)

34 Section 9. G.S. 1A-1, Rule 65(b) reads as rewritten:

35 "(b) Temporary restraining order; notice; hearing; duration. --
36 A temporary restraining order may be granted without written or
37 oral notice to the adverse party or that party's attorney only if
38 (i) it clearly appears from specific facts shown by affidavit or
39 by verified complaint that immediate and irreparable injury,
40 loss, or damage will result to the applicant before ~~notice can be~~
41 ~~served and a hearing had thereon.~~ the adverse party or that
42 party's attorney can be heard in opposition, and (ii) the
43 applicant's attorney certifies to the court in writing the
44 efforts, if any, that have been made to give the notice and the

1 reasons supporting the claim that notice should not be required.
2 Every temporary restraining order granted without notice shall be
3 endorsed with the date and hour of issuance; shall be filed
4 forthwith in the clerk's office and entered of record; shall
5 define the injury and state why it is irreparable and why the
6 order was granted without notice; and shall expire by its terms
7 within such time after entry, not to exceed 10 days, as the judge
8 fixes, unless within the time so fixed the order, for good cause
9 shown, is extended for a like period or unless the party against
10 whom the order is directed consents that it may be extended for a
11 longer period. The reasons for the extension shall be entered of
12 record. In case a temporary restraining order is granted without
13 notice and a motion for a preliminary injunction is made, it
14 shall be set down for hearing at the earliest possible time and
15 takes precedence over all matters except older matters of the
16 same character; and when the motion comes on for hearing, the
17 party who obtained the temporary restraining order shall proceed
18 with a motion for a preliminary injunction, and, if he does not
19 do so, the judge shall dissolve the temporary restraining order.
20 On two days' notice to the party who obtained the temporary
21 restraining order without notice or on such shorter notice to
22 that party as the judge may prescribe, the adverse party may
23 appear and move its dissolution or modification and in that event
24 the judge shall proceed to hear and determine such motion as
25 expeditiously as the ends of justice require. Damages may be
26 awarded in an order for dissolution as provided in section (e)."
27

28 **EXTEND CIVIL PROCEDURE STUDY COMMISSION AND INCREASE MEMBERSHIP**

29 Section 10. Subsection (c) of Section 4.1 of Part IV of
30 Chapter 17 of the 1996 Second Extra Session Laws reads as
31 rewritten:

32 "(c) The Commission shall report to the General Assembly and
33 the Chief Justice no later than ~~April 1, 1998~~, February 1, 2001.
34 The report shall be in writing and shall set forth the
35 Commission's findings, conclusions, and recommendations,
36 including any proposed legislation or court rules. Upon issuing
37 its final report, the Commission shall terminate."

38 Section 11. Subsection (a) of Section 4.1 of Part IV of
39 Chapter 17 of the 1996 Second Extra Session Laws reads as
40 rewritten:

41 "(a) The Civil Procedure Study Commission is created. The
42 Commission shall consist of ~~18~~ 24 voting members: ~~six~~ eight
43 members to be appointed by the President Pro Tempore of the
44 Senate, ~~six~~ eight members to be appointed by the Speaker of the

1 House of Representatives, and ~~six~~ eight members to be appointed
2 by the Chief Justice of the North Carolina Supreme Court. No
3 more than four members appointed by the President Pro Tempore of
4 the Senate and no more than four members appointed by the Speaker
5 of the House of Representatives may be members of the General
6 Assembly. No more than four of the members appointed by any one
7 of the three appointing authorities may be members of the same
8 political party."

9 Section 12. Of the funds appropriated to the General
10 Assembly for the 1998-99 fiscal year, the sum of twenty-five
11 thousand dollars (\$25,000) shall be allocated to implement the
12 provisions of this act.

13

14 CLARIFY PUBLIC DUTY DOCTRINE AND THE TORTS CLAIMS ACT

15 Section 13. G.S. 143-291(a) reads as rewritten:

16 "(a) The North Carolina Industrial Commission is hereby
17 constituted a court for the purpose of hearing and passing upon
18 tort claims against the State Board of Education, the Board of
19 Transportation, and all other departments, institutions and
20 agencies of the State. The Industrial Commission shall determine
21 whether or not each individual claim arose as a result of the
22 negligence of any officer, employee, involuntary servant or agent
23 of the State while acting within the scope of his office,
24 employment, service, agency or authority, under circumstances
25 where the State of North Carolina, if a private person, would be
26 liable to the claimant in accordance with the laws of North
27 Carolina. Negligence, within this section, is the failure to use
28 ordinary care in following a duty imposed by law, whether the
29 duty is for the benefit of a specific person or of the general
30 public. If the Commission finds that there was such negligence
31 on the part of an officer, employee, involuntary servant or agent
32 of the State while acting within the scope of his office,
33 employment, service, agency or authority, which was the proximate
34 cause of the injury and that there was no contributory negligence
35 on the part of the claimant or the person in whose behalf the
36 claim is asserted, the Commission shall determine the amount of
37 damages which the claimant is entitled to be paid, including
38 medical and other expenses, and by appropriate order direct the
39 payment of such damages by the department, institution or agency
40 concerned, but in no event shall the amount of damages awarded
41 exceed the sum of one hundred fifty thousand dollars (\$150,000)
42 cumulatively to all claimants on account of injury and damage to
43 any one person. Community colleges and technical colleges shall
44 be deemed State agencies for purposes of this Article. The fact

1 that a claim may be brought under more than one Article under
2 this Chapter shall not increase the foregoing maximum liability
3 of the State."

4

5 **OFFICIAL COMMENTS**

6 Section 14. The Revisor of Statutes shall cause to be
7 printed along with this act the following statement to the
8 official Comment for G.S. 1A-1, Rule 5(b):

9 "To be considered by the presiding judge on a motion calendar
10 for a Monday, for example, a brief or memorandum must be served
11 by the close of business on the preceding Wednesday. The rule
12 does not require the filing of a brief or memorandum; it only
13 governs instances in which a brief or memorandum is filed. The
14 rule would not preclude a party from providing the judge with
15 copies of cases or statutes at the hearing."

16

17 **EFFECTIVE DATE**

18 Section 15. Sections 1 through 9 of this act become
19 effective October 1, 1998 and apply to actions filed on or after
20 that date. Sections 10, 11 and 14 of this act and this section
21 are effective when they become law. Section 12 of this act
22 becomes effective July 1, 1998. Section 13 of this act becomes
23 effective October 1, 1998 and applies to claims pending on or
24 after that date.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 5, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

**RE: PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 1277 - CIVIL
PROCEDURE RULES CHANGES - Senator Dalton - S1277-CSRU-002**

The Proposed Committee Substitute for Senate Bill 1277 incorporates some of the recommendations of the Civil Procedures Study Commission. The bill makes changes to the Rules of Civil Procedure to reduce the time required to dispose of civil actions and to simplify pretrial and trial procedures. The bill extends the life of a civil summons to 60 days, allows for service by private mail service, allows service of pleadings and papers by fax, requires advance service of briefs, allows video deposition by attorney's employee, requires informal mediation of discovery disputes, simplifies preservation of exceptions to rulings, allows default judgment without hearing, requires greater notice of temporary restraining orders (TRO's), and extends the Civil Procedures Study Commission to 2001 and increases the membership from 18 to 24 members, and clarifies the public duty doctrine under the Torts Claims Act.

Section 1 of the bill amends Rule 4(c) to extend the life of a civil summons from 30 to 60 days to allow for additional time for the summons to be served reducing the paperwork and time by the clerk to endorse the summons to extend the time.

Section 2 amends Rule 4(j) to allow as an optional method of service of process, delivery by a private delivery service, like Federal Express or UPS. Service must be evidenced by a delivery receipt and must be made by a company certified by the Administrative Office of the Courts. Sections 2.1, 2.2, and 2.3 make conforming changes to other statutes to reflect this new method of service, including proof of services statutes.

Section 3 amends Rule 5(b) to broaden the methods of service of pleadings and papers to allow service on the opposite attorney by fax during normal business hours.

Section 4 amends Rule 5 by adding a new subsection to require that a brief or memorandum in support of a motion must serve on the adverse party at least two business days prior to the scheduled hearing when the brief or memorandum will be presented and the

adverse party must serve their brief at least the day before the hearing, unless the judge allows otherwise or the parties otherwise consent.

Section 4.1 amends Rule 7(b) to require that motion shall state with reasonable particularity the grounds for the motion.

Section 5 amends Rule 28(c) to permit a videotaped deposition to be taken by an attorney's employee provided notice of the person and the relationship with the attorney is given to the opposite attorney at the time of the notice of the taking of the deposition.

Section 6 amends Rule 37(a) to require that before applying for an order compelling discovery, the moving party must confer with, or make a good faith attempt to confer with, the party failing to make discovery in order to obtain the information sought. The motion seeking an order to compel discovery must include a certification of the efforts or attempted efforts to confer.

Section 7 amends Rule 46(b) and (c) to clarify that no formal objection or exception is required to any court ruling, other than on evidentiary matters, including pretrial rulings, interlocutory orders, trial rulings or other orders. However to preserve the exception for appellate review, a party must present the court with a request, objection or motion that sets out the specific grounds for the ruling the party desires the court to make when the party has an opportunity to do so. Rule 46(c) is repealed to avoid a conflict with the Rules of Appellate Procedure (Rule 10(b)(2)) which requires formal objection to jury instructions to preserve the exceptions on appeal.

Section 8 amends Rule 55(b) to allow judgment by default to be entered by a court without a hearing when the motion for judgment by default specifically notifies the other party that the court will decide the motion without a hearing unless the other party files a written response stating the grounds for opposing the motion within 30 days of service of the motion, and the other party fails to respond within the time.

Section 9 amends Rule 65(b) to only allow a temporary restraining order to be issued without notice to the opposite party when the moving party shows that immediate and irreparable harm will result before the other party can be heard, and the moving party's attorney certifies in writing to the court the efforts, if any, made to give notice to the other party, and the reasons supporting why the notice should not be required. This change will conform to the current Federal Rule 65.

Sections 10, 11, and 12 would extend (retroactively) the life of the Civil Procedure Study Commission to February 1, 2001 (from April 1, 1998), would increase the membership from 18 to 24 members (2 additional members appointed each by the President ProTemp, the Speaker, and the Chief Justice), and allocates \$25,000 of the funds appropriated to the General Assembly to fund the study.

Section 13 would clarify the relationship between the Torts Claims Act and the "public duty doctrine" by stating specifically that the negligence applicable under this law is the

MEMORANDUM
S1277 - PCS Summary
Page 3

failure to use ordinary care in following a duty imposed by law, whether the duty is for the benefit of a specific person or of the general public.

Section 14 requires the Revisor of Statutes to add to the official Comment for Rule 5(b) explaining the meaning of the requirement to serve briefs in advance of a motion hearing.

The changes to the Rules would be effective October 1, 1998 and would apply to actions filed on or after that date. The changes to Commission would be effective when the bill becomes law and the funding would be approved effective July 1, 1998. Changes to the Torts Claim Act would be effective October 1, 1998 and would apply to claims pending on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

S1277-CSRU-003

PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL 1277

THIS IS A DRAFT 5-AUG-98 18:09:38

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Civil Procedure Rules Changes.

(Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE, AND TO CLARIFY THE
3 PUBLIC DUTY DOCTRINE AND THE TORTS CLAIMS ACT.
4 The General Assembly of North Carolina enacts:
5
6 **SUMMONS ALIVE FOR 60 DAYS (RULE 4(c))**
7 Section 1. G.S. 1A-1, Rule 4(c) reads as rewritten:
8 "(c) Summons -- Return. -- Personal service or substituted
9 personal service of summons as prescribed by Rule 4(j)(1) a and b
10 must be made within ~~30~~ 60 days after the date of the issuance of
11 ~~summons, except that in tax and assessment foreclosures under~~
12 ~~C.S. 47-108.25 or C.S. 105-374 the time allowed for service is 60~~
13 ~~days.~~ summons. When a summons has been served upon every party
14 named in the summons, it shall be returned immediately to the
15 clerk who issued it, with notation thereon of its service.
16 Failure to make service within the time allowed or failure to
17 return a summons to the clerk after it has been served on every
18 party named in the summons shall not invalidate the summons. If
19 the summons is not served within the time allowed upon every
20 party named in the summons, it shall be returned immediately upon
21 the expiration of such time by the officer to the clerk of the

1 court who issued it with notation thereon of its nonservice and
2 the reasons therefor as to every such party not served, but
3 failure to comply with this requirement shall not invalidate the
4 summons."

5

6 SERVICE BY PRIVATE MAIL DELIVERY (RULE 4(j)) AND CONFORMING
7 CHANGES TO PROOF OF SERVICE

8 Section 2. G.S. 1A-1, Rule 4(j) reads as rewritten:

9 "(j) Process -- Manner of service to exercise personal
10 jurisdiction. -- In any action commenced in a court of this State
11 having jurisdiction of the subject matter and grounds for
12 personal jurisdiction as provided in G.S. 1-75.4, the manner of
13 service of process within or without the State shall be as
14 follows:

15 (1) Natural Person. -- Except as provided in subsection
16 (2) below, upon a natural ~~person;~~ person by one of
17 the following:

18 a. By delivering a copy of the summons and of the
19 complaint to him or by leaving copies thereof
20 at the defendant's dwelling house or usual
21 place of abode with some person of suitable
22 age and discretion then residing ~~therein;~~ or
23 therein.

24 b. By delivering a copy of the summons and of the
25 complaint to an agent authorized by
26 appointment or by law to be served or to
27 accept service of process or by serving
28 process upon such agent or the party in a
29 manner specified by any statute.

30 c. By mailing a copy of the summons and of the
31 complaint, registered or certified mail,
32 return receipt requested, addressed to the
33 party to be served, and delivering to the
34 addressee.

35 d. By depositing with a private delivery service
36 a copy of the summons and complaint, addressed
37 to the party to be served, delivering to the
38 addressee, and obtaining a delivery receipt.

39 (2) Natural Person under Disability. -- Upon a natural
40 person under disability by serving process in any
41 manner prescribed in this section (j) for service
42 upon a natural person and, in addition, where
43 required by paragraph a or b below, upon a person
44 therein designated.

- 1 a. Where the person under disability is a minor,
2 process shall be served separately in any
3 manner prescribed for service upon a natural
4 person upon a parent or guardian having
5 custody of the child, or if there be none,
6 upon any other person having the care and
7 control of the child. If there is no parent,
8 guardian, or other person having care and
9 control of the child when service is made upon
10 the child, then service of process must also
11 be made upon a guardian ad litem who has been
12 appointed pursuant to Rule 17.
- 13 b. If the plaintiff actually knows that a person
14 under disability is under guardianship of any
15 kind, process shall be served separately upon
16 his guardian in any manner applicable and
17 appropriate under this section (j). If the
18 plaintiff does not actually know that a
19 guardian has been appointed when service is
20 made upon a person known to him to be
21 incompetent to have charge of his affairs,
22 then service of process must be made upon a
23 guardian ad litem who has been appointed
24 pursuant to Rule 17.
- 25 (3) The State. -- Upon the State by personally
26 delivering a copy of the summons and of the
27 complaint to the Attorney General or to a deputy or
28 assistant attorney ~~general~~ general; by mailing a
29 copy of the summons and of the complaint,
30 registered or certified mail, return receipt
31 requested, addressed to the Attorney General or to
32 a deputy or assistant attorney ~~general~~ general; or
33 by depositing with a private delivery service a
34 copy of the summons and complaint, addressed to the
35 Attorney General or to a deputy or assistant
36 attorney general, delivering to the addressee, and
37 obtaining a delivery receipt.
- 38 (4) An Agency of the State. --
- 39 a. Upon an agency of the State by personally
40 delivering a copy of the summons and of the
41 complaint to the process agent appointed by
42 the agency in the manner hereinafter ~~provided~~
43 provided; ~~or~~ by mailing a copy of the summons
44 and of the complaint, registered or certified

- 1 mail, return receipt requested, addressed to
2 said process ~~agent~~ agent; or by depositing
3 with a private delivery service a copy of the
4 summons and complaint, addressed to the
5 process agent, delivering to the addressee,
6 and obtaining a delivery receipt.
- 7 b. Every agency of the State shall appoint a
8 process agent by filing with the Attorney
9 General the name and address of an agent upon
10 whom process may be served.
- 11 c. If any agency of the State fails to comply
12 with paragraph b above, then service upon such
13 agency may be made by personally delivering a
14 copy of the summons and of the complaint to
15 the Attorney General or to a deputy or
16 assistant attorney ~~general~~ general; by
17 mailing a copy of the summons and of the
18 complaint, registered or certified mail,
19 return receipt requested, addressed to the
20 Attorney General, or to a deputy or assistant
21 attorney ~~general~~ general; or by depositing
22 with a private delivery service a copy of the
23 summons and complaint, addressed to the
24 Attorney General or to a deputy or assistant
25 attorney general, delivering to the addressee,
26 and obtaining a delivery receipt.
- 27 d. For purposes of this rule, the term "agency of
28 the State" includes every agency, institution,
29 board, commission, bureau, department,
30 division, council, member of Council of State,
31 or officer of the State government of the
32 State of North Carolina, but does not include
33 counties, cities, towns, villages, other
34 municipal corporations or political
35 subdivisions of the State, county or city
36 boards of education, other local public
37 districts, units, or bodies of any kind, or
38 private corporations created by act of the
39 General Assembly.
- 40 (5) Counties, Cities, Towns, Villages and Other Local
41 Public Bodies. --
- 42 a. Upon a city, town, or village by personally
43 delivering a copy of the summons and of the
44 complaint to its mayor, city manager or ~~clerk~~

- 1 clerk; ~~or~~ by mailing a copy of the summons and
2 of the complaint, registered or certified
3 mail, return receipt requested, addressed to
4 its mayor, city manager or ~~clerk~~, clerk; or by
5 depositing with a private delivery service a
6 copy of the summons and complaint, addressed
7 to the mayor, city manager, or clerk,
8 delivering to the addressee, and obtaining a
9 delivery receipt.
- 10 b. Upon a county by personally delivering a copy
11 ~~of the summons and of the complaint to its~~
12 county manager or to the chairman, clerk or
13 any member of the board of commissioners for
14 ~~such county or~~ county; by mailing a copy of
15 the summons and of the complaint, registered
16 or certified mail, return receipt requested,
17 addressed to its county manager or to the
18 chairman, clerk, or any member of this board
19 of commissioners for such ~~county~~, county; or
20 by depositing with a private delivery service
21 a copy of the summons and complaint, addressed
22 to the county manager or to the chairman,
23 clerk, or any member of the board of
24 commissioners of that county, delivering to
25 the addressee, and obtaining a delivery
26 receipt.
- 27 c. Upon any other political subdivision of the
28 State, any county or city board of education,
29 or other local public district, unit, or body
30 of any kind (i) by personally delivering a
31 copy of the summons and of the complaint to an
32 officer or director thereof, ~~or~~ (ii) by
33 personally delivering a copy of the summons
34 and of the complaint to an agent or attorney-
35 in-fact authorized by appointment or by
36 statute to be served or to accept service in
37 its behalf, ~~or~~ (iii) by mailing a copy of the
38 summons and of the complaint, registered or
39 certified mail, return receipt requested,
40 addressed to the officer, director, agent, or
41 attorney-in-fact as specified in (i) and ~~(ii)~~-
42 (ii); or by depositing with a private delivery
43 service a copy of the summons and complaint,
44 addressed to the officer, director, agent, or

- 1 attorney-in-fact as specified in (i) and (ii),
2 delivering to the addressee, and obtaining a
3 delivery receipt.
- 4 d. In any case where none of the officials,
5 officers or directors specified in paragraphs
6 a, b and c can, after due diligence, be found
7 in the State, and that fact appears by
8 affidavit to the satisfaction of the court, or
9 a judge thereof, such court or judge may grant
10 an order that service upon the party sought to
11 be served may be made by personally delivering
12 a copy of the summons and of the complaint to
13 the Attorney General or any deputy or
14 assistant attorney general of the State of
15 North ~~Carolina, or~~ Carolina; mailing a copy of
16 the summons and of the complaint, registered
17 or certified mail, return receipt requested,
18 addressed to the Attorney General or any
19 deputy or assistant attorney general of the
20 State of North ~~Carolina.~~ Carolina; or by
21 depositing with a private delivery service a
22 copy of the summons and complaint, addressed
23 to the Attorney General or any deputy or
24 assistant attorney general of the State of
25 North Carolina, delivering to the addressee,
26 and obtaining a delivery receipt.
- 27 (6) Domestic or Foreign Corporation. -- Upon a domestic
28 or foreign corporation:
- 29 a. By delivering a copy of the summons and of the
30 complaint to an officer, director, or managing
31 agent of the corporation or by leaving copies
32 thereof in the office of such officer,
33 director, or managing agent with the person
34 who is apparently in charge of the office; ~~or~~
35 b. By delivering a copy of the summons and of the
36 complaint to an agent authorized by
37 appointment or by law to be served or to
38 accept service ~~or~~ of process or by serving
39 process upon such agent or the party in a
40 manner specified by any ~~statute.~~ statute;
41 c. By mailing a copy of the summons and of the
42 complaint, registered or certified mail,
43 return receipt requested, addressed to the

- 1 officer, director or agent to be served as
2 specified in paragraphs ~~a and b.~~ a. and b.; or
3 d. By depositing with a private delivery service
4 a copy of the summons and complaint, addressed
5 to the officer, director, or agent to be
6 served as specified in paragraphs a. and b.,
7 delivering to the addressee, and obtaining a
8 delivery receipt.
- 9 (7) Partnerships. -- Upon a general or limited
10 partnership:
- 11 a. By delivering a copy of the summons and of the
12 complaint to any general partner, or to any
13 attorney-in-fact or agent authorized by
14 appointment or by law to be served or to
15 accept service of process in its ~~behalf,~~ or
16 behalf; by mailing a copy of the summons and
17 of the complaint, registered or certified
18 mail, return receipt requested, addressed to
19 any general partner, or to any attorney-in-
20 fact or agent authorized by appointment or by
21 law to be served or to accept service of
22 process in its ~~behalf,~~ or behalf; by
23 depositing with a private delivery service a
24 copy of the summons and complaint, addressed
25 to any general partner or to any attorney-in-
26 fact or agent authorized by appointment or by
27 law to be served or to accept service of
28 process in its ~~behalf,~~ delivering to the
29 addressee, and obtaining a delivery receipt;
30 or by leaving copies thereof in the office of
31 such general partner, attorney-in-fact or
32 agent with the person who is apparently in
33 charge of the office.
- 34 b. If relief is sought against a partner
35 specifically, a copy of the summons and of the
36 complaint must be served on such partner as
37 provided in this section (j).
- 38 (8) Other Unincorporated Associations and Their
39 Officers. -- Upon any unincorporated association,
40 organization, or society other than a partnership:
- 41 a. By delivering a copy of the summons and of the
42 complaint to an officer, director, managing
43 agent or member of the governing body of the
44 unincorporated association, organization or

- 1 society, or by leaving copies thereof in the
2 office of such officer, director, managing
3 agent or member of the governing body with the
4 person who is apparently in charge of the
5 office; ~~or~~
- 6 b. By delivering a copy of the summons and of the
7 complaint to an agent authorized by
8 appointment or by law to be served or to
9 accept service of process or by serving
10 process upon such agent or the party in a
11 manner specified by any ~~statute~~, statute;
- 12 c. By mailing a copy of the summons and of the
13 complaint, registered or certified mail,
14 return receipt requested, addressed to the
15 officer, director, agent or member of the
16 governing body to be served as specified in
17 paragraphs ~~a and b~~, a. and b.; or
- 18 d. By depositing with a private delivery service
19 a copy of the summons and complaint, addressed
20 to the officer, director, agent, or member of
21 the governing body to be served as specified
22 in paragraphs a. and b., delivering to the
23 addressee, and obtaining a delivery receipt.

24 (9) Service upon a foreign state or a political
25 subdivision, agency, or instrumentality thereof
26 shall be effected pursuant to 28 U.S.C. § 1608.

27 For purposes of this Rule, 'private delivery service' means a
28 private delivery service that has been certified by the
29 Administrative Office of the Courts for service of process
30 pursuant to this Rule."

31 Section 2.1. G.S. 1A-1, Rule 4(j1) reads as rewritten:
32 "(j1) Service by publication on party that cannot otherwise be
33 served. -- A party that cannot with due diligence be served by
34 personal ~~delivery or~~ delivery, registered or certified ~~mail~~ mail,
35 or private delivery service may be served by publication. Except
36 in actions involving jurisdiction in rem or quasi in rem as
37 provided in section (k), service of process by publication shall
38 consist of publishing a notice of service of process by
39 publication once a week for three successive weeks in a newspaper
40 that is qualified for legal advertising in accordance with G.S.
41 1-597 and G.S. 1-598 and circulated in the area where the party
42 to be served is believed by the serving party to be located, or
43 if there is no reliable information concerning the location of
44 the party then in a newspaper circulated in the county where the

1 action is pending. If the party's post-office address is known or
2 can with reasonable diligence be ascertained, there shall be
3 mailed to the party at or immediately prior to the first
4 publication a copy of the notice of service of process by
5 publication. The mailing may be omitted if the post-office
6 address cannot be ascertained with reasonable diligence. Upon
7 completion of such service there shall be filed with the court an
8 affidavit showing the publication and mailing in accordance with
9 the requirements of G.S. 1-75.10(2), the circumstances warranting
10 the use of service by publication, and information, if any,
11 regarding the location of the party served.

12 The notice of service of process by publication shall (i)
13 designate the court in which the action has been commenced and
14 the title of the action, which title may be indicated
15 sufficiently by the name of the first plaintiff and the first
16 defendant; (ii) be directed to the defendant sought to be served;
17 (iii) state either that a pleading seeking relief against the
18 person to be served has been filed or has been required to be
19 filed therein not later than a date specified in the notice; (iv)
20 state the nature of the relief being sought; (v) require the
21 defendant being so served to make defense to such pleading within
22 40 days after a date stated in the notice, exclusive of such
23 date, which date so stated shall be the date of the first
24 publication of notice, or the date when the complaint is required
25 to be filed, whichever is later, and notify the defendant that
26 upon his failure to do so the party seeking service of process by
27 publication will apply to the court for the relief sought; (vi)
28 in cases of attachment, state the information required by G.S. 1-
29 440.14; (vii) be subscribed by the party seeking service or his
30 attorney and give the post-office address of such party or his
31 attorney; and (viii) be substantially in the following form:

32 NOTICE OF SERVICE OF PROCESS BY PUBLICATION

33 STATE OF NORTH CAROLINA _____ COUNTY

34 In the _____ Court

35 [Title of action or special proceeding] To [Person to be served]:

36 Take notice that a pleading seeking relief against you (has
37 been filed) (is required to be filed not later than _____,
38 19 ____) in the above-entitled (action) (special proceeding). The
39 nature of the relief being sought is as follows:

40 (State nature).

41 You are required to make defense to such pleading not later
42 than (_____, 19 ____) and upon your failure to do so the
43 party seeking service against you will apply to the court for the
44 relief sought.

1 This, the _____ day of _____, 19 ____
2 _____ (Attorney) (Party)
3 _____ (Address)".

4 Section 2.2. G.S. 1A-1, Rule 4(j2) reads as rewritten:
5 "(j2) Proof of service. -- Proof of service of process shall
6 be as follows:

7 (1) Personal Service. -- Before judgment by default may
8 be had on personal service, proof of service must
9 be provided in accordance with the requirements of
10 G.S. 1-75.10(1).

11 (2) Registered or Certified Mail, Mail or Private
12 Delivery Service. -- Before judgment by default may
13 be had on service by registered or certified ~~mail,~~
14 mail or by private delivery service with delivery
15 receipt, the serving party shall file an affidavit
16 with the court showing proof of such service in
17 accordance with the requirements of ~~G.S.~~
18 ~~1-75.10(4),~~ G.S. 1-75.10(4) or G.S. 1-75.10(5), as
19 appropriate. This affidavit together with the
20 return or delivery receipt signed by the person who
21 received the mail or delivery if not the addressee
22 raises a presumption that the person who received
23 the mail or delivery and signed the receipt was an
24 agent of the addressee authorized by appointment or
25 by law to be served or to accept service of process
26 or was a person of suitable age and discretion
27 residing in the addressee's dwelling house or usual
28 place of abode. In the event the presumption
29 described in the preceding sentence is rebutted by
30 proof that the person who received the receipt at
31 the addressee's dwelling house or usual place of
32 abode was not a person of suitable age and
33 discretion residing therein, the statute of
34 limitation may not be pleaded as a defense if the
35 action was initially commenced within the period of
36 limitation and service of process is completed
37 within 60 days from the date the service is
38 declared invalid. Service shall be complete on the
39 day the summons and complaint are delivered to the
40 address.

41 (3) Publication. -- Before judgment by default may be
42 had on service by publication, the serving party
43 shall file an affidavit with the court showing the
44 circumstances warranting the use of service by

1 publication, information, if any, regarding the
2 location of the party served which was used in
3 determining the area in which service by
4 publication was printed and proof of service in
5 accordance with G.S. 1-75.10(2)."

6 Section 2.3. G.S. 1-75.10 reads as rewritten:

7 "§ 1-75.10. Proof of service of summons, defendant appearing in
8 action.

9 Where the defendant appears in the action and challenges the
10 service of the summons upon him, proof of the service of process
11 shall be as follows:

12 (1) Personal Service or Substituted Personal Service.

13 --

14 a. If served by the sheriff of the county or the
15 lawful process officer in this State where the
16 defendant was found, by the officer's
17 certificate thereof, showing place, time and
18 manner of service; or

19 b. If served by any other person, his affidavit
20 thereof, showing place, time and manner of
21 service; his qualifications to make service
22 under Rule 4(a) or Rule 4(j3) of the Rules of
23 Civil Procedure; that he knew the person
24 served to be the party mentioned in the
25 summons and delivered to and left with him a
26 copy; and if the defendant was not personally
27 served, he shall state in such affidavit when,
28 where and with whom such copy was left. If
29 such service is made outside this State, the
30 proof thereof may in the alternative be made
31 in accordance with the law of the place where
32 such service is made.

33 (2) Service of Publication. -- In the case of
34 publication, by the affidavit of the publisher or
35 printer, or his foreman or principal clerk,
36 showing the same and specifying the date of the
37 first and last publication, and an affidavit of
38 mailing of a copy of the complaint or notice, as
39 the case may require, made by the person who mailed
40 the same.

41 (3) Written Admission of Defendant. -- The written
42 admission of the defendant, whose signature or the
43 subscription of whose name to such admission shall
44 be presumptive evidence of genuineness.

- 1 (4) Service by Registered or Certified Mail. -- In the
2 case of service by registered or certified mail, by
3 affidavit of the serving party averring:
- 4 a. That a copy of the summons and complaint was
5 deposited in the post office for mailing by
6 registered or certified mail, return receipt
7 requested;
- 8 b. That it was in fact received as evidenced by
9 the attached registry receipt or other
10 evidence satisfactory to the court of delivery
11 to the addressee; and
- 12 c. That the genuine receipt or other evidence of
13 delivery is attached.
- 14 (5) Service by Private Delivery Service. -- In the case
15 of service by private delivery service, by
16 affidavit of the serving party averring:
- 17 a. That a copy of the summons and complaint was
18 deposited with a private delivery service
19 certified by the Administrative Office of the
20 Courts, delivery receipt requested;
- 21 b. That it was in fact received as evidenced by
22 the attached delivery receipt or other
23 evidence satisfactory to the court of delivery
24 to the addressee; and
- 25 c. That the genuine receipt or other evidence of
26 delivery is attached."

27
28 **SERVICE OF PLEADINGS AND PAPERS BY FAX (RULE 5(b))**

29 Section 3. G.S. 1A-1, Rule 5(b) reads as rewritten:

30 "(b) Service -- How made: -- A pleading setting forth a
31 counterclaim or cross claim shall be filed with the court and a
32 copy thereof shall be served on the party against whom it is
33 asserted or on his attorney of record. With respect to all
34 pleadings subsequent to the original complaint and other papers
35 required or permitted to be served, service with due return may
36 be made in the manner provided for service and return of process
37 in Rule 4 and may be made upon either the party or, unless
38 service upon the party himself is ordered by the court, upon his
39 attorney of record. With respect to such other pleadings and
40 papers, service upon the attorney or upon a party may also be
41 made by delivering a copy to him or by mailing it to him at his
42 last known address or, if no address is known, by filing it with
43 the clerk of court. Delivery of a copy within this rule means
44 handing it to the attorney or to the ~~party; or~~ party, leaving it

1 at the attorney's office with a partner or ~~employee~~ employee, or
2 by sending it to the attorney's office by telefacsimile between
3 9:00 a.m. and 5:00 p.m. Eastern Time on a regular business day.
4 If delivery by telefacsimile is outside the permitted times,
5 service will be deemed to have been completed on the next
6 business day. Service by mail shall be complete upon deposit of
7 the pleading or paper enclosed in a post-paid, properly addressed
8 wrapper in a post office or official depository under the
9 exclusive care and custody of the United States Postal Service."

10

11 SERVICE OF BRIEFS AND MEMORANDA (RULE 5(f))

12 Section 4. G.S. 1A-1, Rule 5 is amended by adding the
13 following new subsection:

14 "(f) Service of briefs and memoranda. -- Except by leave of
15 court or consent of the parties, to be considered by the
16 presiding judge, other than a magistrate, a brief or memorandum
17 in support of a motion shall be served by the moving party upon
18 the adverse party no later than the fifth business day preceding
19 the scheduled hearing date on the motion and a brief or
20 memorandum shall be served by the adverse party upon the moving
21 party no later than the second business day prior to the
22 scheduled hearing date on the motion."

23

24 MOTION STATED WITH PARTICULARITY (RULE 7(b))

25 Section 5. G.S. 1A-1, Rule 7(b) reads as rewritten:

26 "(b) Motions and other papers. --

27 (1) An application to the court for an order shall be by
28 motion which, unless made during a hearing or trial or
29 at a session at which a cause is on the calendar for
30 that session, shall be made in writing, shall state
31 with reasonable particularity the grounds therefor, and
32 shall set forth the relief or order sought. The
33 requirement of writing is fulfilled if the motion is
34 stated in a written notice of the hearing of the
35 motion.

36 (2) The rules applicable to captions, signing, and other
37 matters of form of pleadings apply to all motions and
38 other papers provided for by these rules.

39 (3) A motion to transfer under G.S. 7A-258 shall comply
40 with the directives therein specified but the relief
41 thereby obtainable may also be sought in a responsive
42 pleading pursuant to Rule 12(b)."

43 ATTORNEY'S EMPLOYEE NOT DISQUALIFIED FOR VIDEOTAPE DEPOSITION
44 (RULE 28(c))

1 Section 6. G.S. 1A-1, Rule 28(c) reads as rewritten:

2 "(c) Disqualification for interest. -- No deposition shall be
3 taken before a person who is a relative or employee or attorney
4 or counsel of any of the parties, or is a relative or employee of
5 such attorney or counsel, or is financially interested in the
6 action ~~unless~~ unless:

7 (1) ~~the~~ The parties agree otherwise by stipulation as
8 provided in ~~Rule 29~~ Rule 29; or

9 (2) The deposition is taken by videotape in compliance
10 with Rule 30(b)(4) and Rule 30(f), and the notice
11 for the taking of the deposition states the name of
12 the person before whom the deposition will be taken
13 and that person's relationship, if any, to a party
14 or a party's attorney."
15

16 DISCOVERY DISPUTES (RULE 37)

17 Section 7. G.S. 1A-1, Rule 37(a) reads as rewritten:

18 "(a) Motion for order compelling discovery. -- A party, upon
19 reasonable notice to other parties and all persons affected
20 thereby, may apply for an order compelling discovery as follows:

21 (1) Appropriate Court. -- An application for an order
22 to a party or a deponent who is not a party may be
23 made to a judge of the court in which the action is
24 pending, or, on matters relating to a deposition
25 where the deposition is being taken in this State,
26 to a judge of the court in the county where the
27 deposition is being taken, as defined by Rule
28 30(h).

29 (2) Motion. -- If a deponent fails to answer a question
30 propounded or submitted under Rules 30 or 31, or a
31 corporation or other entity fails to make a
32 designation under Rule 30(b)(6) or 31(a), or a
33 party fails to answer an interrogatory submitted
34 under Rule 33; or if a party, in response to a
35 request for inspection submitted under Rule 34,
36 fails to respond that inspection will be permitted
37 as requested or fails to permit inspection as
38 requested, the discovering party may move for an
39 order compelling an answer, or a designation, or an
40 order compelling inspection in accordance with the
41 request. The motion must include a certification
42 that the movant has in good faith conferred or
43 attempted to confer with the person or party
44 failing to make the discovery in an effort to

1 secure the information or material without court
2 action. When taking a deposition on oral
3 examination, the proponent of the question shall
4 complete the examination on all other matters
5 before he adjourns the examination in order to
6 apply for an order. If the court denies the motion
7 in whole or in part, it may make such protective
8 order as it would have been empowered to make on a
9 motion made pursuant to Rule 26(c).

10 (3) Evasive or Incomplete Answer. -- For purposes of
11 this subdivision an evasive or incomplete answer is
12 to be treated as a failure to answer.

13 (4) Award of Expenses of Motion. -- If the motion is
14 granted, the court shall, after opportunity for
15 hearing, require the party or deponent whose
16 conduct necessitated the motion or the party
17 advising such conduct or both of them to pay to the
18 moving party the reasonable expenses incurred in
19 obtaining the order, including attorney's fees,
20 unless the court finds that the opposition to the
21 motion was substantially justified or that other
22 circumstances make an award of expenses unjust.

23 If the motion is denied, the court shall,
24 after opportunity for hearing, require the moving
25 party to pay to the party or deponent who opposed
26 the motion the reasonable expenses incurred in
27 opposing the motion, including attorney's fees,
28 unless the court finds that the making of the
29 motion was substantially justified or that other
30 circumstances make an award of expenses unjust.

31 If the motion is granted in part and denied in
32 part, the court may apportion the reasonable
33 expenses incurred in relation to the motion among
34 the parties and persons in a just manner."
35

36 **DEFAULT JUDGMENT WITHOUT HEARING (RULE 55(b))**

37 Section 8. G.S. 1A-1, Rule 55(b) reads as rewritten:

38 "(b) Judgment. -- Judgment by default may be entered as
39 follows:

40 (1) By the Clerk. -- When the plaintiff's claim against
41 a defendant is for a sum certain or for a sum which
42 can by computation be made certain, the clerk upon
43 request of the plaintiff and upon affidavit of the
44 amount due shall enter judgment for that amount and

1 costs against the defendant, if ~~he~~ the defendant
2 has been defaulted for failure to appear and if ~~he~~
3 the defendant is not an infant or incompetent
4 person. A verified pleading may be used in lieu of
5 an affidavit when the pleading contains information
6 sufficient to determine or compute the sum certain.

7 In all cases wherein, pursuant to this rule, the
8 clerk enters judgment by default upon a claim for
9 debt which is secured by any pledge, mortgage, deed
10 of trust or other contractual security in respect
11 of which foreclosure may be had, or upon a claim to
12 enforce a lien for unpaid taxes or assessments
13 under G.S. 105-414, the clerk may likewise make all
14 further orders required to consummate foreclosure
15 in accordance with the procedure provided in
16 Article 29A of Chapter 1 of the General Statutes,
17 entitled "Judicial Sales."

18 (2) By the Judge. --

19 a. In all other cases the party entitled to a
20 judgment by default shall apply to the judge
21 therefor; but no judgment by default shall be
22 entered against an infant or incompetent
23 person unless represented in the action by a
24 guardian ad litem or other such representative
25 who has appeared therein. If the party against
26 whom judgment by default is sought has
27 appeared in the action, ~~he~~ that party (or, if
28 appearing by representative, ~~he~~ his the
29 representative) shall be served with written
30 notice of the application for judgment at
31 least three days prior to the hearing on such
32 application. If, in order to enable the judge
33 to enter judgment or to carry it into effect,
34 it is necessary to take an account or to
35 determine the amount of damages or to
36 establish the truth of any averment by
37 evidence or to take an investigation of any
38 other matter, the judge may conduct such
39 hearings or order such references as ~~he~~ the
40 judge deems necessary and proper and shall
41 accord a right of trial by jury to the parties
42 when and as required by the Constitution or by
43 any statute of North Carolina. If the
44 plaintiff seeks to establish paternity under

1 Article 3 of Chapter 49 of the General
2 Statutes and the defendant fails to appear,
3 the judge shall enter judgment by default.

4 b. A motion for judgment by default may be
5 decided by the court without a hearing if:

- 6 1. The motion specifically provides that the
7 court may decide the motion for judgment
8 by default without a hearing if the party
9 against whom judgment is sought fails to
10 serve a written response, stating the
11 grounds for opposing the motion, within
12 30 days of service of the motion; and
13 2. The party against whom judgment is sought
14 fails to serve the response in accordance
15 with this sub-subdivision."
16

17 ENHANCED NOTICE FOR TEMPORARY RESTRAINING ORDER (RULE 65)

18 Section 9. G.S. 1A-1, Rule 65(b) reads as rewritten:

19 "(b) Temporary restraining order; notice; hearing; duration. --
20 A temporary restraining order may be granted without written or
21 oral notice to the adverse party or that party's attorney only if
22 (i) it clearly appears from specific facts shown by affidavit or
23 by verified complaint that immediate and irreparable injury,
24 loss, or damage will result to the applicant before notice can be
25 served and a hearing had thereon, the adverse party or that
26 party's attorney can be heard in opposition, and (ii) the
27 applicant's attorney certifies to the court in writing the
28 efforts, if any, that have been made to give the notice and the
29 reasons supporting the claim that notice should not be required.
30 Every temporary restraining order granted without notice shall be
31 endorsed with the date and hour of issuance; shall be filed
32 forthwith in the clerk's office and entered of record; shall
33 define the injury and state why it is irreparable and why the
34 order was granted without notice; and shall expire by its terms
35 within such time after entry, not to exceed 10 days, as the judge
36 fixes, unless within the time so fixed the order, for good cause
37 shown, is extended for a like period or unless the party against
38 whom the order is directed consents that it may be extended for a
39 longer period. The reasons for the extension shall be entered of
40 record. In case a temporary restraining order is granted without
41 notice and a motion for a preliminary injunction is made, it
42 shall be set down for hearing at the earliest possible time and
43 takes precedence over all matters except older matters of the
44 same character; and when the motion comes on for hearing, the

1 party who obtained the temporary restraining order shall proceed
2 with a motion for a preliminary injunction, and, if he does not
3 do so, the judge shall dissolve the temporary restraining order.
4 On two days' notice to the party who obtained the temporary
5 restraining order without notice or on such shorter notice to
6 that party as the judge may prescribe, the adverse party may
7 appear and move its dissolution or modification and in that event
8 the judge shall proceed to hear and determine such motion as
9 expeditiously as the ends of justice require. Damages may be
10 awarded in an order for dissolution as provided in section (e)."

11
12 CLARIFY PUBLIC DUTY DOCTRINE AND THE TORTS CLAIMS ACT

13 Section 10. G.S. 143-291(a) reads as rewritten:

14 "(a) The North Carolina Industrial Commission is hereby
15 constituted a court for the purpose of hearing and passing upon
16 tort claims against the State Board of Education, the Board of
17 Transportation, and all other departments, institutions and
18 agencies of the State. The Industrial Commission shall determine
19 whether or not each individual claim arose as a result of the
20 negligence of any officer, employee, involuntary servant or agent
21 of the State while acting within the scope of his office,
22 employment, service, agency or authority, under circumstances
23 where the State of North Carolina, if a private person, would be
24 liable to the claimant in accordance with the laws of North
25 Carolina. Negligence, within this section, is the failure to use
26 ordinary care in following a duty imposed by law, whether the
27 duty is for the benefit of a specific person or of the general
28 public. If the Commission finds that there was such negligence
29 on the part of an officer, employee, involuntary servant or agent
30 of the State while acting within the scope of his office,
31 employment, service, agency or authority, which was the proximate
32 cause of the injury and that there was no contributory negligence
33 on the part of the claimant or the person in whose behalf the
34 claim is asserted, the Commission shall determine the amount of
35 damages which the claimant is entitled to be paid, including
36 medical and other expenses, and by appropriate order direct the
37 payment of such damages by the department, institution or agency
38 concerned, but in no event shall the amount of damages awarded
39 exceed the sum of one hundred fifty thousand dollars (\$150,000)
40 cumulatively to all claimants on account of injury and damage to
41 any one person. Community colleges and technical colleges shall
42 be deemed State agencies for purposes of this Article. The fact
43 that a claim may be brought under more than one Article under

1 this Chapter shall not increase the foregoing maximum liability
2 of the State."

3

4 OFFICIAL COMMENTS

5 Section 11. The Revisor of Statutes shall cause to be
6 printed along with this act the following statement to the
7 official Comment for G.S. 1A-1, Rule 5(b):

8 "To be considered by the presiding judge on a motion calendar
9 for a Monday, for example, a brief or memorandum must be served
10 by the close of business on the preceding Monday. The rule does
11 not require the filing of a brief or memorandum; it only governs
12 instances in which a brief or memorandum is filed. The rule
13 would not preclude a party from providing the judge with copies
14 of cases or statutes at the hearing."

15 This addition to the official Comment shall only be for
16 annotation purposes and shall not be construed to be the law.

17

18 EFFECTIVE DATE

19 Section 12. Sections 1 through 9 of this act become
20 effective October 1, 1998 and apply to actions filed on or after
21 that date. Section 10 of this act becomes effective October 1,
22 1998 and applies to claims pending on or after that date. The
23 remaining sections of this act become effective when they become
24 law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 1094
Committee Substitute Favorable 4/29/97
Committee Substitute #2 Favorable 6/4/97
Fourth Edition Engrossed 6/12/97

Short Title: Repeal/Recodify Railroad Laws.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL OBSOLETE OR PREEMPTED PROVISIONS OF THE
3 GENERAL STATUTES AFFECTING RAILROADS, TO RECODIFY CERTAIN
4 RAILROAD STATUTES, AND TO MAKE CONFORMING CHANGES AND
5 CLARIFYING CHANGES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 62-3(6) reads as rewritten:
8 "(6) 'Common carrier' means any ~~person~~ person, other than a carrier
9 by rail, which holds itself out to the general public to engage in
10 transportation of persons or household goods for compensation,
11 including transportation by ~~train~~, bus, truck, boat or other
12 conveyance, except as exempted in G.S. 62-260."
13 Section 2. G.S. 62-3(22) reads as rewritten:
14 "(22) 'Private carrier' means any ~~person~~ person, other than a carrier by
15 rail, not included in the definitions of common carrier, which
16 transports in intrastate commerce in its own vehicle or vehicles
17 property of which such person is the owner, lessee, or bailee, when
18 such transportation is for the purpose of sale, lease, rent, or
19 bailment, or when such transportation is purely an incidental
20 adjunct to some other established private business owned and

1 operated by such person other than the transportation of
2 household goods for compensation."

3 Section 3. G.S. 62-3(23)a. reads as rewritten:

4 "(23) a. 'Public utility' means a person, whether organized under the
5 laws of this State or under the laws of any other state or
6 country, now or hereafter owning or operating in this State
7 equipment or facilities for:

- 8 1. Producing, generating, transmitting, delivering or
9 furnishing electricity, piped gas, steam or any other
10 like agency for the production of light, heat or power
11 to or for the public for compensation; provided,
12 however, that the term 'public utility' shall not
13 include persons who construct or operate an electric
14 generating facility, the primary purpose of which
15 facility is for such person's own use and not for the
16 primary purpose of producing electricity, heat, or
17 steam for sale to or for the public for compensation;
- 18 2. Diverting, developing, pumping, impounding,
19 distributing or furnishing water to or for the public
20 for compensation, or operating a public sewerage
21 system for compensation; provided, however, that the
22 term 'public utility' shall not include any person or
23 company whose sole operation consists of selling
24 water to less than 10 residential customers, except
25 that any person or company which constructs a water
26 system in a subdivision with plans for 10 or more lots
27 and which holds itself out by contracts or other
28 means at the time of said construction to serve an
29 area containing more than 10 residential building lots
30 shall be a public utility at the time of such planning
31 or holding out to serve such 10 or more building lots,
32 without regard to the number of actual customers
33 connected;
- 34 3. Transporting persons or household goods by street,
35 suburban or interurban bus ~~or railways~~ for the public
36 for compensation;
- 37 4. Transporting persons or household goods by ~~railways~~
38 ~~or motor vehicles~~, vehicles or any other form of
39 transportation for the public for compensation, except
40 motor carriers exempted in G.S. 62-260, ~~and except~~
41 carriers by rail, and carriers by air;
- 42 5. Transporting or conveying gas, crude oil or other
43 fluid substance by pipeline for the public for
44 compensation;

1 shall be deemed public utilities and shall be subject to regulation under the
2 provisions of this Chapter."

3 Section 9. G.S. 62-200(b) reads as rewritten:

4 "(b) Any common carrier violating any of the provisions of this section shall
5 forfeit to the party aggrieved the sum of ~~fifteen dollars (\$15.00) for the first day and~~
6 ~~two dollars (\$2.00) for each succeeding day of such unlawful detention or neglect~~
7 ~~where such shipment is made in carload lots, and in less quantities there shall be a~~
8 ~~forfeiture in like manner of~~ ten dollars (\$10.00) for the first day and one dollar
9 (\$1.00) for each succeeding day, day of such unlawful detention or neglect, but the
10 forfeiture shall not be collected for a period exceeding 30 days."

11 Section 10. G.S. 62-300(a) reads as rewritten:

12 "(a) The Commission shall receive and collect the following fees and charges in
13 accordance with the classification of utilities as provided in rules and regulations of
14 the Commission, and no others:

- 15 (1) Twenty-five dollars (\$25.00) with each notice of appeal to the
16 Court of Appeals or the Supreme Court, and with each notice of
17 application for a writ of certiorari.
- 18 (2) With each application for a new certificate for motor ~~and rail~~
19 carrier rights, the fee shall be two hundred fifty dollars (\$250.00)
20 when filed by Class 1 motor ~~and rail~~ carriers, one hundred dollars
21 (\$100.00) when filed by Class 2 motor ~~and rail~~ carriers, and
22 twenty-five dollars (\$25.00) when filed by Class 3 motor ~~and rail~~
23 carriers, and twenty-five dollars (\$25.00) as filing fee for any
24 amendment thereto so as to extend or enlarge the scope of
25 operations thereunder, and twenty-five dollars (\$25.00) for each
26 broker who applies for a brokerage license under the provisions of
27 this Chapter.
- 28 (3) With each application for a general increase in rates, fares and
29 charges and for each filing of a tariff which seeks general increases
30 in rates, fares and charges, the fee will be five hundred dollars
31 (\$500.00) for Class A utilities and Class 1 motor ~~and rail~~ carriers,
32 two hundred fifty dollars (\$250.00) for Class B utilities and Class 2
33 motor ~~and rail~~ carriers, one hundred dollars (\$100.00) for Class C
34 utilities and twenty-five dollars (\$25.00) for Class D utilities and
35 Class 3 motor ~~and rail~~ carriers; provided that in the case of an
36 application or tariff for a general increase in rates filed by a tariff
37 agent for more than one carrier, the applicable fee shall be the
38 highest fee prescribed for any motor carrier included in the
39 application or tariff. This fee shall not apply to applications for
40 adjustments in particular rates, fares, or charges for the purpose of
41 eliminating inequities, preferences or discriminations or to
42 applications to adjust rates and charges based solely on the
43 increased cost of fuel used in the generation or production of
44 electric power.

- 1 (4) One hundred dollars (\$100.00) with each application by motor
2 carrier of passengers for the abandonment or permanent or
3 temporary discontinuance of transportation service previously
4 authorized in a certificate.
- 5 ~~(4a) Two hundred fifty dollars (\$250.00) with each application for~~
6 ~~discontinuance of train service, or for a change in or~~
7 ~~discontinuance of station facilities.~~
- 8 (5) With each application for a certificate of public convenience and
9 necessity or for any amendment thereto so as to extend or enlarge
10 the scope of operations thereunder, the fee shall be two hundred
11 fifty dollars (\$250.00) for Class A utilities, one hundred dollars
12 (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00) for
13 Class C and D utilities and twenty-five dollars (\$25.00) for any
14 other person seeking a certificate of public convenience and
15 necessity.
- 16 (5a) With each application by a bus company for an original certificate
17 of authority or for any amendment thereto or to an existing
18 certificate of public convenience and necessity so as to extend or
19 enlarge the scope of operations thereunder the fee shall be two
20 hundred fifty dollars (\$250.00).
- 21 (6) With each application for approval of the issuance of securities or
22 for the approval of any sale, lease, hypothecation, lien, or other
23 transfer of any household goods or operating rights of any carrier
24 or public utility over which the Commission has jurisdiction, the
25 fee shall be two hundred fifty dollars (\$250.00) for Class A utilities
26 and Class 1 motor ~~and rail~~ carriers, one hundred dollars (\$100.00)
27 for Class B utilities and Class 2 motor ~~and rail~~ carriers, and
28 twenty-five dollars (\$25.00) for Class C and D utilities and Class 3
29 motor ~~and rail~~ carriers; provided, that in the case of sales, leases
30 and transfers between two or more carriers or utilities, the
31 applicable fee shall be the highest fee prescribed for any party to
32 the transaction.
- 33 (7) Ten dollars (\$10.00) with each application, petition, or complaint
34 not embraced in (2) through (6) of this section, wherein such
35 application, petition, or complaint seeks affirmative relief against a
36 carrier or public utility over which the Commission has
37 jurisdiction. This fee shall not apply to applications for adjustments
38 in particular rates, fares or charges for the purpose of eliminating
39 inequities, preferences or discriminations; nor shall this fee apply
40 to applications, petitions, or complaints made by any county, city
41 or town; nor shall this fee apply to applications or petitions made
42 by individuals seeking service or relief from a public utility.
- 43 (8) Repealed by Session Laws 1985, c. 454, s. 18.

1 (9) One dollar (\$1.00) for each page (8 1/2 x 11 inches) of transcript of
2 testimony, but not less than five dollars (\$5.00) for any such
3 transcript.

4 (10) Twenty cents (20¢) for each page of copies of papers, orders,
5 certificates or other records, but not less than one dollar (\$1.00) for
6 any such order or record, plus five dollars (\$5.00) for formal
7 certification of any such paper, order or record.

8 (11), (12) Repealed by Session Laws 1985, c. 454, s. 18.

9 (13) Two hundred fifty dollars (\$250.00) with each application for a
10 certificate of public convenience and necessity to construct a
11 transmission line.

12 (14) Twenty-five dollars (\$25.00) with each filing by a person otherwise
13 exempt from Commission regulation under Public Law 103-305 to
14 participate in standard transportation practices as set out by the
15 Commission."

16 Section 11. G.S. 160A-195 is repealed.

17 Section 12. Chapter 14 of the General Statutes is amended by adding a
18 new Article to read:

19 "ARTICLE 61.

20 "Trains and Railroads.

21 **"§ 14-460. Riding on train unlawfully; venue.**

22 If any person, with the intention of being transported free in violation of law, rides
23 or attempts to ride on top of any car, coach, engine, or tender, on any railroad in this
24 State, or on the drawheads between cars, or under cars, on truss rods, or trucks, or in
25 any freight car, or on a platform of any baggage car, express car, or mail car on any
26 train, he shall be guilty of a Class 3 misdemeanor.

27 **"§ 14-461. Unauthorized manufacture or sale of switch-lock keys a misdemeanor.**

28 It shall be unlawful for any person to make, manufacture, sell, or give away to any
29 other person any duplicate key to any lock used by any railroad company in this
30 State on its switches or switch tracks, except upon the written order of that officer of
31 such railroad company whose duty it is to distribute and issue switch-lock keys to the
32 employees of such railroad company. Any person violating the provisions of this
33 section shall be guilty of a Class 1 misdemeanor."

34 Section 13. G.S. 62-152, 62-192, 62-207, 62-221, 62-222, 62-227, 62-228,
35 62-229, 62-230, 62-231, 62-232, 62-233, 62-234, 62-238, 62-238.1, 62-239, 62-241, 62-
36 242, 62-243, 62-244, 62-245, 62-246, and 62-247 are repealed.

37 Section 14. Article 11 of Chapter 62 of the General Statutes, as amended
38 by Section 13 of this act, G.S. 62-220, 62-223, 62-224, 62-225, 62-226, 62-237, and 62-
39 240, is recodified as Article 15 of Chapter 136 of the General Statutes, G.S. 136-190
40 through G.S. 136-196.

41 Section 15. G.S. 62-237, recodified as G.S. 136-195 by Section 14 of this
42 act, reads as rewritten:

43 **"§ 136-195. To regulate crossings and to abolish grade crossings.**

1 The ~~Commission~~ Department may require the raising or lowering of any tracks or
2 roadway at any grade crossing in a road or street not forming a link in or part of the
3 State highway system and designate who shall pay for the same by partitioning the
4 cost of said work and the maintenance of such crossing among the railroads and
5 municipalities interested in accordance with the formula provided for grade crossing
6 alterations or eliminations on the State highway system in G.S. 136-20(b)."

7 Section 16. Article 15 of Chapter 136 of the General Statutes, as enacted
8 by this act, is amended by adding two new sections to read:

9 "**§ 136-197. Ticket may be refused intoxicated person; penalty for prohibited entry.**

10 The ticket agent of a passenger train shall at all times have the power to refuse to
11 sell a ticket to a person wanting to purchase a ticket who may at the time be
12 intoxicated. The conductor in charge of the train shall at all times have the power to
13 prevent an intoxicated person from boarding the train. An intoxicated person who
14 boards a train after being forbidden by the conductor to do so is guilty of a Class 1
15 misdemeanor.

16 "**§ 136-198. Passenger refusing to pay fare or violating rules may be ejected.**

17 If a passenger shall refuse to pay the fare, be or become intoxicated, or violate the
18 rules of a passenger train, it shall be lawful for the conductor of the train to stop the
19 train and to put the passenger and the passenger's baggage out of the train, using no
20 unnecessary force."

21 Section 17. This act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1094

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H1094-ARV-003

Date 8-6, 1997

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Senator BALLANCE

1 moves to amend the bill on page 7, line 19,
2 by inserting after the word "train" and before the word "and" the
3 following:
4 "at any station, or at any regular stop,".

SIGNED Frank Ballance
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1094

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H1094-ARV-002

Date 8-6, 1997

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Senator ODom

- 1 moves to amend the bill on page 6, line 21,
- 2 by rewriting that line to read:
- 3 "\$14-460. Riding on train unlawfully."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

H-1094 Repeal, Recodify Railroad Laws, 1997 Session

GS 62-	Section Topic	Recodification Section Number	Explanation
3 (6)	Common Carrier Definition	N/A	Deletes rail from definition of common carrier.
3 (22)	Private Carrier Definition	N/A	Deletes rail from definition of private carrier.
3 (23)(a)(3) &(a)(4)	Public Utility Definition	N/A	Deletes rail from definition of public utility.
133 (h)	Rate Applications	N/A	Deletes provision on rates for intrastate rail carriers. Pre-empted by federal law.
150	Ticket: Intoxicated Persons	136-197	Deletes references to conductor and train in G.S. 62-150. Recodifies the same provision in Chapter 136 for rail.
151	No Fare: Ejected	136-197 136-198	Deletes references to conductor and train in G.S. 62-151. Recodifies the same provision in Chapter 136 for rail.
152	Joint Rates	N/A	Deletes provisions concerning rates, pre-empted by federal law.
152.1 (a) (2)	Rail Carrier Classes	N/A	Deletes references to rail.
190	Pipeline corps	N/A	Deletes references to railroads because not subject to Utilities Commission.
192	Condemnation Mapping		Repealed. Inconsistent with Chapter 40A.
200(b)	Transport Freight in Time		Deletes references to carload lots because rail is not subject to Utilities Commission.
207	Regulation of demurrage	N/A	Repealed. Pre-empted by Interstate Commerce Commission Termination Act (ICCTA) 49 U.S.C. 10501
220	Powers of Railroads	136-190	Transferred to Chapter 136.
221	Unauthorized Business	N/A	Repealed. Covered by the corporate law statutes.
222	Through Travel Agreements	N/A	Repealed. 49 USC 10701-10705 & 49 USC 11121-11122
223	Intersections with Highways	136-191	Transferred to Chapter 136.
224	Defective Crossings	136-192	Transferred to Chapter 136.
225	Joint RR Construction	136-193	Transferred to Chapter 136.
226	Cattle Guards & Private Crossings	136-194	Transferred to Chapter 136.
227	Change of Railroad Route	N/A	Repealed. 49 USC 10901 & 10501
228	Temp. Track Across Railroad	N/A	Repealed. Covered by Cartway §§ 136-68, -69
229	Shelter At Division Points	N/A	Repealed. 45 USC 151, et. Seq.; 49 USC 20106, 29 USC 651, et. seq.

230	Maximum Working Hours	N/A	Repealed. 49 USC 21101, et. Seq. [Union Pacific v. Woodahl, 308 F. Supp. 1002 (P. Mont. 1970)]
231	Union Depots Required	N/A	Repealed. 49 USC 10501
232	Construction of Sidetracks	N/A	Repealed. 49 USC 10501
233	Schedules & Connections	N/A	Repealed. 49 USC 10501 & 11101
234	Mail; Discontinue Psngr. Trains	N/A	Repealed. 49 USC 11101
237	Crossings & Closings	136-195	Transferred to Chapter 136.
238	Switching Limits		Repealed. 49 USC 10741
238.1	Train Speed Ordinances		Repealed. Easterwood v. CSX, 933 F.2d 1548, 1553-54 (11 th Cir. 1991); 45 USCS § 421 et. seq. (1990); 49 CFR 213.9 (1990).
239	Train Speed Ordinances	N/A	Repealed. Easterwood v. CSX, 933 F.2 nd 1548, 1553-54 (11 th Cir. 1991); 45 USCS § 421 et. Seq. (1990); 49 CFR 213.9 (1990).
240	Injury to Passenger	136-196	Transferred to Chapter 136.
241	Negligence - Killing Livestock	N/A	Repealed. Obsolete.
242	RR Liability - Injured Employees	N/A	Repealed. Federal Employer's Liability Act
243	RR Liability - Violation of Rules	N/A	Repealed. Subject to general rules for civil case.
244	Workers to Wear Badges	N/A	Repealed.
245	Duty Regarding Freight	N/A	Repealed. Pre-empted by 49 USC 10501
246	Partial Delivery Charges	N/A	Repealed. Pre-empted by 49 USC 10501
247	Station Abandonment	N/A	Repealed. Pre-empted by 49 USC 10501
300 (a)	Fees & Charges	N/A	Repealed. No fees collected because utilities commission jurisdiction removed
319	Riding Trains Unlawfully	14-460	Recodified under the criminal statutes.
322	Switchlocks	14-461	Recodified under the criminal statutes.
160A - 195	Regulating Speed of Trains	N/A	Repealed. Easterwood v. CSX, 933 F.2d 1548, 1553-54 (11 th Cir. 1991); 45 USCS § 421 et. seq. (1990); 49 CFR 213.9 (1990)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 534
Committee Substitute Favorable 4/23/97

Short Title: Support Orders Enforcement.

(Public)

Sponsors:

Referred to:

March 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT REGARDING THE CONTRACTUAL OBLIGATIONS OF SPOUSES,
3 THE TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO
4 ENFORCE SUPPORT ORDERS, AND THE AWARDING OF ALIMONY, AS
5 RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH
6 CAROLINA BAR ASSOCIATION.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 52-2 reads as rewritten:
9 "**§ 52-2. Capacity to contract.**
10 (a) Subject to the provisions of G.S. 52-10 or 52-10.1, G.S. 39-7 and other
11 regulations and limitations now or hereafter prescribed by the General Assembly,
12 every married person is authorized to contract and deal so as to affect his or her real
13 and personal property in the same manner and with the same effect as if he or she
14 were unmarried.
15 (b) Except as otherwise provided by this section or by other State law, a spouse
16 shall not be responsible for the other spouse's contract liability to a third party,
17 whether the liability arose before or after the marriage. The doctrine of necessities
18 as it existed at common law, however, shall apply and shall apply equally to both
19 spouses, except as provided in subsection (c) of this section, but shall in no event
20 create any liability between the spouses as to each other.
21 (c) The doctrine of necessities shall not apply to either spouse when the spouses
22 are living separate and apart with the intent on behalf of one of them to cease marital
23 cohabitation, unless one of the following applies:

1 (1) The nondebtor spouse has willfully created the appearance of not
2 being separated and has requested that the creditor extend credit
3 to the estranged debtor spouse; or

4 (2) The debt is for medical expenses and the nondebtor spouse carries
5 medical insurance on the debtor spouse, provided that the
6 nondebtor spouse shall be liable only for the debt that is or will be
7 discharged under the terms of the medical insurance."

8 Section 2. G.S. 50-13.4(e) reads as rewritten:

9 "(e) Payment for the support of a minor child shall be paid by lump sum
10 payment, periodic payments, or by transfer of title or possession of personal property
11 of any interest therein, or a security interest in or possession of real property, as the
12 court may order. The court may order the transfer of title to real property in payment
13 of arrearages of child support so long as the net value of the interest in the property
14 being transferred does not exceed the amount of the arrearage being satisfied. In
15 every case in which payment for the support of a minor child is ordered and alimony
16 or postseparation support is also ordered, the order shall separately state and identify
17 each allowance."

18 Section 3. G.S. 50-16.7(a) reads as rewritten:

19 "(a) Alimony or postseparation support shall be paid by lump sum payment,
20 periodic payments, income withholding, or by transfer of title or possession of
21 personal property or any interest therein, or a security interest in or possession of real
22 property, as the court may order. The court may order the transfer of title to real
23 property in payment of lump-sum payments of alimony or postseparation support or
24 in payment of arrearages of alimony or postseparation support so long as the net
25 value of the interest in the property being transferred does not exceed the amount of
26 the arrearage being satisfied. In every case in which either alimony or postseparation
27 support is allowed and provision is also made for support of minor children, the
28 order shall separately state and identify each allowance."

29 Section 4. G.S. 50-16.7 is amended by adding the following new
30 subsection to read:

31 "(11) The dependent spouse may apply to the court for an order of income
32 withholding for current or delinquent payments of alimony or postseparation support
33 or for any portion of the payments. If the court orders income withholding, a notice
34 of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule
35 4, Rules of Civil Procedure. Copies of the notice shall be filed with the clerk of
36 court and served upon the supporting spouse by first-class mail."

37 Section 5. G.S. 110-136.3(b) is amended by adding a new subdivision to
38 read:

39 "(3) In the enforcement of alimony or postseparation support orders
40 pursuant to G.S. 110-130.2, and obligor shall become subject to
41 income withholding on the earlier of:

42 a. The date on which the obligor fails to make legally
43 obligated alimony or postseparation payments; or

- 1 b. The date on which the obligor or obligee requests
2 withholding."

3 Section 6. G.S. 110-136.4(a)(2) reads as rewritten:

4 "(2) Contents of advance notice. The advance notice to the obligor
5 shall contain, at a minimum, the following information:

- 6 a. Whether the proposed withholding is based on the obligor's
7 failure to make legally obligated ~~payments in an amount~~
8 ~~equal to the support payable for one month~~ alimony or
9 postseparation support payments or on the obligor's request
10 for withholding or on the obligee's request for withholding;
11 b. The amount of overdue child support, overdue alimony or
12 postseparation support payments, the total amount to be
13 withheld, and when the withholding will occur;
14 c. The name of each child or person for whose benefit the
15 ~~child support is~~ support, alimony or postseparation support
16 payments are due and information sufficient to identify the
17 court order under which the obligor has a duty to support
18 the ~~child~~; child, spouse, or former spouse;
19 d. The amount and sources of disposable income;
20 e. That the withholding will apply to the obligor's wages or
21 other sources of disposable income from current payors and
22 all subsequent payors once the procedures under this section
23 are invoked;
24 f. An explanation of the obligor's rights and responsibilities
25 pursuant to this section;
26 g. That withholding will be continued until terminated
27 pursuant to G.S. 110-136.10."

28 Section 7. G.S. 110-136.6 is amended by adding the following new
29 subsection to read:

30 "(b1) When there is an order of income withholding for current or delinquent
31 payments of alimony or postseparation support or for any portion of the payments,
32 the total amount withheld under this Article and under G.S. 50-16.7 shall not exceed
33 the amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15
34 U.S.C. § 1673(b)."

35 Section 8. G.S. 110-136.8(b) reads as rewritten:

36 "(b) Payor's responsibilities. A payor who has been properly served with a notice
37 to withhold is required to:

- 38 (1) Withhold from the obligor's disposable income and, within 10 days
39 of the date the obligor is paid, send to the clerk of superior court
40 specified in the notice, the amount specified in the notice and the
41 date the amount was withheld, but in no event more than the
42 amount allowed by G.S. 110-136.6; however, if a lesser amount of
43 disposable income is available for any pay period, the payor shall
44 either: (a) compute and send the appropriate amount to the clerk

of court, using the percentages as provided in G.S. 110-136.6, or
 (b) request the initiating party to inform the payor of the proper
 amount to be withheld for that period;

- (2) Continue withholding until further notice from the IV-D agency or the clerk of superior court;
- (3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;
- (4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
- (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:
 - a. ~~If there is more than one child support withholding for the obligor, are one or more orders of child support withholding for the obligor;~~
 - a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;
 - b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
 - c. Of the payor's inability to comply with the withholding for any reason; and
- (6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 9. G.S. 50-16.1A is amended by adding the following new subdivision to read:

"(4a) 'Payor' means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as defined under 20 U.S.C. § 203(d) of the Fair Labor Standards Act."

Section 10. G.S. 110-129(11) reads as rewritten:

"(11) 'Obligee', in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of ~~support~~ support, whether child support, alimony, or postseparation support, is owed or the individual's legal representative."

Section 11. G.S. 110-129(12) reads as rewritten:

"(12) 'Obligor' means the individual who owes a duty to make child support payments or payments of alimony or postseparation support under a court order."

Section 12. G.S. 50-16.3A(b) is amended by adding the following new subdivision to read:

1 "(16) Income being received by either party that was previously
2 considered by the court in determining the value of a marital asset
3 in an equitable distribution of the parties' marital property."

4 Section 13. This act becomes effective October 1, 1997. Section 1 of this
5 act applies to contracts entered into and transactions occurring on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

H534-CSSE-001
PROPOSED SENATE JUDICIARY COMMITTEE SUBSTITUTE
HOUSE BILL 534
THIS IS A DRAFT 6-AUG-98 09:01:21
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Support Orders Enforcement.

(Public)

Sponsors:

Referred to:

March 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW INCOME WITHHOLDING TO ENFORCE SUPPORT ORDERS, AND
3 THE AWARDING OF ALIMONY, AS RECOMMENDED BY THE FAMILY LAW
4 SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 50-13.4(e) reads as rewritten:
7 "(e) Payment for the support of a minor child shall be paid by
8 lump sum payment, periodic payments, or by transfer of title or
9 possession of personal property of any interest therein, or a
10 security interest in or possession of real property, as the court
11 may order. The court may order the transfer of title to real
12 property in payment of arrearages of child support so long as the
13 net value of the interest in the property being transferred does
14 not exceed the amount of the arrearage being satisfied. In every
15 case in which payment for the support of a minor child is ordered
16 and alimony or postseparation support is also ordered, the order
17 shall separately state and identify each allowance."
18 Section 2. G.S. 50-16.7(a) reads as rewritten:
19 "(a) Alimony or postseparation support shall be paid by lump
20 sum payment, periodic payments, income withholding, or by
21 transfer of title or possession of personal property or any



1 interest therein, or a security interest in or possession of real
2 property, as the court may order. The court may order the
3 transfer of title to real property in payment of lump sum
4 payments of alimony or postseparation support or in payment of
5 arrearages of alimony or postseparation support so long as the
6 net value of the interest in the property being transferred does
7 not exceed the amount of the arrearage being satisfied. In every
8 case in which either alimony or postseparation support is allowed
9 and provision is also made for support of minor children, the
10 order shall separately state and identify each allowance."

11 Section 3. G.S. 50-16.7 is amended by adding the
12 following new subsection to read:

13 "(11) The dependent spouse may apply to the court for an order
14 of income withholding for current or delinquent payments of
15 alimony or postseparation support or for any portion of the
16 payments. If the court orders income withholding, a notice of
17 obligation to withhold shall be served on the payor as required
18 by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of the
19 notice shall be filed with the clerk of court and served upon the
20 supporting spouse by first-class mail."

21 Section 4. G.S. 110-136.3(b) is amended by adding a new
22 subdivision to read:

23 "(3) In the enforcement of alimony or postseparation
24 support orders pursuant to G.S. 110-130.2, an
25 obligor shall become subject to income withholding
26 on the earlier of:

27 a. The date on which the obligor fails to make
28 legally obligated alimony or postseparation
29 payments; or

30 b. The date on which the obligor or obligee
31 requests withholding."

32 Section 5. G.S. 110-136.4(a)(2) reads as rewritten:

33 "(2) Contents of advance notice. The advance notice to
34 the obligor shall contain, at a minimum, the
35 following information:

36 a. Whether the proposed withholding is based on
37 the obligor's failure to make legally
38 obligated ~~payments in an amount equal to the~~
39 ~~support payable for one month~~ alimony or
40 postseparation support payments or on the
41 obligor's request for withholding or on the
42 obligee's request for withholding;

43 b. The amount of overdue child support, overdue
44 alimony or postseparation support payments,

- 1 the total amount to be withheld, and when the
2 withholding will occur;
- 3 c. The name of each child or person for whose
4 benefit the child ~~support is~~ support, alimony
5 or postseparation support payments are due and
6 information sufficient to identify the court
7 order under which the obligor has a duty to
8 support the ~~child;~~ child, spouse, or former
9 spouse;
- 10 d. The amount and sources of disposable income;
- 11 e. That the withholding will apply to the
12 obligor's wages or other sources of disposable
13 income from current payors and all subsequent
14 payors once the procedures under this section
15 are invoked;
- 16 f. An explanation of the obligor's rights and
17 responsibilities pursuant to this section;
- 18 g. That withholding will be continued until
19 terminated pursuant to G.S. 110-136.10."

20 Section 6. G.S. 110-136.6 is amended by adding the
21 following new subsection to read:

22 "(b) When there is an order of income withholding for current
23 or delinquent payments of alimony or postseparation support or
24 for any portion of the payments, the total amount withheld under
25 this Article and under G.S. 50-16.7 shall not exceed the amounts
26 allowed under section 303(b) of the Consumer Credit Protection
27 Act, 15 U.S.C. § 1673(b)."

28 Section 7. G.S. 110-136.8(b) reads as rewritten:
29 "(b) Payor's responsibilities. A payor who has been properly
30 served with a notice to withhold is required to:

- 31 (1) Withhold from the obligor's disposable income and,
32 within 10 days of the date the obligor is paid,
33 send to the clerk of superior court specified in
34 the notice, the amount specified in the notice and
35 the date the amount was withheld, but in no event
36 more than the amount allowed by G.S. 110-136.6;
37 however, if a lesser amount of disposable income is
38 available for any pay period, the payor shall
39 either: (a) compute and send the appropriate amount
40 to the clerk of court, using the percentages as
41 provided in G.S. 110-136.6, or (b) request the
42 initiating party to inform the payor of the prop
43 amount to be withheld for that period;

- 1 (2) Continue withholding until further notice from the
2 IV-D agency or the clerk of superior court;
- 3 (3) Withhold for child support before withholding
4 pursuant to any other legal process under State law
5 against the same disposable income;
- 6 (4) Begin withholding from the first payment due the
7 obligor in the first pay period that occurs 14 days
8 following the date the notice of the obligation to
9 withhold was served on the payor;
- 10 (5) Promptly notify the obligee in a IV-D case, or the
11 clerk of superior court in a non-IV-D case, in
12 writing:
- 13 a. ~~If there is more than one child support~~
14 ~~withholding for the obligor; are one or more~~
15 orders of child support withholding for the
16 obligor;
- 17 a1. If there are one or more orders of alimony or
18 postseparation support withholding for the
19 obligor;
- 20 b. When the obligor terminates employment or
21 otherwise ceases to be entitled to disposable
22 income from the payor, and provide the
23 obligor's last known address, and the name and
24 address of his new employer, if known;
- 25 c. Of the payor's inability to comply with the
26 withholding for any reason; and
- 27 (6) Cooperate fully with the initiating party in the
28 verification of the amount of the obligor's
29 disposable income."

30 Section 8. G.S. 50-16.1A is amended by adding the
31 following new subdivision to read:

32 "(4a) 'Payor' means any payor, including any federal,
33 State, or local governmental unit, of disposable
34 income to an obligor. When the payor is an
35 employer, payor means employer as defined under 20
36 U.S.C. § 203(d) of the Fair Labor Standards Act."

37 Section 9. G.S. 110-129(11) reads as rewritten:

38 "(11) 'Obligee', in a IV-D case, means the child support
39 enforcement agency, and in a non-IV-D case means
40 the individual to whom a duty of support support,
41 whether child support, alimony, or postseparation
42 support, is owed or the individual's legal
43 representative."

44 Section 10. G.S. 110-129(12) reads as rewritten:

1 "(12) 'Obligor' means the individual who owes a duty to
2 make child support payments or payments of alimony
3 or postseparation support under a court order."

4 Section 11. G.S. 50-16.3A(b) is amended by adding the
5 following new subdivision to read:

6 "(16) Income being received by either party that was
7 previously considered by the court in determining
8 the value of a marital asset in an equitable
9 distribution of the parties' marital property."

10 Section 12. This act becomes effective October 1, 1998
11 and applies to actions pending on or after the effective date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

MEMORANDUM

TO: Senator Cooper, Chair, Senate Judiciary Committee

FROM: Jo B. McCants, Co-Counsel, Senate Judiciary Committee

DATE: August 6, 1998

RE: HOUSE BILL 534 - SUPPORT ORDERS ENFORCEMENT

House Bill 534 is a recommendation of the Family Law Section of the North Carolina Bar Association.

Section 1.

Authorizes the court to transfer the title to real property as payment for child support arrearages. The value of the transferred interest can not exceed the arrearage amount.

Sections 2 through 10.

Authorizes the court to use income withholding in alimony and postseparation support cases. Also, provides that the court may order the transfer of title to real property as payment for the unpaid alimony or postseparation support or a lump sum payment. The value of the transferred interest can not exceed the arrearage amount.

Section 11.

Provides that, in determining the amount and duration of alimony, the court may consider income being received by either party that was used in determining the value of a marital asset in an equitable distribution of the parties' marital assets.

Section 12.

Act becomes effective October 1, 1998 and applies to actions pending on or before the effective date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 534

DATE 8-6-98

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)



1 moves to amend the bill on page 1, lines 6 THROUGH 17

2 () WHICH CHANGES THE TITLE

3 by DELETING THE LINES; AND

4 _____

5 ON PAGE 2, LINES 2 THROUGH 7

6 BY REWRITING THE LINES TO READ:

7 "PROPERTY, AS THE COURT MAY ORDER. IN EVERY"

9 AND RENUMBER REMAINING SECTIONS ACCORDING

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED



ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 534

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of _____

H534-ARU-001

Date 8-6, 1998

Comm. Sub. [YES]
Amends Title []
H534-CSSE-001

Senator SOLES

1 moves to amend the bill on page 5, line 6,
2 by rewriting the line to read:

3 "The fact that income being received by either party
4 was ~~previously~~."

and ~~move~~ on page 5, lines 10 and 11 by rewriting those lines to read:

"Section 7. This act becomes effective October 1, 1998. ^{after} ~~before~~ Sections 8 through 10 apply to actions pending on or ~~after~~ the effective date. Section 10 applies to actions filed on or after the effective date."

SIGNED _____
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman**

REVISED REPORT

Monday, August 10, 1998

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 1277 Civil Procedure Rules Changes
 Draft Number: PCS 6868
 Sequential Referral: Appropriations
 Recommended Referral: None
 Long Title Amended: Yes

S.B. 1279 1998 Technical Corections
 Draft Number: PCS 4704
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. 1071 Pay Rent Arrears to Stay Ejectment
 Draft Number: PCS 1607
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) 534 Support Orders Enforcement
 Draft Number: PCS 1608
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment: Will have Senator Cooper sign

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Tuesday, August 11, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)	1094	Repeal/Recodify Railroad Laws	
		Draft Number:	PCS 3171
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Senate Judiciary

6/6/98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

And L. Edwards	Christian Science COP for NC
Thomson	Gene Hassere
Doug Lassiter	NCSTA
Hal Miller	OTC Acet
Andy Rameant	N.C.L.M.
Alicia Henry	Power E Small
David Anders	OFFICE
John May	NC LWA
Joe McCles	McCles Consulting
W. Riddick	OR
Eatherine Davis	Electricities
Alan Miles	Bundy & Dixon LLP
Kevin Howell	NCBA
Mac Barte	NC Advocates Assoc
Melissa Lovele	DOT
Patricia A. Yaman	SOSE
Donna Rossi	ACLU
Bill Taylor	NCATL
Quanta Orstrom	NCATL
Quinn & Laughlin	NS
Eric Seaton	ALBA

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

John McMillan	NFAS PA.
John Smith	Smith M.
James Park	Wanta
Larry J. Hayslet	NCUC
Alan Briggs	AOC
George Bonds	AOC
Barbara Summers	NCEquity

MINUTES
SENATE JUDICIARY COMMITTEE
August 11, 1998

The Senate Judiciary Committee met on Tuesday, August 11, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Miller, Acting Chairman in the temporary absence of Senator Cooper, called the meeting to order and recognized Representative Baddour to explain House Bill 908 - AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE AND TO PERMIT NOTICE TO CREDITORS IN SUMMARY ADMINISTRATION OF ESTATES.

Senator Reeves moved to adopt a Proposed Committee Substitute to the Senate Committee Substitute House Bill 908 which was adopted on August 7, 1998 for discussion. The motion carried by a majority voice vote.

Senator Cooper, Chairman, recognized Walker Reagan to explain the changes in the new Proposed Committee Substitute.

Senator Miller moved to amend the Proposed Committee Substitute on Page 2, Lines 16 through 18. The motion carried by a majority voice vote. (See attached amendment.)

Senator Miller moved to amend the Proposed Committee Substitute on Page 14, Line 31. The motion carried by a majority voice vote. (See attached amendment.)

Senator Miller moved to amend the Proposed Committee Substitute on Page 16, Lines 42 through Page 17, Line 2. The motion carried by a majority voice vote. (See attached amendment.)

Senator Horton moved to amend the Proposed Committee Substitute on Page 3, Line 16. The motion carried by a majority voice vote.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report as amended. The motion carried by a majority voice vote.

Senator Cooper recognized the Clerks of Court who were attending the Committee meeting.

House Bill 581 - AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST was brought before the Committee for discussion.

Senator Miller moved to adopt a Proposed Committee Substitute to House Bill 581 for discussion. The motion carried by a majority voice vote.

Katherine Hux, Executive Director of the N. C. Psychiatric Association, was recognized to respond to questions from the Committee.

Senator Lucas moved to amend the Proposed Committee Substitute on Page 1, Lines 19 and 20. The motion carried by a majority voice vote.

Senator Hoyle moved to give the Proposed Committee Substitute a favorable report as amended. The motion carried by a majority voice vote.

Senator William Martin was recognized to explain Senate Bill 1532 - AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO APPROPRIATE FUNDS THEREFOR.

Senator Martin moved to adopt a Proposed Committee Substitute to Senate Bill 1532 for discussion. The motion carried by a majority voice vote.

Sharnese Ransome and Chuck Harris, with the Division of Social Services, were recognized to respond to questions from the Committee.

Because of time constraints, Senator Cooper asked that the bill be brought back to the Committee at a future meeting.

There being no further business, the meeting was adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

AGENDA
SENATE JUDICIARY COMMITTEE
August 11, 1998
10:00 a.m.

HB 581	Sex Exploitation Act	Hackney
HB 908	Modify Rights of Decedent's Spouse	Baddour
SB 1532	Adoption & Safe Families Act	W. Martin

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 908
Committee Substitute Favorable 4/24/97
Senate Judiciary Committee Substitute Adopted 7/7/97

Short Title: Modify Rights of Decedent's Spouse.

(Public)

Sponsors:

Referred to:

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE AND TO
3 PERMIT NOTICE TO CREDITORS IN SUMMARY ADMINISTRATION OF
4 ESTATES.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

7 Section 2. Chapter 30 of the General Statutes is amended by adding a
8 new Article to read:

9 "ARTICLE 1A.

10 "Elective Share.

11 "§ 30-3.1. Right of elective share.

12 (a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in
13 this State has a right to claim an 'elective share', which means an amount equal to (i)
14 the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the
15 value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The
16 applicable share of the Total Net Assets is as follows:

17 (1) If the decedent is not survived by any lineal descendants, one-half
18 of the Total Net Assets.

19 (2) If the decedent is survived by one child, or lineal descendants of
20 one deceased child, one-half of the Total Net Assets.

21 (3) If the decedent is survived by two or more children, or by one or
22 more children and the lineal descendants of one or more deceased

1 children, or by the lineal descendants of two or more deceased
2 children, one-third of the Total Net Assets.

3 (b) Reduction of Applicable Share. -- In those cases in which the surviving spouse
4 is a second or successive spouse, and the decedent has one or more lineal
5 descendants surviving by a prior marriage but there are no lineal descendants
6 surviving by the surviving spouse, the applicable share as determined in subsection
7 (a) of this section shall be reduced by one-half.

8 (c) Minimum Applicable Share. -- In no event shall the applicable share of the
9 Total Net Assets be less than twenty-five thousand dollars (\$25,000).

10 (d) Death Taxes. -- Death taxes shall be taken into account as a claim against the
11 estate in determining Total Net Assets only to the extent that such taxes are increased
12 because the assets received by the surviving spouse do not qualify for the federal
13 estate tax marital deduction pursuant to section 2056 of the Code, the North Carolina
14 exemption from inheritance and estate tax pursuant to G.S. 105-3(10) and (11), or
15 similar provisions under the laws of any other applicable taxing jurisdiction.

16 **"§ 30-3.2. Definitions.**

17 (a) 'Code' means the Internal Revenue Code in effect at the time of the
18 decedent's death.

19 (b) 'Death taxes' means any estate, inheritance, succession, and similar taxes
20 imposed by any taxing authority, reduced by any applicable credits against those
21 taxes.

22 (c) 'Total Net Assets' means, after the payment or provision for payment of the
23 decedent's funeral expenses, year's allowances to persons other than to the surviving
24 spouse, debts, claims, and administration expenses, the sum of the following:

- 25 (1) All property to which the decedent had legal and equitable title
26 immediately prior to death;
- 27 (2) All property received by the decedent's personal representative by
28 reason of the decedent's death;
- 29 (3) All proceeds of insurance on the life of the decedent of which the
30 decedent is the owner, or which is payable to the surviving spouse;
- 31 (4) One-half of the value of any property held by the decedent and the
32 surviving spouse as tenants by the entirety, or as joint tenants with
33 rights of survivorship;
- 34 (5) The entire value of any property held by the decedent and another
35 person, other than the surviving spouse, as joint tenants with right
36 of survivorship, except to the extent that contribution can be
37 proven by clear and convincing evidence;
- 38 (6) The value of any property which would be included in the taxable
39 estate of the decedent pursuant to sections 2033, 2035, 2036, 2037,
40 2038, 2039, 2040, or 2042 of the Code;
- 41 (7) Any donative transfers of property made by the decedent to donees
42 other than the surviving spouse within three years of the
43 decedent's death, excluding:

- 1 a. Any gifts within the annual exclusion provisions of section
2 2503 of the Code; and
3 b. Any gifts to which the surviving spouse consented. A
4 signing of a deed, or income or gift tax return reporting such
5 gift shall be considered consent;
6 (8) Any proceeds of any individual retirement account, pension or
7 profit-sharing plan, or any private or governmental retirement plan
8 or annuity of which the decedent controlled the designation of
9 beneficiary, excluding any benefits under the federal social security
10 system;
11 (9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3;
12 and
13 (10) In case of overlapping application of the same property under
14 more than one provision, the property shall be included only once
15 under the provision yielding the greatest value.

16 (d) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under
17 section 672 of the Code.

18 **"§ 30-3.3. Property Passing to Surviving Spouse.**

19 (a) Property Passing to Surviving Spouse. -- For purposes of this Article,
20 'Property Passing to Surviving Spouse' means the sum of the following:

- 21 (1) One-half of the value of any property held by the decedent and the
22 surviving spouse as tenants by the entirety or as joint tenants with
23 rights of survivorship;
24 (2) The value of any interest in property (outright or in trust,
25 including any interest subject to a general power of appointment
26 held by the surviving spouse, as defined in section 2041 of the
27 Code) devised by the decedent to the surviving spouse, or which
28 passes to the surviving spouse by intestacy, or by beneficiary
29 designation, or by exercise of or in default of the exercise of the
30 decedent's testamentary general or limited power of appointment,
31 or by operation of law or otherwise by reason of the decedent's
32 death, excluding any benefits under the federal social security
33 system;
34 (3) Any year's allowance awarded to the surviving spouse;
35 (4) The value of any interest in property, outright or in trust,
36 renounced by the surviving spouse;
37 (5) The value of the surviving spouse's interest, outright or in trust, in
38 any life insurance proceeds on the life of the decedent; and
39 (6) The value of any interest in property, outright or in trust,
40 transferred from the decedent to the surviving spouse during the
41 lifetime of the decedent for which (i) a gift tax return is timely
42 filed reporting such gift, or (ii) the surviving spouse signs a
43 statement acknowledging such a gift. For purposes of this
44 subdivision, any gift to the surviving spouse by the decedent of the

1 decedent's interest in any property held by the decedent and the
2 surviving spouse as tenants by the entirety or as joint tenants with
3 right of survivorship shall be valued at one-half of the entire value
4 of that property at the time the gift is made.

5 (b) Special Rule for Spousal Trusts. -- Where the interest in property passing to
6 the surviving spouse is held in trust for the exclusive benefit of the surviving spouse
7 during the surviving spouse's lifetime, and where the trust authorizes a Nonadverse
8 Trustee to utilize the principal and income of the trust for the support and
9 maintenance of the surviving spouse, then the entire value of the trust shall be treated
10 as passing to the surviving spouse.

11 (c) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be
12 reduced by any death taxes that are a charge against or apportioned against the
13 surviving spouse on property interests included in Property Passing to Surviving
14 Spouse.

15 (d) No Duplication. -- In case of overlapping application of the same property
16 under more than one provision, the property shall be included only once, under the
17 provision yielding the greatest value.

18 **"§ 30-3.4. Procedure for determining the elective share.**

19 (a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a
20 claim for an elective share must be exercised during the lifetime of the surviving
21 spouse, by the surviving spouse, the surviving spouse's agent under a power of
22 attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies
23 before the claim for an elective share has been settled, the surviving spouse's personal
24 representative shall succeed to the surviving spouse's rights to an elective share.

25 (b) Time Limitations. -- A claim for an elective share must be made within six
26 months after the issuance of letters testamentary or letters of administration by (i)
27 filing a petition with the clerk of superior court of the county in which the primary
28 administration of the decedent's estate lies, and (ii) mailing or delivering a copy of
29 that petition to the personal representative of the decedent's estate. A surviving
30 spouse's incapacity shall not toll the six-month period of limitations.

31 (c) Time for Hearing. -- Unless waived by the personal representative and the
32 surviving spouse, the clerk shall set the matter for hearing no earlier than two months
33 and no later than six months after the filing of the petition. However, the clerk may
34 extend the time of hearing as the clerk sees fit. The clerk shall give notice of the
35 hearing to the surviving spouse, personal representative, and to any person described
36 in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the
37 elective share.

38 (d) Preparation of Tax Form. -- In every case in which a petition to determine an
39 elective share has been filed, and within two months of the filing of the petition, the
40 personal representative shall prepare and submit to the clerk a proposed Form 706,
41 federal estate tax return, for the estate, regardless of whether that form is required to
42 be filed with the Internal Revenue Service. The clerk may extend the time for
43 submission of the proposed Form 706 as the clerk sees fit.

1 (e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2
2 and G.S. 30-3.3 shall be determined as follows:

3 (1) Basic principles. -- Each interest shall be valued at its fair market
4 value, reduced by all liens, claims, or encumbrances against the
5 interest. For interests passing at the decedent's death, valuation
6 shall be as of the date of death, and for interests transferred during
7 the decedent's lifetime, valuation shall be as of the date of transfer.

8 (2) Valuation of partial and contingent interests in property. -- The
9 valuation of interests in property, outright or in trust, which are
10 limited to commence or terminate upon the death of one or more
11 persons, upon the expiration of a period of time, or upon the
12 occurrence of one or more contingencies, shall be determined by
13 computations based upon the mortality and annuity tables set forth
14 in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%)
15 of the gross value of the underlying property in which those
16 interests are limited. However, in valuing interests passing to the
17 surviving spouse, the following special rules apply:

18 a. Except as provided in G.S. 30-3.3(b), to the extent that the
19 interest is dependent upon the exercise of discretion by a
20 fiduciary, the interest shall have no value unless the spouse
21 is serving as that fiduciary and the power to distribute the
22 trust property constitutes a general power of appointment
23 held by the spouse, as defined in section 2041 of the Code;

24 b. To the extent that the interest is dependent upon the
25 occurrence of any contingency that is not subject to the
26 control of the surviving spouse and that is not subject to
27 valuation by reference to the mortality and annuity tables
28 set forth in G.S. 8-46 and G.S. 8-47, the contingency will be
29 conclusively presumed to result in the lowest possible value
30 passing to the surviving spouse. However, a life estate or
31 income interest that will terminate only upon the earlier of
32 the surviving spouse's death or remarriage will be valued
33 without regard to the possibility of termination upon
34 remarriage; and

35 c. To the extent that the valuation of an interest is dependent
36 upon the life expectancy of the surviving spouse, that life
37 expectancy shall be conclusively presumed to be no less
38 than 10 years, regardless of the actual attained age of the
39 surviving spouse at the decedent's death.

40 (3) Determination of fair market value. -- The fair market value of
41 each asset comprising Total Net Assets shall be determined as
42 follows:

43 a. Probate assets and assets passing to spouse. -- The value of
44 each probate asset and Property Passing to Surviving

1 Spouse, other than assets held in trust, shall be established
2 by the good faith agreement of the surviving spouse and the
3 personal representative, unless either (i) the surviving spouse
4 is the personal representative, or (ii) the clerk determines
5 that the personal representative may not be able to represent
6 the estate adversely to the surviving spouse.

7 b. Trust assets. -- The value of each trust asset shall be
8 established by good faith agreement of the surviving spouse
9 and the trustee, unless either (i) the surviving spouse is the
10 trustee, or (ii) the clerk determines that the trustee may not
11 be able to represent the trust adversely to the surviving
12 spouse.

13 c. Other assets. -- The value of any other asset shall be
14 established by the good faith agreement of the surviving
15 spouse and each person described in G.S. 30-3.5 who may
16 be required to contribute toward the satisfaction of the
17 elective share because of that person's interest in the asset,
18 unless the clerk determines that valuation under sub-
19 subdivision d. of this subdivision is more appropriate.

20 d. Use of disinterested persons. -- If the value of any asset is
21 not established by agreement, the clerk shall appoint one or
22 more qualified and disinterested persons to determine a
23 value of each asset. That determination of the value of an
24 asset shall be final for the exclusive purposes of this Article.

25 (f) Findings and Conclusions. -- After notice and hearing, the clerk shall
26 determine whether or not the surviving spouse is entitled to an elective share, and if
27 so, the clerk shall then determine the elective share and shall order the personal
28 representative to transfer that amount to the surviving spouse. The clerk's order shall
29 recite specific findings of fact and conclusions of law in arriving at the decedent's
30 Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

31 (g) Appeals. -- Any party in interest may appeal from the decision of the clerk to
32 the superior court, and in such event the procedure shall be the same as in other
33 special proceedings as now provided by law. If an appeal is taken from the decision
34 of the clerk, that appeal shall have the effect of staying the judgment and order of the
35 clerk until the cause is heard and determined by the superior court upon the appeal
36 taken. Upon an appeal taken from the clerk to the superior court, the judge may
37 review the findings of fact by the clerk and may find the facts or take other evidence,
38 but the facts found by the judge shall be final and conclusive upon any appeal to the
39 Appellate Division.

40 **"§ 30-3.5. Recovery of assets by personal representative.**

41 (a) Recovery of Assets. -- The personal representative is entitled to recover
42 proportionately from all persons, other than the surviving spouse, receiving or in
43 possession of any of the decedent's Total Net Assets a sufficient amount to enable the
44 personal representative to pay the elective share. The apportionment shall be made

1 in the proportion that the value of the interest of each person receiving or in
2 possession of any of Total Net Assets bears to Total Net Assets, excluding any
3 Property Passing to Surviving Spouse. The only persons subject to contribution to
4 make up the elective share are (i) original recipients of property comprising the
5 decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons
6 claiming by testate or intestate succession to the extent those persons have the
7 property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary,
8 as to the property under the fiduciary's control at or after the time a fiduciary
9 receives notice that a surviving spouse has claimed an elective share. A fiduciary
10 shall not be considered to have notice until it receives notice at its address as shown
11 in the decedent's estate papers in the clerk's office or, if there are no such papers or
12 no such address is shown in those papers, at the fiduciary's residence or the office of
13 its registered agent.

14 The personal representative may withhold from any property of the decedent in
15 his possession, distributable to any person subject to apportionment, the amount of
16 the elective share apportioned to such person. If the property in possession of the
17 personal representative and distributable to any person subject to apportionment is
18 insufficient to satisfy the proportionate amount of the elective share determined to be
19 due from that person, the personal representative may recover the deficiency from
20 that person. If the property is not in possession of the personal representative, the
21 personal representative may recover from the person the amount of the elective share
22 apportioned to that person in accordance with this Article. If the personal
23 representative cannot reasonably collect from any person subject to apportionment
24 the amount of the elective share apportioned to that person, the amount not
25 reasonably recoverable shall, with the approval of the clerk, be apportioned among
26 the other persons who are subject to apportionment. The apportionment shall be
27 made in the proportion that the value of the interest of each remaining person bears
28 to the total value of the interests of all remaining persons.

29 (b) Standstill Order. -- After the filing of the petition demanding an elective
30 share, either the personal representative or surviving spouse may request the clerk to
31 issue an order that any recipients not dispose of any of the decedent's Total Net
32 Assets pending the hearing. The decision to issue such an order shall be in the
33 discretion of the clerk.

34 (c) Satisfaction of Liability. -- A person receiving or in possession of any of the
35 decedent's Total Net Assets may pay his proportionate elective share liability with
36 respect to that property by any of the following methods:

- 37 (1) Conveyance of the property included in the decedent's Total Net
38 Assets;
- 39 (2) Payment of the value of his liability in cash or, upon agreement of
40 the surviving spouse, other property; or
- 41 (3) Partial conveyance and partial payment under subdivisions (1) and
42 (2) of this subsection, provided the value conveyed and paid is
43 equal to his liability.

1 (d) In case of election to take a life estate in lieu of an intestate ~~share, share or~~
2 elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a), 30-3.3(a)~~, the clerk
3 of superior court, with whom the notice of election has been filed, shall summon and
4 appoint a jury of three disinterested persons who being first duly sworn shall
5 promptly allot and set apart to the surviving spouse the life estate provided for in
6 subsection (a) and make a final report of such action to the clerk.

7 (e) The final report shall be filed by the jury not more than 60 days after the
8 summoning and appointment thereof, shall be signed by all jurors, and shall describe
9 by metes and bounds the real estate in which the surviving spouse shall have been
10 allotted and set aside a life estate. It shall be filed as a record of court and a certified
11 copy thereof shall be filed and recorded in the office of the register of deeds of each
12 county in which any part of the real property of the deceased spouse, affected by the
13 allotment, is located.

14 (f) In the election and procedure to have the life estate allotted and set apart
15 provided for in this section, the rules of procedure relating to partition proceedings
16 shall apply except insofar as the same would be inconsistent with the provisions of
17 this section.

18 (g) Neither the household furnishings in the dwelling house nor the life estates
19 taken by election under this section shall be subject to the payment of debts due from
20 the estate of the deceased spouse, except those debts secured by such property as
21 follows:

- 22 (1) By a mortgage or deed of trust in which the surviving spouse has
23 waived his or her rights by joining with the other spouse in the
24 making thereof; or
- 25 (2) By a purchase money mortgage or deed of trust, or by a
26 conditional sales contract of personal property in which title is
27 retained by the vendor, made prior to or during the marriage; or
- 28 (3) By a mortgage or deed of trust made prior to the marriage; or
- 29 (4) By a mortgage or deed of trust constituting a lien on the property
30 at the time of its acquisition by the deceased spouse either before
31 or during the marriage.

32 (h) If no election is made in the manner and within the time provided for in
33 subsection (c) the surviving spouse shall be conclusively deemed to have waived his
34 or her right to elect to take under the provisions of this section, and any interest
35 which the surviving spouse may have had in the real estate of the deceased spouse by
36 virtue of this section shall terminate."

37 Section 4. G.S. 30-15 reads as rewritten:

38 "**§ 30-15. When spouse entitled to allowance.**

39 Every surviving spouse of an intestate or of a testator, whether or not he has
40 petitioned for an elective share, ~~dissented from the will~~, shall, unless he has forfeited
41 his right thereto, as provided by law, be entitled, out of the personal property of the
42 deceased spouse, to an allowance of the value of ten thousand dollars (\$10,000) for
43 his support for one year after the death of the deceased spouse. Such allowance shall
44 be exempt from any lien, by judgment or execution, acquired against the property of

1 the deceased spouse, and shall, in cases of testacy, be charged against the share of
2 the surviving spouse."

3 Section 5. G.S. 31-5.3 reads as rewritten:

4 **"§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

5 A will is not revoked by a subsequent marriage of the maker; and the surviving
6 spouse may ~~dissent from such~~ petition for an elective share when there is a will made
7 prior to the marriage in the same manner, upon the same conditions, and to the same
8 extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when
9 there is a will made subsequent to marriage."

10 Section 6. G.S. 31A-1(b) reads as rewritten:

11 "(b) The rights lost as specified in subsection (a) of this section shall be as follows:

- 12 (1) All rights of intestate succession in the estate of the other spouse;
- 13 (2) All right to claim or succeed to a homestead in the real property of
14 the other spouse;
- 15 (3) All right to ~~dissent from the will~~ petition for an elective share of
16 the estate of the other spouse and take either the elective intestate
17 share provided or the life interest in lieu thereof;
- 18 (4) All right to any year's allowance in the personal property of the
19 other spouse;
- 20 (5) All right to administer the estate of the other spouse; and
- 21 (6) Any rights or interests in the property of the other spouse which by
22 a settlement before or after marriage were settled upon the
23 offending spouse solely in consideration of the marriage."

24 Section 7. G.S. 31C-3 reads as rewritten:

25 **"§ 31C-3. Disposition of community property upon death.**

26 Upon death of a married person, one half of the property to which this Chapter
27 applies is the property of the surviving spouse and is not subject to testamentary
28 disposition by the decedent or distribution under the laws or succession of this State.
29 One half of that property is the property of the decedent and is subject to
30 testamentary disposition or distribution under the laws of succession of this State.
31 With respect to property to which this Chapter applies, the one half of the property
32 of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~
33 petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and
34 is not subject to the right to elect a life estate under the provisions of Article 8 of
35 Chapter 29."

36 Section 8. G.S. 84-5(2) reads as rewritten:

- 37 "(2) When any of the following acts are to be performed in connection
38 with the fiduciary activities of such a corporation, said acts shall be
39 performed for the corporation by a duly licensed attorney, not a
40 salaried employee of the corporation, retained to perform legal
41 services required in connection with the particular estate, trust or
42 other fiduciary matter:
 - 43 a. Offering wills for probate.

- 1 b. Preparing and publishing notice of administration to
2 creditors.
- 3 c. Handling formal court proceedings.
- 4 d. Drafting legal papers or giving legal advice to spouses
5 concerning ~~dissent from their spouses' will.~~ rights to an
6 elective share under Article 1A of Chapter 30 of the
7 General Statutes.
- 8 e. Resolving questions of domicile and residence of a decedent.
- 9 f. Handling proceedings involving year's allowances of widows
10 and children.
- 11 g. Drafting deeds, notes, deeds of trust, leases, options and
12 other contracts.
- 13 h. Drafting instruments releasing deeds of trust.
- 14 i. Drafting assignments of rent.
- 15 j. Drafting any formal legal document to be used in the
16 discharge of the corporate fiduciary's duty.
- 17 k. In matters involving estate and inheritance taxes, gift taxes,
18 and federal and State income taxes:
- 19 1. Preparing and filing protests or claims for refund,
20 except requests for a refund based on mathematical
21 or clerical errors in tax returns filed by it as a
22 fiduciary.
- 23 2. Conferring with tax authorities regarding protests or
24 claims for refund, except those based on
25 mathematical or clerical errors in tax returns filed by
26 it as a fiduciary.
- 27 3. Handling petitions to the tax court.
- 28 l. Performing legal services in insolvency proceedings or
29 before a referee in bankruptcy or in court.
- 30 m. In connection with the administration of an estate or trust:
- 31 1. Making application for letters testamentary or letters
32 or administration.
- 33 2. Abstracting or passing upon title to property.
- 34 3. Handling litigation relating to claims by or against the
35 estate or trust.
- 36 4. Handling foreclosure proceedings of deeds of trust or
37 other security instruments which are in default."

38 Section 9. G.S. 28A-28-6 reads as rewritten:

39 **"§ 28A-28-6. Spouse's assumption of liabilities.**

40 ¶ Except as provided for in G.S. 28A-28-8, if the clerk grants the order for
41 summary administration, the spouse shall be deemed to have assumed, to the extent
42 of the value of the property received by the spouse under the will of the decedent or
43 by intestate succession, all liabilities of the decedent that were not discharged by
44 reason of death and liability for all taxes and valid claims against the decedent or the

1 estate. The value of the property is the fair market value of the property on the date
2 of death of the decedent less any liens or encumbrances on the property so received.
3 The spouse may assert any defense, counterclaim, cross-claim, or setoff which would
4 have been available to the decedent if the decedent had not died except for actions
5 listed in G.S. 28A-18-1(b). A spouse shall not be deemed to have assumed any
6 liabilities of the decedent that were discharged by reason of death."

7 Section 10. Article 28 of Chapter 28A of the General Statutes is
8 amended by adding a new section to read:

9 "**§ 28A-28-8. Optional notice to creditors.**

10 The surviving spouse may elect to give notice to creditors in accordance with G.S.
11 28A-14-1. Upon compliance with the provisions of G.S. 28A-14-1, claims against the
12 decedent's estate and claims against the surviving spouse under G.S. 28A-28-6 shall
13 be barred pursuant to G.S. 28A-19-3 unless a claim is presented to the surviving
14 spouse as set forth in G.S. 28A-19-1, in which event the provisions of Article 19 of
15 Chapter 28A of the General Statutes shall apply. In order to carry out the provisions
16 of this section, the surviving spouse shall be deemed to be the personal representative
17 of the decedent for purposes of G.S. 28A-17-12 and Article 19 of Chapter 28A of the
18 General Statutes."

19 Section 11. This act becomes effective October 1, 1997. Sections 9 and
20 10 apply to estates of decedents dying on or after January 1, 1996. The remaining
21 sections apply to estates of decedents dying on or after October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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H908-CSRU-003
PROPOSED SENATE JUDICIARY COMMITTEE SUBSTITUTE No. 2
HOUSE BILL 908
THIS IS A DRAFT 10-AUG-98 19:47:53
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to:

April 10, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE AND TO PERMIT
3 NOTICE TO CREDITORS IN SUMMARY ADMINISTRATION OF ESTATES.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 1 of Chapter 30 of the General
6 Statutes is repealed.
7 Section 2. Chapter 30 of the General Statutes is
8 amended by adding a new Article to read:
9 "ARTICLE 1A.
10 "Elective Share.
11 "§ 30-3.1. Right of elective share.
12 (a) Elective Share. -- The surviving spouse of a decedent who
13 dies domiciled in this State has a right to claim an 'elective
14 share', which means an amount equal to (i) the applicable share
15 of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii)
16 the value of Property Passing to Surviving Spouse, as defined in
17 G.S. 30-3.3(a). The applicable share of the Total Net Assets is
18 as follows:
19 (1) If the decedent is not survived by any lineal
20 descendants, one-half of the Total Net Assets.

1 (2) If the decedent is survived by one child, or lineal
2 descendants of one deceased child, one-half of the
3 Total Net Assets.

4 (3) If the decedent is survived by two or more
5 children, or by one or more children and the lineal
6 descendants of one or more deceased children, or by
7 the lineal descendants of two or more deceased
8 children, one-third of the Total Net Assets.

9 (b) Reduction of Applicable Share. -- In those cases in which
10 the surviving spouse is a second or successive spouse, and the
11 decedent has one or more lineal descendants surviving by a prior
12 marriage but there are no lineal descendants surviving by the
13 surviving spouse, the applicable share as determined in
14 subsection (a) or (c) of this section shall be reduced by one-
15 half.

16 (c) Minimum Applicable Share. -- In no event shall the
17 applicable share of the Total Net Assets be less than twenty-five
18 thousand dollars (\$25,000).

19 (d) Death Taxes. -- Death taxes shall be taken into account as
20 a claim against the estate in determining Total Net Assets only
21 to the extent that such taxes are increased because the assets
22 received by the surviving spouse do not qualify for the federal
23 estate tax marital deduction pursuant to section 2056 of the
24 Code, the North Carolina exemption from inheritance and estate
25 tax pursuant to G.S. 105-3(10) and (11), or similar provisions
26 under the laws of any other applicable taxing jurisdiction.

27 "§ 30-3.2. Definitions.

28 (a) 'Code' means the Internal Revenue Code in effect at the
29 time of the decedent's death.

30 (b) 'Death taxes' means any estate, inheritance, succession,
31 and similar taxes imposed by any taxing authority, reduced by any
32 applicable credits against those taxes.

33 (c) 'Total Net Assets' means, after the payment or provision
34 for payment of the decedent's funeral expenses, year's allowances
35 to persons other than to the surviving spouse, debts, claims, and
36 administration expenses, the sum of the following:

37 (1) All property to which the decedent had legal and
38 equitable title immediately prior to death;

39 (2) All property received by the decedent's personal
40 representative by reason of the decedent's death,
41 other than wrongful death proceeds;

42 (3) All proceeds of insurance on the life of the
43 decedent of which the decedent is the owner, or
44 which is payable to the surviving spouse;

- 1 (4) One-half of the value of any property held by the
2 decedent and the surviving spouse as tenants by the
3 entirety, or as joint tenants with rights of
4 survivorship;
- 5 (5) The entire value of any property held by the
6 decedent and another person, other than the
7 surviving spouse, as joint tenants with right of
8 survivorship, except to the extent that
9 contribution can be proven by clear and convincing
10 evidence by the surviving tenant;
- 11 (6) The value of any property which would be included
12 in the taxable estate of the decedent pursuant to
13 sections 2033, 2035, 2036, 2037, 2038, 2039, 2040,
14 or 2042 of the Code;
- 15 (7) Any donative transfers of property made during the
16 marriage made by the decedent to donees other than
17 the surviving spouse within three years of the
18 decedent's death, excluding:
- 19 a. Any gifts within the annual exclusion
20 provisions of section 2503 of the Code; and
21 b. Any gifts to which the surviving spouse
22 consented. A signing of a deed, or income or
23 gift tax return reporting such gift shall be
24 considered consent;
- 25 (8) Any proceeds of any individual retirement account,
26 pension or profit-sharing plan, or any private or
27 governmental retirement plan or annuity of which
28 the decedent controlled the designation of
29 beneficiary, excluding any benefits under the
30 federal social security system;
- 31 (9) Any other Property Passing to Surviving Spouse
32 under G.S. 30-3.3; and
- 33 (10) In case of overlapping application of more than one
34 subdivision of this subsection to same property,
35 the property shall be included only once under the
36 subdivision yielding the greatest value.
- 37 (d) 'Nonadverse trustee' means a trustee who would be deemed
38 nonadverse under section 672 of the Code.
- 39 "§ 30-3.3. Property Passing to Surviving Spouse.
40 (a) Property Passing to Surviving Spouse. -- For purposes of
41 this Article, 'Property Passing to Surviving Spouse' means the
42 sum of the following:
- 43 (1) One-half of the value of any property held by the
44 decedent and the surviving spouse as tenants by the

- 1 entirety or as joint tenants with rights of
2 survivorship;
- 3 (2) The value of any interest in property (outright or
4 in trust, including any interest subject to a
5 general power of appointment held by the surviving
6 spouse, as defined in section 2041 of the Code)
7 devised by the decedent to the surviving spouse, or
8 which passes to the surviving spouse by intestacy,
9 or by beneficiary designation, or by exercise of or
10 in default of the exercise of the decedent's
11 testamentary general or limited power of
12 appointment, or by operation of law or otherwise by
13 reason of the decedent's death, excluding any
14 benefits under the federal social security system;
- 15 (3) Any year's allowance awarded to the surviving
16 spouse;
- 17 (4) The value of any interest in property, outright or
18 in trust, renounced by the surviving spouse;
- 19 (5) The value of the surviving spouse's interest,
20 outright or in trust, in any life insurance
21 proceeds on the life of the decedent; and
- 22 (6) The value of any interest in property, outright or
23 in trust, transferred from the decedent to the
24 surviving spouse during the lifetime of the
25 decedent for which (i) a gift tax return is timely
26 filed reporting such gift, or (ii) the surviving
27 spouse signs a statement acknowledging such a gift.
28 For purposes of this subdivision, any gift to the
29 surviving spouse by the decedent of the decedent's
30 interest in any property held by the decedent and
31 the surviving spouse as tenants by the entirety or
32 as joint tenants with right of survivorship shall
33 be valued at one-half of the entire value of that
34 property at the time the gift is made.
- 35 (b) Special Rule for Spousal Trusts. -- Where the interest in
36 property passing to the surviving spouse is held in trust for the
37 exclusive benefit of the surviving spouse during the surviving
38 spouse's lifetime, and where the trust authorizes a Nonadverse
39 Trustee to utilize the principal and income of the trust for the
40 support and maintenance of the surviving spouse, then the entire
41 value of the trust shall be treated as passing to the surviving
42 spouse.
- 43 (c) Death Taxes. -- The value of Property Passing to Surviving
44 Spouse shall be reduced by any death taxes that are a charge

1 against or apportioned against the surviving spouse on property
2 interests included in Property Passing to Surviving Spouse.

3 (d) No Duplication. -- In case of overlapping application of
4 more than one subdivision of subsection (a) of this section to
5 the same property, the property shall be included only once under
6 the subdivision yielding the greatest value.

7 "§ 30-3.4. Procedure for determining the elective share.

8 (a) Exercisable Only During Lifetime. -- The right of the
9 surviving spouse to file a claim for an elective share must be
10 exercised during the lifetime of the surviving spouse, by the
11 surviving spouse, the surviving spouse's agent under a power of
12 attorney, or the guardian of the surviving spouse's estate. If a
13 surviving spouse dies before the claim for an elective share has
14 been settled, the surviving spouse's personal representative
15 shall succeed to the surviving spouse's rights to an elective
16 share.

17 (b) Time Limitations. -- A claim for an elective share must be
18 made within six months after the issuance of letters testamentary
19 or letters of administration by (i) filing a petition with the
20 clerk of superior court of the county in which the primary
21 administration of the decedent's estate lies, and (ii) mailing or
22 delivering a copy of that petition to the personal representative
23 of the decedent's estate. A surviving spouse's incapacity shall
24 not toll the six-month period of limitations.

25 (c) Time for Hearing. -- Unless waived by the personal
26 representative and the surviving spouse, the clerk shall set the
27 matter for hearing no earlier than two months and no later than
28 six months after the filing of the petition. However, the clerk
29 may extend the time of hearing as the clerk sees fit. The clerk
30 shall give notice of the hearing to the surviving spouse,
31 personal representative, and to any person described in G.S. 30-
32 3.5 who may be required to contribute toward the satisfaction of
33 the elective share.

34 (d) Preparation of Tax Form. -- In every case in which a
35 petition to determine an elective share has been filed, and
36 within two months of the filing of the petition, the personal
37 representative shall prepare and submit to the clerk a proposed
38 Form 706, federal estate tax return, for the estate, regardless
39 of whether that form is required to be filed with the Internal
40 Revenue Service. The clerk may extend the time for submission of
41 the proposed Form 706 as the clerk sees fit.

42 (e) Valuation. -- The valuation of interests in property for
43 purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as
44 follows:

- 1 (1) Basic principles. -- Each interest shall be valued
2 at its fair market value, reduced by all liens,
3 claims, or encumbrances against the interest. For
4 interests passing at the decedent's death,
5 valuation shall be as of the date of death, and for
6 interests transferred during the decedent's
7 lifetime, valuation shall be as of the date of
8 transfer.
- 9 (2) Valuation of partial and contingent interests in
10 property. -- The valuation of interests in
11 property, outright or in trust, which are limited
12 to commence or terminate upon the death of one or
13 more persons, upon the expiration of a period of
14 time, or upon the occurrence of one or more
15 contingencies, shall be determined by computations
16 based upon the mortuary and annuity tables set
17 forth in G.S. 8-46 and G.S. 8-47, and upon the
18 basis of six percent (6%) of the gross value of the
19 underlying property in which those interests are
20 limited. However, in valuing interests passing to
21 the surviving spouse, the following special rules
22 apply:
- 23 a. Except as provided in G.S. 30-3.3(b), to the
24 extent that the interest is dependent upon the
25 exercise of discretion by a fiduciary, the
26 interest shall have no value unless the spouse
27 is serving as that fiduciary and the power to
28 distribute the trust property constitutes a
29 general power of appointment held by the
30 spouse, as defined in section 2041 of the
31 Code;
- 32 b. To the extent that the interest is dependent
33 upon the occurrence of any contingency that is
34 not subject to the control of the surviving
35 spouse and that is not subject to valuation by
36 reference to the mortuary and annuity tables
37 set forth in G.S. 8-46 and G.S. 8-47, the
38 contingency will be conclusively presumed to
39 result in the lowest possible value passing to
40 the surviving spouse. However, a life estate
41 or income interest that will terminate only
42 upon the earlier of the surviving spouse's
43 death or remarriage will be valued without

- 1 regard to the possibility of termination upon
2 remarriage; and
- 3 c. To the extent that the valuation of an
4 interest is dependent upon the life expectancy
5 of the surviving spouse, that life expectancy
6 shall be conclusively presumed to be no less
7 than 10 years, regardless of the actual
8 attained age of the surviving spouse at the
9 decedent's death.
- 10 (3) Determination of fair market value. -- The fair
11 market value of each asset comprising Total Net
12 Assets shall be determined as follows:
- 13 a. Probate assets and assets passing to spouse.
14 -- The value of each probate asset and
15 Property Passing to Surviving Spouse, other
16 than assets held in trust, shall be
17 established by the good faith agreement of the
18 surviving spouse and the personal
19 representative, unless either (i) the
20 surviving spouse is the personal
21 representative, or (ii) the clerk determines
22 that the personal representative may not be
23 able to represent the estate adversely to the
24 surviving spouse.
- 25 b. Trust assets. -- The value of each trust asset
26 shall be established by good faith agreement
27 of the surviving spouse and the trustee,
28 unless either (i) the surviving spouse is the
29 trustee, or (ii) the clerk determines that the
30 trustee may not be able to represent the trust
31 adversely to the surviving spouse.
- 32 c. Other assets. -- The value of any other asset
33 shall be established by the good faith
34 agreement of the surviving spouse and each
35 person described in G.S. 30-3.5 who may be
36 required to contribute toward the satisfaction
37 of the elective share because of that person's
38 interest in the asset, unless the clerk
39 determines that valuation under sub-
40 subdivision d. of this subdivision is more
41 appropriate.
- 42 d. Use of disinterested persons. -- If the value
43 of any asset is not established by agreement,
44 the clerk shall appoint one or more qualified

1 and disinterested persons to determine a value
2 of each asset. That determination of the
3 value of an asset shall be final for the
4 purposes of this Article.

5 (f) Findings and Conclusions. -- After notice and hearing, the
6 clerk shall determine whether or not the surviving spouse is
7 entitled to an elective share, and if so, the clerk shall then
8 determine the elective share and shall order the personal
9 representative to transfer that amount to the surviving spouse.
10 The clerk's order shall recite specific findings of fact and
11 conclusions of law in arriving at the decedent's Total Net
12 Assets, Property Passing to Surviving Spouse, and the elective
13 share.

14 (g) Appeals. -- Any party in interest may appeal from the
15 decision of the clerk to the superior court, and in such event
16 the procedure shall be the same as in other special proceedings
17 as now provided by law. If an appeal is taken from the decision
18 of the clerk, that appeal shall have the effect of staying the
19 judgment and order of the clerk until the cause is heard and
20 determined by the superior court upon the appeal taken. Upon an
21 appeal taken from the clerk to the superior court, the judge may
22 review the findings of fact by the clerk and may find those facts
23 and consider additional evidence, and the facts found by the
24 judge shall be final and conclusive upon any appeal to the
25 Appellate Division.

26 "§ 30-3.5. Recovery of assets by personal representative.

27 (a) Recovery of Assets. --- The personal representative is
28 entitled to recover proportionately from all persons, other than
29 the surviving spouse, receiving or in possession of any of the
30 decedent's Total Net Assets a sufficient amount to enable the
31 personal representative to pay the elective share. The
32 apportionment shall be made in the proportion that the value of
33 the interest of each person receiving or in possession of any of
34 Total Net Assets bears to Total Net Assets, excluding any
35 Property Passing to Surviving Spouse. The only persons subject
36 to contribution to make up the elective share are (i) original
37 recipients of property comprising the decedent's Total Net
38 Assets, and subsequent gratuitous inter vivos donees or persons
39 claiming by testate or intestate succession to the extent those
40 persons have the property or its proceeds on or after the date of
41 decedent's death, and (ii) a fiduciary, as to the property under
42 the fiduciary's control at or after the time a fiduciary receives
43 notice that a surviving spouse has claimed an elective share. A
44 fiduciary shall not be considered to have notice until it

1 receives notice at its address as shown in the decedent's estate
2 papers in the clerk's office or, if there are no such papers or
3 no such address is shown in those papers, at the fiduciary's
4 residence or the office of its registered agent.

5 The personal representative may withhold from any property of
6 the decedent in his possession, distributable to any person
7 subject to apportionment, the amount of the elective share
8 apportioned to such person. If the property in possession of the
9 personal representative and distributable to any person subject
10 to apportionment is insufficient to satisfy the proportionate
11 amount of the elective share determined to be due from that
12 person, the personal representative may recover the deficiency
13 from that person. If the property is not in possession of the
14 personal representative, the personal representative may recover
15 from the person the amount of the elective share apportioned to
16 that person in accordance with this Article. If the personal
17 representative cannot reasonably collect from any person subject
18 to apportionment the amount of the elective share apportioned to
19 that person, the amount not reasonably recoverable shall, with
20 the approval of the clerk, be apportioned among the other persons
21 who are subject to apportionment. The apportionment shall be
22 made in the proportion that the value of the interest of each
23 remaining person bears to the total value of the interests of all
24 remaining persons.

25 (b) Standstill Order. -- After the filing of the petition
26 demanding an elective share, either the personal representative
27 or surviving spouse may request the clerk to issue an order that
28 any recipients not dispose of any of the decedent's Total Net
29 Assets pending the hearing. The decision to issue such an order
30 shall be in the discretion of the clerk.

31 (c) Satisfaction of Liability. -- A person receiving or in
32 possession of any of the decedent's Total Net Assets may pay his
33 proportionate elective share liability with respect to that
34 property by any of the following methods:

- 35 (1) Conveyance of the property included in the
36 decedent's Total Net Assets;
- 37 (2) Payment of the value of his liability in cash or,
38 upon agreement of the surviving spouse, other
39 property; or
- 40 (3) Partial conveyance and partial payment under
41 subdivisions (1) and (2) of this subsection,
42 provided the value conveyed and paid is equal to
43 his liability.

1 (d) Expenses. -- The expenses reasonably incurred by the
2 personal representative in connection with the appraisal or
3 recovery of assets shall be apportioned as provided for the
4 elective share under this Article. If the personal
5 representative finds that it is inequitable to apportion the
6 expenses because those expenses were incurred because of the
7 fault of one or more persons subject to apportionment, the
8 personal representative may direct other more equitable
9 apportionment, with the approval of the clerk.

10 (e) Bond. -- If property held by the personal representative
11 is distributed prior to final apportionment of the elective
12 share, the personal representative may require the distributee to
13 provide a bond or other security for the apportionment liability
14 in the form and amount prescribed by the personal representative,
15 with the approval of the clerk.

16 "§ 30-3.6. Waiver of rights.

17 (a) The right of a surviving spouse to claim an elective share
18 may be waived, wholly or partially, before or after marriage,
19 with or without consideration, by ante-nuptial agreement or a
20 written waiver signed by the surviving spouse. The agreement or
21 waiver may also specify which property, if any, is excluded from
22 the operation of this statute; such specific property shall be
23 excluded from the Total Assets of the decedent.

24 (b) A waiver is not enforceable if the surviving spouse proves
25 that:

26 (1) The waiver was not executed voluntarily; or
27 (2) The surviving spouse was not provided a fair and
28 reasonable disclosure of the property and financial
29 obligations of the decedent, unless the surviving
30 spouse waived, in writing, the right to that
31 disclosure."

32 Section 3. G.S. 29-30 reads as rewritten:

33 "§ 29-30. Election of surviving spouse to take life interest in
34 lieu of intestate share provided.

35 (a) In lieu of the intestate share provided in G.S. 29-14 or
36 29-21, G.S. 29-21, or of the elective share provided in G.S. 30-
37 3.1, the surviving spouse of an intestate or the surviving spouse
38 who dissents from the will of a testator has petitioned for an
39 elective share shall be entitled to take as his or her intestate
40 share or elective share a life estate in one third in value of
41 all the real estate of which the deceased spouse was seised and
42 possessed of an estate of inheritance at any time during
43 coverture, except that real estate as to which the surviving
44 spouse:

- 1 (1) Has waived his or her rights by joining with the
2 other spouse in a conveyance thereof, or
- 3 (2) Has ~~release~~ released or quitclaimed his or her
4 interest therein in accordance with G.S. 52-10, or
- 5 (3) Was not required by law to join in conveyance
6 thereof in order to bar the elective life estate,
7 or
- 8 (4) Is otherwise not legally entitled to the election
9 provided in this section.

10 (b) Regardless of the value thereof and despite the fact that a
11 life estate therein might exceed the fractional limitation
12 provided for in subsection (a), the life estate provided for in
13 subsection (a) shall at the election of the surviving spouse
14 include a life estate in the usual dwelling house occupied by the
15 surviving spouse at the time of the death of the deceased spouse
16 if such dwelling house ~~were~~ was owned by the deceased spouse at
17 the time of his or her death, together with the outbuildings,
18 improvements and easements thereunto belonging or appertaining,
19 and lands upon which situated and reasonably necessary to the use
20 and enjoyment thereof, as well as a fee simple ownership in the
21 household furnishings therein.

22 (c) The election provided for in subsection (a) shall be made
23 by the filing of a notice thereof with the clerk of the superior
24 court of the county in which the administration of the estate is
25 pending, or, if no administration is pending, then with the clerk
26 of the superior court of any county in which the administration
27 of the estate could be commenced. Such election shall be made:

- 28 (1) ~~At any time within one month after the expiration~~
29 ~~of the time fixed for the filing of a dissent, the~~
30 ~~petition for elective share under Article 1A of~~
31 ~~Chapter 30, or~~
- 32 (2) In case of intestacy, then within 12 months after
33 the death of the deceased spouse if letters of
34 administration are not issued within that period,
35 or
- 36 (3) If letters of administration are issued within 12
37 months after the date of the death of the deceased
38 spouse, then within one month after the expiration
39 of the time limited for filing claims against the
40 estate, or
- 41 (4) If litigation that affects the share of the
42 surviving spouse in the estate is pending, then
43 ~~within such reasonable time as may be allowed by~~
44 ~~written order of the clerk of the superior court.~~

1 The notice of election shall:

- 2 (1) Be directed to the clerk with whom filed;
- 3 (2) State that the surviving spouse making the same
4 elects to take under this section rather than under
5 the provisions of ~~G.S. 29-14 or 29-21~~, G.S. 29-14,
6 29-21, or 30-3.1, as applicable;
- 7 (3) Set forth the names of all heirs, devisees,
8 legatees, personal representatives and all other
9 persons in possession of or claiming an estate or
10 an interest in the property described in subsection
11 (a); and
- 12 (4) Request the allotment of the life estate provided
13 for in subsection (a).

14 The notice of election may be in person, or by attorney
15 authorized in a writing executed and duly acknowledged by the
16 surviving spouse and attested by at least one witness. If the
17 surviving spouse is a minor or an incompetent, the notice of
18 election may be executed and filed by a general guardian or by
19 the guardian of the person or estate of the minor or incompetent
20 spouse. If the minor or incompetent spouse has no guardian, the
21 notice of election may be executed and filed by a next friend
22 appointed by the clerk. The notice of election, whether in person
23 or by attorney, shall be filed as a record of the court, and a
24 summons together with a copy of the notice shall be served upon
25 each of the interested persons named in the notice of election.

26 (d) In case of election to take a life estate in lieu of an
27 intestate ~~share, share or elective share~~, as provided in either
28 ~~G.S. 29-14, 29-21, or 30-3(a)~~, 30-3.3(a), the clerk of superior
29 court, with whom the notice of election has been filed, shall
30 summon and appoint a jury of three disinterested persons who
31 being first duly sworn shall promptly allot and set apart to the
32 surviving spouse the life estate provided for in subsection (a)
33 and make a final report of such action to the clerk.

34 (e) The final report shall be filed by the jury not more than
35 60 days after the summoning and appointment thereof, shall be
36 signed by all jurors, and shall describe by metes and bounds the
37 real estate in which the surviving spouse shall have been
38 allotted and set aside a life estate. It shall be filed as a
39 record of court and a certified copy thereof shall be filed and
40 recorded in the office of the register of deeds of each county in
41 which any part of the real property of the deceased spouse,
42 affected by the allotment, is located.

43 (f) ~~In the election and procedure to have the life estate~~
44 ~~allotted and set apart provided for in this section, the rules~~

1 of procedure relating to ~~partition~~ partitioning proceedings shall
2 apply except insofar as the same would be inconsistent with the
3 provisions of this section.

4 (g) Neither the household furnishings in the dwelling house nor
5 the life estates taken by election under this section shall be
6 subject to the payment of debts due from the estate of the
7 deceased spouse, except those debts secured by such property as
8 follows:

9 (1) By a mortgage or deed of trust in which the
10 surviving spouse has waived his or her rights by
11 joining with the other spouse in the making
12 thereof; or

13 (2) By a purchase money mortgage or deed of trust, or
14 by a conditional sales contract of personal
15 property in which title is retained by the vendor,
16 made prior to or during the marriage; or

17 (3) By a mortgage or deed of trust made prior to the
18 marriage; or

19 (4) By a mortgage or deed of trust constituting a lien
20 on the property at the time of its acquisition by
21 the deceased spouse either before or during the
22 marriage.

23 (h) If no election is made in the manner and within the time
24 provided for in subsection (c) the surviving spouse shall be
25 conclusively deemed to have waived his or her right to elect to
26 take under the provisions of this section, and any interest which
27 the surviving spouse may have had in the real estate of the
28 deceased spouse by virtue of this section shall terminate."

29 Section 4. G.S. 30-15 reads as rewritten:

30 "§ 30-15. When spouse entitled to allowance.

31 Every surviving spouse of an intestate or of a testator,
32 whether or not he has petitioned for an elective share, ~~dissented~~
33 ~~from the will~~, shall, unless he has forfeited his right thereto,
34 as provided by law, be entitled, out of the personal property of
35 the deceased spouse, to an allowance of the value of ten thousand
36 dollars (\$10,000) for his support for one year after the death of
37 the deceased spouse. Such allowance shall be exempt from any
38 lien, by judgment or execution, acquired against the property of
39 the deceased spouse, and shall, in cases of testacy, be charged
40 against the share of the surviving spouse."

41 Section 5. G.S. 31-5.3 reads as rewritten:

42 "§ 31-5.3. Will not revoked by marriage; dissent from will made
43 prior to marriage.

1 A will is not revoked by a subsequent marriage of the maker;
2 and the surviving spouse may ~~dissent from such~~ petition for an
3 elective share when there is a will made prior to the marriage in
4 the same manner, upon the same conditions, and to the same
5 extent, as a surviving spouse may dissent from petition for an
6 elective share when there is a will made subsequent to marriage."

7 Section 6. G.S. 31A-1(b) reads as rewritten:

8 "(b) The rights lost as specified in subsection (a) of this
9 section shall be as follows:

- 10 (1) All rights of intestate succession in the estate of
11 the other spouse;
- 12 (2) All right to claim or succeed to a homestead in the
13 real property of the other spouse;
- 14 (3) All right to ~~dissent from the will~~ petition for an
15 elective share of the estate of the other spouse
16 and take either the elective intestate share
17 provided or the life interest in lieu thereof;
- 18 (4) All right to any year's allowance in the personal
19 property of the other spouse;
- 20 (5) All right to administer the estate of the other
21 spouse; and
- 22 (6) Any rights or interests in the property of the
23 other spouse which by a settlement before or after
24 marriage were settled upon the offending spouse
25 solely in consideration of the marriage."

26 Section 7. G.S. 31C-3 reads as rewritten:

27 "~~§ 31C-3. Disposition of community property upon death.~~

28 ~~Upon death of a married person, one half of the property to~~
29 ~~which this Chapter applies is the property of the surviving~~
30 ~~spouse and is not subject to testamentary disposition by the~~
31 ~~decedent or distribution under the laws or succession of this~~
32 ~~State. One half of that property is the property of the decedent~~
33 ~~and is subject to testamentary disposition or distribution under~~
34 ~~the laws of succession of this State. With respect to property~~
35 ~~to which this Chapter applies, the one half of the property of~~
36 ~~the decedent is not subject to the surviving spouse's right to~~
37 ~~dissent from the will~~ petition for an elective share under the
38 provisions of Article 1A of Chapter 30, and is not subject to
39 the right to elect a life estate under the provisions of Article
40 8 of Chapter 29."

41 Section 8. G.S. 84-5(2) reads as rewritten:

42 "(2) When any of the following acts are to be performed
43 in connection with the fiduciary activities of such
44 a corporation, said acts shall be performed for the

1 corporation by a duly licensed attorney, not a
2 salaried employee of the corporation, retained to
3 perform legal services required in connection with
4 the particular estate, trust or other fiduciary
5 matter:

- 6 a. Offering wills for probate.
7 b. Preparing and publishing notice of
8 administration to creditors.
9 c. Handling formal court proceedings.
10 d. Drafting legal papers or giving legal advice
11 to spouses concerning ~~dissent from their~~
12 spouses' will. rights to an elective share
13 under Article 1A of Chapter 30 of the General
14 Statutes.
15 e. Resolving questions of domicile and residence
16 of a decedent.
17 f. Handling proceedings involving year's
18 allowances of widows and children.
19 g. Drafting deeds, notes, deeds of trust, leases,
20 options and other contracts.
21 h. Drafting instruments releasing deeds of trust.
22 i. Drafting assignments of rent.
23 j. Drafting any formal legal document to be used
24 in the discharge of the corporate fiduciary's
25 duty.
26 k. In matters involving estate and inheritance
27 taxes, gift taxes, and federal and State
28 income taxes:
29 1. Preparing and filing protests or claims
30 for refund, except requests for a refund
31 based on mathematical or clerical errors
32 in tax returns filed by it as a
33 fiduciary.
34 2. Conferring with tax authorities regarding
35 protests or claims for refund, except
36 those based on mathematical or clerical
37 errors in tax returns filed by it as a
38 fiduciary.
39 3. Handling petitions to the tax court.
40 l. Performing legal services in insolvency
41 proceedings or before a referee in bankruptcy
42 or in court.
43 m. In connection with the administration of an
44 estate or trust:

- 1 1. Making application for letters
2 testamentary or letters or
3 administration.
- 4 2. Abstracting or passing upon title to
5 property.
- 6 3. Handling litigation relating to claims by
7 or against the estate or trust.
- 8 4. Handling foreclosure proceedings of deeds
9 of trust or other security instruments
10 which are in default."

11 Section 9. G.S. 28A-28-6 reads as rewritten:

12 "§ 28A-28-6. Spouse's assumption of liabilities.

13 If Except as provided for in G.S. 28A-28-8, if the clerk grants
14 the order for summary administration, the spouse shall be deemed
15 to have assumed, to the extent of the value of the property
16 received by the spouse under the will of the decedent or by
17 intestate succession, all liabilities of the decedent that were
18 not discharged by reason of death and liability for all taxes and
19 valid claims against the decedent or the estate. The value of the
20 property is the fair market value of the property on the date of
21 death of the decedent less any liens or encumbrances on the
22 property so received. The spouse may assert any defense,
23 counterclaim, cross-claim, or setoff which would have been
24 available to the decedent if the decedent had not died except for
25 actions listed in G.S. 28A-18-1(b). A spouse shall not be deemed
26 to have assumed any liabilities of the decedent that were
27 discharged by reason of death."

28 ~~Section 10. Article 28 of Chapter 28A of the General~~
29 ~~Statutes is amended by adding a new section to read:~~

30 "§ 28A-28-8. Optional notice to creditors.

31 The surviving spouse may elect to give notice to creditors in
32 accordance with G.S. 28A-14-1. Upon compliance with the
33 provisions of G.S. 28A-14-1, claims against the decedent's estate
34 and claims against the surviving spouse under G.S. 28A-28-6 shall
35 be barred pursuant to G.S. 28A-19-3 unless a claim is presented
36 to the surviving spouse as set forth in G.S. 28A-19-1, in which
37 event the provisions of Article 19 of Chapter 28A of the General
38 Statutes shall apply. In order to carry out the provisions of
39 this section, the surviving spouse shall be deemed to be the
40 personal representative of the decedent for purposes of G.S. 28A-
41 17-12 and Article 19 of Chapter 28A of the General Statutes."

42 Section 11. This act becomes effective October 1, 1997.
43 Sections 9 and 10 apply to estates of decedents dying on or after

1 January 1, 1996. The remaining sections apply to estates of
2 decedents dying on or after October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 908-003

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) MILLER
Sen.)

moves to amend the bill on page 2, line 5 16 - 18

by DELETING THE LINES AND BY RELETTERING THE
REMAINING SUBSECTION ACCORDINGLY.

SIGNED Bred St

ADOPTED FAILED TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 908

H908-ARV-001

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

Date _____, 1998

Comm. Sub. [YES]
Amends Title []
H908-CSRU-003

Senator _____

1 moves to amend the bill on page 14, line 31,
2 by deleting the phrase "laws or succession" to read "laws of
3 succession".

SIGNED Bruce S. B.
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 908

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H908-ARU-010

Date _____, 1998

Comm. Sub. [YES]
Amends Title []
H908-CSRU-003

Senator

1 moves to amend the bill on page 16, line 42 though page 17, line 2
2 by rewriting the lines to read.
3 "Section 11. This act becomes effective ~~October 1, 1998.~~ *January 1, 1999.*
4 Sections 9 and 10 apply to estates of decedents dying on or after
5 January 1, 1997. The remaining sections apply to estates of
6 decedents dying on or after ~~October 1, 1998.~~ *January 1, 1999.*"

SIGNED *Bred S*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 8-11-98

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE H908-C5RU-003

(to be filled in by
Principal Clerk)

Rep.) Horton
)
Sen.)

1 moves to amend the bill on page 3, line 16

2 () WHICH CHANGES THE TITLE

3 by deleting the word "made"

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED FAILED _____ TABLED _____

*An Act to Modify the Rights of a Decedent's Spouse:
The Elective Share Statute*

North Carolina law currently provides a widow or widower (surviving spouse) with a minimum share of the deceased spouse's (decedent's) probate assets via the dissent statute (Article 1 of Chapter 30 of the General Statutes). The current statute does not take into account the non-probate assets of the decedent, and can operate very inconsistently as discussed more fully below. This bill addresses the failure of the dissent statute and the Intestate Succession Act (Chapter 29 of the General Statutes) to provide a surviving spouse with rights to a decedent's probate and non-probate property in a fair and consistent manner.

The Treatment of Non-probate Property

The dissent statute and Intestate Succession Act provide a decedent's spouse with certain rights in the decedent's property. The dissent statute applies if the decedent dies with a will; the Intestate Succession Act applies if the decedent dies without a will. Both statutes appear to have been enacted to prevent the decedent from disinheriting his or her spouse and to protect the spouse against the loss of support upon the decedent's death.

Each statute, however, gives the spouse rights only to the decedent's probate property. Probate property is generally all property that the decedent owns other than non-probate property. Non-probate property includes life insurance, IRAs, employee retirement plan accounts, annuities, revocable or "living" trusts, irrevocable trusts, and property owned jointly with one or more other persons with right of survivorship.

Both statutes were enacted in 1959. Since then, the "non-probate revolution" has occurred. Federal tax and employee benefit law has encouraged huge investments of wealth in employee qualified retirement plan accounts, IRAs, tax-deferred annuities and life insurance, all of which are non-probate property. At the same time, an increased awareness of the costs, publicity and delay imposed by court jurisdiction over probate property has motivated many people to transfer large amounts of property into revocable or "living" trusts and joint with right of survivorship property.

Today, it is commonplace for a decedent to die owning a substantial amount of non-probate property, yet very little probate property. However, neither the Intestate Succession Act nor the dissent statute provides a decedent's spouse with any rights in the decedent's non-probate property. Accordingly, a decedent can bypass his or her spouse and leave all his or her property to someone else by placing all the property in non-probate form: either owning it jointly with the non-spousal beneficiaries with right of survivorship; or investing it in life insurance, annuities, IRAs, employee benefit plan accounts; or irrevocable trusts that designate the non-spousal persons as beneficiaries.

The elective share statute restores to the surviving spouse the protection that the dissent statute and Intestate Succession Act originally intended to provide. The elective share statute gives the

surviving spouse the right to an "elective share" of the decedent's "Total Net Assets", whether the decedent dies with or without a will.

How Much Property the Surviving Spouse May Claim

The current dissent statute determines a surviving spouse's rights in two steps. The statute first determines whether the spouse has the right to dissent at all (§ 30-1 of the dissent statute). If the spouse has the right to dissent, then the statute determines how much probate property the spouse may receive (§ 30-3 of the dissent statute). The two steps are inconsistent. The first step takes into account the non-probate property that the spouse receives. Generally, the spouse has a right to dissent if the amount of property, probate and non-probate, that the spouse is entitled to receive is less than a threshold amount. If the spouse passes this first step and thus has the right to dissent, the second step generally gives the spouse a share of the probate property equal to the step-one threshold amount without regard to how much non-probate property the spouse receives. Because the first step takes the spouse's share of non-probate property into account and the second step does not, an anomaly results:

Example 1. Decedent dies survived by a spouse (sole marriage) and three children. Decedent owns \$600,000 of probate property and \$200,000 of non-probate property. Decedent's will leaves all the probate property to the children. All the non-probate property passes to the spouse.

Example 2. The facts are the same as Example 1 except that Decedent's probate property is worth \$600,001.

Assume that the step-one threshold amount and the step-two dissent share amount are both equal to one-third of the probate property. In Example 1, the step-one threshold is \$200,000. Decedent's spouse may not dissent, as that share is not less than the threshold amount. The spouse receives \$200,000 in non-probate property but receives none of the probate property.

In Example 2, the step-one threshold is \$200,000.33. Accordingly, Decedent's spouse may dissent. The spouse then receives not only \$200,000 in non-probate property, but also \$200,000.33 worth of the probate property, for a total of \$400,000.33.

The elective share statute avoids this unfairness by eliminating the dissent statute's first step, while maintaining a similar distribution under the second step. § 30-3.1 simply provides that a spouse always has the right to claim an elective share; and that the elective share amount is equal to a defined share of the decedent's probate and non-probate property ("Total Net Assets") reduced by the amount of probate and non-probate property that the spouse is already entitled to receive ("Property Passing to Surviving Spouse").

Comparing the Shares Under the Dissent Statute and the Elective Share Statute

The elective share amount is:

1. If the decedent has no surviving descendants, one-half of Total Net Assets less Property Passing to Surviving Spouse.
2. If the decedent's only surviving descendants are either one child or the issue of one deceased child, one-half of Total Net Assets less Property Passing to Surviving Spouse.
3. Otherwise, one-third of Total Net Assets less Property Passing to Surviving Spouse.

Under the current dissent statute, if the surviving spouse has the right to dissent (passes the "step one" threshold described above) the dissent share equals:

- A. If the decedent has no surviving descendants or parents, approximately one-half of the decedent's net probate property.
- B. Otherwise, the spouse's share under the Intestate Succession Act if the decedent had died without a will. Under the Intestate Succession Act, the spouse's share equals:
 - i. If the decedent's only surviving descendants are either one child or the issue of one deceased child, approximately one-half of the decedent's net probate property.
 - ii. Otherwise, approximately one-third of the decedent's net probate property.

Thus, a similar distribution system is maintained. Like the current dissent statute, under the elective share statute, if the decedent has surviving descendants by a prior marriage and no descendants by the marriage to the surviving spouse, then the elective share amount is determined by reducing the prescribed share of Total Net Assets by one-half. (So, in #2 above, the elective share is one-fourth of Total Net Assets less Property Passing to Surviving Spouse, and in #3 one-sixth.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 581
Committee Substitute Favorable 4/23/97

Short Title: Sex Exploitation Act.

(Public)

Sponsors:

Referred to:

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE
3 SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 90 of the General Statutes is amended by adding a
6 new Article to read:

7 "ARTICLE 1F.

8 "Psychotherapy Patient/Client Sexual Exploitation Act.

9 "§ 90-21.41. Definitions.

10 The following definitions apply in this Article:

- 11 (1) Client. -- A person who may also be called patient or counselee
12 who seeks or obtains psychotherapy, whether or not the person is
13 charged for the service. The term 'client' includes a former client.
14 (2) Psychotherapist. -- A physician, psychologist, nurse, counselor,
15 substance abuse counselor, social worker, member of the clergy,
16 marriage and family therapist, physician assistant, mental health
17 service provider, or other person, regardless of license,
18 certification, or registry status and regardless of employment
19 setting, who performs or purports to perform psychotherapy.
20 (3) Psychotherapy. -- The professional treatment or counseling of a
21 mental or emotional illness, symptom, condition, or problem of
22 living.
23 (4) Sexual exploitation. -- Either of the following:

- 1 a. Sexual contact which includes any of the following actions
2 whether or not they occurred with the consent of a client or
3 during any treatment, consultation, evaluation, interview, or
4 examination:
- 5 1. Sexual intercourse, cunnilingus, fellatio, anal
6 intercourse, or any intrusion, however slight, into the
7 oral, genital, or anal openings of the client's body by
8 any part of the psychotherapist's body or by any
9 object used by the psychotherapist for the purpose of
10 sexual stimulation or gratification of either the
11 psychotherapist or the client; or any intrusion,
12 however slight, into the oral, genital, or anal openings
13 of the psychotherapist's body by any part of the
14 client's body or by any object used by the client for
15 the purpose of sexual stimulation or gratification of
16 either the psychotherapist or the client, if agreed to,
17 or not resisted by the psychotherapist.
- 18 2. Kissing of, or the intentional touching by the
19 psychotherapist of, the client's lips, genital area,
20 groin, inner thigh, buttocks, or breast, or of the
21 clothing covering any of these body parts, or similar
22 activities by the client that have been agreed to or not
23 resisted by the psychotherapist.
- 24 b. Any act done or statement made by the psychotherapist for
25 the purpose of sexual stimulation or gratification of the
26 client or psychotherapist which includes any of the following
27 actions:
- 28 1. The psychotherapist's relating to the client the
29 psychotherapist's own sexual fantasies or the details
30 of the psychotherapist's own sexual life.
- 31 2. The uncovering or display of breasts or genitals of the
32 psychotherapist to the client.
- 33 3. The showing of sexually graphic pictures to the client
34 for purposes other than diagnosis or treatment.
- 35 4. Statements containing sexual innuendo, threats, or
36 suggestions regarding the relationship between the
37 psychotherapist and the client.
- 38 (5) Sexual history. -- Sexual activity of the client other than that
39 conduct alleged by the client to constitute sexual exploitation in an
40 action pursuant to this Article.
- 41 (6) Therapeutic deception. -- A representation by a psychotherapist
42 that sexual contact with the psychotherapist is consistent with or
43 part of the client's treatment.
- 44 "§ 90-21.42. Action for sexual exploitation.

1 Any client who is sexually exploited by the client's psychotherapist shall have
2 remedy by civil action for sexual exploitation if the sexual exploitation occurred:

3 (1) During the period the client was receiving psychotherapy from the
4 psychotherapist.

5 (2) Within three years after the termination of the psychotherapy.

6 (3) By means of therapeutic deception.

7 **"§ 90-21.43. Remedies.**

8 A person found to have been sexually exploited as provided under this Article
9 may recover from the defendant actual or nominal damages. The trier of fact may
10 award punitive damages in accordance with the provisions of Chapter 1D of the
11 General Statutes. In addition, if a person bringing an action pursuant to this Article
12 is found by the trier of fact to have been sexually exploited by the defendant, the
13 court may allow reasonable attorneys' fees to the plaintiff's attorney, to be taxed as
14 part of the court costs.

15 **"§ 90-21.44. Scope of discovery.**

16 (a) In an action under this Article, evidence of the plaintiff's sexual history is not
17 subject to discovery, except under the following conditions:

18 (1) The plaintiff claims impairment of sexual functioning.

19 (2) The defendant requests a hearing prior to conducting discovery
20 and makes an offer of proof of the relevancy of the evidence, and
21 the court finds that the information is relevant and that the
22 probative value of the history outweighs its prejudicial effect.

23 (b) The court shall allow the discovery only of specific information or examples of
24 the plaintiff's conduct that are determined by the court to be relevant. The court
25 order shall detail the information or conduct that is subject to discovery.

26 **"§ 90-21.45. Admissibility of evidence of sexual history.**

27 (a) At the trial of an action under this Article, evidence of the plaintiff's sexual
28 history is not admissible unless:

29 (1) The defendant requests a hearing prior to trial and makes an offer
30 of proof of the relevancy of the sexual history.

31 (2) The court finds that, in the interest of justice, the evidence is
32 relevant and that the probative value of the evidence substantially
33 outweighs its prejudicial effect.

34 (b) The court shall allow the admission only of specific information or examples of
35 instances of the plaintiff's conduct that are determined by the court to be relevant.
36 The court's order shall detail the conduct that is admissible, and no other such
37 evidence may be introduced.

38 (c) Sexual history otherwise admissible pursuant to this section may not be proved
39 by reputation or opinion.

40 (d) Violation of the terms of an order entered pursuant to this section may be
41 grounds for a new trial.

42 **"§ 90-21.46. Prohibited defense.**

43 It shall not be a defense in any action brought pursuant to this Article that the
44 client consented to the sexual exploitation or that the sexual contact with a client

1 occurred outside a therapy or treatment session or that it occurred off the premises
2 regularly used by the psychotherapist for therapy or treatment sessions.

3 **"§ 90-21.47. Statute of limitations.**

4 (a) An action for sexual exploitation must be commenced within three years after
5 the cause of action accrues. A cause of action for sexual exploitation accrues at the
6 later of either:

7 (1) The last act of the defendant giving rise to the cause of action.

8 (2) At the time the client discovers or reasonably should discover that
9 the client was injured as a result of the sexual exploitation;
10 however, no cause of action shall be commenced more than 15
11 years from the last act of the defendant giving rise to the cause of
12 action.

13 (b) If a person is unable to bring an action due to the effects of sexual exploitation
14 or due to any threats, instructions, or statements from the psychotherapist, the
15 duration of the period of inability shall not be included in the statute of limitations
16 for the commencement of the action for sexual exploitation.

17 **"§ 90-21.48. Agreements not to pursue complaint before licensing entity prohibited.**

18 It is prohibited for any person settling or compromising a claim involving the
19 conduct defined herein as sexual exploitation to request or agree, as a term of
20 settlement, not to pursue a complaint before the regulatory entity responsible for
21 overseeing the conduct or licensing of the defendant."

22 Section 2. This act becomes effective October 1, 1997, and applies to
23 exploitative conduct occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

H581-CSRU-003
PROPOSED SENATE JUDICIARY COMMITTEE SUBSTITUTE
HOUSE BILL 581
THIS IS A DRAFT 10-AUG-98 21:07:31
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Sex Exploitation Act.

(Public)

Sponsors:

Referred to:

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE
3 SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 90 of the General Statutes is
6 amended by adding a new Article to read:
7 "ARTICLE 1F.
8 "Psychotherapy Patient/Client Sexual Exploitation Act.
9 "§ 90-21.41. Definitions.
10 The following definitions apply in this Article:
11 (1) Client. -- A person who may also be called patient
12 or counselee who seeks or obtains psychotherapy,
13 whether or not the person is charged for the
14 service. The term 'client' includes a former
15 client.
16 (2) Psychotherapist. -- A psychiatrist licensed in
17 accordance with Article 1 of Chapter 90 of the
18 General Statutes, a psychologist as defined in G.S.
19 90-270.2(9), a nurse licensed in accordance with
20 Article 9A of Chapter 90 of the General Statutes, a
21 licensed professional counselor as defined in G.S.

- 1 90-330(a)(2), a substance abuse professional as
2 defined in G.S. 90-113.31(8), a social worker
3 engaged in a clinical social work practice as
4 defined in G.S. 90B-3(6), a fee-based pastoral
5 counselor as defined in G.S. 90-382(4), a licensed
6 marriage and family therapist as defined in G.S.
7 90-270.47(3), or a mental health service provider,
8 who performs or purports to perform psychotherapy.
9 (3) Psychotherapy. -- The professional treatment or
10 professional counseling of a mental or emotional
11 condition that includes revelation by the client of
12 intimate details of thoughts and emotions of a very
13 personal nature to assist the client in modifying
14 behavior, thoughts and emotions that are
15 maladjustive or contribute to difficulties in
16 living.
17 (4) Sexual exploitation. -- Either of the following:
18 a. Sexual contact which includes any of the
19 following actions whether or not they occurred
20 with the consent of a client or during any
21 treatment, consultation, evaluation,
22 interview, or examination:
23 1. Sexual intercourse, cunnilingus,
24 fellatio, anal intercourse, or any
25 intrusion, however slight, into the oral,
26 genital, or anal openings of the client's
27 body by any part of the psychotherapist's
28 body or by any object used by the
29 psychotherapist for the purpose of sexual
30 stimulation or gratification of either
31 the psychotherapist or the client; or any
32 intrusion, however slight, into the oral,
33 genital, or anal openings of the
34 psychotherapist's body by any part of the
35 client's body or by any object used by
36 the client for the purpose of sexual
37 stimulation or gratification of either
38 the psychotherapist or the client, if
39 agreed to, or not resisted by the
40 psychotherapist.
41 2. Kissing of, or the intentional touching
42 by the psychotherapist of, the client's
43 lips, genital area, groin, inner thigh,
44 buttocks, or breast, or of the clothing

1 covering any of these body parts, for the
2 purpose of sexual stimulation or
3 gratification of either the
4 psychotherapist or the client, or kissing
5 of, or the intentional touching by the
6 client of, the psychotherapist's lips,
7 genital area, groin, inner thigh,
8 buttocks, or breast, or of the clothing
9 covering any of these body parts, if
10 agreed to or not resisted by the
11 psychotherapist, for the purpose of
12 sexual stimulation or gratification to
13 either the psychotherapist or the client.

14 b. Any act done or statement made by the
15 psychotherapist for the purpose of sexual
16 stimulation or gratification of the client or
17 psychotherapist which includes any of the
18 following actions:

19 1. The psychotherapist's relating to the
20 client the psychotherapist's own sexual
21 fantasies or the details of the
22 psychotherapist's own sexual life.

23 2. The uncovering or display of breasts or
24 genitals of the psychotherapist to the
25 client.

26 3. The showing of sexually graphic pictures
27 to the client for purposes other than
28 diagnosis or treatment.

29 4. Statements containing sexual innuendo,
30 sexual threats, or sexual suggestions
31 regarding the relationship between the
32 psychotherapist and the client.

33 (5) Sexual history. -- Sexual activity of the client
34 other than that conduct alleged by the client to
35 constitute sexual exploitation in an action
36 pursuant to this Article.

37 (6) Therapeutic deception. -- A representation by a
38 psychotherapist that sexual contact with the
39 psychotherapist is consistent with or part of the
40 client's treatment.

41 "§ 90-21.42. Action for sexual exploitation.

42 Any client who is sexually exploited by the client's
43 psychotherapist shall have remedy by civil action for sexual
44 exploitation if the sexual exploitation occurred:

- 1 (1) At any time between and including the first date
2 and last date the client was receiving
3 psychotherapy from the psychotherapist;
4 (2) Within three years after the termination of the
5 psychotherapy; or
6 (3) By means of therapeutic deception.

7 "§ 90-21.43. Remedies.

8 A person found to have been sexually exploited as provided
9 under this Article may recover from the psychotherapist actual or
10 nominal damages, and reasonable attorneys' fees as the court may
11 allow. The trier of fact may award punitive damages in
12 accordance with the provisions of Chapter 1D of the General
13 Statutes.

14 "§ 90-21.44. Scope of discovery.

15 (a) In an action under this Article, evidence of the client's
16 sexual history is not subject to discovery, except under the
17 following conditions:

- 18 (1) The client claims impairment of sexual functioning.
19 (2) The psychotherapist requests a hearing prior to
20 conducting discovery and makes an offer of proof of
21 the relevancy of the evidence, and the court finds
22 that the information is relevant and that the
23 probative value of the history outweighs its
24 prejudicial effect.

25 (b) The court shall allow the discovery only of specific
26 information or examples of the client's conduct that are
27 determined by the court to be relevant. The court order shall
28 detail the information or conduct that is subject to discovery.

29 "§ 90-21.45. Admissibility of evidence of sexual history.

30 (a) At the trial of an action under this Article, evidence of
31 the client's sexual history is not admissible unless:

- 32 (1) The psychotherapist requests a hearing prior to
33 trial and makes an offer of proof of the relevancy
34 of the sexual history; and,
35 (2) The court finds that, in the interest of justice,
36 the evidence is relevant and that the probative
37 value of the evidence substantially outweighs its
38 prejudicial effect.

39 (b) The court shall allow the admission only of specific
40 information or examples of instances of the client's conduct that
41 are determined by the court to be relevant. The court's order
42 shall detail the conduct that is admissible, and no other such
43 evidence may be introduced.

1 (c) Sexual history otherwise admissible pursuant to this
2 section may not be proved by reputation or opinion.

3 "§ 90-21.46. Prohibited defense.

4 It shall not be a defense in any action brought pursuant to
5 this Article that the client consented to the sexual exploitation
6 or that the sexual contact with a client occurred outside a
7 therapy or treatment session or that it occurred off the premises
8 regularly used by the psychotherapist for therapy or treatment
9 sessions.

10 "§ 90-21.47. Statute of limitations.

11 Any action under this article shall be subject to the
12 limitations on the period for the commencement of actions set
13 forth in G,S, 1-52(16).

14 "§ 90-21.48. Agreements to not pursue complaint before licensing
15 entity void.

16 Any provision of a settlement agreement of a claim based in
17 whole or part on an allegation of sexual exploitation as defined
18 in this Article, which prohibits a party from initiating or
19 pursuing a complaint before the regulatory entity responsible for
20 overseeing the conduct or licensing of the psychotherapist, is
21 void."

22 Section 2. This act becomes effective October 1, 1998,
23 and applies to conduct occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 581

DATE 8-11-98

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE CSR4-003

Rep.) Lucas
)
Sen.)

1 moves to amend the bill on page 1, line 19 & 20

2 () WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 "90-270.2(9), a"

5 _____

6 _____

7 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Joanne Lucas

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1532*

Short Title: Adoption & Safe Families Act/Funds.

(Public)

Sponsors: Senators Martin of Guilford; and Dannelly.

Referred to: Appropriations.

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO
3 CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES
4 PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL
5 ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO
6 APPROPRIATE FUNDS THEREFOR.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 7A-517 reads as rewritten:

9 "§ 7A-517. Definitions.

10 Unless the context clearly requires otherwise, the following words have the listed
11 meanings:

- 12 (1) Abused juveniles. -- Any juvenile less than 18 years of age whose
13 parent, guardian, custodian, or caretaker:
14 a. Inflicts or allows to be inflicted upon the juvenile a serious
15 physical injury by other than accidental means; or
16 b. Creates or allows to be created a substantial risk of serious
17 physical injury to the juvenile by other than accidental
18 means; or
19 b1. Uses or allows to be used upon the juvenile cruel or grossly
20 inappropriate procedures or cruel or grossly inappropriate
21 devices to modify behavior; or
22 c. Commits, permits, or encourages the commission of a
23 violation of the following laws by, with, or upon the
24 juvenile: first degree rape, as provided in G.S. 14-27.2;

- 1 second degree rape as provided in G.S. 14-27.3; first degree
2 sexual offense, as provided in G.S. 14-27.4; second degree
3 sexual offense, as provided in G.S. 14-27.5; sexual act by a
4 custodian, as provided in G.S. 14-27.7; crime against nature,
5 as provided in G.S. 14-177; incest, as provided in G.S. 14-
6 178 and 14-179; preparation of obscene photographs, slides
7 or motion pictures of the juvenile, as provided in G.S. 14-
8 190.5; employing or permitting the juvenile to assist in a
9 violation of the obscenity laws as provided in G.S. 14-190.6;
10 dissemination of obscene material to the juvenile as
11 provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or
12 disseminating material harmful to the juvenile as provided
13 in G.S. 14-190.14 and G.S. 14-190.15; first and second
14 degree sexual exploitation of the juvenile as provided in
15 G.S. 14-190.16 and G.S. 14-190.17; promoting the
16 prostitution of the juvenile as provided in G.S. 14-190.18;
17 and taking indecent liberties with the juvenile, as provided
18 in G.S. 14-202.1, regardless of the age of the parties; or
19 d. Creates or allows to be created serious emotional damage to
20 the juvenile. Serious emotional damage is evidenced by a
21 juvenile's severe anxiety, depression, withdrawal or
22 aggressive behavior toward himself or others; or
23 e. Encourages, directs, or approves of delinquent acts involving
24 moral turpitude committed by the juvenile.
25 (2) Aftercare. -- The supervision of a juvenile who has been returned
26 to the community on conditional release after having been
27 committed to the Division of Youth Services.
28 (3) Administrator for Juvenile Services. -- The person who is
29 responsible for the planning, organization, and administration of a
30 statewide system of juvenile intake, probation, and aftercare
31 services.
32 (3a) Aggravated circumstances. -- Any circumstance attending to the
33 commission of an act of abuse or neglect which increases its
34 enormity or adds to its injurious consequences, including, but not
35 limited to, abandonment, torture, chronic abuse, or sexual abuse.
36 (4) Director of the Division of Youth Services. -- The person
37 responsible for the supervision of the administration of institutional
38 and detention services.
39 (5) Caretaker. -- Any person other than a parent, guardian, or
40 custodian who has responsibility for the health and welfare of a
41 juvenile in a residential setting. A person responsible for a
42 juvenile's health and welfare means a stepparent, foster parent, an
43 adult member of the juvenile's household, an adult relative
44 entrusted with the juvenile's care, or any person such as a house

- 1 parent or cottage parent who has primary responsibility for
2 supervising a juvenile's health and welfare in a residential child
3 care facility or residential educational facility. "Caretaker" also
4 means any person who has the responsibility for the care of a
5 juvenile in a child care facility as defined in Article 7 of Chapter
6 110 of the General Statutes and includes any person who has the
7 approval of the care provider to assume responsibility for the
8 juveniles under the care of the care provider. Nothing in this
9 subdivision shall be construed to impose a legal duty of support
10 under Chapter 50 or Chapter 110 of the General Statutes. The
11 duty imposed upon a caretaker as defined in this subdivision shall
12 be for the purpose of Chapter 7A of the General Statutes only.
- 13 (6) Chief Court Counselor. -- The person responsible for
14 administration and supervision of juvenile intake, probation, and
15 aftercare in each judicial district, operating under the supervision
16 of the Administrator for Juvenile Services.
- 17 (7) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
18 deputy clerk.
- 19 (8) Community-based program. -- A program providing nonresidential
20 or residential treatment to a juvenile in the community where his
21 family lives. A community-based program may include specialized
22 foster care, family counseling, shelter care, and other appropriate
23 treatment.
- 24 (9) Court. -- The District Court Division of the General Court of
25 Justice.
- 26 (9a) Court of competent jurisdiction. -- A court having the power and
27 authority of law to act at the time of acting over the subject matter
28 of the cause.
- 29 (10) Court counselor. -- A person responsible for probation and
30 aftercare services to juveniles on probation or on conditional
31 release from the Division of Youth Services under the supervision
32 of the chief court counselor.
- 33 (11) Custodian. -- The person or agency that has been awarded legal
34 custody of a juvenile by a court.
- 35 (12) Delinquent juvenile. -- Any juvenile less than 16 years of age who
36 has committed a crime or infraction under State law or under an
37 ordinance of local government, including violation of the motor
38 vehicle laws.
- 39 (13) Dependent Juvenile. -- A juvenile in need of assistance or
40 placement because the juvenile has no parent, guardian, or
41 custodian responsible for the juvenile's care or supervision or
42 whose parent, guardian, or custodian is unable to provide for the
43 care or supervision and lacks an appropriate alternative child care
44 arrangement.

- 1 (14) Detention. -- The confinement of a juvenile pursuant to an order
2 for secure custody pending an adjudicatory or dispositional hearing
3 or admission to a placement with the Division of Youth Services.
- 4 (15) Detention home. -- An authorized facility providing secure custody
5 for juveniles.
- 6 (15a) District. -- Any district court district as established by G.S. 7A-133.
- 7 (16) Holdover facility. -- A place in a jail which has been approved by
8 the Department of Health and Human Services as meeting the
9 State standards for detention as required in G.S. 153A-221
10 providing close supervision where the juvenile cannot converse
11 with, see, or be seen by the adult population.
- 12 (16.1) In loco parentis. -- A person acting in loco parentis means one,
13 other than parents or legal guardian, who has assumed the status
14 and obligation of a parent without being awarded the legal custody
15 of a juvenile by a court.
- 16 (17) Intake counselor. -- A person who screens a petition alleging that a
17 juvenile is delinquent or undisciplined to determine whether the
18 petition should be filed.
- 19 (18) Interstate Compact on Juveniles. -- An agreement ratified by 50
20 states and the District of Columbia providing a formal means of
21 returning a juvenile, who is an absconder, escapee or runaway, to
22 his home state.
- 23 (19) Judge. -- Any district court judge.
- 24 (19a) Judicial district. -- Any district court district as established by G.S.
25 7A-133.
- 26 (20) Juvenile. -- Any person who has not reached his eighteenth
27 birthday and is not married, emancipated, or a member of the
28 armed services of the United States. For the purposes of
29 subdivisions (12) and (28) of this section, a juvenile is any person
30 who has not reached his sixteenth birthday and is not married,
31 emancipated, or a member of the armed forces. A juvenile who is
32 married, emancipated, or a member of the armed forces, shall be
33 prosecuted as an adult for the commission of a criminal offense.
34 Wherever the term "juvenile" is used with reference to rights and
35 privileges, that term encompasses the attorney for the juvenile as
36 well.
- 37 (21) Neglected Juvenile. -- A juvenile who does not receive proper
38 care, supervision, or discipline from the juvenile's parent,
39 guardian, custodian, or caretaker; or who has been abandoned; or
40 who is not provided necessary medical care; or who is not
41 provided necessary remedial care; or who lives in an environment
42 injurious to the juvenile's welfare; or who has been placed for care
43 or adoption in violation of law. In determining whether a juvenile
44 is a neglected juvenile, it is relevant whether that juvenile lives in a

- 1 home where another juvenile has been subjected to abuse or
2 neglect by an adult who regularly lives in the home.
- 3 (22) Petitioner. -- The individual who initiates court action, whether by
4 the filing of a petition or of a motion for review alleging the matter
5 for adjudication.
- 6 (23) Probation. -- The status of a juvenile who has been adjudicated
7 delinquent, is subject to specified conditions under the supervision
8 of a court counselor, and may be returned to the court for
9 violation of those conditions during the period of probation.
- 10 (24) Prosecutor. -- The assistant district attorney assigned by the district
11 attorney to juvenile proceedings.
- 12 (25) Protective supervision. -- The status of a juvenile who has been
13 adjudicated delinquent or undisciplined and is under the
14 supervision of a court counselor.
- 15 (25a) Reasonable efforts. -- The diligent use of preventive or
16 reunification services by a department of social services when a
17 juvenile's remaining at home or returning home is consistent with
18 achieving a safe, permanent home for the juvenile within a
19 reasonable period of ~~time~~ time or, when the juvenile is not to be
20 returned home, the diligent and timely use of permanency
21 planning services by a department of social services to develop and
22 implement a permanent plan for the juvenile.
- 23 (26) Regional detention home. -- A state-supported and administered
24 regional facility providing detention care.
- 25 (26a) Safe home. -- A home in which the child is not at substantial risk
26 of physical or emotional abuse or neglect.
- 27 (27) Shelter care. -- The temporary care of a juvenile in a physically
28 unrestricting facility pending court disposition.
- 29 (28) Undisciplined juvenile. -- A juvenile less than 16 years of age who
30 is unlawfully absent from school; or who is regularly disobedient to
31 his parent, guardian, or custodian and beyond their disciplinary
32 control; or who is regularly found in places where it is unlawful for
33 a juvenile to be; or who has run away from home.
- 34 (29) Director of the department of social services. -- The director of the
35 county department of social services in the county in which the
36 juvenile resides or is found, or his representative as authorized in
37 G.S. 108A-14.

38 The singular includes the plural, the masculine singular includes the feminine
39 singular and masculine and feminine plural unless otherwise specified."

40 Section 2. G.S. 7A-544 reads as rewritten:

41 "**§ 7A-544. Investigation by Director; access to confidential information; notification of**
42 **person making the report.**

43 When a report of abuse, neglect, or dependency is received, the Director of the
44 Department of Social Services shall make a prompt and thorough investigation in

1 order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk
2 of harm to the juvenile, in order to determine whether protective services should be
3 provided or the complaint filed as a petition. When the report alleges abuse, the
4 Director shall immediately, but no later than 24 hours after receipt of the report,
5 initiate the investigation. When the report alleges neglect or dependency, the Director
6 shall initiate the investigation within 72 hours following receipt of the report. The
7 investigation and evaluation shall include a visit to the place where the juvenile
8 resides. All information received by the Department of Social Services, including the
9 identity of the reporter, shall be held in strictest confidence by the Department.

10 When a report of a juvenile's death as a result of suspected maltreatment or a
11 report of suspected abuse, neglect, or dependency of a juvenile is received, the
12 Director of the Department of Social Services shall immediately ascertain if other
13 juveniles ~~remain in the home,~~ reside in the family home of the alleged perpetrator,
14 and, if so, initiate an investigation in order to determine whether they require
15 protective services or whether immediate removal of the juveniles from the home is
16 necessary for their protection.

17 If the investigation indicates that abuse, neglect, or dependency has occurred, the
18 Director shall decide whether immediate removal of the juvenile or any other
19 juveniles in the home is necessary for their protection. If immediate removal does not
20 seem necessary, the Director shall immediately provide or arrange for protective
21 services. If the parent or other caretaker refuses to accept the protective services
22 provided or arranged by the Director, the Director shall sign a complaint seeking to
23 invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

24 If immediate removal seems necessary for the protection of the juvenile or other
25 juveniles in the home, the Director shall sign a complaint which alleges the
26 applicable facts to invoke the jurisdiction of the court. Where the investigation shows
27 that it is warranted, a protective services worker may assume temporary custody of
28 the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

29 In performing any duties related to the investigation of the complaint or the
30 provision or arrangement for protective services, the Director may consult with any
31 public or private agencies or individuals, including the available State or local law-
32 enforcement officers who shall assist in the investigation and evaluation of the
33 seriousness of any report of abuse, neglect, or dependency when requested by the
34 Director. The Director or the Director's representative may make a written demand
35 for any information or reports, whether or not confidential, that may in the Director's
36 opinion be relevant to the investigation of or the provision for protective services.
37 Upon the Director's or the Director's representative's request and unless protected by
38 the attorney-client privilege, any public or private agency or individual shall provide
39 access to and copies of this confidential information and these records to the extent
40 permitted by federal law and regulations. If a custodian of criminal investigative
41 information or records believes that release of the information will jeopardize the
42 right of the State to prosecute a defendant or the right of a defendant to receive a fair
43 trial or will undermine an ongoing or future investigation, it may seek an order from
44 a court of competent jurisdiction to prevent disclosure of the information. In such an

1 action, the custodian of the records shall have the burden of showing by a
2 preponderance of the evidence that disclosure of the information in question will
3 jeopardize the right of the State to prosecute a defendant or the right of a defendant
4 to receive a fair trial or will undermine an ongoing or future investigation. Actions
5 brought pursuant to this paragraph shall be set down for immediate hearing, and
6 subsequent proceedings in the actions shall be accorded priority by the trial and
7 appellate courts.

8 Within five working days after receipt of the report of abuse, neglect, or
9 dependency, the Director shall give written notice to the person making the report,
10 unless requested by that person not to give notice, as to whether the report was
11 accepted for investigation and whether the report was referred to the appropriate
12 State or local law enforcement agency.

13 Within five working days after completion of the protective services investigation,
14 the Director shall give subsequent written notice to the person making the report,
15 unless requested by that person not to give notice, as to whether there is a finding of
16 abuse, neglect, or dependency, whether the county Department of Social Services is
17 taking action to protect the juvenile, and what action it is taking, including whether
18 or not a petition was filed. The person making the report shall be informed of
19 procedures necessary to request a review by the prosecutor of the Director's decision
20 not to file a petition. A request for review by the prosecutor shall be made within five
21 working days of receipt of the second notification. The second notification shall
22 include notice that, if the person making the report is not satisfied with the Director's
23 decision, he may request review of the decision by the prosecutor within five working
24 days of receipt. The person making the report may waive the person's right to this
25 notification and no notification is required if the person making the report does not
26 identify himself to the Director."

27 Section 3. G.S. 7A-576 reads as rewritten:

28 "**§ 7A-576. Place of secure or nonsecure custody.**

29 (a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be
30 placed in nonsecure custody with the Department of Social Services or a person
31 designated in the order for temporary residential placement in:

- 32 (1) A licensed foster home or a home otherwise authorized by law to
33 provide such care or
34 (2) A facility operated by the Department of Social Services or
35 (3) Any other home or ~~facility~~ facility, including a relative's home,
36 approved by the court and designated in the order.

37 In placing a juvenile in nonsecure custody under this ~~section and under G.S.~~
38 ~~7A-629 and G.S. 7A-651, section,~~ the court shall first consider whether a relative of
39 the juvenile is willing and able to provide proper care and supervision of the juvenile
40 in a safe home. If the court finds that the relative is willing and able to provide
41 proper care and supervision in a safe home, then the court shall order placement of
42 the juvenile with the ~~relative.~~ relative unless the court finds that the placement is
43 contrary to the best interests of the juvenile. ~~Prior to placement~~ Placement of a

1 juvenile with a relative outside of this State, ~~the placement~~ State must be in
2 accordance with the Interstate Compact on the Placement of Children.

3 (b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily
4 detained in an approved county detention home or a regional detention facility which
5 shall be separate from any jail, lockup, prison, or other adult penal institution. It shall
6 be unlawful for a county or any unit of government to operate a juvenile detention
7 home unless the facility meets the standards promulgated by the Department of
8 Health and Human Services."

9 Section 4. G.S. 7A-577 reads as rewritten:

10 "**§ 7A-577. Hearing to determine need for continued secure or nonsecure custody.**

11 (a) No juvenile shall be held under a secure custody order for more than five
12 calendar days or under a nonsecure custody order for more than seven calendar days,
13 without a hearing on the merits or a hearing to determine the need for continued
14 custody. A hearing on secure custody conducted under this subsection may not be
15 continued or waived. A hearing on nonsecure custody conducted under this
16 subsection may be continued for up to 10 business days with the consent of the
17 juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad
18 litem. In addition, the court may require the consent of additional parties or may
19 schedule the hearing on nonsecure custody despite a party's consent to a
20 continuance. In every case in which an order has been entered by an official
21 exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the
22 need for continued custody shall be conducted on the day of the next regularly
23 scheduled session of district court in the city or county where the order was entered
24 if such session precedes the expiration of the applicable time period set forth in this
25 subsection: Provided, that if such session does not precede the expiration of the time
26 period, the hearing may be conducted at another regularly scheduled session of
27 district court in the district where the order was entered.

28 (b) Any juvenile who is alleged to be delinquent shall be advised of the right to
29 have legal representation as provided in G.S. 7A-584 if the juvenile appears without
30 counsel at the hearing.

31 (c) At a hearing to determine the need for continued custody, the judge shall
32 receive testimony and shall allow the juvenile, and the juvenile's parent, guardian, or
33 custodian an opportunity to introduce evidence, to be heard in their own behalf, and
34 to examine witnesses. The State shall bear the burden at every stage of the
35 proceedings to provide clear and convincing evidence that restraints on the juvenile's
36 liberty are necessary and that no less intrusive alternative will suffice. The judge shall
37 not be bound by the usual rules of evidence at such hearings.

38 (d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining
39 whether continued custody is warranted.

40 (e) The judge shall impose the least restrictive interference with the liberty of a
41 juvenile who is released from secure custody including:

42 (1) Release on the written promise of the juvenile's parent, guardian,
43 or custodian to produce the juvenile in court for subsequent
44 proceedings; or

- 1 (2) Release into the care of a responsible person or organization; or
2 (3) Release conditioned on restrictions on activities, associations,
3 residence or travel if reasonably related to securing the juvenile's
4 presence in court; or
5 (4) Any other conditions reasonably related to securing the juvenile's
6 presence in court.

7 (f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and
8 should continue in custody, the judge shall issue an order to that effect. The order
9 shall be in writing with appropriate findings of fact. The findings of fact shall include
10 the evidence relied upon in reaching the decision and the purposes which continued
11 custody is to achieve.

12 (g) Pending a hearing on the merits, further hearings to determine the need for
13 continued secure custody shall be held at intervals of no more than seven calendar
14 days. A subsequent hearing on continued nonsecure custody shall be held within
15 seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial
16 hearing required in subsection (a) of this section and hearings thereafter shall be held
17 at intervals of no more than 30 calendar days.

18 (g1) Hearings conducted under subsection (g) of this section may be waived as
19 follows:

- 20 (1) In the case of a juvenile alleged to be delinquent, only with the
21 consent of the juvenile, through counsel for the juvenile; and
22 (2) In the case of a juvenile alleged to be abused, neglected, or
23 dependent, only with the consent of the juvenile's parent,
24 guardian, or custodian, and, if appointed, the juvenile's guardian
25 ad litem.

26 The court may require the consent of additional parties or schedule a hearing
27 despite a party's consent to waiver.

28 ~~(h) Any order authorizing the continued nonsecure custody of a juvenile who is~~
29 ~~alleged to be abused, neglected, or dependent shall include findings as to whether~~
30 ~~reasonable efforts have been made to prevent or eliminate the need for placement of~~
31 ~~the juvenile in custody and may provide for services or other efforts aimed at~~
32 ~~returning the juvenile promptly to a safe home. A finding that reasonable efforts have~~
33 ~~not been made shall not preclude the entry of an order authorizing continued~~
34 ~~nonsecure custody when the court finds that continued nonsecure custody is~~
35 ~~necessary for the protection of the juvenile. Where efforts to prevent the need for the~~
36 ~~juvenile's placement were precluded by an immediate threat of harm to the juvenile,~~
37 ~~the court may find that the placement of the juvenile in the absence of such efforts~~
38 ~~was reasonable. If the court finds through written findings of fact that efforts to~~
39 ~~eliminate the need for placement of the juvenile in custody clearly would be futile or~~
40 ~~would be inconsistent with the juvenile's safety and need for a safe, permanent home~~
41 ~~within a reasonable period of time, then the court shall specify in its order that~~
42 ~~reunification efforts are not required or order that reunification efforts cease.~~

43 (i) At each hearing to determine the need for continued nonsecure custody, the
44 court shall:

- 1 (1) Inquire as to the identity and location of any missing parent. The
2 court shall include findings as to the efforts undertaken to locate
3 the missing parent and to serve that parent. The order may provide
4 for specific efforts aimed at determining the identity and location
5 of any missing parent;
- 6 (2) Inquire as to whether a relative of the juvenile is willing and able
7 to provide proper care and supervision of the juvenile in a safe
8 home. If the court finds that the relative is willing and able to
9 provide proper care and supervision in a safe home, then the court
10 shall order temporary placement of the juvenile with the ~~relative.~~
11 relative unless the court finds that the placement is contrary to the
12 best interests of the juvenile. Prior to placement Placement of a
13 juvenile with a relative outside of this State, the placement State
14 must be in accordance with the Interstate Compact on the
15 Placement of Children; and
- 16 (3) Inquire as to whether there are other juveniles remaining in the
17 home from which the juvenile was removed and, if there are,
18 inquire as to the specific findings of the investigation conducted
19 under G.S. 7A-544 and any actions taken or services provided by
20 the Director for the protection of the other juveniles."

21 Section 4.1. Article 46 of Chapter 7A of the General Statutes is amended
22 by adding the following new section to read:

23 "§ 7A-577.1. Reasonable efforts.

24 (a) An order placing or continuing the placement of a juvenile in the custody or
25 placement responsibility of a county department of social services, whether an order
26 for continued nonsecure custody, a dispositional order, or a review order:

- 27 (1) Shall contain a finding that the juvenile's continuation in or return
28 to the juvenile's own home would be contrary to the juvenile's best
29 interest;
- 30 (2) Shall contain findings as to whether a county department of social
31 services has made reasonable efforts to prevent or eliminate the
32 need for placement of the juvenile, unless the court has previously
33 determined under subsection (b) of this section that such efforts
34 are not required or shall cease;
- 35 (3) Shall contain findings as to whether a county department of social
36 services should continue to make reasonable efforts to prevent or
37 eliminate the need for placement of the juvenile, unless the court
38 has previously determined or determines under subsection (b) of
39 this section that such efforts are not required or shall cease;
- 40 (4) Shall specify that the juvenile's placement and care are the
41 responsibility of the county department of social services and that
42 the agency is to provide or arrange for the foster care or other
43 placement of the juvenile; and

1 (5) May provide for services or other efforts aimed at returning the
2 juvenile to a safe home or at achieving another permanent plan for
3 the juvenile.

4 A finding that reasonable efforts have not been made by a county department of
5 social services shall not preclude the entry of an order authorizing the juvenile's
6 placement when the court finds that placement is necessary for the protection of the
7 juvenile. Where efforts to prevent the need for the juvenile's placement were
8 precluded by an immediate threat of harm to the juvenile, the court may find that the
9 placement of the juvenile in the absence of such efforts was reasonable.

10 (b) In any order placing a juvenile in the custody or placement responsibility of a
11 county department of social services, whether an order for continued nonsecure
12 custody, a dispositional order, or a review order, the court may direct that reasonable
13 efforts to eliminate the need for placement of the juvenile shall not be required or
14 shall cease if the court makes written findings of fact that:

15 (1) Such efforts clearly would be futile or would be inconsistent with
16 the juvenile's health, safety, and need for a safe, permanent home
17 within a reasonable period of time;

18 (2) A court of competent jurisdiction has determined that the parent
19 has subjected the child to aggravated circumstances as defined in
20 G.S. 7A-517(3a);

21 (3) A court of competent jurisdiction has terminated involuntarily the
22 parental rights of the parent to another child of the parent; or

23 (4) A court of competent jurisdiction has determined that: the parent
24 has committed murder or voluntary manslaughter of another child
25 of the parent; has aided, abetted, attempted, conspired, or solicited
26 to commit murder or voluntarily manslaughter of the child or
27 another child of the parent; or has committed a felony assault
28 resulting in serious bodily injury to the child or another child of
29 the parent.

30 (c) At any hearing at which the court finds that reasonable efforts to eliminate the
31 need for the juvenile's placement are not required or shall cease, the court shall
32 direct that a permanency planning hearing as required by G.S. 7A-657.1 be held
33 within 30 calendar days after the date of the hearing and, if practicable, shall set the
34 date and time for the permanency planning hearing.

35 (d) In determining reasonable efforts to be made with respect to a juvenile and in
36 making such reasonable efforts, the juvenile's health and safety shall be the
37 paramount concern. Reasonable efforts to preserve or reunify families may be made
38 concurrently with efforts to plan for the juvenile's adoption, to place the juvenile
39 with a legal guardian, or to place the juvenile in another permanent arrangement."

40 Section 5. G.S. 7A-629 reads as rewritten:

41 "§ 7A-629. Adjudicatory hearing.

42 The adjudicatory hearing shall be held in the district at such time and place as the
43 chief district judge shall ~~designate~~, designate but no later than 60 days from the filing
44 of the petition, unless the judge pursuant to G.S. 7A-632 orders that it be held at a

1 later time. The judge may exclude the public from the hearing unless the juvenile
2 moves that the hearing be open, which motion shall be granted."

3 Section 6. G.S. 7A-647 reads as rewritten:

4 "**§ 7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected,**
5 **or dependent juvenile.**

6 The following alternatives for disposition shall be available to any judge exercising
7 jurisdiction, and the judge may combine any of the applicable alternatives when he
8 finds such disposition to be in the best interest of the juvenile:

- 9 (1) The judge may dismiss the case, or continue the case in order to
10 allow the juvenile, parent, or others to take appropriate action.
- 11 (2) In the case of any juvenile who needs more adequate care or
12 supervision or who needs placement, the judge may:
- 13 a. Require that he be supervised in his own home by the
14 Department of Social Services in his county, a court
15 counselor or other personnel as may be available to the
16 court, subject to conditions applicable to the parent or the
17 juvenile as the judge may specify; or
- 18 b. Place him in the custody of a parent, relative, private agency
19 offering placement services, or some other suitable person;
20 or
- 21 c. Place him in the custody of the Department of Social
22 Services in the county of his residence, or in the case of a
23 juvenile who has legal residence outside the State, in the
24 physical custody of the Department of Social Services in the
25 county where he is found so that agency may return the
26 juvenile to the responsible authorities in his home state. The
27 Director may, unless otherwise ordered by the judge,
28 arrange for, provide, or consent to, needed routine or
29 emergency medical or surgical care or treatment. In the case
30 where the parent is unknown, unavailable or unable to act
31 on behalf of their child or children, the Director may, unless
32 otherwise ordered by the judge, arrange for, provide or
33 consent to any psychiatric, psychological, educational, or
34 other remedial evaluations or treatment for the juvenile
35 placed by a judge or his designee in the custody or physical
36 custody of a county Department of Social Services under the
37 authority of this or any other Chapter of the General
38 Statutes. Prior to exercising this authority, the Director shall
39 make reasonable efforts to obtain consent from a parent or
40 guardian of the affected child. If the Director can not obtain
41 such consent, the Director shall promptly notify the parent
42 or guardian that care or treatment has been provided and
43 shall give him frequent status reports on the circumstances
44 of the child. Upon request of a parent or guardian of the

1 affected child, the results or records of the aforementioned
2 evaluations, findings or treatment shall be made available to
3 such parent or guardian by the Director unless prohibited by
4 G.S. 122C-53(d). If a juvenile is removed from the home
5 and placed in custody or placement responsibility of a
6 county department of social services, the Director shall not
7 allow unsupervised visitation with, or return physical
8 custody of the juvenile to, the parent or person standing in
9 loco parentis without a hearing at which the court finds that
10 the juvenile will receive proper care and supervision in a
11 safe home.

12 In placing a juvenile in out-of-home care under this
13 section, the court shall first consider whether a relative of
14 the juvenile is willing and able to provide proper care and
15 supervision of the juvenile in a safe home. If the court finds
16 that the relative is willing and able to provide proper care
17 and supervision in a safe home, then the court shall order
18 placement of the juvenile with the relative unless the court
19 finds that the placement is contrary to the best interests of
20 the juvenile. Placement of a juvenile with a relative outside
21 of this State must be in accordance with the Interstate
22 Compact on the Placement of Children.

23 (3) In any case, the judge may order that the juvenile be examined by
24 a physician, psychiatrist, psychologist or other qualified expert as
25 may be needed for the judge to determine the needs of the
26 juvenile.

27 a. Upon completion of the examination, the judge shall
28 conduct a hearing to determine whether the juvenile is in
29 need of medical, surgical, psychiatric, psychological, or other
30 treatment and who should pay the cost of the treatment. The
31 county manager, or such person who shall be designated by
32 the chairman of the county commissioners, of the juvenile's
33 residence shall be notified of the hearing, and allowed to be
34 heard. If the judge finds the juvenile to be in need of
35 medical, surgical, psychiatric, psychological or other
36 treatment, the judge shall permit the parent or other
37 responsible persons to arrange for treatment. If the parent
38 declines or is unable to make necessary arrangements, the
39 judge may order the needed treatment, surgery or care, and
40 the judge may order the parent to pay the cost of the care
41 pursuant to G.S. 7A-650. If the judge finds the parent is
42 unable to pay the cost of treatment, the judge shall order the
43 county to arrange for treatment of the juvenile and to pay
44 for the cost of the treatment. The county department of

1 social services shall recommend the facility that will provide
2 the juvenile with treatment.

- 3 b. If the judge believes, or if there is evidence presented to the
4 effect that the juvenile is mentally ill or is developmentally
5 disabled, the judge shall refer the juvenile to the area mental
6 health, developmental disabilities, and substance abuse
7 services director for appropriate action. A juvenile shall not
8 be committed directly to a State hospital or mental
9 retardation center; and orders purporting to commit a
10 juvenile directly to a State hospital or mental retardation
11 center except for an examination to determine capacity to
12 proceed shall be void and of no effect. The area mental
13 health, developmental disabilities, and substance abuse
14 director shall be responsible for arranging an
15 interdisciplinary evaluation of the juvenile and mobilizing
16 resources to meet the juvenile's needs. If institutionalization
17 is determined to be the best service for the juvenile,
18 admission shall be with the voluntary consent of the parent
19 or guardian. If the parent, guardian, or custodian refuses to
20 consent to a mental hospital or retardation center admission
21 after such institutionalization is recommended by the area
22 mental health, developmental disabilities, and substance
23 abuse director, the signature and consent of the judge may
24 be substituted for that purpose. In all cases in which a
25 regional mental hospital refuses admission to a juvenile
26 referred for admission by a judge and an area mental health,
27 developmental disabilities, and substance abuse director or
28 discharges a juvenile previously admitted on court referral
29 prior to completion of his treatment, the hospital shall
30 submit to the judge a written report setting out the reasons
31 for denial of admission or discharge and setting out the
32 juvenile's diagnosis, indications of mental illness, indications
33 of need for treatment, and a statement as to the location of
34 any facility known to have a treatment program for the
35 juvenile in question.

- 36 (4) In any case in which a juvenile, who was at least eleven years of
37 age at the time of the offense, is adjudicated delinquent for
38 committing a violation of G.S. 14-27.2 (first degree rape), G.S. 14-
39 27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-
40 27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted
41 rape or sexual offense), the judge, upon a finding that the juvenile
42 is a danger to the community, may order that the juvenile register
43 in accordance with Part 4 of Article 27A of Chapter 14 of the
44 General Statutes."

1 Section 7. G.S. 7A-651 reads as rewritten:

2 "§ 7A-651. Dispositional order.

3 (a) The dispositional order shall be in writing and shall contain appropriate
4 findings of fact and conclusions of law. The judge shall state with particularity, both
5 orally and in the written order of disposition, the precise terms of the disposition
6 including the kind, duration and the person who is responsible for carrying out the
7 disposition and the person or agency in whom custody is vested.

8 (b) A dispositional order under which a juvenile is removed from the custody of a
9 parent or person standing in loco parentis shall direct that the review hearing
10 required by G.S. 7A-657 be held within ~~six months of~~ 90 days from the date of the
11 ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the
12 date and time for the review hearing.

13 (c) Any dispositional order ~~directing placement of a juvenile in foster care shall~~
14 ~~also contain:~~ shall comply with the requirements of G.S. 7A-577.1.

15 (1) ~~A finding that the juvenile's continuation in or return to his own~~
16 ~~home would be contrary to the juvenile's best interest; and~~

17 (2) ~~Findings as to whether reasonable efforts have been made to~~
18 ~~prevent or eliminate the need for placement of the juvenile in~~
19 ~~foster care. A finding that reasonable efforts were not made shall~~
20 ~~not preclude entry of a dispositional order authorizing placement~~
21 ~~in foster care when the court finds that such placement is needed~~
22 ~~for protection of the juvenile. When efforts to prevent the need for~~
23 ~~the juvenile's placement are precluded by an immediate threat of~~
24 ~~harm to the juvenile, the court may find that placement of the~~
25 ~~juvenile in the absence of such efforts is reasonable.~~

26 ~~The order may provide for services or other efforts aimed at returning the juvenile~~
27 ~~promptly to a safe home. If the court finds through written findings of fact that efforts~~
28 ~~to eliminate the need for placement of the juvenile in custody clearly would be futile~~
29 ~~or would be inconsistent with the juvenile's safety and need for a safe, permanent~~
30 ~~home within a reasonable period of time, the court shall specify in its order that~~
31 ~~reunification efforts are not required or order that reunification efforts cease.~~

32 (d) ~~An order that places a juvenile in the custody of a county department of social~~
33 ~~services for placement shall specify that the juvenile's placement and care are the~~
34 ~~responsibility of the county department of social services and that the county~~
35 ~~department is to provide or arrange for the foster care or other placement of the~~
36 ~~juvenile. Any dispositional order shall provide for appropriate visitation as may be in~~
37 ~~the best interests of the juvenile and consistent with the juvenile's health and safety.~~
38 ~~If the juvenile is placed in the custody or placement responsibility of a county~~
39 ~~department of social services, the court may order the director to arrange, facilitate,~~
40 ~~and supervise a visitation plan expressly approved by the court.~~

41 (e) An order that commits a juvenile to the Division of Youth Services shall recite
42 detailed findings that support commitment to the Division as the least restrictive
43 alternative in light of the circumstances. These findings shall state that all
44 alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have

1 been attempted unsuccessfully or were considered and found to be inappropriate and
2 that the juvenile's behavior constitutes a threat to persons or property in the
3 community. These findings shall be supported by substantial evidence in the record
4 that the judge determined the needs of the juvenile, determined the appropriate
5 community resources required to meet those needs, and explored and exhausted or
6 considered inappropriate those resources prior to committing the juvenile to the
7 Division."

8 Section 8. G.S. 7A-657 reads as rewritten:

9 "§ 7A-657. Review of custody order.

10 (a) In any case where custody is removed from a ~~parent, parent or person~~
11 standing in loco parentis, the judge shall conduct a review hearing within ~~six months~~
12 of 90 days from the date ~~the order was entered,~~ of the dispositional hearing shall
13 ~~conduct a second review within six months after the first review,~~ and shall conduct a
14 subsequent ~~reviews~~ review hearing within six months at least every year thereafter.
15 The Director of Social Services shall make ~~a timely requests~~ request to the clerk to
16 calendar ~~the case~~ each review at a session of court scheduled for the hearing of
17 juvenile ~~matters. matters within six months of the date the order was entered.~~ The
18 ~~Director shall make timely requests for calendaring subsequent reviews.~~ The clerk
19 shall give 15 days' notice of the review and its purpose to the parent ~~or~~ and to any
20 ~~the person~~ standing in loco parentis, the juvenile if 12 years of age or more, the
21 guardian, any foster parent, relative, or preadoptive parent providing care for the
22 child, the custodian or agency with custody, the guardian ad litem, and any other
23 person or agency the court may specify, indicating the court's impending review.
24 Nothing in this subsection shall be construed to make any foster parent, relative, or
25 preadoptive parent a party to the proceeding solely based on receiving notice and an
26 opportunity to be heard.

27 (b) Notwithstanding other provisions of this Article, the court may waive the
28 holding of review hearings required by subsection (a), may require written reports to
29 the court by the agency or person holding custody in lieu of review hearings, or order
30 that review hearings be held less often than every ~~12~~ six months, if the court finds by
31 clear, cogent and convincing evidence that:

- 32 (1) The juvenile has resided with a relative or has been in the custody
33 of another suitable person for a period of at least one year; and
- 34 (2) The placement is stable and continuation of the placement is in the
35 juvenile's best interest; and
- 36 (3) Neither the juvenile's best interests nor the rights of any party
37 require that review hearings be held every ~~12~~ six months; and
- 38 (4) All parties are aware that the matter may be brought before the
39 court for review at any time by the filing of a motion for review or
40 on the court's own motion; and
- 41 (5) The court order has designated the relative or other suitable
42 person as the juvenile's permanent caretaker or guardian of the
43 person.

1 The court may not waive or refuse to conduct a review hearing if a party files a
2 motion seeking the review.

3 (c) At every review hearing, the court shall consider information from ~~the~~
4 ~~Department of Social Services, the court counselor, the juvenile, the parent or person~~
5 ~~standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and~~
6 ~~any public or private agency~~ the parent, any person standing in loco parentis, the
7 juvenile, the guardian, any foster parent, relative, or preadoptive parent providing
8 care for the child, the custodian or agency with custody, the guardian ad litem, and
9 any other person or agency which will aid it in its review.

10 In each case the court shall consider the following criteria and make written
11 findings regarding those that are relevant:

- 12 (1) Services which have been offered to reunite the family, or whether
13 efforts to reunite the family clearly would be futile or inconsistent
14 with the juvenile's safety and need for a safe, permanent home
15 within a reasonable period of time;
- 16 (2) Where the juvenile's return home is unlikely, the efforts which
17 have been made to evaluate or plan for other methods of care;
- 18 (3) Goals of the foster care placement and the appropriateness of the
19 foster care plan;
- 20 (4) A new foster care plan, if continuation of care is sought, that
21 addresses the role the current foster parent will play in the
22 planning for the juvenile;
- 23 (5) Reports on the placements the juvenile has had and any services
24 offered to the juvenile and the parent;
- 25 (5a) An appropriate visitation plan;
- 26 (5b) If the juvenile is 16 or 17 years of age, a report on an independent
27 living assessment of the juvenile and, if appropriate, an
28 independent living plan developed for the juvenile;
- 29 (6) When and if termination of parental rights should be considered;
- 30 (7) Any other criteria the court deems necessary.

31 (d) The judge, after making findings of fact, may appoint a guardian of the person
32 for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by
33 G.S. 7A-647, including the authority to place the child in the custody of either parent
34 or any relative found by the court to be suitable and found by the court to be in the
35 best interest of the juvenile. ~~If the juvenile is placed in or remains in the custody of~~
36 ~~the department of social services, the court may authorize the department to arrange~~
37 ~~and supervise a visitation plan. Except for such visitation, the juvenile shall not be~~
38 ~~returned to the parent or person standing in loco parentis without a hearing at which~~
39 ~~the court finds sufficient facts to show that the juvenile will receive proper care and~~
40 ~~supervision.~~ The court may enter an order continuing the placement under review or
41 providing for a different placement as is deemed to be in the best interest of the
42 juvenile. If at any time custody is restored to a parent, the court shall be relieved of
43 the duty to conduct periodic judicial reviews of the placement.

~~1 (d1) At a hearing designated by the court, but at least within 12 months after the
2 juvenile's placement, a review hearing shall be held under this section and designated
3 as a permanency planning hearing. The purpose of the hearing shall be to develop a
4 plan to achieve a safe, permanent home for the juvenile within a reasonable period of
5 time. Notice of the hearing shall inform the parties of the purpose of the hearing. At
6 the conclusion of the hearing, if the juvenile is not returned home, the judge shall
7 make specific findings as to the best plan of care to achieve a safe, permanent home
8 for the juvenile within a reasonable period of time and shall enter an order consistent
9 with those findings.~~

10 (e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651 G.S. 7A-577.1
11 shall apply to any order entered under this section which continues the foster care
12 placement of a juvenile. section."

13 Section 8.1. Article 52 of Chapter 7A of the General Statutes is amended
14 by adding the following new section to read:

15 "§ 7A-657.1. Permanency planning hearing.

16 (a) In any case where custody is removed from a parent or person standing in loco
17 parentis, the judge shall conduct a review hearing designated as a permanency
18 planning hearing within 12 months after the date of the initial order removing
19 custody, and the hearing may be combined, if appropriate, with a review hearing
20 required by G.S. 7A-657. The purpose of the permanency planning hearing shall be
21 to develop a plan to achieve a safe, permanent home for the juvenile within a
22 reasonable period of time. Subsequent permanency planning hearings shall be held
23 at least every six months thereafter, or earlier as set by the court, to review the
24 progress made in finalizing the permanent plan for the juvenile, or if necessary, to
25 make a new permanent plan for the juvenile. The Director of Social Services shall
26 make a timely request to the clerk to calendar each permanency planning hearing at
27 a session of court scheduled for the hearing of juvenile matters. The clerk shall give
28 15 days' notice of the hearing and its purpose to the parent and to any person
29 standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any
30 foster parent, relative, or preadoptive parent providing care for the child, the
31 custodian or agency with custody, the guardian ad litem, and any other person or
32 agency the court may specify, indicating the court's impending review. Nothing in
33 this provision shall be construed to make any foster parent, relative, or preadoptive
34 parent a party to the proceeding solely based on receiving notice and an opportunity
35 to be heard.

36 (b) At any permanency planning review, the court shall consider information from
37 the parent, any person standing in loco parentis, the juvenile, the guardian, any foster
38 parent, relative or preadoptive parent providing care for the child, the custodian or
39 agency with custody, the guardian ad litem, and any other person or agency which
40 will aid it in the court's review. At the conclusion of the hearing, if the juvenile is
41 not returned home, the court shall consider the following criteria and make written
42 findings regarding those that are relevant:

- 1 (1) Whether it is possible for the juvenile to be returned home
2 immediately or within the next six months, and if not, why it is not
3 in the juvenile's best interests to return home;
4 (2) Where the juvenile's return home is unlikely within six months,
5 whether legal guardianship or custody with a relative or some
6 other suitable person should be established, and if so, the rights
7 and responsibilities which should remain with the parents;
8 (3) Where the juvenile's return home is unlikely within six months,
9 whether adoption should be pursued and if so, any barriers to the
10 juvenile's adoption;
11 (4) Where the juvenile's return home is unlikely within six months,
12 whether the juvenile should remain in the current placement or be
13 placed in another permanent living arrangement and why;
14 (5) Whether the county department of social services has since the
15 initial permanency plan hearing made reasonable efforts to
16 implement the permanent plan for the juvenile;
17 (6) Any other criteria the court deems necessary.

18 (c) At the conclusion of the hearing, the judge shall make specific findings as to
19 the best plan of care to achieve a safe, permanent home for the juvenile within a
20 reasonable period of time. The judge may appoint a guardian of the person for the
21 juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647,
22 including the authority to place the child in the custody of either parent or any
23 relative found by the court to be suitable and found by the court to be in the best
24 interest of the juvenile. If the juvenile is not returned home, the court shall enter an
25 order consistent with its findings that directs the department of social services to
26 make reasonable efforts to place the juvenile in a timely manner in accordance with
27 the permanent plan, to complete whatever steps are necessary to finalize the
28 permanent placement of the juvenile, and to document such steps in the juvenile's
29 case plan. If at any time custody is restored to a parent, or findings are made in
30 accordance with G.S. 7A-657(b), the court shall be relieved of the duty to conduct
31 periodic judicial reviews of the placement.

32 If the court continues the juvenile's placement in the custody or placement
33 responsibility of a county department of social services, the provisions of G.S. 7A-
34 577.1 shall apply to any order entered under this section.

35 (d) In the case of a juvenile who is in the custody or placement responsibility of a
36 county department of social services, and has been in placement outside the home for
37 15 of the most recent 22 months; or a court of competent jurisdiction has determined
38 that the parent has abandoned the child; or has committed murder or voluntary
39 manslaughter of another child of the parent; or has aided, abetted, attempted,
40 conspired, or solicited to commit murder or voluntary manslaughter of the child or
41 another child of the parent, the court shall order the director of the department of
42 social services to initiate a proceeding to terminate the parental rights of the parent
43 unless the court finds:

- 1 (1) The permanent plan for the juvenile is guardianship or custody
2 with a relative or some other suitable person;
3 (2) The court makes specific findings why the filing of a petition for
4 termination of parental rights is not in the best interests of the
5 child; or
6 (3) The department of social services has not provided the juvenile's
7 family with such services as the department deems necessary, when
8 reasonable efforts are still required to enable the juvenile's return
9 to a safe home.

10 (e) If a proceeding to terminate the parental rights of the juvenile's parents is
11 necessary in order to perfect the permanent plan for the juvenile, the director of the
12 department of social services shall file a petition to terminate parental rights within
13 60 calendar days from the date of the permanency planning hearing unless the court
14 makes written findings why the petition cannot be filed within 60 days. If the court
15 makes findings to the contrary, the court shall specify the time frame in which any
16 needed petition to terminate parental rights shall be filed."

17 Section 9. G.S. 7A-659 reads as rewritten:

18 "**§ 7A-659. Post termination of parental rights' placement court review.**

19 (a) The purpose of each placement review is to insure that every reasonable effort
20 is being made to provide for a permanent placement plan for the child who has been
21 placed in the custody of a county director or licensed child-placing agency, which is
22 consistent with the child's best interest. At each review hearing the court may
23 consider information from the Department of Social Services, the licensed
24 child-placing agency, the guardian ad litem, the child, ~~the~~ any foster parent, relative,
25 or preadoptive parent providing care for the child, and any other person or agency
26 the court determines is likely to aid in the review.

27 (b) The court shall conduct a placement review not later than six months from the
28 date of the termination hearing when parental rights have been terminated by a
29 petition brought by any person or agency designated in G.S. 7A-289.24(2) through (5)
30 and a county director or licensed child-placing agency has custody of the child. The
31 court shall conduct reviews every six months thereafter until the child is placed for
32 adoption and the adoption petition is filed by the adoptive parents.

- 33 (1) No more than 30 days and no less than 15 days prior to each
34 review, the clerk shall give notice of the review to the child if he is
35 at least 12 years of age, the legal custodian of the child, ~~the~~ any
36 foster parent, relative, or preadoptive parent providing care for the
37 child, the guardian ad litem, if any, and any other person or
38 agency the court may specify. Only the child if he is at least 12
39 years of age, the legal custodian of the child, ~~the~~ any foster parent,
40 relative, or preadoptive parent providing care for the child, and
41 the guardian ad litem shall attend the review hearings, except as
42 otherwise directed by the court. Nothing in this subdivision shall
43 be construed to make any foster parent, relative, or preadoptive

- 1 parent a party to the proceeding solely based on receiving notice
2 and an opportunity to be heard.
- 3 (2) If a guardian ad litem for the child has not been appointed
4 previously by the court in the termination proceeding, the court, at
5 the initial six-month review hearing, may appoint a guardian ad
6 litem to represent the child. The court may continue the case for
7 such time as is necessary for the guardian ad litem to become
8 familiar with the facts of the case.
- 9 (c) The court shall consider at least the following in its review:
- 10 (1) The adequacy of the plan developed by the county department of
11 social services or a licensed child-placing agency for a permanent
12 placement relative to the child's best interest and the efforts of the
13 department or agency to implement such plan;
- 14 (2) Whether the child has been listed for adoptive placement with the
15 North Carolina Adoption Resource Exchange, the North Carolina
16 Photo Adoption Listing Service (PALS), or any other specialized
17 adoption agency; and
- 18 (3) The efforts previously made by the department or agency to find a
19 permanent home for the child.
- 20 (d) The court, after making findings of fact, shall affirm the county department's
21 or child-placing agency's plans or require specific additional steps which are
22 necessary to accomplish a permanent placement which is in the best interests of the
23 child.
- 24 (e) If the child has been placed for adoption prior to the date scheduled for the
25 review, written notice of said placement shall be given to the clerk to be placed in
26 the court file and the review hearing shall be cancelled, with notice of said
27 cancellation given by the clerk to all persons previously notified.
- 28 (f) The process of selection of specific adoptive parents shall be the responsibility
29 of and within the discretion of the county department of social services or licensed
30 child-placing agency. The guardian ad litem may request information from and
31 consult with the county department or child-placing agency concerning the selection
32 process. If the guardian ad litem requests information about the selection process, the
33 county shall provide the information within five days. Any issue of abuse of
34 discretion by the county department or child-placing agency in the selection process
35 must be raised by the guardian ad litem within 10 days following the date the agency
36 notifies the court and the guardian ad litem in writing of the filing of the adoption
37 petition."
- 38 Section 10. G.S. 78A-289.27 reads as rewritten:
- 39 "**§ 7A-289.27. Issuance of summons.**
- 40 (a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court
41 shall cause a summons to be issued, directed to the following persons or agency, not
42 otherwise a party petitioner, who shall be named as respondents:
- 43 (1) The parents of the child;

- 1 (2) Any person who has been judicially appointed as guardian of the
2 person of the child;
- 3 (3) The custodian of the child appointed by a court of competent
4 jurisdiction;
- 5 (4) Any county department of social services or licensed child-placing
6 agency to whom a child has been released by one parent pursuant
7 to Part 7 of Article 3 of Chapter 48 of the General Statutes;
8 Statutes or any county department of social services to whom
9 placement responsibility for the child has been given by a court of
10 competent jurisdiction; and
- 11 (5) The child, if he or she is 12 years of age or older at the time the
12 petition is filed.

13 Provided, no summons need be directed to or served upon any parent who has
14 previously surrendered the child to a county department of social services or licensed
15 child-placing agency, nor to any parent who has consented to the adoption of the
16 child by the petitioner. The summons shall notify the respondents to file a written
17 answer within 30 days after service of the summons and petition. Service of the
18 summons shall be completed as provided under the procedures established by G.S.
19 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability
20 even though such parent is a minor.

21 (b) The summons shall be issued for the purpose of terminating parental rights
22 pursuant to the provisions of subsection (a) of this section and shall include:

- 23 (1) The name of the minor child;
- 24 (2) Notice that a written answer to the petition must be filed with the
25 clerk who signed the petition within 30 days after service of the
26 summons and a copy of the petition, or the parent's rights may be
27 terminated;
- 28 (3) Notice that if they are indigent, the parents are entitled to
29 appointed counsel. The parents may contact the clerk immediately
30 to request counsel;
- 31 (4) Notice that this is a new case. Any attorney appointed previously
32 will not represent the parents in this proceeding unless ordered by
33 the court;
- 34 (5) Notice that the date, time and place of the hearing will be mailed
35 by the clerk upon filing of the answer or 30 days from the date of
36 service if no answer is filed;
- 37 (6) Notice of the purpose of the hearing and notice that the parents
38 may attend the termination hearing.

39 (c) If a county department of social services, not otherwise a party petitioner, is
40 served with a petition alleging that the parental rights of the parent should be
41 terminated pursuant to G.S. 7A-289.32, the department shall file a written answer and
42 shall be deemed a party to the proceeding."

43 Section 11. G.S. 7A-289.32 reads as rewritten:

44 "§ 7A-289.32. Grounds for terminating parental rights.

1 The court may terminate the parental rights upon a finding of one or more of the
2 following:

- 3 (1) Repealed by Session Laws 1979, c. 669, s. 2.
- 4 (2) The parent has abused or neglected the child. The child shall be
5 deemed to be abused or neglected if the court finds the child to be
6 an abused child within the meaning of G.S. 7A-517(1), or a
7 neglected child within the meaning of G.S. 7A-517(21).
- 8 (3) The parent has willfully left the child in foster care or placement
9 outside the home for more than 12 months without showing to the
10 satisfaction of the court that reasonable progress under the
11 circumstances has been made within 12 months in correcting those
12 conditions which led to the removal of the child. Provided,
13 however, that no parental rights shall be terminated for the sole
14 reason that the parents are unable to care for the child on account
15 of their poverty.
- 16 (3a) The burden in such proceedings shall be upon the petitioner to
17 prove the facts justifying such termination by clear and convincing
18 evidence.
- 19 (4) The child has been placed in the custody of a county Department
20 of Social Services, a licensed child-placing agency, a child-caring
21 institution, or a foster home, and the parent, for a continuous
22 period of six months next preceding the filing of the petition, has
23 willfully failed for such period to pay a reasonable portion of the
24 cost of care for the child although physically and financially able to
25 do so.
- 26 (5) One parent has been awarded custody of the child by judicial
27 decree, or has custody by agreement of the parents, and the other
28 parent whose parental rights are sought to be terminated has for a
29 period of one year or more next preceding the filing of the petition
30 willfully failed without justification to pay for the care, support,
31 and education of the child, as required by said decree or custody
32 agreement.
- 33 (6) The father of a child born out of wedlock has not prior to the
34 filing of a petition to terminate his parental rights:
- 35 a. Establish(ed) paternity judicially or by affidavit which has
36 been filed in a central registry maintained by the
37 Department of Health and Human Services; provided, the
38 court shall inquire of the Department of Health and Human
39 Services as to whether such an affidavit has been so filed
40 and shall incorporate into the case record the Department's
41 certified reply; or
- 42 b. Legitimated the child pursuant to provisions of G.S. 49-10,
43 or filed a petition for this specific purpose; or

- 1 c. Legitimated the child by marriage to the mother of the
2 child; or
3 d. Provided substantial financial support or consistent care with
4 respect to the child and mother.

5 (7) That the parent is incapable of providing for the proper care and
6 supervision of the child, such that the child is a dependent child
7 within the meaning of G.S. 7A-517(13), and that there is a
8 reasonable probability that such incapability will continue for the
9 foreseeable future. Incapability under this subdivision may be the
10 result of substance abuse, mental retardation, mental illness,
11 organic brain syndrome, or any other similar cause or condition.

12 (8) The parent has willfully abandoned the child for at least six
13 consecutive months immediately preceding the filing of the
14 petition. For the purpose of this subdivision, a child may be
15 willfully abandoned by his or her natural father if the mother of
16 the child had been willfully abandoned by and was living separate
17 and apart from the father at the time of the child's birth, although
18 the father may not have known of such birth; but in any event the
19 child must be over the age of three months at the time of the filing
20 of the petition.

21 (9) The parent has committed murder or voluntary manslaughter of
22 another child of the parent; has aided, abetted, attempted,
23 conspired, or solicited to commit murder or voluntary
24 manslaughter of the child or another child of the parent; or has
25 committed a felony assault that results in serious bodily injury to
26 the child or another child of the parent.

27 (10) The parental rights of the parent with respect to another child of
28 the parent have been terminated involuntarily by a court of
29 competent jurisdiction and the parent lacks the ability or
30 willingness to establish a safe home."

31 Section 12. G.S. 48-1-101 is amended by adding a new subdivision to

32 read:

33 "§ 48-1-101. Definitions.

34 In this Chapter, the following definitions apply:

- 35 (1) "Adoptee" means an individual who is adopted, is placed for
36 adoption, or is the subject of a petition for adoption properly filed
37 with the court.
38 (2) "Adoption" means the creation by law of the relationship of parent
39 and child between two individuals.
40 (3) "Adult" means an individual who has attained 18 years of age, or
41 if under the age of 18, is either married or has been emancipated
42 under the applicable State law.

- 1 (3a) "Adoption facilitator" means an individual or a nonprofit entity
2 that assists biological parents in locating and evaluating prospective
3 adoptive parents without charge.
- 4 (4) "Agency" means a public or private association, corporation,
5 institution, or other person or entity that is licensed or otherwise
6 authorized by the law of the jurisdiction where it operates to place
7 minors for adoption. "Agency" also means a county department of
8 social services in this State.
- 9 (5) "Child" means a son or daughter, whether by birth or adoption.
- 10 (5a) "Criminal history" means a county, State, or federal criminal
11 history of conviction or a pending indictment of a crime, whether a
12 misdemeanor or a felony, that bears upon an individual's fitness to
13 have responsibility for the safety and well-being of children,
14 including the following North Carolina crimes contained in any of
15 the following Articles of Chapter 14 of the General Statutes:
16 Article 6, Homicide; Article 7A, Rape and Kindred Offenses;
17 Article 8, Assaults; Article 10, Kidnapping and Abduction; Article
18 13, Malicious Injury or Damage by Use of Explosive or Incendiary
19 Device or Material; Article 26, Offenses Against Public Morality
20 and Decency; Article 27, Prostitution; Article 39, Protection of
21 Minors; Article 40, Protection of the Family; and Article 59, Public
22 Intoxication. Such crimes also include possession or sale of drugs
23 in violation of the North Carolina Controlled Substances Act,
24 Article 5 of Chapter 90 of the General Statutes, and alcohol-
25 related offenses such as sale to underage persons in violation of
26 G.S. 18B-302 or driving while impaired in violation of G.S. 20-
27 138.1 through G.S. 20-138.5. In addition to the North Carolina
28 crimes listed in this subdivision, such crimes also include similar
29 crimes under federal law or under the laws of other states.
- 30 (6) "Department" means the North Carolina Department of Health
31 and Human Services.
- 32 (7) "Division" means the Division of Social Services of the
33 Department.
- 34 (8) "Guardian" means an individual, other than a parent, appointed by
35 a clerk of court in North Carolina to exercise all of the powers
36 conferred by G.S. 35A-1241, including a standby guardian
37 appointed under Article 21 of Chapter 35A of the General Statutes
38 whose authority has actually commenced; and also means an
39 individual, other than a parent, appointed in another jurisdiction
40 according to the law of that jurisdiction who has the power to
41 consent to adoption under the law of that jurisdiction.
- 42 (9) "Legal custody" of an individual means the general right to
43 exercise continuing care of and control over the individual as
44 authorized by law, with or without a court order, and:

- 1 a. Includes the right and the duty to protect, care for, educate,
2 and discipline the individual;
3 b. Includes the right and the duty to provide the individual
4 with food, shelter, clothing, and medical care; and
5 c. May include the right to have physical custody of the
6 individual.
- 7 (10) "Minor" means an individual under 18 years of age who is not an
8 adult.
- 9 (11) "Party" means a petitioner, adoptee, or any person whose consent
10 to an adoption is necessary under this Chapter but has not been
11 obtained.
- 12 (12) "Physical custody" means the physical care of and control over an
13 individual.
- 14 (13) "Placement" means transfer of physical custody of a minor to the
15 selected prospective adoptive parent. Placement may be either:
16 a. Direct placement by a parent or the guardian of the minor;
17 or
18 b. Placement by an agency.
- 19 (14) "Preplacement assessment" means a document, whether prepared
20 before or after placement, that contains the information required
21 by G.S. 48-3-303 and any rules adopted by the Social Services
22 Commission.
- 23 (15) "Relinquishment" means the voluntary surrender of a minor to an
24 agency for the purpose of adoption.
- 25 (16) "Report to the court" means a document prepared in accordance
26 with G.S. 48-2-501, et seq.
- 27 (17) "State" means a state as defined in G.S. 12-3(11).
- 28 (18) "Stepparent" means an individual who is the spouse of a parent of
29 a child, but who is not a legal parent of the child."

30 Section 13. G.S. 48-3-203 reads as rewritten:

31 **"§ 48-3-203. Agency placement adoption.**

32 (a) An agency may acquire legal and physical custody of a minor for purposes of
33 adoptive placement only by means of a relinquishment pursuant to Part 7 of this
34 Article or by a court order terminating the rights and duties of a parent or guardian
35 of the minor.

36 (b) An agency shall give any individual upon request a written statement of the
37 services it provides and of its procedure for selecting a prospective adoptive parent
38 for a minor, including the role of the minor's parent or guardian in the selection
39 process. This statement must include a schedule of any fee or expenses charged or
40 required to be paid by the agency and a summary of the provisions of this Chapter
41 that pertain to the requirements and consequences of a relinquishment and to the
42 selection of a prospective adoptive parent.

43 (c) An agency may notify the parent when a placement has occurred and when an
44 adoption decree is issued.

1 (d) The selection of a prospective adoptive parent for a minor shall be made by
2 the agency on the basis of a preplacement assessment. The selection may not be
3 delegated, but may be based on criteria requested by a parent who relinquishes the
4 child to the agency.

5 (d1) A minor who is in the custody or placement responsibility of a county
6 department of social services shall not be placed with a selected prospective adoptive
7 parent prior to the completion of an investigation of the individual's criminal history
8 pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a
9 determination as to the individual's fitness to have responsibility for the safety and
10 well-being of children.

11 (e) In addition to the authority granted in G.S. 131D-10.5, the Social Services
12 Commission may adopt rules for placements by agencies consistent with the purposes
13 of this Chapter."

14 Section 14. G.S. 48-3-303 reads as rewritten:

15 "**§ 48-3-303. Content and timing of preplacement assessment.**

16 (a) A preplacement assessment shall be completed within 90 days after a request
17 has been accepted.

18 (b) The preplacement assessment must be based on at least one personal interview
19 with each individual being assessed in the individual's residence and any report
20 received pursuant to subsection (c) of this section.

21 (c) The preplacement assessment must, after a reasonable investigation, report on
22 the following about the individual being assessed:

- 23 (1) Age and date of birth, nationality, race, or ethnicity, and any
24 religious preference;
- 25 (2) Marital and family status and history, including the presence of any
26 children born to or adopted by the individual and any other
27 children in the household;
- 28 (3) Physical and mental health, including any addiction to alcohol or
29 drugs;
- 30 (4) Educational and employment history and any special skills;
- 31 (5) Property and income, and current financial information provided
32 by the individual;
- 33 (6) Reason for wanting to adopt;
- 34 (7) Any previous request for an assessment or involvement in an
35 adoptive placement and the outcome of the assessment or
36 placement;
- 37 (8) Whether the individual has ever been a respondent in a domestic
38 violence proceeding or a proceeding concerning a minor who was
39 allegedly abused, dependent, neglected, abandoned, or delinquent,
40 and the outcome of the proceeding;
- 41 (9) Whether the individual has ever been convicted of a crime other
42 than a minor traffic violation;

- 1 (10) Whether the individual has located a parent interested in placing a
2 child with the individual for adoption and a brief, nonidentifying
3 description of the parent and the child; and
4 (11) Any other fact or circumstance that may be relevant to a
5 determination of the individual's suitability to be an adoptive
6 parent, including the quality of the environment in the home and
7 the functioning of any children in the household.

8 When any of the above is not reasonably available, the preplacement assessment
9 shall state why it is unavailable.

10 (d) The agency shall conduct an investigation for any criminal record as permitted
11 by law. If a prospective adoptive parent is seeking to adopt a minor who is in the
12 custody or placement responsibility of a county department of social services, a
13 county department of social services shall have the individual's criminal history
14 investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a
15 determination pursuant to subsection (e) of this section as to the individual's fitness
16 to have responsibility for the safety and well-being of children.

17 (e) In the preplacement assessment, the agency shall review the information
18 obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the
19 individual's strengths and weaknesses to be an adoptive parent. The agency shall then
20 determine whether the individual is suitable to be an adoptive parent.

21 (f) If the agency determines that the individual is suitable to be an adoptive
22 parent, the preplacement assessment shall include specific factors which support that
23 determination.

24 (g) If the agency determines that the individual is not suitable to be an adoptive
25 parent, the replacement assessment shall state the specific concerns which support
26 that determination. A specific concern is one that reasonably indicates that placement
27 of any minor, or a particular minor, in the home of the individual would pose a
28 significant risk of harm to the well-being of the minor.

29 (h) In addition to the information and finding required by subsections (c) through
30 (g) of this section, the preplacement assessment must contain a list of the sources of
31 information on which it is based.

32 (i) The Social Services Commission shall have authority to establish by rule
33 additional standards for preplacement assessments."

34 Section 15. Effective January 1, 1999, Article 3 of Chapter 48 of the
35 General Statutes is amended by adding the following new section to read:

36 "**§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents**
37 **seeking to adopt a minor who is in the custody or placement responsibility of a county**
38 **department of social services.**

39 (a) The department shall ensure that the criminal histories of all prospective
40 adoptive parents seeking to adopt a minor who is in the custody or placement
41 responsibility of a county department of social services are checked prior to
42 placement and, based on the criminal history, a determination is made as to the
43 individual's fitness to have responsibility for the safety and well-being of children.
44 The department shall ensure that all prospective adoptive parents seeking to adopt a

1 minor who is in the custody or placement responsibility of a county department of
2 social services are checked prior to placement for county, state, and federal criminal
3 histories.

4 (b) A county department of social services may issue an unfavorable preplacement
5 assessment to a prospective adoptive parent if the county department of social
6 services determines pursuant to G.S. 48-3-303(e) that the individual is unfit to have
7 responsibility for the safety and well-being of children based on the criminal history.

8 (c) The Department of Justice shall provide to the Department of Health and
9 Human Services the criminal history of such a prospective adoptive parent obtained
10 from the State and National Repositories of Criminal Histories as requested by the
11 Department. The Department shall provide to the Department of Justice, along with
12 the request, the fingerprints of the prospective adoptive parent to be checked, any
13 additional information required by the Department of Justice, and a form consenting
14 to the check of the criminal record and to the use of fingerprints and other
15 identifying information required by the State or National Repositories signed by the
16 individual to be checked. The fingerprints of the prospective adoptive parent shall
17 be forwarded to the State Bureau of Investigation for a search of the State's criminal
18 history record file, and the State Bureau of Investigation shall forward a set of
19 fingerprints to the Federal Bureau of Investigation for a national criminal history
20 record check.

21 (d) At the time of the request for a preplacement assessment or at a subsequent
22 time prior to placement, a prospective adoptive parent whose criminal history is to be
23 checked shall be furnished with a statement substantially similar to the following:

24 "NOTICE

25 MANDATORY CRIMINAL HISTORY CHECK NORTH CAROLINA LAW
26 REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED
27 PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS
28 SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR
29 PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF
30 SOCIAL SERVICES.

31
32 "Criminal history" means a county, state, or federal criminal history of
33 conviction or a pending indictment of a crime, whether a misdemeanor or a
34 felony, that bears upon an individual's fitness to have responsibility for the
35 safety and well-being of children, including the following North Carolina crimes
36 contained in any of the following Articles of Chapter 14 of the General Statutes:
37 Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8,
38 Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or
39 Damage by Use of Explosive or Incendiary Device or Material; Article 26,
40 Offenses Against Public Morality and Decency; Article 27, Prostitution; Article
41 39, Protection of Minors; Article 40, Protection of the Family; and Article 59,
42 Public Intoxication; violation of the North Carolina Controlled Substances Act,
43 Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses
44 such as sale to underage persons in violation of G.S. 18B-302 or driving while

1 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes
2 under federal law or under the laws of other states. Your fingerprints will be
3 used to check the criminal history records of the State Bureau of Investigation
4 (SBI) and the Federal Bureau of Investigation (FBI).

5
6 If it is determined, based on your criminal history, that you are unfit to have
7 responsibility for the safety and well-being of children, you shall have the
8 opportunity to complete, or challenge the accuracy of, the information
9 contained in the SBI or FBI identification records.

10
11 If you are denied a favorable preplacement assessment by a county department
12 of social services as a result of the criminal history check, you may request a
13 review of the assessment pursuant G.S. to 48-3-308(a).

14
15 Any prospective adoptive parent who intentionally falsifies any information
16 required to be furnished to conduct the criminal history is guilty of a Class 2
17 misdemeanor."

18
19 Refusal to consent to a criminal history check is grounds for the issuance by a
20 county department of social services of an unfavorable preplacement assessment.
21 Any prospective adoptive parent who intentionally falsifies any information required
22 to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

23 (e) The department shall notify the prospective adoptive parent's supervising
24 county department of social services of the results of the criminal history check in
25 accordance with the federal and State law regulating the dissemination of the
26 contents of the criminal history file. The department shall not release nor disclose
27 any portion of the prospective adoptive parent's criminal history to the prospective
28 adoptive parent. The department shall also ensure that the prospective adoptive
29 parent is notified of the prospective adoptive parent's right to review the criminal
30 history information, the procedure for completing or challenging the accuracy of the
31 criminal history, and the prospective adoptive parent's right to contest the
32 preplacement assessment of the county department of social services.

33 A prospective adoptive parent who disagrees with the preplacement assessment of
34 the county department of social services may request a review of the assessment
35 pursuant to G.S. 48-3-308(a).

36 (f) All the information that the department receives through the checking of the
37 criminal history is privileged information and is not a public record but is for the
38 exclusive use of the Department and those persons authorized under this section to
39 receive the information. The department may destroy the information after it is used
40 for the purposes authorized by this section after one calendar year.

41 (g) There is no liability for negligence on the part of a State or local agency, or
42 the employees of a State or local agency, arising from any action taken or omission
43 by any of them in carrying out the provisions of this section. The immunity
44 established by this subsection shall not extend to gross negligence, wanton conduct, or

1 intentional wrongdoing that would otherwise be actionable. The immunity
2 established by this subsection shall be deemed to have been waived to the extent of
3 indemnification by insurance, indemnification under Article 31A of Chapter 143 of
4 the General Statutes, and to the extent sovereign immunity is waived under the Tort
5 Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

6 (h) The Department of Justice shall perform the State and national criminal
7 history checks on prospective adoptive parents seeking to adopt a minor in the
8 custody or placement responsibility of a county department of social services and
9 shall charge the Department of Health and Human Services a reasonable fee only for
10 conducting the checks of the national criminal history records authorized by this
11 section. The Division of Social Services, Department of Health and Human Services,
12 shall bear the costs of implementing this section."

13 Section 16. Article 4 of Chapter 114 of the General Statutes is amended
14 by adding the following new section to read:

15 **"§ 114-4-19.7. Criminal record checks prior to placement of prospective adoptive**
16 **parents seeking to adopt a minor who is in the custody or placement responsibility of a**
17 **county department of social services.**

18 The Department of Justice may provide to the Division of Social Services,
19 Department of Health and Human Services, the criminal history from the State and
20 National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The
21 Division shall provide to the Department of Justice, along with the request, the
22 fingerprints of the prospective adoptive parent seeking to adopt a minor who is in the
23 custody or placement responsibility of a county department of social services, any
24 additional information required by the Department of Justice, and a form consenting
25 to the check of the criminal record and to the use of fingerprints and other
26 identifying information required by the State or National Repositories signed by the
27 individual to be checked. The fingerprints of the prospective adoptive parent shall
28 be forwarded to the State Bureau of Investigation for a search of the State's criminal
29 history record file, and the State Bureau of Investigation shall forward a set of
30 fingerprints to the Federal Bureau of Investigation for a national criminal history
31 record check. The Division shall keep all information pursuant to this section
32 privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a
33 reasonable fee only for conducting the checks of the national criminal history records
34 authorized by this section."

35 Section 17. There is appropriated from the General Fund to the
36 Department of Health and Human Services, Division of Social Services, the sum of
37 ninety-five thousand three hundred ninety-nine dollars (\$95,399) for the 1998-99
38 fiscal year to implement Sections 12 through 16 of this act.

39 Section 18. Sections 1 through 9 of this act become effective December 1,
40 1998, and apply to abuse, neglect, and dependency reports received, juvenile petitions
41 filed, and review hearings commenced on and after that date. Sections 10 and 11 of
42 this act become effective December 1, 1998, and apply to termination of parental
43 rights petitions filed on and after that date. Sections 12 through 16 of this act
44 become effective January 1, 1999, and apply to any placement of a minor who is in

1 the custody or placement responsibility of a county department of social services on
2 and after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 1532

Proposed Senate Committee Substitute - S1532-PCSLN-100C

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Adoption & Safe Families Act.

(Public)

Sponsors:

Referred to: Appropriations.

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO
3 CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES
4 PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL
5 ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO
6 AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY
7 CHANGES TO THE JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD
8 ABUSE, NEGLECT, AND DEPENDENCY.

9 The General Assembly of North Carolina enacts:

10 **PART I. ADOPTION AND SAFE FAMILIES ACT CHANGES - EFFECTIVE UNTIL**
11 **JUNE 30, 1999.**

12 Section 1. G.S. 7A-517 reads as rewritten:

13 **"§ 7A-517. Definitions.**

14 Unless the context clearly requires otherwise, the following words have the listed
15 meanings:

16 (1) Abused juveniles. -- Any juvenile less than 18 years of age whose
17 parent, guardian, custodian, or caretaker:

18 a. Inflicts or allows to be inflicted upon the juvenile a serious
19 physical injury by other than accidental means; or

- 1 b. Creates or allows to be created a substantial risk of serious
2 physical injury to the juvenile by other than accidental
3 means; or
4 b1. Uses or allows to be used upon the juvenile cruel or grossly
5 inappropriate procedures or cruel or grossly inappropriate
6 devices to modify behavior; or
7 c. Commits, permits, or encourages the commission of a
8 violation of the following laws by, with, or upon the
9 juvenile: first degree rape, as provided in G.S. 14-27.2;
10 second degree rape as provided in G.S. 14-27.3; first degree
11 sexual offense, as provided in G.S. 14-27.4; second degree
12 sexual offense, as provided in G.S. 14-27.5; sexual act by a
13 custodian, as provided in G.S. 14-27.7; crime against nature,
14 as provided in G.S. 14-177; incest, as provided in G.S. 14-
15 178 and 14-179; preparation of obscene photographs, slides
16 or motion pictures of the juvenile, as provided in G.S. 14-
17 190.5; employing or permitting the juvenile to assist in a
18 violation of the obscenity laws as provided in G.S. 14-190.6;
19 dissemination of obscene material to the juvenile as
20 provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or
21 disseminating material harmful to the juvenile as provided
22 in G.S. 14-190.14 and G.S. 14-190.15; first and second
23 degree sexual exploitation of the juvenile as provided in
24 G.S. 14-190.16 and G.S. 14-190.17; promoting the
25 prostitution of the juvenile as provided in G.S. 14-190.18;
26 and taking indecent liberties with the juvenile, as provided
27 in G.S. 14-202.1, regardless of the age of the parties; or
28 d. Creates or allows to be created serious emotional damage to
29 the juvenile. Serious emotional damage is evidenced by a
30 juvenile's severe anxiety, depression, withdrawal or
31 aggressive behavior toward himself or others; or
32 e. Encourages, directs, or approves of delinquent acts involving
33 moral turpitude committed by the juvenile.
34 (2) Aftercare. -- The supervision of a juvenile who has been returned
35 to the community on conditional release after having been
36 committed to the Division of Youth Services.
37 (3) Administrator for Juvenile Services. -- The person who is
38 responsible for the planning, organization, and administration of a
39 statewide system of juvenile intake, probation, and aftercare
40 services.
41 (3a) Aggravated circumstances. -- Any circumstance attending to the
42 commission of an act of abuse or neglect which increases its
43 enormity or adds to its injurious consequences, including, but not
44 limited to, abandonment, torture, chronic abuse, or sexual abuse.

- 1 (4) Director of the Division of Youth Services. -- The person
2 responsible for the supervision of the administration of institutional
3 and detention services.
- 4 (5) Caretaker. -- Any person other than a parent, guardian, or
5 custodian who has responsibility for the health and welfare of a
6 juvenile in a residential setting. A person responsible for a
7 juvenile's health and welfare means a stepparent, foster parent, an
8 adult member of the juvenile's household, an adult relative
9 entrusted with the juvenile's care, or any person such as a house
10 parent or cottage parent who has primary responsibility for
11 supervising a juvenile's health and welfare in a residential child
12 care facility or residential educational facility. "Caretaker" also
13 means any person who has the responsibility for the care of a
14 juvenile in a child care facility as defined in Article 7 of Chapter
15 110 of the General Statutes and includes any person who has the
16 approval of the care provider to assume responsibility for the
17 juveniles under the care of the care provider. Nothing in this
18 subdivision shall be construed to impose a legal duty of support
19 under Chapter 50 or Chapter 110 of the General Statutes. The
20 duty imposed upon a caretaker as defined in this subdivision shall
21 be for the purpose of Chapter 7A of the General Statutes only.
- 22 (6) Chief Court Counselor. -- The person responsible for
23 administration and supervision of juvenile intake, probation, and
24 aftercare in each judicial district, operating under the supervision
25 of the Administrator for Juvenile Services.
- 26 (7) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
27 deputy clerk.
- 28 (8) Community-based program. -- A program providing nonresidential
29 or residential treatment to a juvenile in the community where his
30 family lives. A community-based program may include specialized
31 foster care, family counseling, shelter care, and other appropriate
32 treatment.
- 33 (9) Court. -- The District Court Division of the General Court of
34 Justice.
- 35 (9a) Court of competent jurisdiction. -- A court having the power and
36 authority of law to act at the time of acting over the subject matter
37 of the cause.
- 38 (10) Court counselor. -- A person responsible for probation and
39 aftercare services to juveniles on probation or on conditional
40 release from the Division of Youth Services under the supervision
41 of the chief court counselor.
- 42 (11) Custodian. -- The person or agency that has been awarded legal
43 custody of a juvenile by a court.

- 1 (12) Delinquent juvenile. -- Any juvenile less than 16 years of age who
2 has committed a crime or infraction under State law or under an
3 ordinance of local government, including violation of the motor
4 vehicle laws.
- 5 (13) Dependent Juvenile. -- A juvenile in need of assistance or
6 placement because the juvenile has no parent, guardian, or
7 custodian responsible for the juvenile's care or supervision or
8 whose parent, guardian, or custodian is unable to provide for the
9 care or supervision and lacks an appropriate alternative child care
10 arrangement.
- 11 (14) Detention. -- The confinement of a juvenile pursuant to an order
12 for secure custody pending an adjudicatory or dispositional hearing
13 or admission to a placement with the Division of Youth Services.
- 14 (15) Detention home. -- An authorized facility providing secure custody
15 for juveniles.
- 16 (15a) District. -- Any district court district as established by G.S. 7A-133.
- 17 (16) Holdover facility. -- A place in a jail which has been approved by
18 the Department of Health and Human Services as meeting the
19 State standards for detention as required in G.S. 153A-221
20 providing close supervision where the juvenile cannot converse
21 with, see, or be seen by the adult population.
- 22 (16.1) In loco parentis. -- A person acting in loco parentis means one,
23 other than parents or legal guardian, who has assumed the status
24 and obligation of a parent without being awarded the legal custody
25 of a juvenile by a court.
- 26 (17) Intake counselor. -- A person who screens a petition alleging that a
27 juvenile is delinquent or undisciplined to determine whether the
28 petition should be filed.
- 29 (18) Interstate Compact on Juveniles. -- An agreement ratified by 50
30 states and the District of Columbia providing a formal means of
31 returning a juvenile, who is an absconder, escapee or runaway, to
32 his home state.
- 33 (19) Judge. -- Any district court judge.
- 34 (19a) Judicial district. -- Any district court district as established by G.S.
35 7A-133.
- 36 (20) Juvenile. -- Any person who has not reached his eighteenth
37 birthday and is not married, emancipated, or a member of the
38 armed services of the United States. For the purposes of
39 subdivisions (12) and (28) of this section, a juvenile is any person
40 who has not reached his sixteenth birthday and is not married,
41 emancipated, or a member of the armed forces. A juvenile who is
42 married, emancipated, or a member of the armed forces, shall be
43 prosecuted as an adult for the commission of a criminal offense.
44 Wherever the term "juvenile" is used with reference to rights and

- 1 privileges, that term encompasses the attorney for the juvenile as
2 well.
- 3 (21) Neglected Juvenile. -- A juvenile who does not receive proper
4 care, supervision, or discipline from the juvenile's parent,
5 guardian, custodian, or caretaker; or who has been abandoned; or
6 who is not provided necessary medical care; or who is not
7 provided necessary remedial care; or who lives in an environment
8 injurious to the juvenile's welfare; or who has been placed for care
9 or adoption in violation of law. In determining whether a juvenile
10 is a neglected juvenile, it is relevant whether that juvenile lives in a
11 home where another juvenile has died as a result of suspected
12 abuse or neglect or lives in a home where another juvenile
13 has been subjected to abuse or neglect by an adult who regularly lives
14 in the home.
- 15 (22) Petitioner. -- The individual who initiates court action, whether by
16 the filing of a petition or of a motion for review alleging the matter
17 for adjudication.
- 18 (23) Probation. -- The status of a juvenile who has been adjudicated
19 delinquent, is subject to specified conditions under the supervision
20 of a court counselor, and may be returned to the court for
21 violation of those conditions during the period of probation.
- 22 (24) Prosecutor. -- The assistant district attorney assigned by the district
23 attorney to juvenile proceedings.
- 24 (25) Protective supervision. -- The status of a juvenile who has been
25 adjudicated delinquent or undisciplined and is under the
26 supervision of a court counselor.
- 27 (25a) Reasonable efforts. -- The diligent use of preventive or
28 reunification services by a department of social services when a
29 juvenile's remaining at home or returning home is consistent with
30 achieving a safe, permanent home for the juvenile within a
31 reasonable period of ~~time~~ time or, when the juvenile is not to be
32 returned home, the diligent and timely use of permanency
33 planning services by a department of social services to develop and
34 implement a permanent plan for the juvenile.
- 35 (26) Regional detention home. -- A state-supported and administered
36 regional facility providing detention care.
- 37 (26a) Safe home. -- A home in which the child is not at substantial risk
38 of physical or emotional abuse or neglect.
- 39 (27) Shelter care. -- The temporary care of a juvenile in a physically
40 unrestricting facility pending court disposition.
- 41 (28) Undisciplined juvenile. -- A juvenile less than 16 years of age who
42 is unlawfully absent from school; or who is regularly disobedient to
43 his parent, guardian, or custodian and beyond their disciplinary

1 control; or who is regularly found in places where it is unlawful for
2 a juvenile to be; or who has run away from home.

3 (29) Director of the department of social services. -- The director of the
4 county department of social services in the county in which the
5 juvenile resides or is found, or his representative as authorized in
6 G.S. 108A-14.

7 The singular includes the plural, the masculine singular includes the feminine
8 singular and masculine and feminine plural unless otherwise specified."

9 Section 2. G.S. 7A-544 reads as rewritten:

10 **"§ 7A-544. Investigation by Director; access to confidential information; notification of**
11 **person making the report.**

12 When a report of abuse, neglect, or dependency is received, the Director of the
13 Department of Social Services shall make a prompt and thorough investigation in
14 order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk
15 of harm to the juvenile, in order to determine whether protective services should be
16 provided or the complaint filed as a petition. When the report alleges abuse, the
17 Director shall immediately, but no later than 24 hours after receipt of the report,
18 initiate the investigation. When the report alleges neglect or dependency, the Director
19 shall initiate the investigation within 72 hours following receipt of the report. The
20 investigation and evaluation shall include a visit to the place where the juvenile
21 resides. All information received by the Department of Social Services, including the
22 identity of the reporter, shall be held in strictest confidence by the Department.

23 When a report of a juvenile's death as a result of suspected maltreatment or a
24 report of suspected abuse, neglect, or dependency of a juvenile is received, the
25 Director of the Department of Social Services shall immediately ascertain if other
26 juveniles remain in the home, and, if so, initiate an investigation in order to
27 determine whether they require protective services or whether immediate removal of
28 the juveniles from the home is necessary for their protection.

29 If the investigation indicates that abuse, neglect, or dependency has occurred, the
30 Director shall decide whether immediate removal of the juvenile or any other
31 juveniles in the home is necessary for their protection. If immediate removal does not
32 seem necessary, the Director shall immediately provide or arrange for protective
33 services. If the parent or other caretaker refuses to accept the protective services
34 provided or arranged by the Director, the Director shall sign a complaint seeking to
35 invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

36 If immediate removal seems necessary for the protection of the juvenile or other
37 juveniles in the home, the Director shall sign a complaint which alleges the
38 applicable facts to invoke the jurisdiction of the court. Where the investigation shows
39 that it is warranted, a protective services worker may assume temporary custody of
40 the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

41 In performing any duties related to the investigation of the complaint or the
42 provision or arrangement for protective services, the Director may consult with any
43 public or private agencies or individuals, including the available State or local law-
44 enforcement officers who shall assist in the investigation and evaluation of the

1 seriousness of any report of abuse, neglect, or dependency when requested by the
2 Director. The Director or the Director's representative may make a written demand
3 for any information or reports, whether or not confidential, that may in the Director's
4 opinion be relevant to the investigation of or the provision for protective services.
5 Upon the Director's or the Director's representative's request and unless protected by
6 the attorney-client privilege, any public or private agency or individual shall provide
7 access to and copies of this confidential information and these records to the extent
8 permitted by federal law and regulations. If a custodian of criminal investigative
9 information or records believes that release of the information will jeopardize the
10 right of the State to prosecute a defendant or the right of a defendant to receive a fair
11 trial or will undermine an ongoing or future investigation, it may seek an order from
12 a court of competent jurisdiction to prevent disclosure of the information. In such an
13 action, the custodian of the records shall have the burden of showing by a
14 preponderance of the evidence that disclosure of the information in question will
15 jeopardize the right of the State to prosecute a defendant or the right of a defendant
16 to receive a fair trial or will undermine an ongoing or future investigation. Actions
17 brought pursuant to this paragraph shall be set down for immediate hearing, and
18 subsequent proceedings in the actions shall be accorded priority by the trial and
19 appellate courts.

20 Within five working days after receipt of the report of abuse, neglect, or
21 dependency, the Director shall give written notice to the person making the report,
22 unless requested by that person not to give notice, as to whether the report was
23 accepted for investigation and whether the report was referred to the appropriate
24 State or local law enforcement agency.

25 Within five working days after completion of the protective services investigation,
26 the Director shall give subsequent written notice to the person making the report,
27 unless requested by that person not to give notice, as to whether there is a finding of
28 abuse, neglect, or dependency, whether the county Department of Social Services is
29 taking action to protect the juvenile, and what action it is taking, including whether
30 or not a petition was filed. The person making the report shall be informed of
31 procedures necessary to request a review by the prosecutor of the Director's decision
32 not to file a petition. A request for review by the prosecutor shall be made within five
33 working days of receipt of the second notification. The second notification shall
34 include notice that, if the person making the report is not satisfied with the Director's
35 decision, he may request review of the decision by the prosecutor within five working
36 days of receipt. The person making the report may waive the person's right to this
37 notification and no notification is required if the person making the report does not
38 identify himself to the Director."

39 Section 3. G.S. 7A-576 reads as rewritten:

40 "**§ 7A-576. Place of secure or nonsecure custody.**

41 (a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be
42 placed in nonsecure custody with the Department of Social Services or a person
43 designated in the order for temporary residential placement in:

- 1 (1) A licensed foster home or a home otherwise authorized by law to
2 provide such care or
3 (2) A facility operated by the Department of Social Services or
4 (3) Any other home or ~~facility~~ facility, including a relative's home,
5 approved by the court and designated in the order.

6 In placing a juvenile in nonsecure custody under this ~~section and under G.S.~~
7 ~~7A-629 and G.S. 7A-651, section,~~ section, the court shall first consider whether a relative of
8 the juvenile is willing and able to provide proper care and supervision of the juvenile
9 in a safe home. If the court finds that the relative is willing and able to provide
10 proper care and supervision in a safe home, then the court shall order placement of
11 the juvenile with the ~~relative.~~ relative unless the court finds that the placement is
12 contrary to the best interests of the juvenile. Prior to placement Placement of a
13 juvenile with a relative outside of this ~~State, the placement~~ State must be in
14 accordance with the Interstate Compact on the Placement of Children.

15 (b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily
16 detained in an approved county detention home or a regional detention facility which
17 shall be separate from any jail, lockup, prison, or other adult penal institution. It shall
18 be unlawful for a county or any unit of government to operate a juvenile detention
19 home unless the facility meets the standards promulgated by the Department of
20 Health and Human Services."

21 Section 4. G.S. 7A-577 reads as rewritten:

22 **"§ 7A-577. Hearing to determine need for continued secure or nonsecure custody.**

23 (a) No juvenile shall be held under a secure custody order for more than five
24 calendar days or under a nonsecure custody order for more than seven calendar days,
25 without a hearing on the merits or a hearing to determine the need for continued
26 custody. A hearing on secure custody conducted under this subsection may not be
27 continued or waived. A hearing on nonsecure custody conducted under this
28 subsection may be continued for up to 10 business days with the consent of the
29 juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad
30 litem. In addition, the court may require the consent of additional parties or may
31 schedule the hearing on nonsecure custody despite a party's consent to a
32 continuance. In every case in which an order has been entered by an official
33 exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the
34 need for continued custody shall be conducted on the day of the next regularly
35 scheduled session of district court in the city or county where the order was entered
36 if such session precedes the expiration of the applicable time period set forth in this
37 subsection: Provided, that if such session does not precede the expiration of the time
38 period, the hearing may be conducted at another regularly scheduled session of
39 district court in the district where the order was entered.

40 (b) Any juvenile who is alleged to be delinquent shall be advised of the right to
41 have legal representation as provided in G.S. 7A-584 if the juvenile appears without
42 counsel at the hearing.

43 (c) At a hearing to determine the need for continued custody, the judge shall
44 receive testimony and shall allow the juvenile, and the juvenile's parent, guardian, or

1 custodian an opportunity to introduce evidence, to be heard in their own behalf, and
2 to examine witnesses. The State shall bear the burden at every stage of the
3 proceedings to provide clear and convincing evidence that restraints on the juvenile's
4 liberty are necessary and that no less intrusive alternative will suffice. The judge shall
5 not be bound by the usual rules of evidence at such hearings.

6 (d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining
7 whether continued custody is warranted.

8 (e) The judge shall impose the least restrictive interference with the liberty of a
9 juvenile who is released from secure custody including:

- 10 (1) Release on the written promise of the juvenile's parent, guardian,
11 or custodian to produce the juvenile in court for subsequent
12 proceedings; or
- 13 (2) Release into the care of a responsible person or organization; or
- 14 (3) Release conditioned on restrictions on activities, associations,
15 residence or travel if reasonably related to securing the juvenile's
16 presence in court; or
- 17 (4) Any other conditions reasonably related to securing the juvenile's
18 presence in court.

19 (f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and
20 should continue in custody, the judge shall issue an order to that effect. The order
21 shall be in writing with appropriate findings of fact. The findings of fact shall include
22 the evidence relied upon in reaching the decision and the purposes which continued
23 custody is to achieve.

24 (g) Pending a hearing on the merits, further hearings to determine the need for
25 continued secure custody shall be held at intervals of no more than seven calendar
26 days. A subsequent hearing on continued nonsecure custody shall be held within
27 seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial
28 hearing required in subsection (a) of this section and hearings thereafter shall be held
29 at intervals of no more than 30 calendar days.

30 (g1) Hearings conducted under subsection (g) of this section may be waived as
31 follows:

- 32 (1) In the case of a juvenile alleged to be delinquent, only with the
33 consent of the juvenile, through counsel for the juvenile; and
- 34 (2) In the case of a juvenile alleged to be abused, neglected, or
35 dependent, only with the consent of the juvenile's parent,
36 guardian, or custodian, and, if appointed, the juvenile's guardian
37 ad litem.

38 The court may require the consent of additional parties or schedule a hearing
39 despite a party's consent to waiver.

40 ~~(h) Any order authorizing the continued nonsecure custody of a juvenile who is~~
41 ~~alleged to be abused, neglected, or dependent shall include findings as to whether~~
42 ~~reasonable efforts have been made to prevent or eliminate the need for placement of~~
43 ~~the juvenile in custody and may provide for services or other efforts aimed at~~
44 ~~returning the juvenile promptly to a safe home. A finding that reasonable efforts have~~

1 ~~not been made shall not preclude the entry of an order authorizing continued~~
2 ~~nonsecure custody when the court finds that continued nonsecure custody is~~
3 ~~necessary for the protection of the juvenile. Where efforts to prevent the need for the~~
4 ~~juvenile's placement were precluded by an immediate threat of harm to the juvenile,~~
5 ~~the court may find that the placement of the juvenile in the absence of such efforts~~
6 ~~was reasonable. If the court finds through written findings of fact that efforts to~~
7 ~~eliminate the need for placement of the juvenile in custody clearly would be futile or~~
8 ~~would be inconsistent with the juvenile's safety and need for a safe, permanent home~~
9 ~~within a reasonable period of time, then the court shall specify in its order that~~
10 ~~reunification efforts are not required or order that reunification efforts cease.~~

11 (i) At each hearing to determine the need for continued nonsecure custody, the
12 court shall:

- 13 (1) Inquire as to the identity and location of any missing parent. The
14 court shall include findings as to the efforts undertaken to locate
15 the missing parent and to serve that parent. The order may provide
16 for specific efforts aimed at determining the identity and location
17 of any missing parent;
- 18 (2) Inquire as to whether a relative of the juvenile is willing and able
19 to provide proper care and supervision of the juvenile in a safe
20 home. If the court finds that the relative is willing and able to
21 provide proper care and supervision in a safe home, then the court
22 shall order temporary placement of the juvenile with the ~~relative.~~
23 relative unless the court finds that the placement is contrary to the
24 best interests of the juvenile. Prior to placement Placement of a
25 juvenile with a relative outside of this State, the placement State
26 must be in accordance with the Interstate Compact on the
27 Placement of Children; and
- 28 (3) Inquire as to whether there are other juveniles remaining in the
29 home from which the juvenile was removed and, if there are,
30 inquire as to the specific findings of the investigation conducted
31 under G.S. 7A-544 and any actions taken or services provided by
32 the Director for the protection of the other juveniles."

33 Section 4.1. Article 46 of Chapter 7A of the General Statutes is amended
34 by adding the following new section to read:

35 "§ 7A-577.1. Reasonable efforts.

36 (a) An order placing or continuing the placement of a juvenile in the custody or
37 placement responsibility of a county department of social services, whether an order
38 for continued nonsecure custody, a dispositional order, or a review order:

39 (1) Shall contain a finding that the juvenile's continuation in or return
40 to the juvenile's own home would be contrary to the juvenile's best
41 interest;

42 (2) Shall contain findings as to whether a county department of social
43 services has made reasonable efforts to prevent or eliminate the
44 need for placement of the juvenile, unless the court has previously

- 1 determined under subsection (b) of this section that such efforts
2 are not required or shall cease;
3 (3) Shall contain findings as to whether a county department of social
4 services should continue to make reasonable efforts to prevent or
5 eliminate the need for placement of the juvenile, unless the court
6 has previously determined or determines under subsection (b) of
7 this section that such efforts are not required or shall cease;
8 (4) Shall specify that the juvenile's placement and care are the
9 responsibility of the county department of social services and that
10 the agency is to provide or arrange for the foster care or other
11 placement of the juvenile; and
12 (5) May provide for services or other efforts aimed at returning the
13 juvenile to a safe home or at achieving another permanent plan for
14 the juvenile.

15 A finding that reasonable efforts have not been made by a county department of
16 social services shall not preclude the entry of an order authorizing the juvenile's
17 placement when the court finds that placement is necessary for the protection of the
18 juvenile. Where efforts to prevent the need for the juvenile's placement were
19 precluded by an immediate threat of harm to the juvenile, the court may find that the
20 placement of the juvenile in the absence of such efforts was reasonable.

21 (b) In any order placing a juvenile in the custody or placement responsibility of a
22 county department of social services, whether an order for continued nonsecure
23 custody, a dispositional order, or a review order, the court may direct that reasonable
24 efforts to eliminate the need for placement of the juvenile shall not be required or
25 shall cease if the court makes written findings of fact that:

- 26 (1) Such efforts clearly would be futile or would be inconsistent with
27 the juvenile's health, safety, and need for a safe, permanent home
28 within a reasonable period of time;
29 (2) A court of competent jurisdiction has determined that the parent
30 has subjected the child to aggravated circumstances as defined in
31 G.S. 7A-517(3a);
32 (3) A court of competent jurisdiction has terminated involuntarily the
33 parental rights of the parent to another child of the parent; or
34 (4) A court of competent jurisdiction has determined that: the parent
35 has committed murder or voluntary manslaughter of another child
36 of the parent; has aided, abetted, attempted, conspired, or solicited
37 to commit murder or voluntarily manslaughter of the child or
38 another child of the parent; or has committed a felony assault
39 resulting in serious bodily injury to the child or another child of
40 the parent.

41 (c) At any hearing at which the court finds that reasonable efforts to eliminate the
42 need for the juvenile's placement are not required or shall cease, the court shall
43 direct that a permanency planning hearing as required by G.S. 7A-657.1 be held

1 within 30 calendar days after the date of the hearing and, if practicable, shall set the
2 date and time for the permanency planning hearing.

3 (d) In determining reasonable efforts to be made with respect to a juvenile and in
4 making such reasonable efforts, the juvenile's health and safety shall be the
5 paramount concern. Reasonable efforts to preserve or reunify families may be made
6 concurrently with efforts to plan for the juvenile's adoption, to place the juvenile
7 with a legal guardian, or to place the juvenile in another permanent arrangement."

8 Section 5. G.S. 7A-629 reads as rewritten:

9 **"§ 7A-629. Adjudicatory hearing.**

10 The adjudicatory hearing shall be held in the district at such time and place as the
11 chief district judge shall ~~designate~~ designate but no later than 60 days from the filing
12 of the petition, unless the judge pursuant to G.S. 7A-632 orders that it be held at a
13 later time. The judge may exclude the general public from ~~the a~~ a hearing in which a
14 juvenile is alleged to be delinquent unless the juvenile moves that the hearing be
15 open, which motion shall be granted. At a hearing in which a juvenile is alleged to be
16 abused, neglected, or dependent, the judge shall exclude the general public."

17 Section 6. G.S. 7A-647 reads as rewritten:

18 **"§ 7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected,**
19 **or dependent juvenile.**

20 The following alternatives for disposition shall be available to any judge exercising
21 jurisdiction, and the judge may combine any of the applicable alternatives when he
22 finds such disposition to be in the best interest of the juvenile:

23 (1) The judge may dismiss the case, or continue the case in order to
24 allow the juvenile, parent, or others to take appropriate action.

25 (2) In the case of any juvenile who needs more adequate care or
26 supervision or who needs placement, the judge may:

27 a. Require that he be supervised in his own home by the
28 Department of Social Services in his county, a court
29 counselor or other personnel as may be available to the
30 court, subject to conditions applicable to the parent or the
31 juvenile as the judge may specify; or

32 b. Place him in the custody of a parent, relative, private agency
33 offering placement services, or some other suitable person;
34 or

35 c. Place him in the custody of the Department of Social
36 Services in the county of his residence, or in the case of a
37 juvenile who has legal residence outside the State, in the
38 physical custody of the Department of Social Services in the
39 county where he is found so that agency may return the
40 juvenile to the responsible authorities in his home state. The
41 Director may, unless otherwise ordered by the judge,
42 arrange for, provide, or consent to, needed routine or
43 emergency medical or surgical care or treatment. In the case
44 where the parent is unknown, unavailable or unable to act

1 on behalf of their child or children, the Director may, unless
2 otherwise ordered by the judge, arrange for, provide or
3 consent to any psychiatric, psychological, educational, or
4 other remedial evaluations or treatment for the juvenile
5 placed by a judge or his designee in the custody or physical
6 custody of a county Department of Social Services under the
7 authority of this or any other Chapter of the General
8 Statutes. Prior to exercising this authority, the Director shall
9 make reasonable efforts to obtain consent from a parent or
10 guardian of the affected child. If the Director can not obtain
11 such consent, the Director shall promptly notify the parent
12 or guardian that care or treatment has been provided and
13 shall give him frequent status reports on the circumstances
14 of the child. Upon request of a parent or guardian of the
15 affected child, the results or records of the aforementioned
16 evaluations, findings or treatment shall be made available to
17 such parent or guardian by the Director unless prohibited by
18 G.S. 122C-53(d). If a juvenile is removed from the home
19 and placed in custody or placement responsibility of a
20 county department of social services, the Director shall not
21 allow unsupervised visitation with, or return physical
22 custody of the juvenile to, the parent or person standing in
23 loco parentis without a hearing at which the court finds that
24 the juvenile will receive proper care and supervision in a
25 safe home.

26 In placing a juvenile in out-of-home care under this
27 section, the court shall first consider whether a relative of
28 the juvenile is willing and able to provide proper care and
29 supervision of the juvenile in a safe home. If the court finds
30 that the relative is willing and able to provide proper care
31 and supervision in a safe home, then the court shall order
32 placement of the juvenile with the relative unless the court
33 finds that the placement is contrary to the best interests of
34 the juvenile. Placement of a juvenile with a relative outside
35 of this State must be in accordance with the Interstate
36 Compact on the Placement of Children.

37 (3) In any case, the judge may order that the juvenile be examined by
38 a physician, psychiatrist, psychologist or other qualified expert as
39 may be needed for the judge to determine the needs of the
40 juvenile.

41 a. Upon completion of the examination, the judge shall
42 conduct a hearing to determine whether the juvenile is in
43 need of medical, surgical, psychiatric, psychological, or other
44 treatment and who should pay the cost of the treatment. The

1 county manager, or such person who shall be designated by
2 the chairman of the county commissioners, of the juvenile's
3 residence shall be notified of the hearing, and allowed to be
4 heard. If the judge finds the juvenile to be in need of
5 medical, surgical, psychiatric, psychological or other
6 treatment, the judge shall permit the parent or other
7 responsible persons to arrange for treatment. If the parent
8 declines or is unable to make necessary arrangements, the
9 judge may order the needed treatment, surgery or care, and
10 the judge may order the parent to pay the cost of the care
11 pursuant to G.S. 7A-650. If the judge finds the parent is
12 unable to pay the cost of treatment, the judge shall order the
13 county to arrange for treatment of the juvenile and to pay
14 for the cost of the treatment. The county department of
15 social services shall recommend the facility that will provide
16 the juvenile with treatment.

- 17 b. If the judge believes, or if there is evidence presented to the
18 effect that the juvenile is mentally ill or is developmentally
19 disabled, the judge shall refer the juvenile to the area mental
20 health, developmental disabilities, and substance abuse
21 services director for appropriate action. A juvenile shall not
22 be committed directly to a State hospital or mental
23 retardation center; and orders purporting to commit a
24 juvenile directly to a State hospital or mental retardation
25 center except for an examination to determine capacity to
26 proceed shall be void and of no effect. The area mental
27 health, developmental disabilities, and substance abuse
28 director shall be responsible for arranging an
29 interdisciplinary evaluation of the juvenile and mobilizing
30 resources to meet the juvenile's needs. If institutionalization
31 is determined to be the best service for the juvenile,
32 admission shall be with the voluntary consent of the parent
33 or guardian. If the parent, guardian, or custodian refuses to
34 consent to a mental hospital or retardation center admission
35 after such institutionalization is recommended by the area
36 mental health, developmental disabilities, and substance
37 abuse director, the signature and consent of the judge may
38 be substituted for that purpose. In all cases in which a
39 regional mental hospital refuses admission to a juvenile
40 referred for admission by a judge and an area mental health,
41 developmental disabilities, and substance abuse director or
42 discharges a juvenile previously admitted on court referral
43 prior to completion of his treatment, the hospital shall
44 submit to the judge a written report setting out the reasons

1 for denial of admission or discharge and setting out the
2 juvenile's diagnosis, indications of mental illness, indications
3 of need for treatment, and a statement as to the location of
4 any facility known to have a treatment program for the
5 juvenile in question.

- 6 (4) In any case in which a juvenile, who was at least eleven years of
7 age at the time of the offense, is adjudicated delinquent for
8 committing a violation of G.S. 14-27.2 (first degree rape), G.S. 14-
9 27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-
10 27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted
11 rape or sexual offense), the judge, upon a finding that the juvenile
12 is a danger to the community, may order that the juvenile register
13 in accordance with Part 4 of Article 27A of Chapter 14 of the
14 General Statutes."

15 Section 7. G.S. 7A-651 reads as rewritten:

16 "§ 7A-651. Dispositional order.

17 (a) The dispositional order shall be in writing and shall contain appropriate
18 findings of fact and conclusions of law. The judge shall state with particularity, both
19 orally and in the written order of disposition, the precise terms of the disposition
20 including the kind, duration and the person who is responsible for carrying out the
21 disposition and the person or agency in whom custody is vested.

22 (b) A dispositional order under which a juvenile is removed from the custody of a
23 parent or person standing in loco parentis shall direct that the review hearing
24 required by G.S. 7A-657 be held within ~~six months of~~ 90 days from the date of the
25 ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the
26 date and time for the review hearing.

27 (c) Any dispositional order directing placement of a juvenile in foster care shall
28 ~~also contain:~~ shall comply with the requirements of G.S. 7A-577.1.

29 (1) ~~A finding that the juvenile's continuation in or return to his own~~
30 ~~home would be contrary to the juvenile's best interest; and~~

31 (2) ~~Findings as to whether reasonable efforts have been made to~~
32 ~~prevent or eliminate the need for placement of the juvenile in~~
33 ~~foster care. A finding that reasonable efforts were not made shall~~
34 ~~not preclude entry of a dispositional order authorizing placement~~
35 ~~in foster care when the court finds that such placement is needed~~
36 ~~for protection of the juvenile. When efforts to prevent the need for~~
37 ~~the juvenile's placement are precluded by an immediate threat of~~
38 ~~harm to the juvenile, the court may find that placement of the~~
39 ~~juvenile in the absence of such efforts is reasonable.~~

40 ~~The order may provide for services or other efforts aimed at returning the juvenile~~
41 ~~promptly to a safe home. If the court finds through written findings of fact that efforts~~
42 ~~to eliminate the need for placement of the juvenile in custody clearly would be futile~~
43 ~~or would be inconsistent with the juvenile's safety and need for a safe, permanent~~

1 ~~home within a reasonable period of time, the court shall specify in its order that~~
2 ~~reunification efforts are not required or order that reunification efforts cease.~~

3 (d) ~~An order that places a juvenile in the custody of a county department of social~~
4 ~~services for placement shall specify that the juvenile's placement and care are the~~
5 ~~responsibility of the county department of social services and that the county~~
6 ~~department is to provide or arrange for the foster care or other placement of the~~
7 ~~juvenile. Any dispositional order shall provide for appropriate visitation as may be in~~
8 ~~the best interests of the juvenile and consistent with the juvenile's health and safety.~~
9 ~~If the juvenile is placed in the custody or placement responsibility of a county~~
10 ~~department of social services, the court may order the director to arrange, facilitate,~~
11 ~~and supervise a visitation plan expressly approved by the court.~~

12 (e) An order that commits a juvenile to the Division of Youth Services shall recite
13 detailed findings that support commitment to the Division as the least restrictive
14 alternative in light of the circumstances. These findings shall state that all
15 alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have
16 been attempted unsuccessfully or were considered and found to be inappropriate and
17 that the juvenile's behavior constitutes a threat to persons or property in the
18 community. These findings shall be supported by substantial evidence in the record
19 that the judge determined the needs of the juvenile, determined the appropriate
20 community resources required to meet those needs, and explored and exhausted or
21 considered inappropriate those resources prior to committing the juvenile to the
22 Division."

23 Section 8. G.S. 7A-657 reads as rewritten:

24 "§ 7A-657. Review of custody order.

25 (a) In any case where custody is removed from a ~~parent, parent or person~~
26 ~~standing in loco parentis, the judge shall conduct a review hearing within six months~~
27 ~~of 90 days from the date the order was entered, of the dispositional hearing shall~~
28 ~~conduct a second review within six months after the first review, and shall conduct a~~
29 ~~subsequent reviews review hearing within six months at least every year thereafter.~~
30 The Director of Social Services shall make a ~~timely requests~~ request to the clerk to
31 calendar ~~the case~~ each review at a session of court scheduled for the hearing of
32 juvenile ~~matters, matters within six months of the date the order was entered. The~~
33 ~~Director shall make timely requests for calendaring subsequent reviews. The clerk~~
34 ~~shall give 15 days' notice of the review and its purpose to the parent or and to any~~
35 ~~the person standing in loco parentis, the juvenile if 12 years of age or more, the~~
36 ~~guardian, any foster parent, relative, or preadoptive parent providing care for the~~
37 ~~child, the custodian or agency with custody, the guardian ad litem, and any other~~
38 ~~person or agency the court may specify, indicating the court's impending review.~~
39 ~~Nothing in this subsection shall be construed to make any foster parent, relative, or~~
40 ~~preadoptive parent a party to the proceeding solely based on receiving notice and an~~
41 ~~opportunity to be heard.~~

42 (b) Notwithstanding other provisions of this Article, the court may waive the
43 holding of review hearings required by subsection (a), may require written reports to
44 the court by the agency or person holding custody in lieu of review hearings, or order

1 that review hearings be held less often than every ~~12~~ six months, if the court finds by
2 clear, cogent and convincing evidence that:

- 3 (1) The juvenile has resided with a relative or has been in the custody
4 of another suitable person for a period of at least one year; and
- 5 (2) The placement is stable and continuation of the placement is in the
6 juvenile's best interest; and
- 7 (3) Neither the juvenile's best interests nor the rights of any party
8 require that review hearings be held every ~~12~~ six months; and
- 9 (4) All parties are aware that the matter may be brought before the
10 court for review at any time by the filing of a motion for review or
11 on the court's own motion; and
- 12 (5) The court order has designated the relative or other suitable
13 person as the juvenile's permanent caretaker or guardian of the
14 person.

15 The court may not waive or refuse to conduct a review hearing if a party files a
16 motion seeking the review.

17 (c) At every review hearing, the court shall consider information from ~~the~~
18 ~~Department of Social Services, the court counselor, the juvenile, the parent or person~~
19 ~~standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and~~
20 ~~any public or private agency~~ the parent, any person standing in loco parentis, the
21 juvenile, the guardian, any foster parent, relative, or preadoptive parent providing
22 care for the child, the custodian or agency with custody, the guardian ad litem, and
23 any other person or agency which will aid it in its review.

24 In each case the court shall consider the following criteria and make written
25 findings regarding those that are relevant:

- 26 (1) Services which have been offered to reunite the family, or whether
27 efforts to reunite the family clearly would be futile or inconsistent
28 with the juvenile's safety and need for a safe, permanent home
29 within a reasonable period of time;
- 30 (2) Where the juvenile's return home is unlikely, the efforts which
31 have been made to evaluate or plan for other methods of care;
- 32 (3) Goals of the foster care placement and the appropriateness of the
33 foster care plan;
- 34 (4) A new foster care plan, if continuation of care is sought, that
35 addresses the role the current foster parent will play in the
36 planning for the juvenile;
- 37 (5) Reports on the placements the juvenile has had and any services
38 offered to the juvenile and the parent;
- 39 (5a) An appropriate visitation plan;
- 40 (5b) If the juvenile is 16 or 17 years of age, a report on an independent
41 living assessment of the juvenile and, if appropriate, an
42 independent living plan developed for the juvenile;
- 43 (6) When and if termination of parental rights should be considered;
- 44 (7) Any other criteria the court deems necessary.

1 (d) The judge, after making findings of fact, may appoint a guardian of the person
2 for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by
3 G.S. 7A-647, including the authority to place the child in the custody of either parent
4 or any relative found by the court to be suitable and found by the court to be in the
5 best interest of the juvenile. ~~If the juvenile is placed in or remains in the custody of~~
6 ~~the department of social services, the court may authorize the department to arrange~~
7 ~~and supervise a visitation plan. Except for such visitation, the juvenile shall not be~~
8 ~~returned to the parent or person standing in loco parentis without a hearing at which~~
9 ~~the court finds sufficient facts to show that the juvenile will receive proper care and~~
10 ~~supervision.~~ The court may enter an order continuing the placement under review or
11 providing for a different placement as is deemed to be in the best interest of the
12 juvenile. If at any time custody is restored to a parent, the court shall be relieved of
13 the duty to conduct periodic judicial reviews of the placement.

14 ~~(d1) At a hearing designated by the court, but at least within 12 months after the~~
15 ~~juvenile's placement, a review hearing shall be held under this section and designated~~
16 ~~as a permanency planning hearing. The purpose of the hearing shall be to develop a~~
17 ~~plan to achieve a safe, permanent home for the juvenile within a reasonable period of~~
18 ~~time. Notice of the hearing shall inform the parties of the purpose of the hearing. At~~
19 ~~the conclusion of the hearing, if the juvenile is not returned home, the judge shall~~
20 ~~make specific findings as to the best plan of care to achieve a safe, permanent home~~
21 ~~for the juvenile within a reasonable period of time and shall enter an order consistent~~
22 ~~with those findings.~~

23 (e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651 G.S. 7A-577.1
24 shall apply to any order entered under this section ~~which continues the foster care~~
25 ~~placement of a juvenile. section."~~

26 Section 8.1. Article 52 of Chapter 7A of the General Statutes is amended
27 by adding the following new section to read:

28 "§ 7A-657.1. Permanency planning hearing.

29 (a) In any case where custody is removed from a parent or person standing in loco
30 parentis, the judge shall conduct a review hearing designated as a permanency
31 planning hearing within 12 months after the date of the initial order removing
32 custody, and the hearing may be combined, if appropriate, with a review hearing
33 required by G.S. 7A-657. The purpose of the permanency planning hearing shall be
34 to develop a plan to achieve a safe, permanent home for the juvenile within a
35 reasonable period of time. Subsequent permanency planning hearings shall be held
36 at least every six months thereafter, or earlier as set by the court, to review the
37 progress made in finalizing the permanent plan for the juvenile, or if necessary, to
38 make a new permanent plan for the juvenile. The Director of Social Services shall
39 make a timely request to the clerk to calendar each permanency planning hearing at
40 a session of court scheduled for the hearing of juvenile matters. The clerk shall give
41 15 days' notice of the hearing and its purpose to the parent and to any person
42 standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any
43 foster parent, relative, or preadoptive parent providing care for the child, the
44 custodian or agency with custody, the guardian ad litem, and any other person or

1 agency the court may specify, indicating the court's impending review. Nothing in
2 this provision shall be construed to make any foster parent, relative, or preadoptive
3 parent a party to the proceeding solely based on receiving notice and an opportunity
4 to be heard.

5 (b) At any permanency planning review, the court shall consider information from
6 the parent, any person standing in loco parentis, the juvenile, the guardian, any foster
7 parent, relative or preadoptive parent providing care for the child, the custodian or
8 agency with custody, the guardian ad litem, and any other person or agency which
9 will aid it in the court's review. At the conclusion of the hearing, if the juvenile is
10 not returned home, the court shall consider the following criteria and make written
11 findings regarding those that are relevant:

12 (1) Whether it is possible for the juvenile to be returned home
13 immediately or within the next six months, and if not, why it is not
14 in the juvenile's best interests to return home;

15 (2) Where the juvenile's return home is unlikely within six months,
16 whether legal guardianship or custody with a relative or some
17 other suitable person should be established, and if so, the rights
18 and responsibilities which should remain with the parents;

19 (3) Where the juvenile's return home is unlikely within six months,
20 whether adoption should be pursued and if so, any barriers to the
21 juvenile's adoption;

22 (4) Where the juvenile's return home is unlikely within six months,
23 whether the juvenile should remain in the current placement or be
24 placed in another permanent living arrangement and why;

25 (5) Whether the county department of social services has since the
26 initial permanency plan hearing made reasonable efforts to
27 implement the permanent plan for the juvenile;

28 (6) Any other criteria the court deems necessary.

29 (c) At the conclusion of the hearing, the judge shall make specific findings as to
30 the best plan of care to achieve a safe, permanent home for the juvenile within a
31 reasonable period of time. The judge may appoint a guardian of the person for the
32 juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647,
33 including the authority to place the child in the custody of either parent or any
34 relative found by the court to be suitable and found by the court to be in the best
35 interest of the juvenile. If the juvenile is not returned home, the court shall enter an
36 order consistent with its findings that directs the department of social services to
37 make reasonable efforts to place the juvenile in a timely manner in accordance with
38 the permanent plan, to complete whatever steps are necessary to finalize the
39 permanent placement of the juvenile, and to document such steps in the juvenile's
40 case plan. If at any time custody is restored to a parent, or findings are made in
41 accordance with G.S. 7A-657(b), the court shall be relieved of the duty to conduct
42 periodic judicial reviews of the placement.

1 If the court continues the juvenile's placement in the custody or placement
2 responsibility of a county department of social services, the provisions of G.S. 7A-
3 577.1 shall apply to any order entered under this section.

4 (d) In the case of a juvenile who is in the custody or placement responsibility of a
5 county department of social services, and has been in placement outside the home for
6 15 of the most recent 22 months; or a court of competent jurisdiction has determined
7 that the parent has abandoned the child; or has committed murder or voluntary
8 manslaughter of another child of the parent; or has aided, abetted, attempted,
9 conspired, or solicited to commit murder or voluntary manslaughter of the child or
10 another child of the parent, the court shall order the director of the department of
11 social services to initiate a proceeding to terminate the parental rights of the parent
12 unless the court finds:

13 (1) The permanent plan for the juvenile is guardianship or custody
14 with a relative or some other suitable person;

15 (2) The court makes specific findings why the filing of a petition for
16 termination of parental rights is not in the best interests of the
17 child; or

18 (3) The department of social services has not provided the juvenile's
19 family with such services as the department deems necessary, when
20 reasonable efforts are still required to enable the juvenile's return
21 to a safe home.

22 (e) If a proceeding to terminate the parental rights of the juvenile's parents is
23 necessary in order to perfect the permanent plan for the juvenile, the director of the
24 department of social services shall file a petition to terminate parental rights within
25 60 calendar days from the date of the permanency planning hearing unless the court
26 makes written findings why the petition cannot be filed within 60 days. If the court
27 makes findings to the contrary, the court shall specify the time frame in which any
28 needed petition to terminate parental rights shall be filed."

29 Section 9. G.S. 7A-659 reads as rewritten:

30 "**§ 7A-659. Post termination of parental rights' placement court review.**

31 (a) The purpose of each placement review is to insure that every reasonable effort
32 is being made to provide for a permanent placement plan for the child who has been
33 placed in the custody of a county director or licensed child-placing agency, which is
34 consistent with the child's best interest. At each review hearing the court may
35 consider information from the Department of Social Services, the licensed
36 child-placing agency, the guardian ad litem, the child, ~~the~~ any foster parent, relative,
37 or preadoptive parent providing care for the child, and any other person or agency
38 the court determines is likely to aid in the review.

39 (b) The court shall conduct a placement review not later than six months from the
40 date of the termination hearing when parental rights have been terminated by a
41 petition brought by any person or agency designated in G.S. 7A-289.24(2) through (5)
42 and a county director or licensed child-placing agency has custody of the child. The
43 court shall conduct reviews every six months thereafter until the child is placed for
44 adoption and the adoption petition is filed by the adoptive parents.

- 1 (1) No more than 30 days and no less than 15 days prior to each
2 review, the clerk shall give notice of the review to the child if he is
3 at least 12 years of age, the legal custodian of the child, ~~the~~ any
4 foster parent, relative, or preadoptive parent providing care for the
5 child, the guardian ad litem, if any, and any other person or
6 agency the court may specify. Only the child if he is at least 12
7 years of age, the legal custodian of the child, ~~the~~ any foster parent,
8 relative, or preadoptive parent providing care for the child, and
9 the guardian ad litem shall attend the review hearings, except as
10 otherwise directed by the court. Nothing in this subdivision shall
11 be construed to make any foster parent, relative, or preadoptive
12 parent a party to the proceeding solely based on receiving notice
13 and an opportunity to be heard.
- 14 (2) If a guardian ad litem for the child has not been appointed
15 previously by the court in the termination proceeding, the court, at
16 the initial six-month review hearing, may appoint a guardian ad
17 litem to represent the child. The court may continue the case for
18 such time as is necessary for the guardian ad litem to become
19 familiar with the facts of the case.
- 20 (c) The court shall consider at least the following in its review:
- 21 (1) The adequacy of the plan developed by the county department of
22 social services or a licensed child-placing agency for a permanent
23 placement relative to the child's best interest and the efforts of the
24 department or agency to implement such plan;
- 25 (2) Whether the child has been listed for adoptive placement with the
26 North Carolina Adoption Resource Exchange, the North Carolina
27 Photo Adoption Listing Service (PALS), or any other specialized
28 adoption agency; and
- 29 (3) The efforts previously made by the department or agency to find a
30 permanent home for the child.
- 31 (d) The court, after making findings of fact, shall affirm the county department's
32 or child-placing agency's plans or require specific additional steps which are
33 necessary to accomplish a permanent placement which is in the best interests of the
34 child.
- 35 (e) If the child has been placed for adoption prior to the date scheduled for the
36 review, written notice of said placement shall be given to the clerk to be placed in
37 the court file and the review hearing shall be cancelled, with notice of said
38 cancellation given by the clerk to all persons previously notified.
- 39 (f) The process of selection of specific adoptive parents shall be the responsibility
40 of and within the discretion of the county department of social services or licensed
41 child-placing agency. The guardian ad litem may request information from and
42 consult with the county department or child-placing agency concerning the selection
43 process. If the guardian ad litem requests information about the selection process, the
44 county shall provide the information within five days. Any issue of abuse of

1 discretion by the county department or child-placing agency in the selection process
2 must be raised by the guardian ad litem within 10 days following the date the agency
3 notifies the court and the guardian ad litem in writing of the filing of the adoption
4 petition."

5 Section 9.1. Article 24B of Chapter 7A of the General Statutes is
6 amended by adding the following new section to read:

7 **"§ 7A-289.23.1. Pending child abuse, neglect, or dependency hearings.**

8 When a juvenile is currently within the jurisdiction of the district court based upon
9 an abuse, neglect, or dependency proceeding, a petition for termination of parental
10 rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or
11 dependency proceeding. Any parent of that juvenile who was previously served in
12 the abuse, neglect, or dependency proceeding in accordance with G.S. 7A-565 shall
13 be served with the petition to terminate parental rights in accordance with G.S. 1A-
14 1, Rule 5."

15 Section 10. G.S. 78A-289.27 reads as rewritten:

16 **"§ 7A-289.27. Issuance of summons.**

17 (a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court
18 shall cause a summons to be issued, directed to the following persons or agency, not
19 otherwise a party petitioner, who shall be named as respondents:

- 20 (1) The parents of the child;
- 21 (2) Any person who has been judicially appointed as guardian of the
22 person of the child;
- 23 (3) The custodian of the child appointed by a court of competent
24 jurisdiction;
- 25 (4) Any county department of social services or licensed child-placing
26 agency to whom a child has been released by one parent pursuant
27 to Part 7 of Article 3 of Chapter 48 of the General Statutes;
28 Statutes or any county department of social services to whom
29 placement responsibility for the child has been given by a court of
30 competent jurisdiction; and
- 31 (5) The child, if he or she is 12 years of age or older at the time the
32 petition is filed.

33 Provided, no summons need be directed to or served upon any parent who has
34 previously surrendered the child to a county department of social services or licensed
35 child-placing agency, nor to any parent who has consented to the adoption of the
36 child by the petitioner. The summons shall notify the respondents to file a written
37 answer within 30 days after service of the summons and petition. Service of the
38 summons shall be completed as provided under the procedures established by G.S.
39 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability
40 even though such parent is a minor.

41 (b) The summons shall be issued for the purpose of terminating parental rights
42 pursuant to the provisions of subsection (a) of this section and shall include:

- 43 (1) The name of the minor child;

- 1 (2) Notice that a written answer to the petition must be filed with the
2 clerk who signed the petition within 30 days after service of the
3 summons and a copy of the petition, or the parent's rights may be
4 terminated;
- 5 (3) Notice that if they are indigent, the parents are entitled to
6 appointed counsel. The parents may contact the clerk immediately
7 to request counsel;
- 8 (4) Notice that this is a new case. Any attorney appointed previously
9 will not represent the parents in this proceeding unless ordered by
10 the court;
- 11 (5) Notice that the date, time and place of the hearing will be mailed
12 by the clerk upon filing of the answer or 30 days from the date of
13 service if no answer is filed;
- 14 (6) Notice of the purpose of the hearing and notice that the parents
15 may attend the termination hearing.

16 (c) If a county department of social services, not otherwise a party petitioner, is
17 served with a petition alleging that the parental rights of the parent should be
18 terminated pursuant to G.S. 7A-289.32, the department shall file a written answer and
19 shall be deemed a party to the proceeding."

20 Section 11. G.S. 7A-289.32 reads as rewritten:

21 "§ 7A-289.32. Grounds for terminating parental rights.

22 The court may terminate the parental rights upon a finding of one or more of the
23 following:

- 24 (1) Repealed by Session Laws 1979, c. 669, s. 2.
- 25 (2) The parent has abused or neglected the child. The child shall be
26 deemed to be abused or neglected if the court finds the child to be
27 an abused child within the meaning of G.S. 7A-517(1), or a
28 neglected child within the meaning of G.S. 7A-517(21).
- 29 (3) The parent has willfully left the child in foster care or placement
30 outside the home for more than 12 months without showing to the
31 satisfaction of the court that reasonable progress under the
32 circumstances has been made within 12 months in correcting those
33 conditions which led to the removal of the child. Provided,
34 however, that no parental rights shall be terminated for the sole
35 reason that the parents are unable to care for the child on account
36 of their poverty.
- 37 (3a) The burden in such proceedings shall be upon the petitioner to
38 prove the facts justifying such termination by clear and convincing
39 evidence.
- 40 (4) The child has been placed in the custody of a county Department
41 of Social Services, a licensed child-placing agency, a child-caring
42 institution, or a foster home, and the parent, for a continuous
43 period of six months next preceding the filing of the petition, has
44 willfully failed for such period to pay a reasonable portion of the

1 cost of care for the child although physically and financially able to
2 do so.

3 (5) One parent has been awarded custody of the child by judicial
4 decree, or has custody by agreement of the parents, and the other
5 parent whose parental rights are sought to be terminated has for a
6 period of one year or more next preceding the filing of the petition
7 willfully failed without justification to pay for the care, support,
8 and education of the child, as required by said decree or custody
9 agreement.

10 (6) The father of a child born out of wedlock has not prior to the
11 filing of a petition to terminate his parental rights:

12 a. Establish(ed) paternity judicially or by affidavit which has
13 been filed in a central registry maintained by the
14 Department of Health and Human Services; provided, the
15 court shall inquire of the Department of Health and Human
16 Services as to whether such an affidavit has been so filed
17 and shall incorporate into the case record the Department's
18 certified reply; or

19 b. Legitimated the child pursuant to provisions of G.S. 49-10,
20 or filed a petition for this specific purpose; or

21 c. Legitimated the child by marriage to the mother of the
22 child; or

23 d. Provided substantial financial support or consistent care with
24 respect to the child and mother.

25 (7) That the parent is incapable of providing for the proper care and
26 supervision of the child, such that the child is a dependent child
27 within the meaning of G.S. 7A-517(13), and that there is a
28 reasonable probability that such incapability will continue for the
29 foreseeable future. Incapability under this subdivision may be the
30 result of substance abuse, mental retardation, mental illness,
31 organic brain syndrome, or any other similar cause or condition.

32 (8) The parent has willfully abandoned the child for at least six
33 consecutive months immediately preceding the filing of the
34 petition. For the purpose of this subdivision, a child may be
35 willfully abandoned by his or her natural father if the mother of
36 the child had been willfully abandoned by and was living separate
37 and apart from the father at the time of the child's birth, although
38 the father may not have known of such birth; but in any event the
39 child must be over the age of three months at the time of the filing
40 of the petition.

41 (9) The parent has committed murder or voluntary manslaughter of
42 another child of the parent; has aided, abetted, attempted,
43 conspired, or solicited to commit murder or voluntary
44 manslaughter of the child or another child of the parent; or has

1 committed a felony assault that results in serious bodily injury to
2 the child or another child of the parent.

- 3 (10) The parental rights of the parent with respect to another child of
4 the parent have been terminated involuntarily by a court of
5 competent jurisdiction and the parent lacks the ability or
6 willingness to establish a safe home."

7 Section 12. G.S. 48-1-101 is amended by adding a new subdivision to
8 read:

9 **"§ 48-1-101. Definitions.**

10 In this Chapter, the following definitions apply:

- 11 (1) "Adoptee" means an individual who is adopted, is placed for
12 adoption, or is the subject of a petition for adoption properly filed
13 with the court.
- 14 (2) "Adoption" means the creation by law of the relationship of parent
15 and child between two individuals.
- 16 (3) "Adult" means an individual who has attained 18 years of age, or
17 if under the age of 18, is either married or has been emancipated
18 under the applicable State law.
- 19 (3a) "Adoption facilitator" means an individual or a nonprofit entity
20 that assists biological parents in locating and evaluating prospective
21 adoptive parents without charge.
- 22 (4) "Agency" means a public or private association, corporation,
23 institution, or other person or entity that is licensed or otherwise
24 authorized by the law of the jurisdiction where it operates to place
25 minors for adoption. "Agency" also means a county department of
26 social services in this State.
- 27 (5) "Child" means a son or daughter, whether by birth or adoption.
- 28 (5a) "Criminal history" means a county, State, or federal criminal
29 history of conviction or a pending indictment of a crime, whether a
30 misdemeanor or a felony, that bears upon an individual's fitness to
31 have responsibility for the safety and well-being of children,
32 including the following North Carolina crimes contained in any of
33 the following Articles of Chapter 14 of the General Statutes:
34 Article 6, Homicide; Article 7A, Rape and Kindred Offenses;
35 Article 8, Assaults; Article 10, Kidnapping and Abduction; Article
36 13, Malicious Injury or Damage by Use of Explosive or Incendiary
37 Device or Material; Article 26, Offenses Against Public Morality
38 and Decency; Article 27, Prostitution; Article 39, Protection of
39 Minors; Article 40, Protection of the Family; and Article 59, Public
40 Intoxication. Such crimes also include possession or sale of drugs
41 in violation of the North Carolina Controlled Substances Act,
42 Article 5 of Chapter 90 of the General Statutes, and alcohol-
43 related offenses such as sale to underage persons in violation of
44 G.S. 18B-302 or driving while impaired in violation of G.S. 20-

1 138.1 through G.S. 20-138.5. In addition to the North Carolina
2 crimes listed in this subdivision, such crimes also include similar
3 crimes under federal law or under the laws of other states.

- 4 (6) "Department" means the North Carolina Department of Health
5 and Human Services.
- 6 (7) "Division" means the Division of Social Services of the
7 Department.
- 8 (8) "Guardian" means an individual, other than a parent, appointed by
9 a clerk of court in North Carolina to exercise all of the powers
10 conferred by G.S. 35A-1241, including a standby guardian
11 appointed under Article 21 of Chapter 35A of the General Statutes
12 whose authority has actually commenced; and also means an
13 individual, other than a parent, appointed in another jurisdiction
14 according to the law of that jurisdiction who has the power to
15 consent to adoption under the law of that jurisdiction.
- 16 (9) "Legal custody" of an individual means the general right to
17 exercise continuing care of and control over the individual as
18 authorized by law, with or without a court order, and:
19 a. Includes the right and the duty to protect, care for, educate,
20 and discipline the individual;
21 b. Includes the right and the duty to provide the individual
22 with food, shelter, clothing, and medical care; and
23 c. May include the right to have physical custody of the
24 individual.
- 25 (10) "Minor" means an individual under 18 years of age who is not an
26 adult.
- 27 (11) "Party" means a petitioner, adoptee, or any person whose consent
28 to an adoption is necessary under this Chapter but has not been
29 obtained.
- 30 (12) "Physical custody" means the physical care of and control over an
31 individual.
- 32 (13) "Placement" means transfer of physical custody of a minor to the
33 selected prospective adoptive parent. Placement may be either:
34 a. Direct placement by a parent or the guardian of the minor;
35 or
36 b. Placement by an agency.
- 37 (14) "Preplacement assessment" means a document, whether prepared
38 before or after placement, that contains the information required
39 by G.S. 48-3-303 and any rules adopted by the Social Services
40 Commission.
- 41 (15) "Relinquishment" means the voluntary surrender of a minor to an
42 agency for the purpose of adoption.
- 43 (16) "Report to the court" means a document prepared in accordance
44 with G.S. 48-2-501, et seq.

1 (17) "State" means a state as defined in G.S. 12-3(11).

2 (18) "Stepparent" means an individual who is the spouse of a parent of
3 a child, but who is not a legal parent of the child."

4 Section 13. G.S. 48-3-203 reads as rewritten:

5 "**§ 48-3-203. Agency placement adoption.**

6 (a) An agency may acquire legal and physical custody of a minor for purposes of
7 adoptive placement only by means of a relinquishment pursuant to Part 7 of this
8 Article or by a court order terminating the rights and duties of a parent or guardian
9 of the minor.

10 (b) An agency shall give any individual upon request a written statement of the
11 services it provides and of its procedure for selecting a prospective adoptive parent
12 for a minor, including the role of the minor's parent or guardian in the selection
13 process. This statement must include a schedule of any fee or expenses charged or
14 required to be paid by the agency and a summary of the provisions of this Chapter
15 that pertain to the requirements and consequences of a relinquishment and to the
16 selection of a prospective adoptive parent.

17 (c) An agency may notify the parent when a placement has occurred and when an
18 adoption decree is issued.

19 (d) The selection of a prospective adoptive parent for a minor shall be made by
20 the agency on the basis of a preplacement assessment. The selection may not be
21 delegated, but may be based on criteria requested by a parent who relinquishes the
22 child to the agency.

23 (d1) A minor who is in the custody or placement responsibility of a county
24 department of social services shall not be placed with a selected prospective adoptive
25 parent prior to the completion of an investigation of the individual's criminal history
26 pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a
27 determination as to the individual's fitness to have responsibility for the safety and
28 well-being of children.

29 (e) In addition to the authority granted in G.S. 131D-10.5, the Social Services
30 Commission may adopt rules for placements by agencies consistent with the purposes
31 of this Chapter."

32 Section 14. G.S. 48-3-303 reads as rewritten:

33 "**§ 48-3-303. Content and timing of preplacement assessment.**

34 (a) A preplacement assessment shall be completed within 90 days after a request
35 has been accepted.

36 (b) The preplacement assessment must be based on at least one personal interview
37 with each individual being assessed in the individual's residence and any report
38 received pursuant to subsection (c) of this section.

39 (c) The preplacement assessment must, after a reasonable investigation, report on
40 the following about the individual being assessed:

41 (1) Age and date of birth, nationality, race, or ethnicity, and any
42 religious preference;

- 1 (2) Marital and family status and history, including the presence of any
- 2 children born to or adopted by the individual and any other
- 3 children in the household;
- 4 (3) Physical and mental health, including any addiction to alcohol or
- 5 drugs;
- 6 (4) Educational and employment history and any special skills;
- 7 (5) Property and income, and current financial information provided
- 8 by the individual;
- 9 (6) Reason for wanting to adopt;
- 10 (7) Any previous request for an assessment or involvement in an
- 11 adoptive placement and the outcome of the assessment or
- 12 placement;
- 13 (8) Whether the individual has ever been a respondent in a domestic
- 14 violence proceeding or a proceeding concerning a minor who was
- 15 allegedly abused, dependent, neglected, abandoned, or delinquent,
- 16 and the outcome of the proceeding;
- 17 (9) Whether the individual has ever been convicted of a crime other
- 18 than a minor traffic violation;
- 19 (10) Whether the individual has located a parent interested in placing a
- 20 child with the individual for adoption and a brief, nonidentifying
- 21 description of the parent and the child; and
- 22 (11) Any other fact or circumstance that may be relevant to a
- 23 determination of the individual's suitability to be an adoptive
- 24 parent, including the quality of the environment in the home and
- 25 the functioning of any children in the household.

26 When any of the above is not reasonably available, the preplacement assessment
27 shall state why it is unavailable.

28 (d) The agency shall conduct an investigation for any criminal record as permitted
29 by law. If a prospective adoptive parent is seeking to adopt a minor who is in the
30 custody or placement responsibility of a county department of social services, a
31 county department of social services shall have the individual's criminal history
32 investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a
33 determination pursuant to subsection (e) of this section as to the individual's fitness
34 to have responsibility for the safety and well-being of children.

35 (e) In the preplacement assessment, the agency shall review the information
36 obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the
37 individual's strengths and weaknesses to be an adoptive parent. The agency shall then
38 determine whether the individual is suitable to be an adoptive parent.

39 (f) If the agency determines that the individual is suitable to be an adoptive
40 parent, the preplacement assessment shall include specific factors which support that
41 determination.

42 (g) If the agency determines that the individual is not suitable to be an adoptive
43 parent, the replacement assessment shall state the specific concerns which support
44 that determination. A specific concern is one that reasonably indicates that placement

1 of any minor, or a particular minor, in the home of the individual would pose a
2 significant risk of harm to the well-being of the minor.

3 (h) In addition to the information and finding required by subsections (c) through
4 (g) of this section, the preplacement assessment must contain a list of the sources of
5 information on which it is based.

6 (i) The Social Services Commission shall have authority to establish by rule
7 additional standards for preplacement assessments."

8 Section 15. Effective January 1, 1999, Article 3 of Chapter 48 of the
9 General Statutes is amended by adding the following new section to read:

10 "§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents
11 seeking to adopt a minor who is in the custody or placement responsibility of a county
12 department of social services.

13 (a) The department shall ensure that the criminal histories of all prospective
14 adoptive parents seeking to adopt a minor who is in the custody or placement
15 responsibility of a county department of social services are checked prior to
16 placement and, based on the criminal history, a determination is made as to the
17 individual's fitness to have responsibility for the safety and well-being of children.
18 The department shall ensure that all prospective adoptive parents seeking to adopt a
19 minor who is in the custody or placement responsibility of a county department of
20 social services are checked prior to placement for county, state, and federal criminal
21 histories.

22 (b) A county department of social services may issue an unfavorable preplacement
23 assessment to a prospective adoptive parent if the county department of social
24 services determines pursuant to G.S. 48-3-303(e) that the individual is unfit to have
25 responsibility for the safety and well-being of children based on the criminal history.

26 (c) The Department of Justice shall provide to the Department of Health and
27 Human Services the criminal history of such a prospective adoptive parent obtained
28 from the State and National Repositories of Criminal Histories as requested by the
29 Department. The Department shall provide to the Department of Justice, along with
30 the request, the fingerprints of the prospective adoptive parent to be checked, any
31 additional information required by the Department of Justice, and a form consenting
32 to the check of the criminal record and to the use of fingerprints and other
33 identifying information required by the State or National Repositories signed by the
34 individual to be checked. The fingerprints of the prospective adoptive parent shall
35 be forwarded to the State Bureau of Investigation for a search of the State's criminal
36 history record file, and the State Bureau of Investigation shall forward a set of
37 fingerprints to the Federal Bureau of Investigation for a national criminal history
38 record check.

39 (d) At the time of the request for a preplacement assessment or at a subsequent
40 time prior to placement, a prospective adoptive parent whose criminal history is to be
41 checked shall be furnished with a statement substantially similar to the following:

42 "NOTICE

43 MANDATORY CRIMINAL HISTORY CHECK; NORTH CAROLINA LAW
44 REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED

1 PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS
2 SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR
3 PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF
4 SOCIAL SERVICES.

5
6 "Criminal history" means a county, state, or federal criminal history of
7 conviction or a pending indictment of a crime, whether a misdemeanor or a
8 felony, that bears upon an individual's fitness to have responsibility for the
9 safety and well-being of children, including the following North Carolina crimes
10 contained in any of the following Articles of Chapter 14 of the General Statutes:
11 Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8,
12 Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or
13 Damage by Use of Explosive or Incendiary Device or Material; Article 26,
14 Offenses Against Public Morality and Decency; Article 27, Prostitution; Article
15 39, Protection of Minors; Article 40, Protection of the Family; and Article 59,
16 Public Intoxication; violation of the North Carolina Controlled Substances Act,
17 Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses
18 such as sale to underage persons in violation of G.S. 18B-302 or driving while
19 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes
20 under federal law or under the laws of other states. Your fingerprints will be
21 used to check the criminal history records of the State Bureau of Investigation
22 (SBI) and the Federal Bureau of Investigation (FBI).

23
24 If it is determined, based on your criminal history, that you are unfit to have
25 responsibility for the safety and well-being of children, you shall have the
26 opportunity to complete, or challenge the accuracy of, the information
27 contained in the SBI or FBI identification records.

28
29 If you are denied a favorable preplacement assessment by a county department
30 of social services as a result of the criminal history check, you may request a
31 review of the assessment pursuant G.S. to 48-3-308(a).

32
33 Any prospective adoptive parent who intentionally falsifies any information
34 required to be furnished to conduct the criminal history is guilty of a Class 2
35 misdemeanor."

36
37 Refusal to consent to a criminal history check is grounds for the issuance by a
38 county department of social services of an unfavorable preplacement assessment.
39 Any prospective adoptive parent who intentionally falsifies any information required
40 to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

41 (e) The department shall notify the prospective adoptive parent's supervising
42 county department of social services of the results of the criminal history check in
43 accordance with the federal and State law regulating the dissemination of the
44 contents of the criminal history file. The department shall not release nor disclose

1 any portion of the prospective adoptive parent's criminal history to the prospective
2 adoptive parent. The department shall also ensure that the prospective adoptive
3 parent is notified of the prospective adoptive parent's right to review the criminal
4 history information, the procedure for completing or challenging the accuracy of the
5 criminal history, and the prospective adoptive parent's right to contest the
6 preplacement assessment of the county department of social services.

7 A prospective adoptive parent who disagrees with the preplacement assessment of
8 the county department of social services may request a review of the assessment
9 pursuant to G.S. 48-3-308(a).

10 (f) All the information that the department receives through the checking of the
11 criminal history is privileged information and is not a public record but is for the
12 exclusive use of the Department and those persons authorized under this section to
13 receive the information. The department may destroy the information after it is used
14 for the purposes authorized by this section after one calendar year.

15 (g) There is no liability for negligence on the part of a State or local agency, or
16 the employees of a State or local agency, arising from any action taken or omission
17 by any of them in carrying out the provisions of this section. The immunity
18 established by this subsection shall not extend to gross negligence, wanton conduct, or
19 intentional wrongdoing that would otherwise be actionable. The immunity
20 established by this subsection shall be deemed to have been waived to the extent of
21 indemnification by insurance, indemnification under Article 31A of Chapter 143 of
22 the General Statutes, and to the extent sovereign immunity is waived under the Tort
23 Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

24 (h) The Department of Justice shall perform the State and national criminal
25 history checks on prospective adoptive parents seeking to adopt a minor in the
26 custody or placement responsibility of a county department of social services and
27 shall charge the Department of Health and Human Services a reasonable fee only for
28 conducting the checks of the national criminal history records authorized by this
29 section. The Division of Social Services, Department of Health and Human Services,
30 shall bear the costs of implementing this section."

31 Section 16. Article 4 of Chapter 114 of the General Statutes is amended
32 by adding the following new section to read:

33 **"§ 114-4-19.7. Criminal record checks prior to placement of prospective adoptive**
34 **parents seeking to adopt a minor who is in the custody or placement responsibility of a**
35 **county department of social services.**

36 The Department of Justice may provide to the Division of Social Services,
37 Department of Health and Human Services, the criminal history from the State and
38 National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The
39 Division shall provide to the Department of Justice, along with the request, the
40 fingerprints of the prospective adoptive parent seeking to adopt a minor who is in the
41 custody or placement responsibility of a county department of social services, any
42 additional information required by the Department of Justice, and a form consenting
43 to the check of the criminal record and to the use of fingerprints and other
44 identifying information required by the State or National Repositories signed by the

1 individual to be checked. The fingerprints of the prospective adoptive parent shall
2 be forwarded to the State Bureau of Investigation for a search of the State's criminal
3 history record file, and the State Bureau of Investigation shall forward a set of
4 fingerprints to the Federal Bureau of Investigation for a national criminal history
5 record check. The Division shall keep all information pursuant to this section
6 privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a
7 reasonable fee only for conducting the checks of the national criminal history records
8 authorized by this section."

9 Section 17. The Legislative Research Commission may study changes
10 proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill
11 1513, 1997 General Assembly. The study may include other issues relevant to child
12 abuse, neglect, and dependency cases. The Commission shall report its findings,
13 recommendations, and any legislative proposals to the 1999 General Assembly.

14

15 **PART II. ADOPTION AND SAFE FAMILIES ACT - EFFECTIVE JULY 1, 1999.**

16 Section 18. G.S. 7B-101, as rewritten and recodified by enacted Senate
17 Bill 1260, 1997 General Assembly, reads as rewritten:

18 "**§ 7B-101. Definitions.**

19 As used in this Subchapter, unless the context clearly requires otherwise, the
20 following words have the listed meanings:

- 21 (1) Abused juveniles. -- Any juvenile less than 18 years of age whose
22 parent, guardian, custodian, or caretaker:
- 23 a. Inflicts or allows to be inflicted upon the juvenile a serious
24 physical injury by other than accidental means;
 - 25 b. Creates or allows to be created a substantial risk of serious
26 physical injury to the juvenile by other than accidental
27 means;
 - 28 c. Uses or allows to be used upon the juvenile cruel or grossly
29 inappropriate procedures or cruel or grossly inappropriate
30 devices to modify behavior;
 - 31 d. Commits, permits, or encourages the commission of a
32 violation of the following laws by, with, or upon the
33 juvenile: first-degree rape, as provided in G.S. 14-27.2;
34 second degree rape as provided in G.S. 14-27.3; first-degree
35 sexual offense, as provided in G.S. 14-27.4; second degree
36 sexual offense, as provided in G.S. 14-27.5; sexual act by a
37 custodian, as provided in G.S. 14-27.7; crime against nature,
38 as provided in G.S. 14-177; incest, as provided in G.S. 14-
39 178 and G.S. 14-179; preparation of obscene photographs,
40 slides, or motion pictures of the juvenile, as provided in
41 G.S. 14-190.5; employing or permitting the juvenile to assist
42 in a violation of the obscenity laws as provided in G.S. 14-
43 190.6; dissemination of obscene material to the juvenile as
44 provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or

- 1 disseminating material harmful to the juvenile as provided
2 in G.S. 14-190.14 and G.S. 14-190.15; first and second
3 degree sexual exploitation of the juvenile as provided in
4 G.S. 14-190.16 and G.S. 14-190.17; promoting the
5 prostitution of the juvenile as provided in G.S. 14-190.18;
6 and taking indecent liberties with the juvenile, as provided
7 in G.S. 14-202.1, regardless of the age of the parties;
- 8 e. Creates or allows to be created serious emotional damage to
9 the juvenile. Serious emotional damage is evidenced by a
10 juvenile's severe anxiety, depression, withdrawal, or
11 aggressive behavior toward himself or others; or
- 12 f. Encourages, directs, or approves of delinquent acts involving
13 moral turpitude committed by the juvenile.
- 14 (1a) Aggravated circumstances. -- Any circumstance attending to the
15 commission of an act of abuse or neglect which increases its
16 enormity or adds to its injurious consequences, including, but not
17 limited to, abandonment, torture, chronic abuse, or sexual abuse.
- 18 (2) Caretaker. -- Any person other than a parent, guardian, or
19 custodian who has responsibility for the health and welfare of a
20 juvenile in a residential setting. A person responsible for a
21 juvenile's health and welfare means a stepparent, foster parent, an
22 adult member of the juvenile's household, an adult relative
23 entrusted with the juvenile's care, or any person such as a house
24 parent or cottage parent who has primary responsibility for
25 supervising a juvenile's health and welfare in a residential child
26 care facility or residential educational facility. 'Caretaker' also
27 means any person who has the responsibility for the care of a
28 juvenile in a child care facility as defined in Article 7 of Chapter
29 110 of the General Statutes and includes any person who has the
30 approval of the care provider to assume responsibility for the
31 juveniles under the care of the care provider. Nothing in this
32 subdivision shall be construed to impose a legal duty of support
33 under Chapter 50 or Chapter 110 of the General Statutes. The
34 duty imposed upon a caretaker as defined in this subdivision shall
35 be for the purpose of this Subchapter only.
- 36 (3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or
37 deputy clerk.
- 38 (4) Community-based program. -- A program providing nonresidential
39 or residential treatment to a juvenile in the community where the
40 juvenile's family lives. A community-based program may include
41 specialized foster care, family counseling, shelter care, and other
42 appropriate treatment.
- 43 (5) Court. -- The district court division of the General Court of
44 Justice.

- 1 (5a) Court of competent jurisdiction. -- A court having the power and
2 authority of law to act at the time of acting over the subject matter
3 of the cause.
- 4 (6) Custodian. -- The person or agency that has been awarded legal
5 custody of a juvenile by a court or a person, other than parents or
6 legal guardian, who has assumed the status and obligation of a
7 parent without being awarded the legal custody of a juvenile by a
8 court.
- 9 (7) Dependent juvenile. -- A juvenile in need of assistance or
10 placement because the juvenile has no parent, guardian, or
11 custodian responsible for the juvenile's care or supervision or
12 whose parent, guardian, or custodian is unable to provide for the
13 care or supervision and lacks an appropriate alternative child care
14 arrangement.
- 15 (8) Director. -- The director of the county department of social
16 services in the county in which the juvenile resides or is found, or
17 the director's representative as authorized in G.S. 108A-14.
- 18 (9) District. -- Any district court district as established by G.S. 7A-133.
- 19 (10) Judge. -- Any district court judge.
- 20 (11) Judicial district. -- Any district court district as established by G.S.
21 7A-133.
- 22 (12) Juvenile. -- A person who has not reached the person's eighteenth
23 birthday and is not married, emancipated, or a member of the
24 armed services of the United States.
- 25 (13) Neglected juvenile. -- A juvenile who does not receive proper care,
26 supervision, or discipline from the juvenile's parent, guardian,
27 custodian, or caretaker; or who has been abandoned; or who is not
28 provided necessary medical care; or who is not provided necessary
29 remedial care; or who lives in an environment injurious to the
30 juvenile's welfare; or who has been placed for care or adoption in
31 violation of law. In determining whether a juvenile is a neglected
32 juvenile, it is relevant whether that juvenile lives in a home where
33 another juvenile has died as a result of suspected abuse or neglect
34 or lives in a home where another juvenile has been subjected to
35 abuse or neglect by an adult who regularly lives in the home.
- 36 (14) Petitioner. -- The individual who initiates court action, whether by
37 the filing of a petition or of a motion for review alleging the matter
38 for adjudication.
- 39 (15) Prosecutor. -- The district attorney or assistant district attorney
40 assigned by the district attorney to juvenile proceedings.
- 41 (16) Reasonable efforts. -- The diligent use of preventive or
42 reunification services by a department of social services when a
43 juvenile's remaining at home or returning home is consistent with
44 achieving a safe, permanent home for the juvenile within a

1 reasonable period of ~~time~~ time or, when the juvenile is not to be
2 returned home, the diligent and timely use of permanency
3 planning services by a department of social services to develop and
4 implement a permanent plan for the juvenile.

5 (17) Safe home. -- A home in which the juvenile is not at substantial
6 risk of physical or emotional abuse or neglect.

7 (18) Shelter care. -- The temporary care of a juvenile in a physically
8 unrestricting facility pending court disposition.

9 The singular includes the plural, the masculine singular includes the feminine
10 singular and masculine and feminine plural unless otherwise specified."

11 Section 19. G.S. 7B-302, as rewritten and recodified by enacted Senate
12 Bill 1260, 1997 General Assembly, reads as rewritten:

13 "**§ 7B-302. Investigation by director; access to confidential information; notification of**
14 **person making the report.**

15 When a report of abuse, neglect, or dependency is received, the director of the
16 department of social services shall make a prompt and thorough investigation in
17 order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk
18 of harm to the juvenile, in order to determine whether protective services should be
19 provided or the complaint filed as a petition. When the report alleges abuse, the
20 director shall immediately, but no later than 24 hours after receipt of the report,
21 initiate the investigation. When the report alleges neglect or dependency, the director
22 shall initiate the investigation within 72 hours following receipt of the report. The
23 investigation and evaluation shall include a visit to the place where the juvenile
24 resides. All information received by the department of social services, including the
25 identity of the reporter, shall be held in strictest confidence by the department.

26 When a report of a juvenile's death as a result of suspected maltreatment or a
27 report of suspected abuse, neglect, or dependency of a juvenile is received, the
28 director of the department of social services shall immediately ascertain if other
29 juveniles remain in the home, and, if so, initiate an investigation in order to
30 determine whether they require protective services or whether immediate removal of
31 the juveniles from the home is necessary for their protection.

32 If the investigation indicates that abuse, neglect, or dependency has occurred, the
33 director shall decide whether immediate removal of the juvenile or any other
34 juveniles in the home is necessary for their protection. If immediate removal does not
35 seem necessary, the director shall immediately provide or arrange for protective
36 services. If the parent or other caretaker refuses to accept the protective services
37 provided or arranged by the director, the director shall sign a complaint seeking to
38 invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

39 If immediate removal seems necessary for the protection of the juvenile or other
40 juveniles in the home, the director shall sign a complaint which alleges the applicable
41 facts to invoke the jurisdiction of the court. Where the investigation shows that it is
42 warranted, a protective services worker may assume temporary custody of the
43 juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

1 In performing any duties related to the investigation of the complaint or the
2 provision or arrangement for protective services, the director may consult with any
3 public or private agencies or individuals, including the available State or local law
4 enforcement officers who shall assist in the investigation and evaluation of the
5 seriousness of any report of abuse, neglect, or dependency when requested by the
6 director. The director or the director's representative may make a written demand for
7 any information or reports, whether or not confidential, that may in the director's
8 opinion be relevant to the investigation of or the provision for protective services.
9 Upon the director's or the director's representative's request and unless protected by
10 the attorney-client privilege, any public or private agency or individual shall provide
11 access to and copies of this confidential information and these records to the extent
12 permitted by federal law and regulations. If a custodian of criminal investigative
13 information or records believes that release of the information will jeopardize the
14 right of the State to prosecute a defendant or the right of a defendant to receive a fair
15 trial or will undermine an ongoing or future investigation, it may seek an order from
16 a court of competent jurisdiction to prevent disclosure of the information. In such an
17 action, the custodian of the records shall have the burden of showing by a
18 preponderance of the evidence that disclosure of the information in question will
19 jeopardize the right of the State to prosecute a defendant or the right of a defendant
20 to receive a fair trial or will undermine an ongoing or future investigation. Actions
21 brought pursuant to this paragraph shall be set down for immediate hearing, and
22 subsequent proceedings in the actions shall be accorded priority by the trial and
23 appellate courts.

24 Within five working days after receipt of the report of abuse, neglect, or
25 dependency, the director shall give written notice to the person making the report,
26 unless requested by that person not to give notice, as to whether the report was
27 accepted for investigation and whether the report was referred to the appropriate
28 State or local law enforcement agency.

29 Within five working days after completion of the protective services investigation,
30 the director shall give subsequent written notice to the person making the report,
31 unless requested by that person not to give notice, as to whether there is a finding of
32 abuse, neglect, or dependency, whether the county department of social services is
33 taking action to protect the juvenile, and what action it is taking, including whether
34 or not a petition was filed. The person making the report shall be informed of
35 procedures necessary to request a review by the prosecutor of the director's decision
36 not to file a petition. A request for review by the prosecutor shall be made within five
37 working days of receipt of the second notification. The second notification shall
38 include notice that, if the person making the report is not satisfied with the director's
39 decision, the person may request review of the decision by the prosecutor within five
40 working days of receipt. The person making the report may waive the person's right
41 to this notification, and no notification is required if the person making the report
42 does not identify himself to the director."

43 Section 20. G.S. 7B-505, as rewritten and recodified by enacted Senate
44 Bill 1260, 1997 General Assembly, reads as rewritten:

1 **"§ 7B-505. Place of nonsecure custody.**

2 A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure
3 custody with the department of social services or a person designated in the order for
4 temporary residential placement in:

- 5 (1) A licensed foster home or a home otherwise authorized by law to
6 provide such care; or
7 (2) A facility operated by the department of social services; or
8 (3) Any other home or ~~facility~~ facility, including a relative's home
9 approved by the court and designated in the order.

10 In placing a juvenile in nonsecure custody under this section, the court shall first
11 consider whether a relative of the juvenile is willing and able to provide proper care
12 and supervision of the juvenile in a safe home. If the court finds that the relative is
13 willing and able to provide proper care and supervision in a safe home, then the
14 court shall order placement of the juvenile with the ~~relative.~~ relative unless the court
15 finds that the placement is contrary to the best interests of the juvenile. ~~Prior to~~
16 ~~placement~~ Placement of a juvenile with a relative outside of this State, ~~the placement~~
17 State must be in accordance with the Interstate Compact on the Placement of
18 Children, Article 38 of this Chapter."

19 Section 21. G.S. 7B-506, as rewritten and recodified by enacted Senate
20 Bill 1260, 1997 General Assembly, reads as rewritten:

21 **"§ 7B-506. Hearing to determine need for continued nonsecure custody.**

22 (a) No juvenile shall be held under a nonsecure custody order for more than
23 seven calendar days without a hearing on the merits or a hearing to determine the
24 need for continued custody. A hearing on nonsecure custody conducted under this
25 subsection may be continued for up to 10 business days with the consent of the
26 juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's
27 guardian ad litem. In addition, the court may require the consent of additional parties
28 or may schedule the hearing on custody despite a party's consent to a continuance. In
29 every case in which an order has been entered by an official exercising authority
30 delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued
31 custody shall be conducted on the day of the next regularly scheduled session of
32 district court in the city or county where the order was entered if such session
33 precedes the expiration of the applicable time period set forth in this subsection:
34 Provided, that if such session does not precede the expiration of the time period, the
35 hearing may be conducted at another regularly scheduled session of district court in
36 the district where the order was entered.

37 (b) At a hearing to determine the need for continued custody, the court shall
38 receive testimony and shall allow the guardian ad litem, or juvenile, and the
39 juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce
40 evidence, to be heard in the person's own behalf, and to examine witnesses. The
41 State shall bear the burden at every stage of the proceedings to provide clear and
42 convincing evidence that the juvenile's placement in custody is necessary. The court
43 shall not be bound by the usual rules of evidence at such hearings.

1 (c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining
2 whether continued custody is warranted.

3 (d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and
4 should continue in custody, the court shall issue an order to that effect. The order
5 shall be in writing with appropriate findings of fact. The findings of fact shall include
6 the evidence relied upon in reaching the decision and the purposes which continued
7 custody is to achieve.

8 (e) If the court orders at the hearing required in subsection (a) of this section that
9 the juvenile remain in custody, a subsequent hearing on continued custody shall be
10 held within seven business days of that hearing, excluding Saturdays, Sundays, and
11 legal holidays, and pending a hearing on the merits, hearings thereafter shall be held
12 at intervals of no more than 30 calendar days.

13 (f) Hearings conducted under subsection (e) of this section may be waived only
14 with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if
15 appointed, the juvenile's guardian ad litem.

16 The court may require the consent of additional parties or schedule a hearing
17 despite a party's consent to waiver.

18 ~~(g) Any order authorizing the continued custody of a juvenile shall include
19 findings as to whether reasonable efforts have been made to prevent or eliminate the
20 need for placement of the juvenile in custody and may provide for services or other
21 efforts aimed at returning the juvenile promptly to a safe home. A finding that
22 reasonable efforts have not been made shall not preclude the entry of an order
23 authorizing continued custody when the court finds that continued custody is
24 necessary for the protection of the juvenile. Where efforts to prevent the need for the
25 juvenile's placement were precluded by an immediate threat of harm to the juvenile,
26 the court may find that the placement of the juvenile in the absence of such efforts
27 was reasonable. If the court finds through written findings of fact that efforts to
28 eliminate the need for placement of the juvenile in custody clearly would be futile or
29 would be inconsistent with the juvenile's safety and need for a safe, permanent home
30 within a reasonable period of time, then the court shall specify in its order that
31 reunification efforts are not required or order that reunification efforts cease.~~

32 (h) At each hearing to determine the need for continued custody, the court shall:

33 (1) Inquire as to the identity and location of any missing parent. The
34 court shall include findings as to the efforts undertaken to locate
35 the missing parent and to serve that parent. The order may provide
36 for specific efforts aimed at determining the identity and location
37 of any missing parent;

38 (2) Inquire as to whether a relative of the juvenile is willing and able
39 to provide proper care and supervision of the juvenile in a safe
40 home. If the court finds that the relative is willing and able to
41 provide proper care and supervision in a safe home, then the court
42 shall order temporary placement of the juvenile with the relative.
43 relative unless the court finds that the placement is contrary to the
44 best interests of the juvenile. Prior to placement Placement of a

1 juvenile with a relative outside of this State, ~~the placement State~~
2 must be in accordance with the Interstate Compact on the
3 Placement of Children set forth in Article 38 of this Chapter; and
4 (3) Inquire as to whether there are other juveniles remaining in the
5 home from which the juvenile was removed and, if there are,
6 inquire as to the specific findings of the investigation conducted
7 under G.S. 7B-302 and any actions taken or services provided by
8 the director for the protection of the other juveniles."

9 Section 21.1. If Senate Bill 1260, 1997 General Assembly is enacted into
10 law by the 1997 General Assembly, then G.S. 7A-577.1, as enacted in Part I of this
11 act is recodified as G.S. 7B-506.1 and reads as rewritten:

12 **"§ 7B-506.1. Reasonable efforts.**

13 (a) An order placing or continuing the placement of a juvenile in the custody or
14 placement responsibility of a county department of social services, whether an order
15 for continued nonsecure custody, a dispositional order, or a review order:

16 (1) Shall contain a finding that the juvenile's continuation in or return
17 to the juvenile's own home would be contrary to the juvenile's best
18 interest;

19 (2) Shall contain findings as to whether a county department of social
20 services has made reasonable efforts to prevent or eliminate the
21 need for placement of the juvenile, unless the court has previously
22 determined under subsection (b) of this section that such efforts
23 are not required or shall cease;

24 (3) Shall contain findings as to whether a county department of social
25 services should continue to make reasonable efforts to prevent or
26 eliminate the need for placement of the juvenile, unless the court
27 has previously determined or determines under subsection (b) of
28 this section that such efforts are not required or shall cease;

29 (4) Shall specify that the juvenile's placement and care are the
30 responsibility of the county department of social services and that
31 the agency is to provide or arrange for the foster care or other
32 placement of the juvenile; and

33 (5) May provide for services or other efforts aimed at returning the
34 juvenile to a safe home or at achieving another permanent plan for
35 the juvenile.

36 A finding that reasonable efforts have not been made by a county department of
37 social services shall not preclude the entry of an order authorizing the juvenile's
38 placement when the court finds that placement is necessary for the protection of the
39 juvenile. Where efforts to prevent the need for the juvenile's placement were
40 precluded by an immediate threat of harm to the juvenile, the court may find that the
41 placement of the juvenile in the absence of such efforts was reasonable.

42 (b) In any order placing a juvenile in the custody or placement responsibility of a
43 county department of social services, whether an order for continued nonsecure
44 custody, a dispositional order, or a review order, the court may direct that reasonable

1 efforts to eliminate the need for placement of the juvenile shall not be required or
2 shall cease if the court makes written findings of fact that:

- 3 (1) Such efforts clearly would be futile or would be inconsistent with
4 the juvenile's health, safety, and need for a safe, permanent home
5 within a reasonable period of time;
- 6 (2) A court of competent jurisdiction has determined that the parent
7 has subjected the child to aggravated circumstances as defined in
8 G.S. ~~7A-517(3a)~~; 7B-101(1a);
- 9 (3) A court of competent jurisdiction has terminated involuntarily the
10 parental rights of the parent to another child of the parent; or
- 11 (4) A court of competent jurisdiction has determined that: the parent
12 has committed murder or voluntary manslaughter of another child
13 of the parent; has aided, abetted, attempted, conspired, or solicited
14 to commit murder or voluntarily manslaughter of the child or
15 another child of the parent; or has committed a felony assault
16 resulting in serious bodily injury to the child or another child of
17 the parent.

18 (c) At any hearing at which the court finds that reasonable efforts to eliminate the
19 need for the juvenile's placement are not required or shall cease, the court shall
20 direct that a permanency planning hearing as required by G.S. ~~7A-657.1~~ 7B-906.1 be
21 held within 30 calendar days after the date of the hearing and, if practicable, shall set
22 the date and time for the permanency planning hearing.

23 (d) In determining reasonable efforts to be made with respect to a juvenile and in
24 making such reasonable efforts, the juvenile's health and safety shall be the
25 paramount concern. Reasonable efforts to preserve or reunify families may be made
26 concurrently with efforts to plan for the juvenile's adoption, to place the juvenile
27 with a legal guardian, or to place the juvenile in another permanent arrangement."

28 Section 22. G.S. 7B-801, as rewritten and recodified by enacted Senate
29 Bill 1260, 1997 General Assembly, reads as rewritten:

30 "**§ 7B-801. Adjudicatory hearing.**

31 The adjudicatory hearing shall be held in the district at such time and place as the
32 chief district court judge shall ~~designate~~; designate but no later than 60 days from the
33 filing of the petition, unless the judge pursuant to G.S. 7B-803 orders that it be held
34 at a later time. ~~The court may exclude the public from the hearing unless the~~
35 ~~juvenile moves that the hearing be open, which motion shall be granted.~~ At a
36 hearing in which a juvenile is alleged to be abused, neglected, or dependent, the
37 judge shall exclude the general public."

38 Section 23. G.S. 7B-903, as rewritten and recodified by enacted Senate
39 Bill 1260, 1997 General Assembly, reads as rewritten:

40 "**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

41 The following alternatives for disposition shall be available to any court exercising
42 jurisdiction, and the court may combine any of the applicable alternatives when the
43 court finds the disposition to be in the best interests of the juvenile:

- 1 (1) The court may dismiss the case or continue the case in order to
2 allow the parent or others to take appropriate action.
- 3 (2) In the case of any juvenile who needs more adequate care or
4 supervision or who needs placement, the court may:
- 5 a. Require that the juvenile be supervised in the juvenile's own
6 home by the department of social services in the juvenile's
7 county, or by other personnel as may be available to the
8 court, subject to conditions applicable to the parent,
9 guardian, custodian, or caretaker as the court may specify;
10 or
- 11 b. Place the juvenile in the custody of a parent, relative,
12 private agency offering placement services, or some other
13 suitable person; or
- 14 c. Place the juvenile in the custody of the department of social
15 services in the county of the juvenile's residence, or in the
16 case of a juvenile who has legal residence outside the State,
17 in the physical custody of the department of social services
18 in the county where the juvenile is found so that agency
19 may return the juvenile to the responsible authorities in the
20 juvenile's home state. The director may, unless otherwise
21 ordered by the court, arrange for, provide, or consent to,
22 needed routine or emergency medical or surgical care or
23 treatment. In the case where the parent is unknown,
24 unavailable, or unable to act on behalf of the juvenile, the
25 director may, unless otherwise ordered by the court, arrange
26 for, provide, or consent to any psychiatric, psychological,
27 educational, or other remedial evaluations or treatment for
28 the juvenile placed by a court or the court's designee in the
29 custody or physical custody of a county department of social
30 services under the authority of this or any other Chapter of
31 the General Statutes. Prior to exercising this authority, the
32 director shall make reasonable efforts to obtain consent from
33 a parent or guardian of the affected juvenile. If the director
34 cannot obtain such consent, the director shall promptly
35 notify the parent or guardian that care or treatment has
36 been provided and shall give the parent frequent status
37 reports on the circumstances of the juvenile. Upon request
38 of a parent or guardian of the affected juvenile, the results
39 or records of the aforementioned evaluations, findings, or
40 treatment shall be made available to such parent or guardian
41 by the director unless prohibited by G.S. 122C-53(d). If a
42 juvenile is removed from the home and placed in custody or
43 placement responsibility of a county department of social
44 services, the Director shall not allow unsupervised visitation

1 with, or return physical custody of the juvenile to, the
2 parent, guardian, custodian, or caretaker without a hearing
3 at which the court finds that the juvenile will receive proper
4 care and supervision in a safe home.

5 In placing a juvenile in out-of-home care under this
6 section, the court shall first consider whether a relative of
7 the juvenile is willing and able to provide proper care and
8 supervision of the juvenile in a safe home. If the court finds
9 that the relative is willing and able to provide proper care
10 and supervision in a safe home, then the court shall order
11 placement of the juvenile with the relative unless the court
12 finds that the placement is contrary to the best interests of
13 the juvenile. Placement of a juvenile with a relative outside
14 of this State must be in accordance with the Interstate
15 Compact on the Placement of Children.

16 (3) In any case, the court may order that the juvenile be examined by
17 a physician, psychiatrist, psychologist, or other qualified expert as
18 may be needed for the court to determine the needs of the
19 juvenile:

20 a. Upon completion of the examination, the court shall
21 conduct a hearing to determine whether the juvenile is in
22 need of medical, surgical, psychiatric, psychological, or other
23 treatment and who should pay the cost of the treatment. The
24 county manager, or such person who shall be designated by
25 the chairman of the county commissioners, of the juvenile's
26 residence shall be notified of the hearing, and allowed to be
27 heard. If the court finds the juvenile to be in need of
28 medical, surgical, psychiatric, psychological, or other
29 treatment, the court shall permit the parent or other
30 responsible persons to arrange for treatment. If the parent
31 declines or is unable to make necessary arrangements, the
32 court may order the needed treatment, surgery, or care, and
33 the court may order the parent to pay the cost of the care
34 pursuant to G.S. 7B-904. If the court finds the parent is
35 unable to pay the cost of treatment, the court shall order the
36 county to arrange for treatment of the juvenile and to pay
37 for the cost of the treatment. The county department of
38 social services shall recommend the facility that will provide
39 the juvenile with treatment.

40 b. If the court believes, or if there is evidence presented to the
41 effect that the juvenile is mentally ill or is developmentally
42 disabled, the court shall refer the juvenile to the area mental
43 health, developmental disabilities, and substance abuse
44 services director for appropriate action. A juvenile shall not

1 be committed directly to a State hospital or mental
2 retardation center; and orders purporting to commit a
3 juvenile directly to a State hospital or mental retardation
4 center except for an examination to determine capacity to
5 proceed shall be void and of no effect. The area mental
6 health, developmental disabilities, and substance abuse
7 director shall be responsible for arranging an
8 interdisciplinary evaluation of the juvenile and mobilizing
9 resources to meet the juvenile's needs. If institutionalization
10 is determined to be the best service for the juvenile,
11 admission shall be with the voluntary consent of the parent
12 or guardian. If the parent, guardian, custodian, or caretaker
13 refuses to consent to a mental hospital or retardation center
14 admission after such institutionalization is recommended by
15 the area mental health, developmental disabilities, and
16 substance abuse director, the signature and consent of the
17 court may be substituted for that purpose. In all cases in
18 which a regional mental hospital refuses admission to a
19 juvenile referred for admission by a court and an area
20 mental health, developmental disabilities, and substance
21 abuse director or discharges a juvenile previously admitted
22 on court referral prior to completion of treatment, the
23 hospital shall submit to the court a written report setting out
24 the reasons for denial of admission or discharge and setting
25 out the juvenile's diagnosis, indications of mental illness,
26 indications of need for treatment, and a statement as to the
27 location of any facility known to have a treatment program
28 for the juvenile in question."

29 Section 24. G.S. 7B-905, as rewritten and recodified by enacted Senate
30 Bill 1260, 1997 General Assembly, reads as rewritten:

31 "**§ 7B-905. Dispositional order.**

32 (a) The dispositional order shall be in writing and shall contain appropriate
33 findings of fact and conclusions of law. The court shall state with particularity, both
34 orally and in the written order of disposition, the precise terms of the disposition
35 including the kind, duration, and the person who is responsible for carrying out the
36 disposition and the person or agency in whom custody is vested.

37 (b) A dispositional order under which a juvenile is removed from the custody of a
38 parent, guardian, custodian, or caretaker shall direct that the review hearing required
39 by G.S. 7B-906 be held within ~~six months~~ 90 days from of the date of the juvenile's
40 ~~placement in custody~~ dispositional hearing and, if practicable, shall set the date and
41 time for the review hearing.

42 (c) Any dispositional order ~~directing placement of a juvenile in foster care shall~~
43 ~~also contain:~~ shall comply with the requirements of G.S. 7B-506.1.

1 (1) ~~A finding that the juvenile's continuation in or return to the~~
2 ~~juvenile's home would be contrary to the juvenile's best interests;~~
3 ~~and~~

4 (2) ~~Findings as to whether reasonable efforts have been made to~~
5 ~~prevent or eliminate the need for placement of the juvenile in~~
6 ~~foster care. A finding that reasonable efforts were not made shall~~
7 ~~not preclude entry of a dispositional order authorizing placement~~
8 ~~in foster care when the court finds that such placement is needed~~
9 ~~for protection of the juvenile. When efforts to prevent the need for~~
10 ~~the juvenile's placement are precluded by an immediate threat of~~
11 ~~harm to the juvenile, the court may find that placement of the~~
12 ~~juvenile in the absence of such efforts is reasonable.~~

13 ~~The order may provide for services or other efforts aimed at returning the juvenile~~
14 ~~promptly to a safe home. If the court finds through written findings of fact that efforts~~
15 ~~to eliminate the need for placement of the juvenile in custody clearly would be futile~~
16 ~~or would be inconsistent with the juvenile's safety and need for a safe, permanent~~
17 ~~home within a reasonable period of time, the court shall specify in its order that~~
18 ~~reunification efforts are not required or order that reunification efforts cease.~~

19 ~~(d) An order that places a juvenile in the custody of a county department of social~~
20 ~~services for placement shall specify that the juvenile's placement and care are the~~
21 ~~responsibility of the county department of social services and that the county~~
22 ~~department is to provide or arrange for the foster care or other placement of the~~
23 ~~juvenile. Any dispositional order shall provide for appropriate visitation as may be in~~
24 ~~the best interests of the juvenile and consistent with the juvenile's health and safety.~~
25 ~~If the juvenile is placed in the custody or placement responsibility of a county~~
26 ~~department of social services, the court may order the director to arrange, facilitate,~~
27 ~~and supervise a visitation plan expressly approved by the court."~~

28 Section 25. G.S. 7B-906, as rewritten and recodified by enacted Senate
29 Bill 1260, 1997 General Assembly, reads as rewritten:

30 "**§ 7B-906. Review of custody order.**

31 (a) In any case where custody is removed from a parent, guardian, custodian, or
32 caretaker the court shall conduct a review hearing within ~~six months of~~ 90 days from
33 ~~the date the order was entered, of the dispositional hearing shall conduct a second~~
34 ~~review within six months after the first review, and shall conduct subsequent reviews~~
35 ~~at least every year thereafter. a review hearing within six months thereafter. The~~
36 ~~director of social services shall make timely requests~~ a timely request to the clerk to
37 ~~calendar the case~~ each review at a session of court scheduled for the hearing of
38 ~~juvenile matters within six months of the date the order was entered. matters. The~~
39 ~~director shall make timely requests for calendaring subsequent reviews. The clerk~~
40 ~~shall give 15 days' notice of the review~~ and its purpose to the parent, the juvenile, if
41 ~~12 years of age or more, the guardian, any foster parent, relative, or preadoptive~~
42 ~~parent providing care for the child, the custodian or agency with custody, the~~
43 ~~guardian ad litem, and any other person or agency the court may specify, indicating~~
44 ~~the court's impending review. Nothing in this subsection shall be construed to make~~

1 any foster parent, relative, or preadoptive parent a party to the proceeding solely
2 based on receiving notice and an opportunity to be heard.

3 (b) Notwithstanding other provisions of this Article, the court may waive the
4 holding of review hearings required by subsection (a) of this section, may require
5 written reports to the court by the agency or person holding custody in lieu of review
6 hearings, or order that review hearings be held less often than every ~~12~~ six months, if
7 the court finds by clear, cogent, and convincing evidence that:

- 8 (1) The juvenile has resided with a relative or has been in the custody
9 of another suitable person for a period of at least one year;
- 10 (2) The placement is stable and continuation of the placement is in the
11 juvenile's best interests;
- 12 (3) Neither the juvenile's best interests nor the rights of any party
13 require that review hearings be held every 12 months;
- 14 (4) All parties are aware that the matter may be brought before the
15 court for review at any time by the filing of a motion for review or
16 on the court's own motion; and
- 17 (5) The court order has designated the relative or other suitable
18 person as the juvenile's permanent caretaker or guardian of the
19 person.

20 The court may not waive or refuse to conduct a review hearing if a party files a
21 motion seeking the review.

22 (c) At every review hearing, the court shall consider information from the
23 ~~department of social services, the juvenile, the parent, the guardian, the custodian,~~
24 ~~the foster parent, the guardian ad litem, and any public or private agency which will~~
25 ~~aid it in its review.~~ parent, the juvenile, the guardian, any foster parent, relative or
26 preadoptive parent providing care for the child, the custodian or agency with custody,
27 the guardian ad litem, and any other person or agency which will aid in its review.

28 In each case the court shall consider the following criteria and make written
29 findings regarding those that are relevant:

- 30 (1) Services which have been offered to reunite the family, or whether
31 efforts to reunite the family clearly would be futile or inconsistent
32 with the juvenile's safety and need for a safe, permanent home
33 within a reasonable period of time.
- 34 (2) Where the juvenile's return home is unlikely, the efforts which
35 have been made to evaluate or plan for other methods of care.
- 36 (3) Goals of the foster care placement and the appropriateness of the
37 foster care plan.
- 38 (4) A new foster care plan, if continuation of care is sought, that
39 addresses the role the current foster parent will play in the
40 planning for the juvenile.
- 41 (5) Reports on the placements the juvenile has had and any services
42 offered to the juvenile and the parent.
- 43 (5a) An appropriate visitation plan.

1 (5b) If the juvenile is 16 or 17 years of age, a report on an independent
2 living assessment of the juvenile and, if appropriate, an
3 independent living plan developed for the juvenile.

4 (6) When and if termination of parental rights should be considered.

5 (7) Any other criteria the court deems necessary.

6 (d) The court, after making findings of fact, may appoint a guardian of the person
7 for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by
8 G.S. 7B-903, including the authority to place the juvenile in the custody of either
9 parent or any relative found by the court to be suitable and found by the court to be
10 in the best interests of the juvenile. ~~If the juvenile is placed in or remains in the~~
11 ~~custody of the department of social services, the court may authorize the department~~
12 ~~to arrange and supervise a visitation plan. Except for such visitation, the juvenile~~
13 ~~shall not be returned to the parent, guardian, custodian, or caretaker without a~~
14 ~~hearing at which the court finds sufficient facts to show that the juvenile will receive~~
15 ~~proper care and supervision.~~ The court may enter an order continuing the placement
16 under review or providing for a different placement as is deemed to be in the best
17 interests of the juvenile. If at any time custody is restored to a parent, guardian,
18 custodian, or caretaker the court shall be relieved of the duty to conduct periodic
19 judicial reviews of the placement.

20 ~~(e) At a hearing designated by the court, but at least within 12 months after the~~
21 ~~juvenile's placement, a review hearing shall be held under this section and designated~~
22 ~~as a permanency planning hearing. The purpose of the hearing shall be to develop a~~
23 ~~plan to achieve a safe, permanent home for the juvenile within a reasonable period of~~
24 ~~time. Notice of the hearing shall inform the parties of the purpose of the hearing. At~~
25 ~~the conclusion of the hearing, if the juvenile is not returned home, the court shall~~
26 ~~make specific findings as to the best plan of care to achieve a safe, permanent home~~
27 ~~for the juvenile within a reasonable period of time and shall enter an order consistent~~
28 ~~with those findings.~~

29 (f) The provisions of ~~subsections (b), (c), and (d) of G.S. 7B-905~~ G.S. 7B-506.1
30 shall apply to any order entered under this section ~~which continues the foster care~~
31 ~~placement of a juvenile.~~ section."

32 Section 25.1. If Senate Bill 1260, 1997 General Assembly, is enacted into
33 law by the 1997 General Assembly, then G.S. 7A-657.1 as enacted in Part I of this act
34 is recodified as G.S. 7B-906.1 and reads as rewritten:

35 "**§ 7B-906.1. Permanency planning hearing.**

36 (a) In any case where custody is removed from a ~~parent or person standing in loco~~
37 ~~parentis, parent, guardian, custodian, or caretaker,~~ the judge shall conduct a review
38 hearing designated as a permanency planning hearing within 12 months after the date
39 of the initial order removing custody, and the hearing may be combined, if
40 appropriate, with a review hearing required by G.S. ~~7A-657. 7B-906.~~ The purpose of
41 the permanency planning hearing shall be to develop a plan to achieve a safe,
42 permanent home for the juvenile within a reasonable period of time. Subsequent
43 permanency planning hearings shall be held at least every six months thereafter, or
44 earlier as set by the court, to review the progress made in finalizing the permanent

1 plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile.
2 The Director of Social Services shall make a timely request to the clerk to calendar
3 each permanency planning hearing at a session of court scheduled for the hearing of
4 juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose
5 to the ~~parent and to any person standing in loco parentis~~, parent, the juvenile if 12
6 years of age or more, the guardian, any foster parent, relative, or preadoptive parent
7 providing care for the child, the custodian or agency with custody, the guardian ad
8 litem, and any other person or agency the court may specify, indicating the court's
9 impending review. Nothing in this provision shall be construed to make any foster
10 parent, relative, or preadoptive parent a party to the proceeding solely based on
11 receiving notice and an opportunity to be heard.

12 (b) At any permanency planning review, the court shall consider information from
13 the parent, ~~any person standing in loco parentis~~, the juvenile, the guardian, any foster
14 parent, relative or preadoptive parent providing care for the child, the custodian or
15 agency with custody, the guardian ad litem, and any other person or agency which
16 will aid it in the court's review. At the conclusion of the hearing, if the juvenile is
17 not returned home, the court shall consider the following criteria and make written
18 findings regarding those that are relevant:

- 19 (1) Whether it is possible for the juvenile to be returned home
20 immediately or within the next six months, and if not, why it is not
21 in the juvenile's best interests to return home;
- 22 (2) Where the juvenile's return home is unlikely within six months,
23 whether legal guardianship or custody with a relative or some
24 other suitable person should be established, and if so, the rights
25 and responsibilities which should remain with the parents;
- 26 (3) Where the juvenile's return home is unlikely within six months,
27 whether adoption should be pursued and if so, any barriers to the
28 juvenile's adoption;
- 29 (4) Where the juvenile's return home is unlikely within six months,
30 whether the juvenile should remain in the current placement or be
31 placed in another permanent living arrangement and why;
- 32 (5) Whether the county department of social services has since the
33 initial permanency plan hearing made reasonable efforts to
34 implement the permanent plan for the juvenile;
- 35 (6) Any other criteria the court deems necessary.

36 (c) At the conclusion of the hearing, the judge shall make specific findings as to
37 the best plan of care to achieve a safe, permanent home for the juvenile within a
38 reasonable period of time. The judge may appoint a guardian of the person for the
39 juvenile pursuant to G.S. ~~7A-585~~ 7B-600 or make any disposition authorized by G.S.
40 ~~7A-647~~ 7B-903 including the authority to place the child in the custody of either
41 parent or any relative found by the court to be suitable and found by the court to be
42 in the best interest of the juvenile. If the juvenile is not returned home, the court
43 shall enter an order consistent with its findings that directs the department of social
44 services to make reasonable efforts to place the juvenile in a timely manner in

1 accordance with the permanent plan, to complete whatever steps are necessary to
2 finalize the permanent placement of the juvenile, and to document such steps in the
3 juvenile's case plan. If at any time custody is restored to a parent, or findings are
4 made in accordance with G.S. ~~7A-657(b)~~, 7B-906(b) the court shall be relieved of the
5 duty to conduct periodic judicial reviews of the placement.

6 If the court continues the juvenile's placement in the custody or placement
7 responsibility of a county department of social services, the provisions of G.S.
8 ~~7A-577.1~~ 7B-506.1 shall apply to any order entered under this section.

9 (d) In the case of a juvenile who is in the custody or placement responsibility of a
10 county department of social services, and has been in placement outside the home for
11 15 of the most recent 22 months; or a court of competent jurisdiction has determined
12 that the parent has abandoned the child; or has committed murder or voluntary
13 manslaughter of another child of the parent; or has aided, abetted, attempted,
14 conspired, or solicited to commit murder or voluntary manslaughter of the child or
15 another child of the parent, the court shall order the director of the department of
16 social services to initiate a proceeding to terminate the parental rights of the parent
17 unless the court finds:

- 18 (1) The permanent plan for the juvenile is guardianship or custody
19 with a relative or some other suitable person;
- 20 (2) The court makes specific findings why the filing of a petition for
21 termination of parental rights is not in the best interests of the
22 child; or
- 23 (3) The department of social services has not provided the juvenile's
24 family with such services as the department deems necessary, when
25 reasonable efforts are still required to enable the juvenile's return
26 to a safe home.

27 (e) If a proceeding to terminate the parental rights of the juvenile's parents is
28 necessary in order to perfect the permanent plan for the juvenile, the director of the
29 department of social services shall file a petition to terminate parental rights within
30 60 calendar days from the date of the permanency planning hearing unless the court
31 makes written findings why the petition cannot be filed within 60 days. If the court
32 makes findings to the contrary, the court shall specify the time frame in which any
33 needed petition to terminate parental rights shall be filed."

34 Section 26. G.S. 7B-907, as rewritten and recodified by enacted Senate
35 Bill 1260, 1997 General Assembly, reads as rewritten:

36 "**§ 7B-907. Posttermination of parental rights' placement court review.**

37 (a) The purpose of each placement review is to ensure that every reasonable effort
38 is being made to provide for a permanent placement plan for the juvenile who has
39 been placed in the custody of a county director or licensed child-placing agency,
40 which is consistent with the juvenile's best interests. At each review hearing the court
41 may consider information from the department of social services, the licensed
42 child-placing agency, the guardian ad litem, the ~~juvenile, the~~ child, any foster parent,
43 relative, or preadoptive parent providing care for the child, and any other person or
44 agency the court determines is likely to aid in the review.

1 (b) The court shall conduct a placement review not later than six months from the
2 date of the termination hearing when parental rights have been terminated by a
3 petition brought by any person or agency designated in G.S. 7B-1102(2) through (5)
4 and a county director or licensed child-placing agency has custody of the juvenile.
5 The court shall conduct reviews every six months thereafter until the juvenile is
6 placed for adoption and the adoption petition is filed by the adoptive parents:

7 (1) No more than 30 days and no less than 15 days prior to each
8 review, the clerk shall give notice of the review to the juvenile if
9 the juvenile is at least 12 years of age, the legal custodian of the
10 juvenile, ~~the~~ any foster parent, relative, or preadoptive parent
11 providing care for the juvenile, the guardian ad litem, if any, and
12 any other person or agency the court may specify. Only the
13 juvenile, if the juvenile is at least 12 years of age, the legal
14 custodian of the juvenile, ~~the~~ any foster parent, relative, or
15 preadoptive parent providing care for the juvenile, and the
16 guardian ad litem shall attend the review hearings, except as
17 otherwise directed by the court. Nothing in this subdivision shall
18 be construed to make any foster parent, relative, or preadoptive
19 parent a party to the proceeding solely based on receiving notice
20 and an opportunity to be heard.

21 (2) If a guardian ad litem for the juvenile has not been appointed
22 previously by the court in the termination proceeding, the court, at
23 the initial six-month review hearing, may appoint a guardian ad
24 litem to represent the juvenile. The court may continue the case
25 for such time as is necessary for the guardian ad litem to become
26 familiar with the facts of the case.

27 (c) The court shall consider at least the following in its review:

28 (1) The adequacy of the plan developed by the county department of
29 social services or a licensed child-placing agency for a permanent
30 placement relative to the juvenile's best interests and the efforts of
31 the department or agency to implement such plan;

32 (2) Whether the juvenile has been listed for adoptive placement with
33 the North Carolina Adoption Resource Exchange, the North
34 Carolina Photo Adoption Listing Service (PALS), or any other
35 specialized adoption agency; and

36 (3) The efforts previously made by the department or agency to find a
37 permanent home for the juvenile.

38 (d) The court, after making findings of fact, shall affirm the county department's
39 or child-placing agency's plans or require specific additional steps which are
40 necessary to accomplish a permanent placement which is in the best interests of the
41 juvenile.

42 (e) If the juvenile has been placed for adoption prior to the date scheduled for
43 the review, written notice of said placement shall be given to the clerk to be placed

1 in the court file, and the review hearing shall be cancelled with notice of said
2 cancellation given by the clerk to all persons previously notified.

3 (f) The process of selection of specific adoptive parents shall be the responsibility
4 of and within the discretion of the county department of social services or licensed
5 child-placing agency. The guardian ad litem may request information from and
6 consult with the county department or child-placing agency concerning the selection
7 process. If the guardian ad litem requests information about the selection process, the
8 county shall provide the information within five days. Any issue of abuse of
9 discretion by the county department or child-placing agency in the selection process
10 must be raised by the guardian ad litem within 10 days following the date the agency
11 notifies the court and the guardian ad litem in writing of the filing of the adoption
12 petition."

13 Section 26.1. If Senate Bill 1260, 1997 General Assembly, is enacted into
14 law by the 1997 General Assembly, then G.S. 7A-289.23.1 as enacted in Part I of this
15 act is recodified as G.S. 7B-1101.1 and reads as rewritten:

16 "**§ 7B-1101.1. Pending child abuse, neglect, or dependency hearings.**

17 When a juvenile is currently within the jurisdiction of the district court based upon
18 an abuse, neglect, or dependency proceeding, a petition for termination of parental
19 rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or
20 dependency proceeding. Any parent of that juvenile who was previously served in
21 the abuse, neglect, or dependency proceeding in accordance with G.S. ~~7A-565~~ 7B-407
22 shall be served with the petition to terminate parental rights in accordance with G.S.
23 1A-1, Rule 5."

24 Section 27. G.S. 7B-1105, as rewritten and recodified by enacted Senate
25 Bill 1260, 1997 General Assembly, reads as rewritten:

26 "**§ 7B-1105. Issuance of summons.**

27 (a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court
28 shall cause a summons to be issued. The summons shall be directed to the following
29 persons or agency, not otherwise a party petitioner, who shall be named as
30 respondents:

- 31 (1) The parents of the juvenile;
- 32 (2) Any person who has been judicially appointed as guardian of the
33 person of the juvenile;
- 34 (3) The custodian of the juvenile appointed by a court of competent
35 jurisdiction;
- 36 (4) Any county department of social services or licensed child-placing
37 agency to whom a juvenile has been released by one parent
38 pursuant to Part 7 of Article 3 of Chapter 48 of the General
39 Statutes; Statutes or any county department of social services to
40 whom placement responsibility for the child has been given by a
41 court of competent jurisdiction; and
- 42 (5) The juvenile, if the juvenile is 12 years of age or older at the time
43 the petition is filed.

1 Provided, no summons need be directed to or served upon any parent who has
2 previously surrendered the juvenile to a county department of social services or
3 licensed child-placing agency nor to any parent who has consented to the adoption of
4 the juvenile by the petitioner. The summons shall notify the respondents to file a
5 written answer within 30 days after service of the summons and petition. Service of
6 the summons shall be completed as provided under the procedures established by
7 G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under
8 disability even though the parent is a minor.

9 (b) The summons shall be issued for the purpose of terminating parental rights
10 pursuant to the provisions of subsection (a) of this section and shall include:

- 11 (1) The name of the minor juvenile;
- 12 (2) Notice that a written answer to the petition must be filed with the
13 clerk who signed the petition within 30 days after service of the
14 summons and a copy of the petition, or the parent's rights may be
15 terminated;
- 16 (3) Notice that if they are indigent, the parents are entitled to
17 appointed counsel. The parents may contact the clerk immediately
18 to request counsel;
- 19 (4) Notice that this is a new case. Any attorney appointed previously
20 will not represent the parents in this proceeding unless ordered by
21 the court;
- 22 (5) Notice that the date, time, and place of the hearing will be mailed
23 by the clerk upon filing of the answer or 30 days from the date of
24 service if no answer is filed; and
- 25 (6) Notice of the purpose of the hearing and notice that the parents
26 may attend the termination hearing.

27 (c) If a county department of social services, not otherwise a party petitioner, is
28 served with a petition alleging that the parental rights of the parent should be
29 terminated pursuant to G.S. 7B-1110, the department shall file a written answer and
30 shall be deemed a party to the proceeding."

31 Section 28. G.S. 7B-1110, as rewritten and recodified by enacted Senate
32 Bill 1260, 1997 General Assembly, reads as rewritten:

33 "**§ 7B-1110. Grounds for terminating parental rights.**

34 The court may terminate the parental rights upon a finding of one or more of the
35 following:

- 36 (1) The parent has abused or neglected the juvenile. The juvenile
37 shall be deemed to be abused or neglected if the court finds the
38 juvenile to be an abused juvenile within the meaning of G.S. 7B-
39 101(1) or a neglected juvenile within the meaning of G.S. 7B-
40 101(14)
- 41 (2) The parent has willfully left the juvenile in foster care or
42 placement outside the home for more than 12 months without
43 showing to the satisfaction of the court that reasonable progress
44 under the circumstances has been made within 12 months in

1 correcting those conditions which led to the removal of the
2 juvenile. Provided, however, that no parental rights shall be
3 terminated for the sole reason that the parents are unable to care
4 for the juvenile on account of their poverty.

5 (3) The burden in such proceedings shall be upon the petitioner to
6 prove the facts justifying such termination by clear and convincing
7 evidence.

8 (4) The juvenile has been placed in the custody of a county
9 department of social services, a licensed child-placing agency, a
10 child-caring institution, or a foster home, and the parent, for a
11 continuous period of six months next preceding the filing of the
12 petition, has willfully failed for such period to pay a reasonable
13 portion of the cost of care for the juvenile although physically and
14 financially able to do so.

15 (5) One parent has been awarded custody of the juvenile by judicial
16 decree or has custody by agreement of the parents, and the other
17 parent whose parental rights are sought to be terminated has for a
18 period of one year or more next preceding the filing of the petition
19 willfully failed without justification to pay for the care, support,
20 and education of the juvenile, as required by said decree or
21 custody agreement.

22 (6) The father of a juvenile born out of wedlock has not, prior to the
23 filing of a petition to terminate parental rights:

24 a. Established paternity judicially or by affidavit which has
25 been filed in a central registry maintained by the
26 Department of Health and Human Services; provided, the
27 court shall inquire of the Department of Health and Human
28 Services as to whether such an affidavit has been so filed
29 and shall incorporate into the case record the Department's
30 certified reply; or

31 b. Legitimated the juvenile pursuant to provisions of G.S. 49-
32 10 or filed a petition for this specific purpose; or

33 c. Legitimated the juvenile by marriage to the mother of the
34 juvenile; or

35 d. Provided substantial financial support or consistent care with
36 respect to the juvenile and mother.

37 (7) That the parent is incapable of providing for the proper care and
38 supervision of the juvenile, such that the juvenile is a dependent
39 juvenile within the meaning of G.S. 7B-101(7), and that there is a
40 reasonable probability that such incapability will continue for the
41 foreseeable future. Incapability under this subdivision may be the
42 result of substance abuse, mental retardation, mental illness,
43 organic brain syndrome, or any other similar cause or condition.

- 1 (8) The parent has willfully abandoned the juvenile for at least six
2 consecutive months immediately preceding the filing of the
3 petition. For the purpose of this subdivision, a juvenile may be
4 willfully abandoned by the juvenile's natural father if the mother
5 of the juvenile had been willfully abandoned by and was living
6 separate and apart from the father at the time of the juvenile's
7 birth, although the father may not have known of such birth; but in
8 any event the juvenile must be over the age of three months at the
9 time of the filing of the petition.
- 10 (9) The parent has committed murder or voluntary manslaughter of
11 another child of the parent; has aided, abetted, attempted,
12 conspired, or solicited to commit murder or voluntary
13 manslaughter of the child or another child of the parent; or has
14 committed a felony assault that results in serious bodily injury to
15 the child or another child of the parent.
- 16 (10) The parental rights of the parent with respect to another child of
17 the parent have been terminated involuntarily by a court of
18 competent jurisdiction and the parent lacks the ability or
19 willingness to establish a safe home."

20 Section 29. Sections 1 through 9 of this act become effective December 1,
21 1998, and apply to abuse, neglect, and dependency reports received, juvenile petitions
22 filed, and review hearings commenced on and after that date. Sections 10 and 11 of
23 this act become effective December 1, 1998, and apply to termination of parental
24 rights petitions filed on and after that date. Sections 12 through 16 of this act
25 become effective January 1, 1999, and apply to any placement of a minor who is in
26 the custody or placement responsibility of a county department of social services on
27 and after that date. If the 1997 General Assembly enacts Senate Bill 1260, then on
28 the effective date of that act, Sections 1 through 16 of this act expire June 30, 1999
29 and Sections 18 through 28 of this act become effective. The remainder of this act is
30 effective when it becomes law.
31



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

Memorandum

Date: August 3, 1998
To: Senator Bill Martin
From: Gann Watson, Staff Attorney, gannw@ms.ncga.state.nc.us
Subject: S1532 - Adoption Federal Requirements - Certification

G.S. 120-36.8 requires that every introduced bill that proposes any change in the law which purports to implement federal law or purports to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds, shall have attached a certification identifying the federal law. The certification is to be provided by the Fiscal Research Division in consultation with Bill Drafting/General Research.

Senate Bill 1532 makes changes to State law to ensure that the State is in compliance with Public Law 105-89, The Adoption and Safe Families Act of 1997. Compliance with P.L. 105-89 is required in order for the State to continue to receive federal funds for the State's foster care and adoption program.

The purpose of the federal law is to assure safe homes for children in a timely manner, expedite reunification of families when reunification is in the child's best interest, provide for permanent placement of children with their relatives when appropriate and in the child's best interest, initiate proceedings to terminate parental rights when parents have not provided for their children or have subjected their children to an unsafe home environment, and to facilitate timely adoption of children for whom reunification with the family is inappropriate. In order to accomplish these purposes, federal law requires the following: the health and safety of children must be of paramount concern when making reasonable efforts to keep children in the home or reunify families when children have been removed; initiate proceedings to terminate parental rights for certain children in foster care; and require criminal history record checks on foster parents and prospective adoptive

parents. These federal requirements also necessitate changes in State law pertaining to permanency planning hearings and to the time lines for adjudicatory, dispositional, and review stages of custody order hearings.

Sections 1- 16 and Section 18 are necessary changes in State law in order to comply with P.L. 105-89. Section 17 appropriates funds to implement the criminal history record checks required for foster care and prospective adoptive parents. Section 2 includes a technical change to the law to restore language deleted in error in S.L. 1997-390.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Thursday, August 13, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **581** Sex Exploitation Act
 Draft Number: PCS 4211
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1) **908** Modify Rights of Decedent's Spouse
 Draft Number: PCS 2413
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Senate Judiciary

Aug 11, 1998

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

Dick Taylor	NCATL
Anne L. Edwards	Christian Justice COP-NC
Natalie Butts	Sen. Lee's office
Steve Keene	NCMS
Nicholas E. Stratas	NC Psychiatric Assoc.
Katherine Hine	NC Psychology Assoc
Bill Scoggin	NC BAR Assoc.
Eric Halus	Sen. Rand's office
CAROLYN RUSSELL	HOUSE
John Bason + crew	UNC-TV
Dennis Patterson	AP
FRED TAYLOR	WRAL-TV
Jean W. Boyd	CSC Craven Co
Bondia Jenkins	CSC Pitt Co
Ann Farrell	CSC Wilson Co
Rachel Joyner	CSC Nash Co
Roslyn Sand	NC NOW
Rachel M. Joyner	Nash Co. Clerk of Court
William Blitt	NCMS
Charles Cromer	NCATL
John McCallan	WFSB PA

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

NAME	FIRM OR STATE AGENCY AND ADDRESS
King State	AOC
Bill Jones	NCATC
Deborah Ross	AChE
Bernard Allen	SOB
Jane P. Gray	DOJ
AL DE ITLID	DOA/YITD
Kristen Guldberg	NC DSS
Joan McAnister	NC DSS
Jill Ann Lumma	DHHS-DSS
Jane Smith	DHHS-DSS
Sharon Ransome	DSS
Chuck Harris	DHHS-DSS
David Jordan	AG's
Bob Atkinson	AOC
LANA DIAL	AOC - COURT IMPROVEMENT
Cy Gurney	AOC - Guardian ad Litem
Walter DeBain	Smith Anderson
Mark Denson	Capital Group
Jon Bevan	Capital Group

MINUTES
SENATE JUDICIARY COMMITTEE
August 20, 1998

The Senate Judiciary Committee met on Thursday, August 20, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Odom, Acting Chairman, called the meeting to order and recognized Senator Cooper to explain Senate Bill 763 - AN ACT TO CREATE THE CRIME VICTIMS RIGHTS ACT.

Senator William Martin moved to adopt a Proposed Committee Substitute to Senate Bill 763 for discussion. The motion carried by a majority voice vote.

Senator Cooper gave background information on the constitutional amendment which was sponsored by Senator Ed Warren.

Senator Warren was recognized to comment on his bill which was approved by the voters in November, 1996.

Catherine Smith, with the N. C. Victims Assistance Network, and Walker Reagan, Committee Counsel, were recognized to answer questions from the Committee.

Rex Gore, President of the N. C. District Attorneys Association; John Kennedy, Wake County Clerk of Court; Pete Powell, with the Administrative Office of the Court; and Rosalyn Savitt, with the N. C. Coalition Against Domestic Violence and N. C. NOW, were recognized to comment on the bill.

Senator Cooper announced that the discussion of the bill would continue at the meeting scheduled for August 25, 1998.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Thursday, August 20, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 763 Crime Victims Rights Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 08/19/98 1:12 PM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 763

Short Title: Crime Victims Rights Act.

(Public)

Sponsors: Senators Cooper; Albertson, Dalton, Gulley, Hoyle, Lee, Martin of Guilford, Miller, Odom, Perdue, Phillips, Plyler, Rand, Warren, Weinstein, and Winner.

Referred to: Judiciary.

April 8, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIME VICTIMS RIGHTS ACT.
3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 15A of the General Statutes is amended by adding a
5 new Subchapter to read:

6 "SUBCHAPTER XVI. CRIME VICTIMS RIGHTS.

7 "ARTICLE 101.

8 "Crime Victims Rights Act.

9 "§ 15A-2010. Definitions.

10 The following definitions apply in this Article:

- 11 (1) Accused. -- A person who has been arrested and charged with
12 committing a crime covered by this Article.
- 13 (2) Law enforcement agency. -- The police or sheriff department
14 responsible for investigating a crime covered by this Article.
- 15 (3) Next of kin. -- The victim's spouse, children, parents, or siblings.
16 The term does not include such a person, however, if the person
17 caused the victim's injuries or death.
- 18 (4) Victim. -- A person against whom there is probable cause to
19 believe one of the following crimes was committed:
- 20 a. A Class A, B, C, D, or E felony.
- 21 b. A Class F felony if it is a violation of one of the following:
22 G.S. 14-16.6(b), 14-16.6(c), 14-18, 14-32.1(e), 14-32.2(b)(3).

1 14-32.3(b), 14-34.2, 14-34.5, 14-41, 14-43.2, 14-43.3, 14-
2 190.17, 14-190.19, 14-202.1, or 14-288.9.

3 c. A Class G felony if it is a violation of one of the following:
4 G.S. 14-32.3(b), 14-51, 14-58, 14-87.1, 20-138.5(b), or 20-
5 141.4.

6 d. A Class H felony if it is a violation of one of the following:
7 G.S. 14-32.3(a), 14-32.3(c), or 14-33.2.

8 e. A Class I felony if it is a violation of one of the following:
9 G.S. 14-277.3, 14-32.3(b), 14-34.6(b), or 14-190.17A.

10 A person is also a victim if the perpetrator of one of the
11 crimes listed above is a juvenile and the case was referred to
12 superior court for adjudication or the perpetrator was found
13 not guilty by reason of insanity.

14 **"§ 15A-2011. Responsibilities of law enforcement agency.**

15 (a) Within 24 hours after identifying a victim covered by this Article, the law
16 enforcement agency shall provide the victim with the following information:

17 (1) The availability of medical services, if needed.

18 (2) The availability of crime victims compensation funds under
19 Chapter 15B of the General Statutes and the address and phone
20 number of the agency responsible for dispensing the funds.

21 (3) The address and phone number of the district attorney's office that
22 will be responsible for prosecuting the victim's case.

23 (4) The name and phone number of a law enforcement agency
24 employee whom the victim may contact if the victim has not been
25 notified of an arrest in the victim's case within six months after the
26 crime was reported to the law enforcement agency.

27 (b) Within 24 hours after the arrest of a person believed to have committed a
28 crime covered by this Article, the law enforcement agency shall:

29 (1) Inform the victim of the accused's opportunity for pretrial release.

30 (2) Provide the victim with the name and phone number of a law
31 enforcement agency employee whom the victim may contact to
32 find out whether the accused has been released from custody.

33 (c) Within 24 hours after an accused has been detained and no later than five days
34 after the accused has been arrested if the accused is not detained, the law
35 enforcement agency shall forward to the district attorney's office that will be
36 responsible for prosecuting the case the victim's name, address, date of birth, social
37 security number, race, sex, and phone number.

38 **"§ 15A-2012. Responsibilities of the district attorney's office.**

39 (a) Within 21 days after the arrest of the accused, but not less than 24 hours
40 before the accused's first scheduled probable cause hearing, the district attorney's
41 office shall provide to the victim a pamphlet or other written material that explains in
42 a clear and concise manner the following:

- 1 (1) The victim's rights under this Article, including the right to confer
2 with the attorney prosecuting the case about the disposition of the
3 case.
- 4 (2) The responsibilities of the law enforcement agency and the district
5 attorney's office under this Article.
- 6 (3) The victim's eligibility for compensation under the Crime Victims
7 Compensation Act and the date by which the victim must file a
8 claim for compensation.
- 9 (4) The steps generally taken by the district attorney's office when
10 prosecuting a felony case.
- 11 (5) Suggestions on what the victim should do if threatened or
12 intimidated by the accused or someone acting on the accused's
13 behalf.
- 14 (6) The name and phone number of a victim and witness assistant in
15 the district attorney's office whom the victim may contact for
16 further information.
- 17 (b) Upon receiving the information in subsection (a) of this section, the victim
18 shall, on a form provided by the district attorney's office, indicate whether the victim
19 wishes to receive any further notices of trial proceedings involving the accused. If the
20 victim elects to receive further notices, the victim shall be responsible for notifying
21 the district attorney's office or any other department or agency that has a
22 responsibility under this Article of any changes in the victim's address and phone
23 number.
- 24 (c) A victim has the right to be present at every court proceeding at which the
25 accused has the right to be present. The district attorney's office shall notify a victim
26 of the date, time, and place of these proceedings. All notices required to be given by
27 the district attorney's office shall be given in a manner that is reasonably calculated
28 to be received by the victim prior to the date of the court proceeding.
- 29 (d) Whenever practical, the district attorney's office shall provide a secure waiting
30 area during court proceedings that does not place the victim in close proximity to the
31 defendant or the defendant's family.
- 32 (e) When the victim is to be called as a witness in a court proceeding, the court
33 shall make every effort to permit the fullest attendance possible by the victim in the
34 proceedings.
- 35 (f) Prior to the disposition of the case, the district attorney's office shall offer the
36 victim of crime the opportunity to consult with the prosecuting attorney to obtain the
37 views of the victim about the disposition of a crime, including the victim's views
38 about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.
39 **"§ 15A-2013. Victim impact statement.**
- 40 (a) The district attorney's office shall notify the victim that the victim has the right
41 to make an oral or written victim impact statement, which shall be considered by the
42 court or jury, as the case may be, in sentencing the defendant. The notice shall
43 explain that the victim may include in the statement the following:

- 1 (1) A description of the nature and extent of any physical,
2 psychological, or emotional injury suffered by the victim as a result
3 of the offense committed by the defendant.
4 (2) An explanation of any economic or property loss suffered by the
5 victim as a result of the offense committed by the defendant.
6 (3) An opinion of whether there is a need for restitution and whether
7 the victim has applied for or received compensation under the
8 Crime Victims Compensation Act.
9 (4) The victim's recommendation of an appropriate sentence for the
10 defendant.

11 (b) No victim shall be required to make a victim's impact statement. The court
12 shall not draw any inference or conclusion from a victim's decision not to make a
13 victim's impact statement.

14 **"§ 15A-2014. Restitution.**

15 (a) A court shall, in addition to or instead of any penalty authorized by law,
16 require that the defendant make restitution to a victim or the victim's estate for any
17 injuries or damages arising out of the offense committed by the defendant.

18 (b) The amount the defendant is ordered to pay in restitution may include, if they
19 are a result of the offense committed by the defendant:

- 20 (1) The cost of any medical or other professional services and devices
21 or equipment required by the victim.
22 (2) The cost of physical therapy, occupational therapy, and
23 rehabilitation required by the victim.
24 (3) Any income loss, after taxes, suffered by the victim.
25 (4) The cost of any psychological or medical treatment for the victim's
26 next of kin.
27 (5) The cost of the victim's funeral and any related services.

28 The court may require that the victim or the victim's estate provide evidence that
29 documents the costs claimed by the victim or the victim's estate under this section.
30 Any such documentation shall be shared with the defendant before the sentencing
31 hearing.

32 (c) In deciding whether to require that restitution be made, the court shall take
33 into consideration the resources of the defendant, including all real and personal
34 property owned by the defendant and the income derived from the property, the
35 defendant's ability to earn, the defendant's obligation to support dependents, and any
36 other matters that pertain to the defendant's ability to make restitution, but the court
37 is not required to make findings of fact or conclusions of law on these matters when
38 the sentence is imposed. The amount of restitution must be limited to that supported
39 by the record, and the court may order partial restitution when it appears that the
40 damage or loss caused by the offense is greater than that which the defendant is able
41 to pay.

42 (d) An order providing for restitution does not abridge the right of a victim or the
43 victim's estate to bring a civil action against the defendant for damages arising out of
44 the offense committed by the defendant, but any amount paid by the defendant under

1 the terms of an order under this section shall be credited against any judgment
2 rendered against the defendant in a civil action. Any amount paid by the defendant
3 shall also be subtracted from any compensation paid by the Crime Victims
4 Compensation Fund if the compensation is paid after restitution has been made.

5 (e) The court may order the defendant to make restitution to a person other than
6 the victim, or to any organization, corporation, or association, including the Crime
7 Victims Compensation Fund that provided assistance to the victim following the
8 commission of the offense by the defendant. Restitution shall be made to the victim
9 or the victim's estate before it is made to any other person, organization, corporation,
10 or association.

11 (f) The court may require the defendant to make full restitution no later than a
12 certain date or, if the circumstances warrant, may allow the defendant to make
13 restitution in installments over a specified time period.

14 (g) If the defendant is placed on probation or post-release supervision, or is
15 paroled, any restitution ordered under this Article shall be a condition of probation,
16 supervision, or parole.

17 (h) If the court does not order restitution, or orders partial restitution, the court
18 shall state on the record the reasons for such a finding.

19 **"§ 15A-2015. Docketing of order of restitution.**

20 An order of restitution shall be docketed with the clerk of superior court and may
21 be collected in the same manner as a civil judgment.

22 **"§ 15A-2016. Posttrial responsibilities.**

23 (a) Within 30 days after the final proceeding in a case, the district attorney's office
24 shall notify the victim, in writing, of:

- 25 (1) The final disposition of the case.
- 26 (2) The crimes of which the defendant was convicted.
- 27 (3) The defendant's right to appeal, if any.

28 (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the
29 Supreme Court, the district attorney's office shall forward to the Attorney General's
30 office the victim's name, address, and phone number. Upon receipt of this
31 information, the Attorney General's office shall provide the victim with the following:

- 32 (1) A clear and concise explanation of how the appellate process
33 works, including information about possible actions that may be
34 taken by the appellate court.
- 35 (2) Notice of the date, time, and place of any appellate proceedings
36 involving the defendant. Notice shall be given in a manner that is
37 reasonably calculated to be received by the victim prior to the date
38 of the proceedings.
- 39 (3) The final disposition of an appeal.

40 (c) If the defendant has been released on bail pending the outcome of the appeal,
41 the agency that has custody of the defendant shall notify the victim that the defendant
42 has been released.

43 (d) If the defendant's conviction is overturned and the district attorney's office
44 decides to retry the case or the case is remanded to superior court for a new trial, the

1 victim shall be entitled to the same rights under this Article as if the first trial did not
2 take place.

3 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

4 The law enforcement agency that has custody of the defendant or the Department
5 of Correction, if it has custody of the defendant, shall notify the victim of:

- 6 (1) The earliest date by which the defendant can be released from
7 custody. The calculation of the release date shall be as exact as
8 possible, including earned time and disciplinary credits if the
9 sentence of imprisonment exceeds 90 days. The law enforcement
10 agency or Department of Correction shall be required to provide
11 notice of the defendant's earliest release date only once during the
12 defendant's incarceration.
- 13 (2) The defendant's transfer to a minimum security facility and the
14 address of the facility.
- 15 (3) The defendant's release or pending release into a community
16 residential program or under extended furlough, or the transfer of
17 the defendant to community status.
- 18 (4) Any reduction of the defendant's minimum sentence.
- 19 (5) The defendant's escape from custody.
- 20 (6) The date of any hearings held by the Parole Commission to
21 consider whether the defendant should be released from custody.
22 Notice should be given not later than 90 days before a hearing is
23 held.
- 24 (7) The victim's right to submit a written or oral statement to the
25 Parole Commission before the defendant is released.
- 26 (8) The Parole Commission's decision about whether to release or
27 continue the incarceration of a defendant.
- 28 (9) The date the defendant is scheduled to be released from the
29 facility. Whenever practical, notice shall be given 60 days before
30 release.
- 31 (10) The defendant's death.

32 **"§ 15A-2018. Responsibilities of Department of Adult Probation and Parole.**

33 The Department of Adult Probation and Parole shall notify the victim of:

- 34 (1) The date of a hearing to determine whether the defendant's
35 probation should be revoked or extended.
- 36 (2) The final disposition of any hearing held in subdivision (1) of this
37 section.
- 38 (3) The defendant's leaving the jurisdiction of the court that sentenced
39 the defendant without the permission of the court or the
40 defendant's probation officer.
- 41 (4) The capture of a defendant described in subdivision (3) of this
42 section.
- 43 (5) The date when the defendant is discharged from probation.

44 **"§ 15A-2019. Notice of commuted sentence or pardon.**

1 The Governor shall notify a victim that the Governor is considering commuting
2 the defendant's sentence or pardoning the defendant. The Governor shall also give
3 notice that the victim has the right to present a written statement to be considered by
4 the Governor before the defendant's sentence is commuted or the defendant is
5 pardoned.

6 **"§ 15A-2020. No money damages.**

7 This Article does not create a claim for damages against the State, a county, or a
8 municipality, or any of its agencies, instrumentalities, or employees.

9 **"§ 15A-2021. No ground for relief.**

10 The failure or inability of any person to provide a right or service under this
11 Article may not be used by a defendant in a criminal case, by an inmate, or by any
12 other accused as a ground for relief in any criminal or civil proceeding.

13 **"§ 15A-2022. Appointment of guardian.**

14 When a victim is rendered mentally or physically incompetent, the court shall
15 appoint a guardian to exercise the victim's rights under this Article. The court shall
16 not appoint as guardian a person who was responsible for causing the victim's
17 injuries.

18 **"ARTICLE 102.**

19 **"Crime Victims Rights Fund.**

20 **"§ 15A-2025. Crime Victims Rights Fund established.**

21 There is hereby established within the State treasury a special revenue fund to be
22 known as the Crime Victims Rights Fund (hereinafter Fund). The Fund shall be
23 administered by the Department of Crime Control and Public Safety and shall be
24 used to supplement the budgets of law enforcement agencies and district attorney's
25 offices that provide services to crime victims as required by the General Statutes.
26 Revenue in the Fund at the end of each fiscal year shall not revert and interest and
27 other investment income earned by the Fund must be credited to the Fund.

28 **"§ 15A-2026. Assessments.**

29 (a) In every criminal case where the defendant is convicted of or enters a plea of
30 guilty or nolo contendere to a felony, a Class 1 or 1A misdemeanor, or to an offense
31 of impaired driving under Chapter 20 of the General Statutes, the court shall order
32 the defendant to pay a sum of thirty dollars (\$30.00) to be used to supplement the
33 budgets of law enforcement agencies and district attorney's offices who provide
34 services to crime victims as required by the General Statutes.

35 (b) If the court authorizes the payment of fines, costs, restitution, probation
36 oversight fees, or any other obligations of the defendant to be paid in installments,
37 the assessment imposed under this section shall be collected from the first monies
38 paid by the defendant. The clerk of superior court shall transmit daily all monies
39 collected to the Department of Crime Control and Public Safety for deposit in the
40 Fund.

41 **"§ 15A-2027. Application for supplemental funds.**

42 (a) A law enforcement agency or district attorney's office that has a responsibility
43 to provide services to crime victims as required by the General Statutes may apply
44 annually to the Department of Crime Control and Public Safety for supplemental

1 funds. Supplemental funds may not be used to supplant local, State, or federal funds
2 that are available to agencies and district attorney's offices to provide services to
3 crime victims.

4 (b) The Department of Crime Control and Public Safety shall establish procedures
5 for screening, recording, and processing applications for supplemental funds. The
6 Department shall prepare and transmit annually to the General Assembly a report of
7 the Department's activities."

8 Section 2. G.S. 7A-304 is amended by adding a new subdivision to read:

9 "(7) For the Crime Victims Rights Fund, the sum of thirty dollars
10 (\$30.00) to be remitted to the Department of Crime Control and
11 Public Safety to be administered under the provisions of Article
12 102 of Chapter 15A of the General Statutes."

13 Section 3. G.S. 15A-824 through G.S. 15A-827 are repealed.

14 Section 4. Article 102 as enacted in Section 1 of this act becomes
15 effective January 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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S763-CSRV-003.4
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 763
THIS IS A DRAFT 19-AUG-98 23:48:06
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Crime Victims' Rights Act. (Public)

Sponsors:

Referred to:

April 8, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS
3 OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR
4 RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL
5 JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR
6 EXECUTION OF RESTITUTION JUDGMENTS, AND TO CHANGE THE ORDER OF
7 PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES.
8 The General Assembly of North Carolina enacts:
9 Section 1. The title to Article 45 of Subchapter VIII
10 of Chapter 15A of the General Statutes reads as rewritten:
11 "SUBCHAPTER VIII-A. RIGHTS OF CRIME VICTIMS AND WITNESSES
12
13 "Article 45.
14 "Fair Treatment for Certain Victims and Witnesses."
15 Section 2. G.S. 15A-824 reads as rewritten:
16 "§ 15A-824. Definitions.
17 As used in this Article, unless the context clearly requires
18 otherwise:

- 1 (1) "Crime" means a felony or serious misdemeanor as
2 determined in the sole discretion of the district
3 attorney, ~~any felony,~~ except those included in
4 Article 45A of this Chapter, or any act committed
5 by a juvenile that, if committed by a competent
6 adult, would constitute a ~~felony,~~ felony or serious
7 misdemeanor.
- 8 (2) "Family member" means a spouse, child, parent or
9 legal guardian, or the closest living relative.
- 10 (3) "Victim" means a person against whom there is
11 probable cause to believe a crime has been
12 committed.
- 13 (4) "Witness" means a person who has been or is
14 expected to be summoned to testify for the
15 prosecution in a criminal action concerning a
16 felony, or who by reason of having relevant
17 information is subject to being called or is likely
18 to be called as a witness for the prosecution in
19 such an action, whether or not an action or
20 proceeding has been commenced."

21 Section 3. Subchapter VIII-A of Chapter 15A of the
22 General Statutes as enacted in Section 1 of this act is amended
23 by adding a new Article to read:

24 "ARTICLE 45A.

25 "Crime Victims' Rights Act.

26 "§ 15A-830. Definitions.

27 (a) The following definitions apply in this Article:

- 28 (1) Accused. -- A person who has been arrested and
29 charged with committing a crime covered by this
30 Article.
- 31 (2) Arresting law enforcement agency. -- The law
32 enforcement agency that makes the arrest of an
33 accused.
- 34 (3) Custodial agency. -- The agency that has legal
35 custody of an accused or defendant arising from a
36 charge or conviction of a crime covered by this
37 Article including, but not limited to, local jails
38 or detention facilities, regional jails or
39 detention facilities, or the Department of
40 Correction.

- 1 (4) Investigating law enforcement agency. -- The law
2 enforcement agency with primary responsibility for
3 investigating the crime committed against the
4 victim.
- 5 (5) Law enforcement agency. -- An arresting law
6 enforcement agency, a custodial agency, or an
7 investigating law enforcement agency.
- 8 (6) Next of kin. -- The victim's spouse, children,
9 parents, siblings, or grandparents. The term does
10 not include the accused unless the charges are
11 dismissed or the person is found not guilty.
- 12 (7) Victim. -- A person against whom there is probable
13 cause to believe one of the following crimes was
14 committed:
- 15 a. A Class A, B1, B2, C, D, or E felony.
- 16 b. A Class F felony if it is a violation of one
17 of the following: G.S. 14-16.6(b); 14-
18 16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-
19 32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41;
20 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-
21 202.1; 14-288.9; or 20-138.5.
- 22 c. A Class G felony if it is a violation of one
23 of the following: G.S. 14-32.3(b); 14-51; 14-
24 58; 14-87.1; or 20-141.4.
- 25 d. A Class H felony if it is a violation of one
26 of the following: G.S. 14-32.3(a); 14-32.3(c);
27 or 14-33.2.
- 28 e. A Class I felony if it is a violation of one
29 of the following: G.S. 14-277.3; 14-32.3(b);
30 14-34.6(b); or 14-190.17A.
- 31 f. An attempt of any of the felonies listed in
32 this subdivision if the attempted felony is
33 punishable as a felony.
- 34 g. Any of the following misdemeanor offenses when
35 the offense is committed between persons who
36 have a personal relationship as defined in
37 G.S. 50B-1(b): 14-33(c)(1), G.S. 14-33(c)(2),
38 G.S. 14-33(a), G.S. 14-34, G.S. 14-134.3, or
39 G.S. 14-277.3.

1 (b) If the victim is deceased, then the next of kin, in the
2 order set forth in the definition contained in this section, is
3 entitled to the victim's rights under this Article. However, the
4 right contained in G.S. 15A-834 may only be exercised by the
5 personal representative of the victim's estate. An individual
6 entitled to exercise the victim's rights as a member of the class
7 of next of kin may designate anyone in the class to act on behalf
8 of the class.

9 "§ 15A-831. Responsibilities of law enforcement agency.

10 (a) As soon as practicable but within 72 hours after
11 identifying a victim covered by this Article, the investigating
12 law enforcement agency shall provide the victim with the
13 following information:

- 14 (1) The availability of medical services, if needed.
15 (2) The availability of crime victims' compensation
16 funds under Chapter 15B of the General Statutes and
17 the address and telephone number of the agency
18 responsible for dispensing the funds.
19 (3) The address and telephone number of the district
20 attorney's office that will be responsible for
21 prosecuting the victim's case.
22 (4) The name and telephone number of an investigating
23 law enforcement agency employee whom the victim may
24 contact if the victim has not been notified of an
25 arrest in the victim's case within six months after
26 the crime was reported to the law enforcement
27 agency.
28 (5) Information about an accused's opportunity for
29 pretrial release.
30 (6) The name and telephone number of an investigating
31 law enforcement agency employee whom the victim may
32 contact to find out whether the accused has been
33 released from custody.

34 (b) As soon as practicable but within 72 hours after the
35 arrest of a person believed to have committed a crime covered by
36 this Article, the arresting law enforcement agency shall inform
37 the investigating law enforcement agency of the arrest. As soon
38 as practicable but within 72 hours of being notified of the
39 arrest, the investigating law enforcement agency shall notify the
40 victim of the arrest.

1 (c) As soon as practicable but within 72 hours after receiving
2 notification from the arresting law enforcement agency that the
3 accused has been arrested, the investigating law enforcement
4 agency shall forward to the district attorney's office that will
5 be responsible for prosecuting the case the victim's name,
6 address, date of birth, social security number, race, sex, and
7 telephone number, unless the victim refuses to disclose any or
8 all of the information, in which case, the investigating law
9 enforcement agency shall so inform the district attorney's
10 office.

11 (d) Upon receiving the information in subsection (a) of this
12 section, the victim shall, on a form provided by the
13 investigating law enforcement agency, indicate whether the victim
14 wishes to receive any further notices from the investigating law
15 enforcement agency. If the victim elects to receive further
16 notices, the victim shall be responsible for notifying the
17 investigating law enforcement agency of any changes in the
18 victim's name, address, and telephone number.

19 "§ 15A-832. Responsibilities of the district attorney's office.

20 (a) Within 21 days after the arrest of the accused, but not
21 less than 24 hours before the accused's first scheduled probable
22 cause hearing, the district attorney's office shall provide to
23 the victim a pamphlet or other written material that explains in
24 a clear and concise manner the following:

25 (1) The victim's rights under this Article, including
26 the right to confer with the attorney prosecuting
27 the case about the disposition of the case and the
28 right to provide a victim impact statement.

29 (2) The responsibilities of the district attorney's
30 office under this Article.

31 (3) The victim's eligibility for compensation under
32 the Crime Victims' Compensation Act and the
33 deadlines by which the victim must file a claim for
34 compensation.

35 (4) The steps generally taken by the district
36 attorney's office when prosecuting a felony case.

37 (5) Suggestions on what the victim should do if
38 threatened or intimidated by the accused or someone
39 acting on the accused's behalf.

1 (6) The name and telephone number of a victim and
2 witness assistant in the district attorney's office
3 whom the victim may contact for further
4 information.

5 (b) Upon receiving the information in subsection (a) of this
6 section, the victim shall, on a form provided by the district
7 attorney's office, indicate whether the victim wishes to receive
8 notices of some, all, or none of the trial and posttrial
9 proceedings involving the accused. If the victim elects to
10 receive notices, the victim shall be responsible for notifying
11 the district attorney's office or any other department or agency
12 that has a responsibility under this Article of any changes in
13 the victim's address and telephone number. The victim may alter
14 the request for notification at any time by notifying the
15 district attorney's office and completing the form provided by
16 the district attorney's office.

17 (c) The district attorney's office shall notify a victim of
18 the date, time, and place of all trial court proceedings of the
19 type which the victim has elected to receive notice. All notices
20 required to be given by the district attorney's office shall be
21 given in a manner that is reasonably calculated to be received by
22 the victim prior to the date of the court proceeding.

23 (d) Whenever practical, the district attorney's office shall
24 provide a secure waiting area during court proceedings that does
25 not place the victim in close proximity to the defendant or the
26 defendant's family.

27 (e) When the victim is to be called as a witness in a court
28 proceeding, the court shall make every effort to permit the
29 fullest attendance possible by the victim in the proceedings.
30 This subsection shall not be construed to interfere with the
31 defendant's right to a fair trial.

32 (f) Prior to the disposition of the case, the district
33 attorney's office shall offer the victim the opportunity to
34 consult with the prosecuting attorney to obtain the views of the
35 victim about the disposition of the case, including the victim's
36 views about dismissal, plea or negotiations, sentencing, and any
37 pretrial diversion programs.

38 (g) At the sentencing hearing, the prosecuting attorney shall
39 submit to the court a copy of a form containing the identifying
40 information set forth in G.S. 15A-831(c) about any victim

1 electing to receive further notices under this Article. The form
2 shall be included with the final judgment and commitment
3 transmitted to the Department of Correction or other agency
4 receiving custody of the defendant and shall be maintained by the
5 custodial agency as a confidential file.

6 "§ 15A-833. Evidence of victim impact.

7 (a) A victim has the right to offer admissible evidence of the
8 impact of the crime, which shall be considered by the court or
9 jury in sentencing the defendant. The evidence may include the
10 following:

11 (1) A description of the nature and extent of any
12 physical, psychological, or emotional injury
13 suffered by the victim as a result of the offense
14 committed by the defendant.

15 (2) An explanation of any economic or property loss
16 suffered by the victim as a result of the offense
17 committed by the defendant.

18 (3) A request for restitution and an indication of
19 whether the victim has applied for or received
20 compensation under the Crime Victims' Compensation
21 Act.

22 (b) No victim shall be required to offer evidence of the
23 impact of the crime. No inference or conclusion shall be drawn
24 from a victim's decision not to offer evidence of the impact of
25 the crime.

26 "§ 15A-834. Restitution.

27 A victim has the right to receive restitution as ordered by the
28 court pursuant to Article 81C of Chapter 15A of the General
29 Statutes.

30 "§ 15A-835. Posttrial responsibilities.

31 (a) Within 30 days after the final trial court proceeding in
32 the case, the district attorney's office shall notify the victim,
33 in writing, of:

34 (1) The final disposition of the case.

35 (2) The crimes of which the defendant was convicted.

36 (3) The defendant's right to appeal, if any.

37 (b) Upon a defendant's giving notice of appeal to the Court of
38 Appeals or the Supreme Court, the district attorney's office
39 shall forward to the Attorney General's office the victim's name,
40 address, and telephone number. Upon receipt of this information,

1 and thereafter as the circumstances require, the Attorney
2 General's office shall provide the victim with the following:

3 (1) A clear and concise explanation of how the
4 appellate process works, including information
5 about possible actions that may be taken by the
6 appellate court.

7 (2) Notice of the date, time, and place of any
8 appellate proceedings involving the defendant.
9 Notice shall be given in a manner that is
10 reasonably calculated to be received by the victim
11 prior to the date of the proceedings.

12 (3) The final disposition of an appeal.

13 (c) If the defendant has been released on bail pending the
14 outcome of the appeal, the agency that has custody of the
15 defendant shall notify the investigating law enforcement agency,
16 and the investigating law enforcement agency shall notify the
17 victim that the defendant has been released.

18 (d) If the defendant's conviction is overturned, and the
19 district attorney's office decides to retry the case or the case
20 is remanded to superior court for a new trial, the victim shall
21 be entitled to the same rights under this Article as if the first
22 trial did not take place.

23 (e) The Conference of District Attorneys shall maintain a
24 repository relating to victims' identities, addresses, and other
25 appropriate information for use by agencies charged with
26 responsibilities under this Article.

27 "§ 15A-836. Responsibilities of agency with custody of
28 defendant.

29 The custodial agency shall notify the victim of:

30 (1) The projected date by which the defendant can be
31 released from custody. The calculation of the
32 release date shall be as exact as possible,
33 including earned time and disciplinary credits if
34 the sentence of imprisonment exceeds 90 days.

35 (2) An inmate's assignment to a minimum custody unit
36 and the address of the unit. This notification
37 shall include notice that the inmate's minimum
38 custody status may lead to the inmate's
39 participation in one or more community-based

- 1 programs such as work release or supervised leaves
2 in the community.
- 3 (3) The victim's right to submit any concerns to the
4 agency with custody and the procedure for
5 submitting such concerns.
- 6 (4) The defendant's escape from custody.
- 7 (5) The defendant's capture.
- 8 (6) The date the defendant is scheduled to be released
9 from the facility. Whenever practical, notice
10 shall be given 60 days before release.
- 11 (7) The defendant's death.

12 "§ 15A-837. Responsibilities of Division of Adult Probation and
13 Parole.

14 The Division of Adult Probation and Parole shall notify the
15 victim of:

- 16 (1) The defendant's regular conditions of probation or
17 post-release supervision, special or added
18 conditions, supervision requirements, and any
19 subsequent changes.
- 20 (2) The date of a hearing to determine whether the
21 defendant's supervision should be revoked,
22 continued, modified, or terminated.
- 23 (3) The final disposition of any hearing referred to
24 in subdivision (2) of this section.
- 25 (4) Any restitution modification.
- 26 (5) The defendant's movement into or out of any
27 intermediate sanction as defined in G.S. 15A-
28 1340.11(6).
- 29 (6) The defendant absconding supervision.
- 30 (7) The capture of a defendant described in subdivision
31 (6) of this section.
- 32 (8) The date when the defendant is terminated or
33 discharged.
- 34 (9) The defendant's death.

35 "§ 15A-838. Notice of commuted sentence or pardon.

36 The Governor's Clemency Office shall notify a victim when it is
37 considering commuting the defendant's sentence or pardoning the
38 defendant. The Governor's Clemency Office shall also give notice
39 that the victim has the right to present a written statement to
40 be considered by the Office before the defendant's sentence is

1 commuted or the defendant is pardoned. The Governor's Clemency
2 Office shall notify the victim of its decision. Notice shall be
3 given in a manner that is reasonably calculated to allow for a
4 timely response to the commutation or pardon decision.

5 "§ 15A-839. No money damages.

6 This Article does not create a claim for damages against the
7 State, a county, or a municipality, or any of its agencies,
8 instrumentalities, officers, or employees.

9 "§ 15A-840. No ground for relief.

10 The failure or inability of any person to provide a right or
11 service under this Article may not be used by a defendant in a
12 criminal case, by an inmate, by any other accused, or by any
13 victim as a ground for relief in any criminal or civil
14 proceeding.

15 "§ 15A-841. Incompetent victim's rights exercised.

16 When a victim is rendered mentally or physically incompetent or
17 when the victim is a minor, the victim's rights under this
18 Article, other than the rights provided by G.S. 15A-834, may be
19 exercised by the victim's next of kin."

20 Section 4. Chapter 15A of the General Statutes is
21 amended by adding a new Article to read:

22 "ARTICLE 81C.

23 "Restitution"

24 "§ 15A-1340.24. Determination of Restitution.

25 (a) When sentencing a defendant convicted of a criminal
26 offense, the court shall, in addition to any penalty authorized
27 by law, require that the defendant make restitution to a victim
28 or the victim's estate for any injuries or damages arising
29 directly and proximately out of the offense committed by the
30 defendant. In determining the amount of restitution, the court
31 shall consider the following:

32 (1) In the case of an offense resulting in bodily
33 injury to a victim:

34 a. The cost of necessary medical and related
35 professional services and devices or equipment
36 relating to physical, psychiatric, and
37 psychological care required by the victim;

38 b. The cost of necessary physical and
39 occupational therapy and rehabilitation
40 required by the victim; and

- 1 c. Income lost, after taxes, by the victim as a
2 result of the offense.
- 3 (2) In the case of an offense resulting in the damage,
4 loss, or destruction of property of a victim of the
5 offense:
- 6 a. Return of the property to the owner of the
7 property or someone designated by the owner;
8 or
- 9 b. If return of the property under subdivision
10 (2)a. of this subsection is impossible,
11 impracticable, or inadequate:
- 12 i. The value of the property on the date of
13 the damage, loss, or destruction; or
- 14 ii. The value of the property on the date of
15 sentencing, less the value of any part of
16 the property that is returned.
- 17 (3) In the case of an offense resulting in bodily
18 injury that results in the death of the victim, the
19 cost of the victim's necessary funeral and related
20 services.
- 21 (b) The court may require that the victim or the victim's
22 estate provide admissible evidence that documents the costs
23 claimed by the victim or the victim's estate under this section.
24 Any such documentation shall be shared with the defendant before
25 the sentencing hearing.
- 26 (c) In determining the amount of restitution to be made, the
27 court shall take into consideration the resources of the
28 defendant including all real and personal property owned by the
29 defendant and the income derived from the property, the
30 defendant's ability to earn, the defendant's obligation to
31 support dependents, and any other matters that pertain to the
32 defendant's ability to make restitution, but the court is not
33 required to make findings of fact or conclusions of law on these
34 matters. The amount of restitution must be limited to that
35 supported by the record, and the court may order partial
36 restitution when it appears that the damage or loss caused by the
37 offense is greater than that which the defendant is able to pay.
- 38 (d) An order providing for restitution does not abridge the
39 right of a victim or the victim's estate to bring a civil action
40 against the defendant for damages arising out of the offense

1 committed by the defendant. Any amount paid by the defendant
2 under the terms of a restitution order under this Article shall
3 be credited against any judgment rendered against the defendant
4 in favor of the same victim in a civil action.

5 (e) The court may order the defendant to make restitution to a
6 person other than the victim, or to any organization,
7 corporation, or association, including the Crime Victims'
8 Compensation Fund, that provided assistance to the victim
9 following the commission of the offense by the defendant and is
10 subrogated to the rights of the victim. Restitution shall be
11 made to the victim or the victim's estate before it is made to
12 any other person, organization, corporation, or association under
13 this subsection.

14 (f) The court may require the defendant to make full
15 restitution no later than a certain date or, if the circumstances
16 warrant, may allow the defendant to make restitution in
17 installments over a specified time period.

18 (g) If the defendant is placed on probation or post-release
19 supervision, any restitution ordered under this Article shall be
20 a condition of probation or post-release supervision.

21 (h) If the court orders partial restitution, the court shall
22 state on the record the reasons for such an order.

23 "§ 15A-1340.25. Enforcement of order for restitution.

24 (a) In addition to the provisions of G.S. 15A-1340.24, an order
25 for restitution under this Article may be enforced in the same
26 manner as a civil judgment, subject to the provisions of this
27 section.

28 (b) The order for restitution under this Article shall be
29 docketed and indexed in the county of the original conviction in
30 the same manner as a civil judgment. The order for restitution
31 may be collected in the same manner as a civil judgment unless
32 the order to pay restitution is a condition of probation. If the
33 order to pay restitution is a condition of probation, the
34 judgment may only be executed upon in accordance with subsection
35 (c) of this section.

36 (c) If the defendant is ordered to pay restitution as a
37 condition of probation, the docketed judgment may not be executed
38 upon until the date of notification to the clerk of superior
39 court in the county of the original conviction that the judge
40 presiding at the probation termination or revocation hearing has

1 made a finding that restitution in a sum certain remains due and
2 payable, that the defendant's probation has been terminated or
3 revoked, and that the remaining balance of restitution owing may
4 be collected by execution on the judgment. The clerk shall then
5 enter upon the judgment docket the amount that remains due and
6 payable on the judgment, together with amounts equal to the
7 standard fees for docketing, copying, certifying, and mailing, as
8 appropriate, and shall notify the victim by first-class mail at
9 the victim's last known address that the judgment may be executed
10 upon, together with the amount of the judgment. Until the clerk
11 receives notification of termination or revocation of probation
12 and the amount that remains due and payable on the order of
13 restitution, the clerk shall not be required to update the
14 judgment docket to reflect partial payments on the order of
15 restitution as a condition of probation.

16 (d) An appeal of the conviction upon which the order of
17 restitution is based shall stay execution on the judgment until
18 the appeal is completed. If the conviction is overturned, the
19 judgment shall be removed from the judgment docket."

20 Section 5. G.S. 1C-1601(e) reads as rewritten:

21 "(e) Exceptions. -- The exemptions provided in this Article
22 are inapplicable to claims

- 23 (1) Of the United States or its agencies as provided by
24 federal law;
- 25 (2) Of the State or its subdivisions for taxes,
26 appearance bonds or fiduciary bonds;
- 27 (3) Of lien by a laborer for work done and performed
28 for the person claiming the exemption, but only as
29 to the specific property affected;
- 30 (4) Of lien by a mechanic for work done on the
31 premises, but only as to the specific property
32 affected;
- 33 (5) For payment of obligations contracted for the
34 purchase of the specific real property affected;
- 35 (6) Repealed by Session Laws 1981 (Regular Session,
36 1982), c. 1224, s. 6;
- 37 (7) For contractual security interests in the specific
38 property affected; provided, that the exemptions
39 shall apply to the debtor's household goods
40 notwithstanding any contract for a nonpossessory,

- 1 nonpurchase money security interest in any such
2 goods;
- 3 (8) For statutory liens, on the specific property
4 affected, other than judicial liens;
- 5 (9) For child support, alimony or distributive award
6 order pursuant to Chapter 50 of the General
7 ~~Statutes~~ Statutes;
- 8 (10) For criminal restitution orders docketed as civil
9 judgments pursuant to G.S. 15A-1340.25.

10 Section 6. G.S. 7A-304(d) reads as rewritten:

11 "(d) In any criminal case in which the liability for costs,
12 fines, restitution, or any other lawful charge has been finally
13 determined, the clerk of superior court shall, unless otherwise
14 ordered by the presiding judge, disburse such funds when paid in
15 accordance with the following priorities:

- 16 (1) Sums in restitution to the victim entitled
17 thereto;
- 18 ~~(1)~~(2) Costs due the county;
- 19 ~~(2)~~(3) Costs due the city;
- 20 ~~(3)~~(4) Fines to the county school fund;
- 21 ~~(4)~~(5) Sums in restitution prorated among the persons
22 other than the victim entitled thereto;
- 23 ~~(5)~~(6) Costs due the State;
- 24 ~~(6)~~(7) Attorney's fees.

25 Sums in restitution received by the clerk of superior court
26 shall be disbursed when:

- 27 (1) Complete restitution has been received; or
28 (2) When, in the opinion of the clerk, additional
29 payments in restitution will not be collected;
30 or
31 (3) Upon the request of the person or persons
32 entitled thereto; and
33 (4) In any event, at least once each calendar
34 year."

35 Section 7. G.S. 15B-11(b) is amended by adding a new
36 subdivision to read:

- 37 "(c1) A claim may be denied upon a finding that the
38 claimant has been convicted of any felony
39 classified as a Class A, B1, B2, C, D, or E
40 felony under the laws of the State of North

1 Carolina and that such felony was committed
2 within 3 years of the time the victim's injury
3 occurred."

4 Section 8. G.S. 15A-830, 15A-833 and 15A-834 as
5 enacted by Section 3 of this act become effective December 1,
6 1998 and apply to offenses committed on or after that date.
7 Section 4 of this act becomes effective December 1, 1998 and
8 applies to offenses committed on or after that date. Section 7
9 of this act is effective when it becomes law and applies to
10 injuries occurring on or after that date. The remainder of this
11 act becomes effective July 1, 1999 and applies to offenses
12 committed on or after that date.



North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 19, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Brenda Carter and Jo McCants, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 763 - CRIME VICTIMS RIGHTS ACT - Senator Cooper.**

The Proposed Committee Substitute for Senate Bill 763 would prescribe by law the rights of victims of crimes as provided for under Section 37 of Article I of the North Carolina Constitution as approved by the voters November 5, 1996. (Copy attached.)

The bill creates two different levels of services for victims by prescribing certain mandatory services for victims of the more serious offenses, and services within the discretion of the district attorney within available resources for victims of less serious offenses. The bill also defines restitution that maybe ordered as a form of punishment in any criminal case, as is now permitted for under Section 1 of Article XI of the North Carolina Constitution as amended by the voters also on November 5, 1996. (Copy attached.)

Section 1 creates a new subchapter in Chapter 15A entitled "Rights of Crime Victims and Witnesses."

Section 2 amends the current Fair Treatment for Victims and Witness Act to apply to victims of offenses not otherwise covered by the new Crime Victims' Rights Act codified in the new Article 45A.

Section 3 creates the new Article 45A- Crime Victims' Rights Act. (**All statutory section references are to G.S. 15A**).

Sec. 830 defines the victim, the victim's next of kin, the accused, and the various agencies involved in furnishing victim services. The victim is a person against whom there is probable cause to believe one of the following crimes was committed:

Any Class A, B1, B2, C, D, or E felony (see list attached), and other felonies including assaults with deadly weapons, voluntary manslaughter, kidnapping, child sex abuse, elderly abuse and neglect, burglary, arson, habitual DWI, robbery, death by vehicle, habitual assault and stalking, and an attempts of any of these crimes. This section also provides that the next of kin of a deceased victim has the rights of other victims, except the right to restitution is limited to restitution specifically available to next of kin.

Sec. 831 defines the responsibilities of law enforcement officers to notify the victim of the services available to the victims and rights of the victims. This includes notice about victim's compensation and contact numbers for the investigative agency and the district attorney. The victim is also to be given a form to be completed and turned in to designate what additional services and notices the victim would like to receive.

This section also spells out the responsibilities of the arresting law enforcement agency to furnish information to the investigative agency needed for the victim. This section also defines the investigative agency's responsibilities concerning giving information to the victim once the defendant is arrested including information on release from custody, and the time, date and place of the defendant's first court appearance. This section also allows the victim to request that the victim not be given any additional information in the future.

Sec. 832 defines the responsibilities of the district attorney including furnishing the victim written material on the victim's rights, the court process, and the victim's opportunity to participate in the trial process. This section also defines at which of the court proceedings the victim has a right to be present, including when the victim is called as a witness at trial. The victim has a right to consult with the DA before the DA disposes of the case.

Sec. 833 gives the victim the right to present a admissible evidence o the impact of the crime and requires the judge or jury to consider this evidence in sentencing the defendant. This section specifies what evidence may be included and the fact that no evidence is required to be provided.

Sec. 834 gives the victim the right to receive restitution as ordered by the court pursuant to the criminal sentencing statute.

Sec. 835 sets out the responsibilities of the DA after the trial, including notifying the victim of the final disposition and the defendant's right to appeal. This section requires the DA to pass on victim information to the Attorney General's Office that is to inform the victim of the appellant process and give notice to the victim of any appellant hearings. The investigative agency is also to give the victim notice if the

defendant is released on bond pending appeal. If the defendant is awarded a new trial, the victim will have the same rights as were applicable during the original trial.

Sec. 836 sets forth the responsibilities of the agency that has custody or control over the defendant. This will normally be the city, county, or regional jails or the Department of Corrections. The responsibilities under this section include notifying the victim when the victim might be eligible for release, where the defendant is assigned for minimum custody or work release, and the victim's right to be notified of and to participate in reviews prior to the defendant's release. The victim is also to be notified if the defendant escapes, is recaptured, or if the defendant dies.

Sec. 837 sets out the responsibilities of the Division of Adult Probation and Parole, including notifying the victim of any special conditions for probation and any hearings affecting probation.

Sec. 838 requires the Governor's Office to notify the victim if the Governor is considering commuting the defendant's sentence or pardoning the defendant. The victim shall have a right to submit a statement to the Governor for consideration in the Governor's decision and to be informed of the decision.

Sec. 839 makes it clear this act does not create a claim for damages against any governmental body or employee.

Sec. 840 makes it clear that failure for the victim to be given any right or service may not be used as the basis for any relief by the defendant or victim in any criminal or civil action.

Sec. 841 provides that the victim's next of kin may exercise the rights of an incompetent victim.

Section 4 of the bill creates a new Article 81C in Chapter 15A for restitution. **(All references are to sections of G.S. 15A-1340.)**

Sec. .24 requires a judge at sentencing to determine whether, in addition to any other punishment, the defendant should be order to pay restitution to a victim. This allows for restitution to be order in any criminal case where a victim has suffered injury or damages as defined in this Article. This section also sets out what the court must consider in deciding the amount of restitution to be ordered. These factors include the amount of loss suffered by the victim and the defendant's ability to pay. This section also makes it clear that an order of restitution does not prevent a victim from bringing a civil action to recover damages. The defendant is entitled to a credit against any civil judgment for restitution payments actually made.

Sec. .25 allows an order of restitution to be docketed and enforced as a civil judgment. Execution on any judgment would be stayed pending appeal and while the defendant is paying restitution under probation. The clerk is directed to add the normal civil fees and interest to any payoff of the judgment.

Sec. 5 provides that provisions regarding a debtor's property that is exempt from the enforcement of the claims of creditors do not apply to criminal restitution orders that are docketed as civil judgments.

Sec. 6 gives the victim entitled to restitution priority in receiving funds paid into the clerk of superior courts office.

Sec. 7 allows the Victims Compensation Board to deny claims filed by person convicted of A-E felonies within 3 years of the victims injury under Chapter 15B, Crime Victims Compensation Act

Sec. 8 . Effective date provisions. The new G.S. 15A-830 - Crime Victims Rights definitions, G.S. 15A-833 - Evidence of Victim Impact, and G.S. 15A-834 - Restitution are effective December 1, 1998 and apply to offenses committed on or after that date. Section 4 of the bill, Restitution criminal punishment provisions, are effective December 1, 1998 and apply to offenses committed on or after that date. The changes in Section 7 regarding disqualification for compensation under the Victims Compensation Fund of persons convicted of A-E felonies is effective when the bill becomes law and applies to injuries occurring on or after that date. The remainder of the bill which includes the notification victim notification and participation provisions become effective July 1, 1999 and apply to offenses committed on or after that date.

**FELONY CLASSIFICATION
UNDER THE STRUCTURED SENTENCING ACT
Offenses committed on or after December 1, 1997**

FELONY CLASS	GENERAL STATUTES SECTION	OFFENSE
A	G.S. 14-17	Murder in the 1st degree.
B1	G.S. 14-27.2	1st degree rape.
B1	G.S. 14-27.4	1st degree sexual offense.
B1	G.S. 14-27.7A(a)	Statutory rape or sexual offense of person who is 13, 14, or 15 years old (defendant is at least six years older than victim).
B2	G.S. 14-17	Murder in the 2nd degree.
C	G.S. 14-7.6	Sentencing of habitual felons.
C	G.S. 14-27.3	2nd degree rape.
C	G.S. 14-27.5	2nd degree sexual offense.
C	G.S. 14-27.7A(b)	Statutory rape or sexual offense of person who is 13, 14, or 15 years old (defendant is more than four but less than six years older than victim).
C	G.S. 14-28	Malicious castration.
C	G.S. 14-30	Malicious maiming.
C	G.S. 14-32(a)	Assault with deadly weapon with intent to kill inflicting serious injury.
C	G.S. 14-32.2(b)(1)	Patient abuse and neglect, intentional conduct proximately causes death.
C	G.S. 14-34.4(a)	Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death.
C	G.S. 14-34.4(b)	Adulterated or misbranded food, drugs, etc.; intent to extort.
C	G.S. 14-39	Kidnapping in the 1st degree.
C	G.S. 14-74	Larceny by servants and other employees (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-90	Embezzlement of property received by virtue of office or employment (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-91	Embezzlement of State property by public officers and employees (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-92	Embezzlement of funds by public officers and trustees (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-93	Embezzlement by treasurers of charitable and religious organizations (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>

Felony Classification Continued

C	G.S. 14-94	Embezzlement by officers of railroad companies (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-97	Appropriation of partnership funds by partner to personal use (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-98	Embezzlement by surviving partner (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-99	Embezzlement of taxes by officers (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-100	Obtaining property by false pretenses (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-159.1	Contaminating a public water system.
C	G.S. 14-401.11(b)(3)	Distribution of certain food at Halloween and all other times prohibited (poisonous chemical/foreign substance).
C	G.S. 53-129	Misapplication, embezzlement of funds, etc. (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 58-2-162	Embezzlement by insurance agents, brokers, or administrators (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 90-95(b)(4)c	Trafficking in opium or heroin (28 grams or more).
C	G.S. 90-95.1	Continuing criminal enterprise.
C	G.S. 90-210.70(a)	Penalties (Funeral and Burial Trust Funds; amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 130A-26.1(i)(1)	Criminal Violation of Article 9 (Hazardous waste).
C	G.S. 143-215.6B(h)(1)	Enforcement procedures: criminal penalties (Water and air resources).
C	G.S. 143-215.88B(f)(1)	Enforcement procedures: criminal penalties (Oil pollution and hazardous substance control).
C	G.S. 143-215.94X(c)(1)	Enforcement procedures: criminal penalties (Hazardous substances).
C	G.S. 143-215.104Q(c)	Enforcement procedures; criminal penalties (dry-cleaning solvents; knowing and willful violation, place person in danger of death/serious bodily injury). <i>(Effective 1/1/98)</i>
C	G.S. 143-215.114B(h)(1)	Enforcement procedures: criminal penalties (Air pollution control).
D	G.S. 14-18	Voluntary manslaughter. <i>(was Class E - Effective 12/1/97)</i>
D	G.S. 14-49(a)	Malicious use of explosive or incendiary.
D	G.S. 14-49.1	Malicious damage of occupied property by use of explosive or incendiary.
D	G.S. 14-51	Burglary in the 1st degree.
D	G.S. 14-53	Breaking out of dwelling house burglary.
D	G.S. 14-57	Burglary with explosives.

Felony Classification Continued

D	G.S. 14-58	Arson in the 1st degree.
D	G.S. 14-58.2	Burning of mobile home, manufactured-type house or recreational trailer home.
D	G.S. 14-87	Robbery with firearms or other dangerous weapons.
D	G.S. 14-88	Train robbery.
D	G.S. 14-190.16	1st degree sexual exploitation of a minor.
D	G.S. 14-190.18	Promoting prostitution of a minor.
D	G.S. 90-95(e)(5)	Selling or delivering a controlled substance by a person 18 or over to a person under 16 or a pregnant female. <i>(was E - Effective 1/1/97)</i>
D	G.S. 90-95(h)(1)d	Trafficking in marijuana (10,000 pounds or more).
D	G.S. 90-95(h)(2)c	Trafficking in methaqualone (10,000 or more dosage units).
D	G.S. 90-95(h)(3)c	Trafficking in cocaine (400 grams or more).
D	G.S. 90-95(h)(3a)c	Trafficking in amphetamine (10,000 or more dosage units).
D	G.S. 90-95(h)(3b)c	Trafficking in methamphetamine (400 grams or more).
D	G.S. 90-95(h)(4a)c	Trafficking in Lysergic Acid Diethylamide (1,000 or more dosage units).
E	G.S. 14-27.7	Intercourse and sexual offense with certain victims (Parent, Custodian).
E	G.S. 14-29	Castration or other maiming without malice aforethought.
E	G.S. 14-30.1	Malicious throwing of corrosive acid or alkali.
E	G.S. 14-31	Maliciously assaulting in a secret manner.
E	G.S. 14-32(b)	Assault with deadly weapon inflicting serious injury.
E	G.S. 14-32(c)	Assault with deadly weapon with intent to kill.
E	G.S. 14-32.2(b)(2)	Patient abuse and neglect, culpably negligent conduct proximately causes death.
E	G.S. 14-34.1	Discharging certain barreled weapons or a firearm into occupied property.
E	G.S. 14-34.5	Assault with a firearm on a law enforcement officer.
E	G.S. 14-39	Kidnapping in the 2nd degree.
E	G.S. 14-49(b1)	Malicious use of explosive or incendiary. <i>(Effective 6/21/96)</i>
E	G.S. 14-62.2	Burning of churches and certain other religious buildings. <i>(Effective 6/21/96)</i>
E	G.S. 14-318.4(a)	Child abuse inflicting serious injury.
E	G.S. 14-318.4(a1)	Child abuse - prostitution.
E	G.S. 14-318.4(a2)	Child abuse - sexual act.
E	G.S. 90-95(e)(8)	Manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance within 300 feet of an elementary or secondary school.
E	G.S. 90-95(h)(4)b	Trafficking in opium or heroin (14 grams or more, less than 28 grams).

ARTICLE I

1

Sec. 37. (Effective upon certification of approval) Rights of victims of crime.

(1) *Basic rights.* Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

(2) *No money damages; other enforcement.* Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) *No ground for relief in criminal case.* The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding.

(1995, c. 438, s. 1.)

ARTICLE XI

1

Section 1. (Effective upon certification of approval) Punishments.

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

(1995, c. 429, s. 2.)

FISCAL ANALYSIS MEMORANDUM

**DRAFT
FOR REVIEW ONLY**

DATE: August 20, 1998

TO: Senator Roy Cooper
Chairman, Senate Judiciary Committee

FROM: Charles Perusse and Jim Mills, Fiscal Research Division

RE: Estimated Fiscal Impact for SB 763, CSRV 003 – Crime Victims' Rights Act

ESTIMATED FISCAL IMPACT OF SB 763 --DRAFT

	<u>FY 1998-99*</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
1. Judicial	\$1,397,119 (31)	\$5,435,519 (94)	\$5,338,508 (94)	\$5,498,663 (94)	\$5,663,613 (94)
(94 = 51 VWA's, 18 assistant DA's, 13 clerks, 6 superior court judges, and 6 court reporters)					
2. Correction**	\$0	\$388,806 (5)	\$198,551 (5)	\$206,370 (5)	\$214,385 (5)
3. Justice**	\$0	\$34,933 (1)	\$35,980 (1)	\$37,060 (1)	\$38,173 (1)
4. Law Enforcement**	\$0	\$962,307 (28)	\$991,177 (28)	\$1,020,911 (28)	\$1,051,545 (28)
5. Domestic Violence	<u>No Precise Estimate Available</u> (Estimated Fiscal Impact of Crime Commission's Definition is \$1.3m)				
TOTAL	\$1,397,119 (31)	\$6,821,565 (128)	\$6,564,216 (128)	\$6,763,004 (128)	\$6,967,716 (128)

* Substantive portions of the bill are effective December 1, 1998 (definitions, restitution, and use of victim impact statements as evidence in court) and July 1, 1999 (victim services -- notification etc.)

** Direct state funding related to requirements in this bill has not been appropriated at this time.

The General Assembly provided funding in the 1997 Session for the following items:

- 105 Victim Witness / Legal Assistants (45 still in reserve)
- 54 Assistant District Attorneys
- 100 Deputy Clerks
- 8 Court Reporters
- increased indigent defense budget by \$5,703,138 for 98-99

1998 Short Session of General Assembly is considering funding additional related court positions:

	<u>Senate</u>	<u>House*</u>
Clerks	25	149
Asst. D.A.'s:	1	3
Court Reporters	2	8

*House also funds 2 special superior court judges

Assumptions and Methodology – All State Agencies and Local Law Enforcement

1. **Victims Rights Amendment** -- SB 763 is implementing legislation for the 1996 Constitutional Amendment on Victims Rights, which required certain services as "prescribed by law." This fiscal estimate assumes that services listed in SB 763 must be provided to designated victims because of the Amendment. The current Fair Treatment for Victims and Witnesses Act is discretionary to a certain extent; a lower level of services than required by SB 763 are now provided "to the extent reasonably possible and subject to available resources."
2. **New/Expanded Services** -- SB 763 mandates new services to victims and expansion of, or more precisely defined, current services. These new or expanded services outlined in SB 763 are the major cost drivers of the bill. This fiscal estimate calculates the incremental time and person hours over and above current services. Examples of new or expanded services include providing victims with information on the criminal justice system at various stages of the process; notifications of victims of the arrest of offenders, of all court proceedings, and of changes in probationary status of an offender; and, direct assistance to victims for help in obtaining services and preparing statements for court.
3. **Criminal Offenses = Number of Victims** - SB 763 mandates services to victims of specific crimes – A to E felonies, selected assaultive F through I felonies, and certain domestic violence misdemeanors. This fiscal memo assumes that only the victims of the crimes outlined in SB 763 will be provided the services outlined in the bill. In calculating the population of victims under SB 763, each department estimated the number of offenders involved in the felonies and misdemeanors defined in the bill (e.g. the Judicial Department estimated that 30,615 offenders were charged (case filings) with the felony offenses listed in SB 763 in 1997 and then estimated 1.6 victims per case or over 48,000 victims).
4. **# of Victims Who Will Request Services** - The cost estimates are also based on the projection of the number of victims likely to request services, as determined in consultation with other states and state and local agencies. Projection of how many victims will want services was the most difficult analysis; if more victims want services, the projected costs will be higher than estimated in this memo. Conversely, costs will decrease if fewer victims request services. The bill requires certain services for all victims while others are upon request -- cost estimates for anticipated service needs are adjusted when SB 763 specifies that a particular service should only be provided "upon request" of the victim.
5. **Amount of Time Required to Provide Services** -- Position estimates are based on the estimated number of victims who will request services and the time required to provide each service, such as 5 minutes for certain notifications to 60 minutes for consultation with district attorneys. (Example : Assumed 36,671 victims or 75% of total victims of felonies covered under this Bill would request notification of all court proceedings. Assumed approximately 50 minutes per victim for notification of all court proceedings or 30,559 person hours. 30,559/1800 hours per position = 17 Victim Witness Assistant positions.)

Major Cost Drivers of Bill by Individual Department or Program

Judicial Department

- Automation of victim information - notification, tracking, and a central victims database
- Increased person hours by Victim Witness Assistants due to new or expanded services (packet of information on victims programs, notifications of court proceedings, and additional assistance with victim impact statements and restitution claims).

- Additional court time and associated person hours due to new and expanded requirements for restitution and for victim impact statements to be presented in court = increase in statewide person hours for judges, clerks, district attorneys, court reporters and VWA positions. (these requirements are effective 12/1/98 and account for partial year cost in 98-99 for Judicial).
- Direct consultation with assistant district attorneys by victim

Departments of Correction and Justice

Correction and Justice are assigned new responsibilities under this bill – DOC must notify victims of most changes in an offenders' probation status and provide additional notifications for changes in status for prisoners. Justice must provide information to victims on the appeal process and notification of court dates and dispositions for appeal hearings. These changes require some modification to DOC automated systems and potentially new personnel in DOC (5 positions) and Justice (1).

Law Enforcement

- Services are primarily notification tasks, not direct services.
- Cost estimates are based primarily on providing basic information on victims services at the time of the incident (128,000 + victims) and notification of victim upon the arrest of an offender (28,000 est.)
- Primary costs are administrative (brochures, postage,) and personnel (person hours/positions to provide information and notification services to victims and to coordinate with other criminal justice agencies). Estimates are based on total hours statewide and may not reflect need in individual counties or law enforcement offices.

VISITOR REGISTRATION SHEET

Judiciary - 1

8-20-98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Rodlyn Smith AChA - NC	NC NOW NC Coalition Against Domestic Violence Federal Row
Charles Cromer	NCATL
Joe Stewart	NC Dept of CCPS
My Sichelberg	USS
Catherine Smith	NC VAN
Jane P. Gray	DOJ
Ray Gore	Conference of District Attorneys
Peg Dorer	Conference of D.A.s
Belinda Inke	Conference of DA
Leigh House	Conference of District Atty's
MK Culber	NCPP
David Ferrell	Hfg. m'Noman, Caldwell, et al
Rob Lubitz	Governor's Core Commission
Jim Drennan	Institute of Government
Laura Annally	NC AOC
He [unclear]	AOC
Bruno Summers	NC Equity
Paula A. Hoff	Covenant w/ NC's Children
Christina Medlin	Covenant w/ NC's Children
John Knech	Chief of Superior Court
Jean Carole	NC Council for Women

VISITOR REGISTRATION SHEET

Judiciary - 1

8-20-98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

John Madler	Sentencing Commission
Bill Scoggin	We BAR Assoc
Annette Ethridge	Governor's Office
John [Signature]	NCFAC
FRAN [Signature]	NCA MA
Jeanne Bonds	AOC

MINUTES
SENATE JUDICIARY COMMITTEE
August 25, 1998

The Senate Judiciary Committee met on Wednesday, August 25, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Miller, Acting Chairman, called the meeting to order and recognized Senator Cooper to continue the discussion of the Proposed Committee Substitute to Senate Bill 763 - AN ACT TO CREATE THE CRIME VICTIMS RIGHTS ACT, which was begun on August 20, 1998.

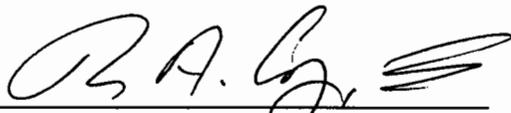
Senator Cooper moved to adopt a Proposed Committee Substitute (005) for discussion. The motion carried by a majority voice vote.

Senator Gulley was recognized to explain the changes in the bill he introduced which were included in the Proposed Committee Substitute to Senate Bill 763.

Joe Stewart and Gary Eikelberger, with the Department of Crime Control and Public Safety, were recognized to respond to questions from the Committee.

Senator Cooper moved to give the Proposed Committee Substitute a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, August 25, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

SB 763 Crime Victims Rights Act Cooper

Sen. Roy Cooper, III, Chairman

Posted: 08/20/98 12:53 PM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

S763-CSR-005

PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL 763

THIS IS A DRAFT 25-AUG-98 09:20:27

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

April 8, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS
3 OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR
4 RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL
5 JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR
6 EXECUTION OF RESTITUTION JUDGMENTS, TO CHANGE THE ORDER OF
7 PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES AND TO MAKE
8 CHANGES TO THE VICTIMS COMPENSATION ACT.
9 The General Assembly of North Carolina enacts:
10 Section 1. The title to Article 45 of Subchapter VIII
11 of Chapter 15A of the General Statutes reads as rewritten:
12 "SUBCHAPTER VIII-A. RIGHTS OF CRIME VICTIMS AND WITNESSES
13
14 "Article 45.
15 "Fair Treatment for Certain Victims and Witnesses."
16 Section 2. G.S. 15A-824 reads as rewritten:
17 "§ 15A-824. Definitions.

1 As used in this Article, unless the context clearly requires
2 otherwise:

- 3 (1) "Crime" means a felony or serious misdemeanor as
4 determined in the sole discretion of the district
5 attorney, any felony, except those included in
6 Article 45A of this Chapter, or any act committed
7 by a juvenile that, if committed by a competent
8 adult, would constitute a ~~felony~~ felony or serious
9 misdemeanor.
- 10 (2) "Family member" means a spouse, child, parent or
11 legal guardian, or the closest living relative.
- 12 (3) "Victim" means a person against whom there is
13 probable cause to believe a crime has been
14 committed.
- 15 (4) "Witness" means a person who has been or is
16 expected to be summoned to testify for the
17 prosecution in a criminal action concerning a
18 felony, or who by reason of having relevant
19 information is subject to being called or is likely
20 to be called as a witness for the prosecution in
21 such an action, whether or not an action or
22 proceeding has been commenced."

23 Section 3. Subchapter VIII-A of Chapter 15A of the
24 General Statutes as enacted in Section 1 of this act is amended
25 by adding a new Article to read:

26 "ARTICLE 45A.

27 "Crime Victims' Rights Act.

28 "§ 15A-830. Definitions.

29 (a) The following definitions apply in this Article:

- 30 (1) Accused. -- A person who has been arrested and
31 charged with committing a crime covered by this
32 Article.
- 33 (2) Arresting law enforcement agency. -- The law
34 enforcement agency that makes the arrest of an
35 accused.
- 36 (3) Custodial agency. -- The agency that has legal
37 custody of an accused or defendant arising from a
38 charge or conviction of a crime covered by this
39 Article including, but not limited to, local jails
40 or detention facilities, regional jails or

- 1 detention facilities, or the Department of
2 Correction.
- 3 (4) Investigating law enforcement agency. -- The law
4 enforcement agency with primary responsibility for
5 investigating the crime committed against the
6 victim.
- 7 (5) Law enforcement agency. -- An arresting law
8 enforcement agency, a custodial agency, or an
9 investigating law enforcement agency.
- 10 (6) Next of kin. -- The victim's spouse, children,
11 parents, siblings, or grandparents. The term does
12 not include the accused unless the charges are
13 dismissed or the person is found not guilty.
- 14 (7) Victim. -- A person against whom there is probable
15 cause to believe one of the following crimes was
16 committed:
- 17 a. A Class A, B1, B2, C, D, or E felony.
- 18 b. A Class F felony if it is a violation of one
19 of the following: G.S. 14-16.6(b); 14-
20 16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-
21 32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41;
22 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-
23 202.1; 14-288.9; or 20-138.5.
- 24 c. A Class G felony if it is a violation of one
25 of the following: G.S. 14-32.3(b); 14-51; 14-
26 58; 14-87.1; or 20-141.4.
- 27 d. A Class H felony if it is a violation of one
28 of the following: G.S. 14-32.3(a); 14-32.3(c);
29 or 14-33.2.
- 30 e. A Class I felony if it is a violation of one
31 of the following: G.S. 14-277.3; 14-32.3(b);
32 14-34.6(b); or 14-190.17A.
- 33 f. An attempt of any of the felonies listed in
34 this subdivision if the attempted felony is
35 punishable as a felony.
- 36 g. Any of the following misdemeanor offenses when
37 the offense is committed between persons who
38 have a personal relationship as defined in
39 G.S. 50B-1(b); 14-33(c)(1), G.S. 14-33(c)(2),

1 G.S. 14-33(a), G.S. 14-34, G.S. 14-134.3, or
2 G.S. 14-277.3.

3 (b) If the victim is deceased, then the next of kin, in the
4 order set forth in the definition contained in this section, is
5 entitled to the victim's rights under this Article. However, the
6 right contained in G.S. 15A-834 may only be exercised by the
7 personal representative of the victim's estate. An individual
8 entitled to exercise the victim's rights as a member of the class
9 of next of kin may designate anyone in the class to act on behalf
10 of the class.

11 "§ 15A-831. Responsibilities of law enforcement agency.

12 (a) As soon as practicable but within 72 hours after
13 identifying a victim covered by this Article, the investigating
14 law enforcement agency shall provide the victim with the
15 following information:

- 16 (1) The availability of medical services, if needed.
17 (2) The availability of crime victims' compensation
18 funds under Chapter 15B of the General Statutes and
19 the address and telephone number of the agency
20 responsible for dispensing the funds.
21 (3) The address and telephone number of the district
22 attorney's office that will be responsible for
23 prosecuting the victim's case.
24 (4) The name and telephone number of an investigating
25 law enforcement agency employee whom the victim may
26 contact if the victim has not been notified of an
27 arrest in the victim's case within six months after
28 the crime was reported to the law enforcement
29 agency.
30 (5) Information about an accused's opportunity for
31 pretrial release.
32 (6) The name and telephone number of an investigating
33 law enforcement agency employee whom the victim may
34 contact to find out whether the accused has been
35 released from custody.

36 (b) As soon as practicable but within 72 hours after the
37 arrest of a person believed to have committed a crime covered by
38 this Article, the arresting law enforcement agency shall inform
39 the investigating law enforcement agency of the arrest. As soon
40 as practicable but within 72 hours of being notified of the

1 arrest, the investigating law enforcement agency shall notify the
2 victim of the arrest.

3 (c) As soon as practicable but within 72 hours after receiving
4 notification from the arresting law enforcement agency that the
5 accused has been arrested, the investigating law enforcement
6 agency shall forward to the district attorney's office that will
7 be responsible for prosecuting the case the victim's name,
8 address, date of birth, social security number, race, sex, and
9 telephone number, unless the victim refuses to disclose any or
10 all of the information, in which case, the investigating law
11 enforcement agency shall so inform the district attorney's
12 office.

13 (d) Upon receiving the information in subsection (a) of this
14 section, the victim shall, on a form provided by the
15 investigating law enforcement agency, indicate whether the victim
16 wishes to receive any further notices from the investigating law
17 enforcement agency. If the victim elects to receive further
18 notices, the victim shall be responsible for notifying the
19 investigating law enforcement agency of any changes in the
20 victim's name, address, and telephone number.

21 "§ 15A-832. Responsibilities of the district attorney's office.

22 (a) Within 21 days after the arrest of the accused, but not
23 less than 24 hours before the accused's first scheduled probable
24 cause hearing, the district attorney's office shall provide to
25 the victim a pamphlet or other written material that explains in
26 a clear and concise manner the following:

27 (1) The victim's rights under this Article, including
28 the right to confer with the attorney prosecuting
29 the case about the disposition of the case and the
30 right to provide a victim impact statement.

31 (2) The responsibilities of the district attorney's
32 office under this Article.

33 (3) The victim's eligibility for compensation under
34 the Crime Victims' Compensation Act and the
35 deadlines by which the victim must file a claim for
36 compensation.

37 (4) The steps generally taken by the district
38 attorney's office when prosecuting a felony case.

1 (5) Suggestions on what the victim should do if
2 threatened or intimidated by the accused or someone
3 acting on the accused's behalf.

4 (6) The name and telephone number of a victim and
5 witness assistant in the district attorney's office
6 whom the victim may contact for further
7 information.

8 (b) Upon receiving the information in subsection (a) of this
9 section, the victim shall, on a form provided by the district
10 attorney's office, indicate whether the victim wishes to receive
11 notices of some, all, or none of the trial and post-trial
12 proceedings involving the accused. If the victim elects to
13 receive notices, the victim shall be responsible for notifying
14 the district attorney's office or any other department or agency
15 that has a responsibility under this Article of any changes in
16 the victim's address and telephone number. The victim may alter
17 the request for notification at any time by notifying the
18 district attorney's office and completing the form provided by
19 the district attorney's office.

20 (c) The district attorney's office shall notify a victim of
21 the date, time, and place of all trial court proceedings of the
22 type which the victim has elected to receive notice. All notices
23 required to be given by the district attorney's office shall be
24 given in a manner that is reasonably calculated to be received by
25 the victim prior to the date of the court proceeding.

26 (d) Whenever practical, the district attorney's office shall
27 provide a secure waiting area during court proceedings that does
28 not place the victim in close proximity to the defendant or the
29 defendant's family.

30 (e) When the victim is to be called as a witness in a court
31 proceeding, the court shall make every effort to permit the
32 fullest attendance possible by the victim in the proceedings.
33 This subsection shall not be construed to interfere with the
34 defendant's right to a fair trial.

35 (f) Prior to the disposition of the case, the district
36 attorney's office shall offer the victim the opportunity to
37 consult with the prosecuting attorney to obtain the views of the
38 victim about the disposition of the case, including the victim's
39 views about dismissal, plea or negotiations, sentencing, and any
40 pretrial diversion programs.

1 (g) At the sentencing hearing, the prosecuting attorney shall
2 submit to the court a copy of a form containing the identifying
3 information set forth in G.S. 15A-831(c) about any victim
4 electing to receive further notices under this Article. The form
5 shall be included with the final judgment and commitment
6 transmitted to the Department of Correction or other agency
7 receiving custody of the defendant and shall be maintained by the
8 custodial agency as a confidential file.

9 "§ 15A-833. Evidence of victim impact.

10 (a) A victim has the right to offer admissible evidence of the
11 impact of the crime, which shall be considered by the court or
12 jury in sentencing the defendant. The evidence may include the
13 following:

14 (1) A description of the nature and extent of any
15 physical, psychological, or emotional injury
16 suffered by the victim as a result of the offense
17 committed by the defendant.

18 (2) An explanation of any economic or property loss
19 suffered by the victim as a result of the offense
20 committed by the defendant.

21 (3) A request for restitution and an indication of
22 whether the victim has applied for or received
23 compensation under the Crime Victims' Compensation
24 Act.

25 (b) No victim shall be required to offer evidence of the
26 impact of the crime. No inference or conclusion shall be drawn
27 from a victim's decision not to offer evidence of the impact of
28 the crime.

29 "§ 15A-834. Restitution.

30 A victim has the right to receive restitution as ordered by the
31 court pursuant to Article 81C of Chapter 15A of the General
32 Statutes.

33 "§ 15A-835. Post-trial responsibilities.

34 (a) Within 30 days after the final trial court proceeding in
35 the case, the district attorney's office shall notify the victim,
36 in writing, of:

37 (1) The final disposition of the case.

38 (2) The crimes of which the defendant was convicted.

39 (3) The defendant's right to appeal, if any.

1 (b) Upon a defendant's giving notice of appeal to the Court of
2 Appeals or the Supreme Court, the district attorney's office
3 shall forward to the Attorney General's office the victim's name,
4 address, and telephone number. Upon receipt of this information,
5 and thereafter as the circumstances require, the Attorney
6 General's office shall provide the victim with the following:

7 (1) A clear and concise explanation of how the
8 appellate process works, including information
9 about possible actions that may be taken by the
10 appellate court.

11 (2) Notice of the date, time, and place of any
12 appellate proceedings involving the defendant.
13 Notice shall be given in a manner that is
14 reasonably calculated to be received by the victim
15 prior to the date of the proceedings.

16 (3) The final disposition of an appeal.

17 (c) If the defendant has been released on bail pending the
18 outcome of the appeal, the agency that has custody of the
19 defendant shall notify the investigating law enforcement agency
20 as soon as practicable, and within 72 hours of receipt of the
21 notification the investigating law enforcement agency shall
22 notify the victim that the defendant has been released.

23 (d) If the defendant's conviction is overturned, and the
24 district attorney's office decides to retry the case or the case
25 is remanded to superior court for a new trial, the victim shall
26 be entitled to the same rights under this Article as if the first
27 trial did not take place.

28 (e) The Conference of District Attorneys shall maintain a
29 repository relating to victims' identities, addresses, and other
30 appropriate information for use by agencies charged with
31 responsibilities under this Article.

32 "§ 15A-836. Responsibilities of agency with custody of
33 defendant.

34 (a) The custodial agency shall notify the victim of:

35 (1) The projected date by which the defendant can be
36 released from custody. The calculation of the
37 release date shall be as exact as possible,
38 including earned time and disciplinary credits if
39 the sentence of imprisonment exceeds 90 days.

1 (2) An inmate's assignment to a minimum custody unit
2 and the address of the unit. This notification
3 shall include notice that the inmate's minimum
4 custody status may lead to the inmate's
5 participation in one or more community-based
6 programs such as work release or supervised leaves
7 in the community.

8 (3) The victim's right to submit any concerns to the
9 agency with custody and the procedure for
10 submitting such concerns.

11 (4) The defendant's escape from custody, within 72
12 hours.

13 (5) The defendant's capture, within 72 hours.

14 (6) The date the defendant is scheduled to be released
15 from the facility. Whenever practical, notice
16 shall be given 60 days before release. In no event
17 shall notice be given less than 7 days before
18 release.

19 (7) The defendant's death.

20 (b) Notifications required in this section shall be provided
21 within 30 days of the date the custodial agency takes custody of
22 the defendant or within 30 days of the event requiring
23 notification, or as otherwise specified in subsection (a) of this
24 section.

25 "§ 15A-837. Responsibilities of Division of Adult Probation and
26 Parole.

27 (a) The Division of Adult Probation and Parole shall notify
28 the victim of:

29 (1) The defendant's regular conditions of probation or
30 post-release supervision, special or added
31 conditions, supervision requirements, and any
32 subsequent changes.

33 (2) The date of a hearing to determine whether the
34 defendant's supervision should be revoked,
35 continued, modified, or terminated.

36 (3) The final disposition of any hearing referred to
37 in subdivision (2) of this section.

38 (4) Any restitution modification.

- 1 (5) The defendant's movement into or out of any
2 intermediate sanction as defined in G.S. 15A-
3 1340.11(6).
4 (6) The defendant absconding supervision, within 72
5 hours.
6 (7) The capture of a defendant described in subdivision
7 (6) of this section, within 72 hours.
8 (8) The date when the defendant is terminated or
9 discharged.
10 (9) The defendant's death.

11 (b) Notifications required in this section shall be provided
12 within 30 days of the event requiring notification, or as
13 otherwise specified in subsection (a) of this section.

14 "§ 15A-838. Notice of commuted sentence or pardon.

15 The Governor's Clemency Office shall notify a victim when it is
16 considering commuting the defendant's sentence or pardoning the
17 defendant. The Governor's Clemency Office shall also give notice
18 that the victim has the right to present a written statement to
19 be considered by the Office before the defendant's sentence is
20 commuted or the defendant is pardoned. The Governor's Clemency
21 Office shall notify the victim of its decision. Notice shall be
22 given in a manner that is reasonably calculated to allow for a
23 timely response to the commutation or pardon decision.

24 "§ 15A-839. No money damages.

25 This Article does not create a claim for damages against the
26 State, a county, or a municipality, or any of its agencies,
27 instrumentalities, officers, or employees.

28 "§ 15A-840. No ground for relief.

29 The failure or inability of any person to provide a right or
30 service under this Article may not be used by a defendant in a
31 criminal case, by an inmate, by any other accused, or by any
32 victim, as a ground for relief in any criminal or civil
33 proceeding.

34 "§ 15A-841. Incompetent victim's rights exercised.

35 When a victim is mentally or physically incompetent or when the
36 victim is a minor, the victim's rights under this Article, other
37 than the rights provided by G.S. 15A-834, may be exercised by the
38 victim's next of kin or legal guardian."

39 Section 4. Chapter 15A of the General Statutes is
40 amended by adding a new Article to read:

"ARTICLE 81C."Restitution""§ 15A-1340.24. Restitution generally.

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term 'victim' means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 45A of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.

(c) When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.

"§ 15A-1340.25. Basis for restitution.

(a) In determining the amount of restitution, the court shall consider the following:

(1) In the case of an offense resulting in bodily injury to a victim:

a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the victim;

b. The cost of necessary physical and occupational therapy and rehabilitation required by the victim; and

c. Income lost by the victim as a result of the offense.

- 1 (2) In the case of an offense resulting in the damage,
2 loss, or destruction of property of a victim of the
3 offense:
- 4 a. Return of the property to the owner of the
5 property or someone designated by the owner;
6 or
- 7 b. If return of the property under subdivision
8 (2)a. of this subsection is impossible,
9 impracticable, or inadequate:
- 10 i. The value of the property on the date of
11 the damage, loss, or destruction; or
- 12 ii. The value of the property on the date of
13 sentencing, less the value of any part of
14 the property that is returned.
- 15 (3) Any measure of restitution specifically provided by
16 law for the offense committed by the defendant.
- 17 (4) In the case of an offense resulting in bodily
18 injury that results in the death of the victim, the
19 cost of the victim's necessary funeral and related
20 services, in addition to the items set out in
21 subdivisions (1), (2), and (3) of this subsection.
- 22 (b) The court may require that the victim or the victim's
23 estate provide admissible evidence that documents the costs
24 claimed by the victim or the victim's estate under this section.
25 Any such documentation shall be shared with the defendant before
26 the sentencing hearing.
- 27 § 15A-1340.26. Determination of restitution.
- 28 (a) In determining the amount of restitution to be made, the
29 court shall take into consideration the resources of the
30 defendant including all real and personal property owned by the
31 defendant and the income derived from the property, the
32 defendant's ability to earn, the defendant's obligation to
33 support dependents, and any other matters that pertain to the
34 defendant's ability to make restitution, but the court is not
35 required to make findings of fact or conclusions of law on these
36 matters. The amount of restitution must be limited to that
37 supported by the record, and the court may order partial
38 restitution when it appears that the damage or loss caused by the
39 offense is greater than that which the defendant is able to pay.

1 If the court orders partial restitution, the court shall state on
2 the record the reasons for such an order.

3 (b) The court may require the defendant to make full
4 restitution no later than a certain date or, if the circumstances
5 warrant, may allow the defendant to make restitution in
6 installments over a specified time period.

7 (c) When an active sentence is imposed the court shall
8 consider whether it should recommend to the Secretary of
9 Correction that restitution be made by the defendant out of any
10 earnings gained by the defendant if the defendant is granted
11 work-release privileges, as provided in G.S. 148-33.2. The court
12 shall also consider whether it should recommend to the Post-
13 Release Supervision and Parole Commission that restitution by the
14 defendant be made a condition of any parole or post-release
15 supervision granted the defendant, as provided in G.S. 148-57.1.
16 § 15A-1340.27. Effect of restitution order; beneficiaries.

17 (a) An order providing for restitution does not abridge the
18 right of a victim or the victim's estate to bring a civil action
19 against the defendant for damages arising out of the offense
20 committed by the defendant. Any amount paid by the defendant
21 under the terms of a restitution order under this Article shall
22 be credited against any judgment rendered against the defendant
23 in favor of the same victim in a civil action arising out of the
24 criminal offense committed by the defendant.

25 (b) The court may order the defendant to make restitution to a
26 person other than the victim, or to any organization,
27 corporation, or association, including the Crime Victims'
28 Compensation Fund, that provided assistance to the victim
29 following the commission of the offense by the defendant and is
30 subrogated to the rights of the victim. Restitution shall be
31 made to the victim or the victim's estate before it is made to
32 any other person, organization, corporation, or association under
33 this subsection.

34 (c) No government agency shall benefit by way of restitution
35 except for particular damage or loss to it over and above its
36 normal operating costs and except that the State may receive
37 restitution for the total amount of a judgment authorized by G.S.
38 7A-455(b).

39 (d) No third party shall benefit by way of restitution as a
40 result of the liability of that third party to pay indemnity to

1 an aggrieved party for the damage or loss caused by the
2 defendant, but the liability of a third party to pay indemnity to
3 an aggrieved party or any payment of indemnity actually made by a
4 third party to an aggrieved party does not prohibit or limit in
5 any way the power of the court to require the defendant to make
6 complete and full restitution to the aggrieved party for the
7 total amount of the damage or loss caused by the defendant.

8 "§ 15A-1340.28. Enforcement of certain orders for restitution.

9 (a) In addition to the provisions of G.S. 15A-1340.26, when an
10 order for restitution under G.S. 15A-1340.24(b) requires the
11 defendant to pay restitution in an amount in excess of \$250 to a
12 victim, the order may be enforced in the same manner as a civil
13 judgment, subject to the provisions of this section.

14 (b) The order for restitution under G.S. 15A-1340.24(b) shall
15 be docketed and indexed in the county of the original conviction
16 in the same manner as a civil judgment pursuant to G.S. 1-233 et
17 seq., and may be docketed in any other county pursuant to G.S. 1-
18 234. The judgment may be collected in the same manner as a civil
19 judgment unless the order to pay restitution is a condition of
20 probation. If the order to pay restitution is a condition of
21 probation, the judgment may only be executed upon in accordance
22 with subsection (c) of this section.

23 (c) If the defendant is ordered to pay restitution under G.S.
24 15A-1340.24(b) as a condition of probation, a judgment docketed
25 under this section may be collected in the same manner as a civil
26 judgment. However, the docketed judgment for restitution may not
27 be executed upon the property of the defendant until the date of
28 notification to the clerk of superior court in the county of the
29 original conviction that the judge presiding at the probation
30 termination or revocation hearing has made a finding that
31 restitution in a sum certain remains due and payable, that the
32 defendant's probation has been terminated or revoked, and that
33 the remaining balance of restitution owing may be collected by
34 execution on the judgment. The clerk shall then enter upon the
35 judgment docket the amount that remains due and payable on the
36 judgment, together with amounts equal to the standard fees for
37 docketing, copying, certifying, and mailing, as appropriate, and
38 shall collect any other fees or charges incurred as in the
39 enforcement of other civil judgments, including accrued interest.
40 However, no interest shall accrue on the judgment until the entry

1 of an order terminating or revoking probation and finding the
2 amount remaining due and payable, at which time interest shall
3 begin to accrue at the legal rate pursuant to G.S. 24-5. The
4 interest shall be applicable to the amount determined at the
5 termination or revocation hearing to be then due and payable.
6 The clerk shall notify the victim by first-class mail at the
7 victim's last known address that the judgment may be executed
8 upon, together with the amount of the judgment. Until the clerk
9 receives notification of termination or revocation of probation
10 and the amount that remains due and payable on the order of
11 restitution, the clerk shall not be required to update the
12 judgment docket to reflect partial payments on the order of
13 restitution as a condition of probation. The stay of execution
14 under this subsection shall not apply to property of the
15 defendant after the transfer or conveyance of the property to
16 another person. When the criminal order of restitution has been
17 paid in full, the civil judgment indexed under this section shall
18 be deemed satisfied and the judgment shall be cancelled. Payment
19 satisfying the civil judgment shall also be credited against the
20 order of restitution.

21 (d) An appeal of the conviction upon which the order of
22 restitution is based shall stay execution on the judgment until
23 the appeal is completed. If the conviction is overturned, the
24 judgment shall be cancelled."

25 Section 5. G. S. 15A-1021(d) reads as rewritten:

26 "(d) When restitution or reparation by the defendant is a part
27 of the plea arrangement agreement, if the judge concurs in the
28 proposed disposition he may order that restitution or reparation
29 be made as a condition of special probation pursuant to the
30 provisions of G.S. 15A-1351, or probation pursuant to the
31 provisions of G.S. 15A-1343(d). If an active sentence is imposed
32 the court may recommend that the defendant make restitution or
33 reparation out of any earnings gained by the defendant if he is
34 granted work release privileges under the provisions of G.S. 148-
35 33.1, or that restitution or reparation be imposed as a condition
36 of parole in accordance with the provisions of G.S. 148-57.1. The
37 order or recommendation providing for restitution or reparation
38 shall be in accordance with the applicable provisions of ~~G.S.~~
39 ~~15A-1343(d)~~ G.S. 15A-1343(d) and Article 81C of this Chapter.

1 If the offense is one in which there is evidence of physical,
2 mental or sexual abuse of a minor, the court should encourage the
3 minor and the minor's parents or custodians to participate in
4 rehabilitative treatment and the plea agreement may include a
5 provision that the defendant will be ordered to pay for such
6 treatment.

7 When restitution or reparation is recommended as part of a plea
8 arrangement that results in an active sentence, the sentencing
9 court shall enter as a part of the commitment that restitution or
10 reparation is recommended as part of the plea arrangement. The
11 Administrative Office of the Courts shall prepare and distribute
12 forms which provide for ample space to make restitution or
13 reparation recommendations incident to commitments."

14 Section 6. G.S. 15A-1343(d) reads as rewritten:

15 "(d) Restitution as a Condition of Probation. -- As a
16 condition of probation, a defendant may be required to make
17 restitution or reparation to an aggrieved party or parties who
18 shall be named by the court for the damage or loss caused by the
19 defendant arising out of the offense or offenses committed by the
20 defendant. When restitution or reparation is a condition imposed,
21 the court shall take into consideration the ~~resources of the~~
22 ~~defendant, including all real and personal property owned by the~~
23 ~~defendant and the income derived from such property, his ability~~
24 ~~to earn, his obligation to support dependents, and such other~~
25 ~~matters as shall pertain to his ability to make restitution or~~
26 ~~reparation, but the court is not required to make findings of~~
27 ~~fact or conclusions of law on these matters when the sentence is~~
28 ~~imposed. The amount must be limited to that supported by the~~
29 ~~record, and the court may order partial restitution or reparation~~
30 ~~when it appears that the damage or loss caused by the offense or~~
31 ~~offenses is greater than that which the defendant is able to pay.~~
32 ~~An order providing for restitution or reparation shall in no way~~
33 ~~abridge the right of any aggrieved party to bring a civil action~~
34 ~~against the defendant for money damages arising out of the~~
35 ~~offense or offenses committed by the defendant, but any amount~~
36 ~~paid by the defendant under the terms of an order as provided~~
37 ~~herein shall be credited against any judgment rendered against~~
38 ~~the defendant in such civil action. As used herein, "restitution"~~
39 ~~shall mean (i) compensation for damage or loss as could~~
40 ~~ordinarily be recovered by an aggrieved party in a civil action,~~

1 ~~and (ii) reimbursement to the State for the total amount of a~~
2 ~~judgment authorized by G.S. 7A-455(b). factors set out in G.S.~~
3 ~~15A-1340.25 and 15A-1340.26. As used herein, "reparation" shall~~
4 ~~include but not be limited to the performing of community~~
5 ~~services, volunteer work, or doing such other acts or things as~~
6 ~~shall aid the defendant in his rehabilitation. As used herein~~
7 ~~"aggrieved party" includes individuals, firms, corporations,~~
8 ~~associations, other organizations, and government agencies,~~
9 ~~whether federal, State or local, including the Crime Victims~~
10 ~~Compensation Fund established by G.S. 15B-23. Provided, that no~~
11 ~~government agency shall benefit by way of restitution except for~~
12 ~~particular damage or loss to it over and above its normal~~
13 ~~operating costs and except that the State may receive restitution~~
14 ~~for the total amount of a judgment authorized by G.S. 7A-455(b).~~
15 A government agency may benefit by way of reparation even though
16 the agency was not a party to the crime provided that when
17 reparation is ordered, community service work shall be rendered
18 only after approval has been granted by the owner or person in
19 charge of the property or premises where the work will be done.
20 ~~Provided further, that no third party shall benefit by way of~~
21 ~~restitution or reparation as a result of the liability of that~~
22 ~~third party to pay indemnity to an aggrieved party for the damage~~
23 ~~or loss caused by the defendant, but the liability of a third~~
24 ~~party to pay indemnity to an aggrieved party or any payment of~~
25 ~~indemnity actually made by a third party to an aggrieved party~~
26 ~~does not prohibit or limit in any way the power of the court to~~
27 ~~require the defendant to make complete and full restitution or~~
28 ~~reparation to the aggrieved party for the total amount of the~~
29 ~~damage or loss caused by the defendant. Restitution or reparation~~
30 ~~measures are ancillary remedies to promote rehabilitation of~~
31 ~~criminal offenders, to provide for compensation to victims of~~
32 ~~crime, and to reimburse the Crime Victims Compensation Fund~~
33 ~~established by G.S. 15B-23, and shall not be construed to be a~~
34 ~~fine or other punishment as provided for in the Constitution and~~
35 ~~laws of this State."~~

36 Section 7. G.S. 148-33.2(c) reads as rewritten:
37 "(c) When an active sentence is imposed, the court shall
38 consider whether, as a rehabilitative measure, it should
39 recommend to the Secretary of Correction that restitution or
40 reparation be made by the defendant out of any earnings gained by

1 the defendant if he is granted work-release privileges and out of
2 other resources of the defendant, including all real and personal
3 property owned by the defendant, and income derived from such
4 property. If the court determines that restitution or reparation
5 should not be recommended, it shall so indicate on the
6 commitment. If, however, the court determines that restitution or
7 reparation should be recommended, the court shall make its
8 recommendation a part of the order committing the defendant to
9 custody. The recommendation shall be in accordance with the
10 applicable provisions of ~~G.S. 15A-1343(d)~~ G.S. 15A-1343(d) and
11 Article 81C of Chapter 15A of the General Statutes. If the
12 offense is one in which there is evidence of physical, mental or
13 sexual abuse of a minor, the court may order the defendant to pay
14 from work release earnings the cost of rehabilitative treatment
15 for the minor. The Administrative Office of the Courts shall
16 prepare and distribute forms which provide ample space to make
17 restitution or reparation recommendations incident to
18 commitments, which forms shall be conveniently structured to
19 enable the sentencing court to make its recommendation."

20 Section 8. G.S. 148-57.1(c) reads as rewritten:

21 "(c) When an active sentence is imposed, the court shall
22 consider whether, as a rehabilitative measure, it should
23 recommend to the Post-Release Supervision and Parole Commission
24 that restitution or reparation by the defendant be made a
25 condition of any parole or post-release supervision granted the
26 defendant. If the court determines that restitution or
27 reparation should not be recommended, it shall so indicate on the
28 commitment. If, however, the court determines that restitution
29 or reparation should be recommended, the court shall make its
30 recommendation a part of the order committing the defendant to
31 custody. The recommendation shall be in accordance with the
32 applicable provisions of ~~G.S. 15A-1343(d)~~ Article 81C of Chapter
33 15A of the General Statutes. The Administrative Office of the
34 Courts shall prepare and distribute forms which provide ample
35 space to make restitution or reparation recommendations incident
36 to commitments, which forms shall be conveniently structured to
37 enable the sentencing court to make its recommendation.

38 If the offense is one in which there is evidence of physical,
39 mental or sexual abuse of a minor, the court may order, as a
40 condition of parole or post-release supervision, that th

1 defendant pay the cost of any rehabilitative treatment for the
2 minor."

3 Section 9. G.S. 1-234 reads as rewritten:

4 "§1-234. Where and how docketed; lien.

5 Upon filing a judgment roll upon a judgment affecting the title
6 of real property, or directing in whole or in part the payment of
7 money, it shall be docketed on the judgment docket of the court
8 of the county where the judgment roll was filed, and may be
9 docketed on the judgment of the court of any other county upon
10 the filing with the clerk thereof of a transcript of the original
11 docket, and is a lien on the real property in the county where
12 the same is docketed of every person against whom any such
13 judgment is rendered, and which he has at the time of the
14 docketing thereof in the county in which such real property is
15 situated, or which he acquires at any time thereafter, for 10
16 years from the date of the rendition of the judgment. But the
17 time during which the party recovering or owning such judgment
18 shall be, or shall have been, restrained from proceeding thereon
19 by an order of injunction, or other order, or by the operation of
20 any appeal, or by a statutory prohibition, does not constitute
21 any part of the 10 years aforesaid, as against the defendant in
22 such judgment, or the party obtaining such orders or making such
23 appeal, or any other person who is not a purchaser, creditor or
24 mortgagee in good faith.

25 A judgment docketed pursuant to G.S.15A-1340.28 shall
26 constitute a lien against the property of a defendant as provided
27 for under this section."

28 Section 10. G.S. 1C-1601(e) reads as rewritten:

29 "(e) Exceptions. -- The exemptions provided in this Article
30 are inapplicable to claims

- 31 (1) Of the United States or its agencies as provided by
32 federal law;
33 (2) Of the State or its subdivisions for taxes,
34 appearance bonds or fiduciary bonds;
35 (3) Of lien by a laborer for work done and performed
36 for the person claiming the exemption, but only as
37 to the specific property affected;
38 (4) Of lien by a mechanic for work done on the
39 premises, but only as to the specific property
40 affected;

- 1 (5) For payment of obligations contracted for the
2 purchase of the specific real property affected;
3 (6) Repealed by Session Laws 1981 (Regular Session,
4 1982), c. 1224, s. 6;
5 (7) For contractual security interests in the specific
6 property affected; provided, that the exemptions
7 shall apply to the debtor's household goods
8 notwithstanding any contract for a nonpossessory,
9 nonpurchase money security interest in any such
10 goods;
11 (8) For statutory liens, on the specific property
12 affected, other than judicial liens;
13 (9) For child support, alimony or distributive award
14 order pursuant to Chapter 50 of the General
15 Statutes- Statutes;
16 (10) For criminal restitution orders docketed as civil
17 judgments pursuant to G.S. 15A-1340.28.

18 Section 11. G.S. 7A-304(d) reads as rewritten:

19 "(d) In any criminal case in which the liability for costs,
20 fines, restitution, or any other lawful charge has been finally
21 determined, the clerk of superior court shall, unless otherwise
22 ordered by the presiding judge, disburse such funds when paid in
23 accordance with the following priorities:

- 24 (1) Sums in restitution to the victim entitled
25 thereto;
26 ~~(1)~~(2) Costs due the county;
27 ~~(2)~~(3) Costs due the city;
28 ~~(3)~~(4) Fines to the county school fund;
29 ~~(4)~~(5) Sums in restitution prorated among the persons
30 other than the victim entitled thereto;
31 ~~(5)~~(6) Costs due the State;
32 ~~(6)~~(7) Attorney's fees.

33 Sums in restitution received by the clerk of superior court
34 shall be disbursed when:

- 35 (1) Complete restitution has been received; or
36 (2) When, in the opinion of the clerk, additional
37 payments in restitution will not be collected;
38 or
39 (3) Upon the request of the person or persons
40 entitled thereto; and

1 (4) In any event, at least once each calendar
2 year."

3 Section 12. G.S. 15B-2 reads as rewritten:

4 "**§ 15B-2. Definitions.**

5 As used in this Chapter, unless the context requires otherwise:

6 (1) "Allowable expense" means reasonable charges
7 incurred for reasonably needed products, services,
8 and accommodations, including those for medical
9 care, rehabilitation, medically related property,
10 and other remedial treatment and care.

11 Allowable expense includes a total charge not
12 in excess of three thousand five hundred dollars
13 (\$3,500) for expenses related to funeral,
14 cremation, and burial, including transportation of
15 a body, but excluding expenses for flowers,
16 gravestone, and other items not directly related to
17 the funeral service.

18 (2) "Claimant" means any of the following persons who
19 claims an award of compensation under this Chapter:
20 a. A victim;
21 b. A dependent of a deceased victim;
22 c. A third person who is not a collateral source
23 and who provided benefit to the victim or his
24 family other than in the course or scope of
25 his employment, business, or profession;
26 d. A person who is authorized to act on behalf of
27 a victim, a dependent, or a third person
28 described in subdivision c.

29 The claimant, however, may not be the offender or
30 an accomplice of the offender who committed the
31 criminally injurious conduct.

32 (3) "Collateral source" means a source of benefits or
33 advantages for economic loss otherwise compensable
34 that the victim or claimant has received or that is
35 readily available to him from any of the following
36 sources:

37 a. The offender;
38 b. The government of the United States or any of
39 its agencies, a state or any of its political

- 1 subdivisions, or an instrumentality of two or
2 more states;
- 3 c. Social security, medicare, and medicaid;
4 d. State-required, temporary, nonoccupational
5 disability insurance;
6 e. Worker's compensation;
7 f. Wage continuation programs of any employer;
8 g. Proceeds of a contract of insurance payable to
9 the victim for loss that he sustained because
10 of the criminally injurious conduct;
11 h. A contract providing prepaid hospital and
12 other health care services, or benefits for
13 disability.
- 14 (4) "Commission" means the Crime Victims Compensation
15 Commission established by G.S. 15B-3.
- 16 (5) "Criminally injurious conduct" means conduct that
17 by its nature poses a substantial threat of
18 personal injury or death, and is punishable by fine
19 or imprisonment or death, or would be so punishable
20 but for the fact that the person engaging in the
21 conduct lacked the capacity to commit the crime
22 under the laws of this State. Criminally injurious
23 conduct includes conduct that amounts to an offense
24 involving impaired driving as defined in G.S. 20-
25 4.01(24a), and conduct that amounts to a violation
26 of G.S. 20-166 if the victim was a pedestrian or
27 was operating a vehicle moved solely by human power
28 or a mobility impairment device. For purposes of
29 this Chapter, a mobility impairment device is a
30 device that is designed for and intended to be used
31 as a means of transportation for a person with a
32 mobility impairment, is suitable for use both
33 inside and outside a building, and whose maximum
34 speed does not exceed 12 miles per hour when the
35 device is being operated by a person with a
36 mobility impairment. Criminally injurious conduct
37 does not include conduct arising out of the
38 ownership, maintenance, or use of a motor vehicle
39 when the conduct is punishable only as a violation
40 of other provisions of Chapter 20 of the General

1 Statutes. Criminally injurious conduct shall also
2 include an act of terrorism, as defined in 18
3 U.S.C. § 2331, that is committed outside of the
4 United States against a citizen of this State.

5 (6) "Dependent" means an individual wholly or
6 substantially dependent upon the victim for care
7 and support and includes a child of the victim born
8 after his death.

9 (7) "Dependent's economic loss" means loss after a
10 victim's death of contributions of things of
11 economic value to his dependents, not including
12 services they would have received from the victim
13 if he had not suffered the fatal injury, less
14 expenses of the dependents avoided by reason of the
15 victim's death.

16 (8) "Dependent's replacement service loss" means loss
17 reasonably incurred by dependents after a victim's
18 death in obtaining ordinary and necessary services
19 in lieu of those the victim would have performed
20 for their benefit if he had not suffered the fatal
21 injury, less expenses of the dependents avoided by
22 reason of the victim's death and not subtracted in
23 calculating dependent's economic loss.

24 Dependent's replacement service loss will be
25 limited to a 26-week period commencing from the
26 date of the injury and compensation shall not
27 exceed two hundred dollars (\$200.00) per week.

28 (9) "Director" means the Director of the Commission
29 appointed under G.S. 15B-3(g).

30 (10) "Economic loss" means economic detriment consisting
31 only of allowable expense, work loss, and
32 replacement services ~~loss~~ loss, and household
33 support loss. If criminally injurious conduct
34 causes death, economic loss includes a dependent's
35 economic loss and a dependent's replacement service
36 loss. Noneconomic detriment is not economic loss,
37 but economic loss may be caused by pain and
38 suffering or physical impairment.

1 (11) "Noneconomic detriment" means pain, suffering,
2 inconvenience, physical impairment, or other
3 nonpecuniary damage.

4 (12) "Replacement services loss" means expenses
5 reasonably incurred in obtaining ordinary and
6 necessary services in lieu of those the injured
7 person would have performed, not for income but for
8 the benefit of himself or his family, if he had not
9 been injured.

10 Replacement service loss will be limited to a
11 26-week period commencing from the date of the
12 injury, and compensation may not exceed two hundred
13 dollars (\$200.00) per week.

14 (12a) "Substantial evidence" means relevant evidence
15 that a reasonable mind might accept as
16 adequate to support a conclusion.

17 (13) "Victim" means a person who suffers personal injury
18 or death proximately caused by criminally injurious
19 conduct.

20 (14) "Work loss" means loss of income from work that the
21 injured person would have performed if he had not
22 been injured and expenses reasonably incurred by
23 him to obtain services in lieu of those he would
24 have performed for income, reduced by any income
25 from substitute work actually performed by him, or
26 by income he would have earned in available
27 appropriate substitute work that he was capable of
28 performing but unreasonably failed to undertake.

29 Compensation for work loss will be limited to
30 26 weeks commencing from the date of the injury,
31 and compensation ~~may shall~~ not exceed ~~two hundred~~
32 ~~dollars (\$200.00) three hundred dollars (\$300.00)~~
33 per week. A claim for work loss will be paid only
34 upon proof that the injured person was gainfully
35 employed at the time of the criminally injurious
36 conduct and, by physician's certificate, that the
37 injured person was unable to work.

38 (15) "Household support loss" means the loss of support
39 that a victim would have received from the victim's
40 spouse for the purpose of maintaining a home or

1 residence for the victim and the victim's
2 dependents. A victim may be compensated fifty
3 dollars (\$50.00) per week for each dependent child.
4 Compensation for household support loss shall not
5 exceed three hundred dollars (\$300.00) per week and
6 shall be limited to 26 weeks commencing from the
7 date of the injury. A victim may receive only one
8 compensation for household support loss. Household
9 support loss is only available to an unemployed
10 victim whose spouse is the offender who committed
11 the criminally injurious conduct that is the basis
12 of the victim's claim under this act."

13 Section 12.1. G.S. 15B-11 reads as rewritten:

14 "**§ 15B-11. Grounds for denial of claim or reduction of award.**

15 (a) An award of compensation shall be denied if:

- 16 (1) The claimant fails to file an application for an
17 award within ~~one year~~ two years after the date of
18 the criminally injurious conduct that caused the
19 injury or death for which the claimant seeks the
20 award;
- 21 (2) The economic loss is incurred after one year from
22 the date of the criminally injurious conduct that
23 caused the injury or death for which the victim
24 seeks the award, except in the case where the
25 victim for whom compensation is sought was 10 years
26 old or younger at the time the injury occurred. In
27 that case an award of compensation will be denied
28 if the economic loss is incurred after two years
29 from the date of the criminally injurious conduct
30 that caused the injury or death for which the
31 victim seeks the award;
- 32 (3) The criminally injurious conduct was not reported
33 to a law enforcement officer or agency within 72
34 hours of its occurrence, and there was no good
35 cause for the delay;
- 36 (4) The award would benefit the offender or the
37 offender's accomplice, unless a determination is
38 made that the interests of justice require that an
39 award be approved in a particular case;

1 (5) The criminally injurious conduct occurred while the
2 victim was confined in any State, county, or city
3 prison, correctional, youth services, or juvenile
4 facility, or local confinement facility, or half-
5 way house, group home, or similar facility; or

6 (6) The victim was participating in a felony or a
7 nontraffic misdemeanor at or about the time that
8 the victim's injury occurred.

9 (b) A claim may be denied and an award of compensation may be
10 reduced upon a finding of contributory misconduct by the claimant
11 or a victim through whom the claimant claims.

12 (c) A claim may be denied, an award of compensation may be
13 reduced, and a claim that has already been decided may be
14 reconsidered upon finding that the claimant or victim has not
15 fully cooperated with appropriate law enforcement agencies with
16 regard to the criminally injurious conduct that is the basis for
17 the award.

18 (c1) A claim may be denied upon a finding that the claimant
19 has been convicted of any felony classified as a Class A, B1, B2,
20 C, D, or E felony under the laws of the State of North Carolina
21 and that such felony was committed within 3 years of the time the
22 victim's injury occurred.

23 (d) After reaching a decision to approve an award of
24 compensation, but before notifying the claimant, the Director
25 shall require the claimant to submit current information as to
26 collateral sources on forms prescribed by the Commission.

27 An award that has been approved shall nevertheless be denied or
28 reduced to the extent that the economic loss upon which the claim
29 is based is or will be recouped from a collateral source. If an
30 award is reduced or a claim is denied because of the expected
31 recoupment of all or part of the economic loss of the claimant
32 from a collateral source, the amount of the award or the denial
33 of the claim shall be conditioned upon the claimant's economic
34 loss being recouped by the collateral source. If it is thereafter
35 determined that the claimant will not receive all or part of the
36 expected recoupment, the claim shall be reopened and an award
37 shall be approved in an amount equal to the amount of expected
38 recoupment that it is determined the claimant will not receive
39 from the collateral source, subject to the limitations set forth
40 in subsections (f) and (g). The existence of a collateral source

1 that would pay expenses directly related to a funeral, cremation,
2 and burial, including transportation of a body, shall not
3 constitute grounds for the denial or reduction of an award of
4 compensation.

5 ~~(e) Compensation may not be awarded if the economic loss is~~
6 ~~less than one hundred dollars (\$100.00).~~

7 (f) Compensation for work loss, replacement services loss,
8 dependent's economic loss, and dependent's replacement services
9 loss may not exceed two hundred dollars (\$200.00) per week.

10 (g) Compensation payable to a victim and to all other
11 claimants sustaining economic loss because of injury to, or the
12 death of, that victim may not exceed ~~twenty~~ thirty thousand
13 dollars ~~(\$20,000)~~ (\$30,000) in the aggregate in addition to
14 allowable funeral, cremation, and burial expenses.

15 (h) The right to reconsider or reopen a claim does not affect
16 the finality of its decision for the purpose of judicial review."

17 Section 12.2. G.S. 143B-480.2(a) reads as rewritten:

18 "(a) Only victims who have reported the following crimes are
19 eligible for assistance under this Program: first-degree rape as
20 defined in G.S. 14-27.2, second-degree rape as defined in G.S.
21 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4,
22 second-degree sexual offense as defined in G.S. 14-27.5, or
23 attempted first-degree or second-degree rape or attempted first-
24 degree or second-degree sexual offense as defined in G.S. 14-
25 27.6. Assistance is limited to immediate and short-term medical
26 expenses, ambulance services, and mental health services provided
27 by a professional licensed or certified by the State to provide
28 such services, not to exceed ~~five hundred dollars (\$500.00)~~ one
29 thousand dollars (\$1,000) incurred by the victim for the medical
30 examination, medical procedures to collect evidence, or
31 counseling treatment which follow the attack, or ambulance
32 services from the place of the attack to a place where medical
33 treatment is provided. Assistance not to exceed fifty dollars
34 (\$50.00) shall be provided to victims to replace clothing that
35 was held for evidence tests."

36 Section 13. The North Carolina Conference of District
37 Attorneys, with assistance from the Administrative Office of the
38 Court and the Governor's Crime Commission, shall present to the
39 General Assembly on or before March 1, 1999 a projection of the
40 costs for full implementation of the provisions of this act with

1 regard to victims of domestic violence. In preparing the report,
2 the Conference of District Attorneys shall use data collected in
3 Prosecutorial Districts 3A, 13, 20, 21, and 26 by domestic
4 violence prosecution programs receiving grant funds from the
5 Governor's Crime Commission. Nothing herein shall prohibit the
6 Conference of District Attorneys from using data from other such
7 grant programs in this State. Failure or delay in presentation
8 of the report shall not result in a delay in the implementation
9 of the provisions of this act relating to victims of domestic
10 violence.

11 Section 14. To the extent practicable and within
12 available resources, agencies are encouraged to begin as soon as
13 possible the implementation of applicable victim notification
14 procedures of this act prior to the effective date of July 1,
15 1999.

16 Section 15. G.S. 15A-830, 15A-833 and 15A-834 as
17 enacted by Section 3 of this act become effective December 1,
18 1998 and apply to offenses committed on or after that date.
19 Sections 4, 5, 6, 7, 8 and 9 of this act become effective
20 December 1, 1998 and apply to offenses committed on or after that
21 date. Sections 12 and 12.1 of this act become effective October
22 1, 1998 and apply to injuries occurring on or after that date.
23 Sections 13 and 14 of this act are effective when the act becomes
24 law. The remainder of this act becomes effective July 1, 1999 and
25 applies to offenses committed on or after that date.



**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

August 19, 1998

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Brenda Carter and Jo McCants, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 763 - CRIME VICTIMS RIGHTS ACT - Senator Cooper.**

The Proposed Committee Substitute for Senate Bill 763 would prescribe by law the rights of victims of crimes as provided for under Section 37 of Article I of the North Carolina Constitution as approved by the voters November 5, 1996. (Copy attached.)

The bill creates two different levels of services for victims by prescribing certain mandatory services for victims of the more serious offenses, and services within the discretion of the district attorney within available resources for victims of less serious offenses. The bill also defines restitution that maybe ordered as a form of punishment in any criminal case, as is now permitted for under Section 1 of Article XI of the North Carolina Constitution as amended by the voters also on November 5, 1996. (Copy attached.)

Section 1 creates a new subchapter in Chapter 15A entitled "Rights of Crime Victims and Witnesses."

Section 2 amends the current Fair Treatment for Victims and Witness Act to apply to victims of offenses not otherwise covered by the new Crime Victims' Rights Act codified in the new Article 45A.

Section 3 creates the new Article 45A- Crime Victims' Rights Act. **(All statutory section references are to G.S. 15A).**

Sec. 830 defines the victim, the victim's next of kin, the accused, and the various agencies involved in furnishing victim services. The victim is a person against whom there is probable cause to believe one of the following crimes was committed:

Any Class A, B1, B2, C, D, or E felony (see list attached), and other felonies including assaults with deadly weapons, voluntary manslaughter, kidnapping, child sex abuse, elderly abuse and neglect, burglary, arson, habitual DWI, robbery, death by vehicle, habitual assault and stalking, and an attempts of any of these crimes. This section also provides that the next of kin of a deceased victim has the rights of other victims, except the right to restitution is limited to restitution specifically available to next of kin.

Sec. 831 defines the responsibilities of law enforcement officers to notify the victim of the services available to the victims and rights of the victims. This includes notice about victim's compensation and contact numbers for the investigative agency and the district attorney. The victim is also to be given a form to be completed and turned in to designate what additional services and notices the victim would like to receive.

This section also spells out the responsibilities of the arresting law enforcement agency to furnish information to the investigative agency needed for the victim. This section also defines the investigative agency's responsibilities concerning giving information to the victim once the defendant is arrested including information on release from custody, and the time, date and place of the defendant's first court appearance. This section also allows the victim to request that the victim not be given any additional information in the future.

Sec. 832 defines the responsibilities of the district attorney including furnishing the victim written material on the victim's rights, the court process, and the victim's opportunity to participate in the trial process. This section also defines at which of the court proceedings the victim has a right to be present, including when the victim is called as a witness at trial. The victim has a right to consult with the DA before the DA disposes of the case.

Sec. 833 gives the victim the right to present a admissible evidence o the impact of the crime and requires the judge or jury to consider this evidence in sentencing the defendant. This section specifies what evidence may be included and the fact that no evidence is required to be provided.

Sec. 834 gives the victim the right to receive restitution as ordered by the court pursuant to the criminal sentencing statute.

Sec. 835 sets out the responsibilities of the DA after the trial, including notifying the victim of the final disposition and the defendant's right to appeal. This section requires the DA to pass on victim information to the Attorney General's Office that is to inform the victim of the appellant process and give notice to the victim of any appellant hearings. The investigative agency is also to give the victim notice if the

defendant is released on bond pending appeal. If the defendant is awarded a new trial, the victim will have the same rights as were applicable during the original trial.

Sec. 836 sets forth the responsibilities of the agency that has custody or control over the defendant. This will normally be the city, county, or regional jails or the Department of Corrections. The responsibilities under this section include notifying the victim when the victim might be eligible for release, where the defendant is assigned for minimum custody or work release, and the victim's right to be notified of and to participate in reviews prior to the defendant's release. The victim is also to be notified if the defendant escapes, is recaptured, or if the defendant dies.

Sec. 837 sets out the responsibilities of the Division of Adult Probation and Parole, including notifying the victim of any special conditions for probation and any hearings affecting probation.

Sec. 838 requires the Governor's Office to notify the victim if the Governor is considering commuting the defendant's sentence or pardoning the defendant. The victim shall have a right to submit a statement to the Governor for consideration in the Governor's decision and to be informed of the decision.

Sec. 839 makes it clear this act does not create a claim for damages against any governmental body or employee.

Sec. 840 makes it clear that failure for the victim to be given any right or service may not be used as the basis for any relief by the defendant or victim in any criminal or civil action.

Sec. 841 provides that the victim's next of kin may exercise the rights of an incompetent victim.

Section 4 of the bill creates a new Article 81C in Chapter 15A for restitution. **(All references are to sections of G.S. 15A-1340. __)**

Sec. .24 requires a judge at sentencing to determine whether, in addition to any other punishment, the defendant should be order to pay restitution to a victim. This allows for restitution to be order in any criminal case where a victim has suffered injury or damages as defined in this Article. This section also sets out what the court must consider in deciding the amount of restitution to be ordered. These factors include the amount of loss suffered by the victim and the defendant's ability to pay. This section also makes it clear that an order of restitution does not prevent a victim from bringing a civil action to recover damages. The defendant is entitled to a credit against any civil judgment for restitution payments actually made.

Sec. .25 allows an order of restitution to be docketed and enforced as a civil judgment. Execution on any judgment would be stayed pending appeal and while the defendant is paying restitution under probation. The clerk is directed to add the normal civil fees and interest to any payoff of the judgment.

Sec. 5 provides that provisions regarding a debtor's property that is exempt from the enforcement of the claims of creditors do not apply to criminal restitution orders that are docketed as civil judgments.

Sec. 6 gives the victim entitled to restitution priority in receiving funds paid into the clerk of superior courts office.

Sec. 7 allows the Victims Compensation Board to deny claims filed by person convicted of A-E felonies within 3 years of the victims injury under Chapter 15B, Crime Victims Compensation Act

Sec. 8 . Effective date provisions. The new G.S. 15A-830 - Crime Victims Rights definitions, G.S. 15A-833 - Evidence of Victim Impact, and G.S. 15A-834 - Restitution are effective December 1, 1998 and apply to offenses committed on or after that date. Section 4 of the bill, Restitution criminal punishment provisions, are effective December 1, 1998 and apply to offenses committed on or after that date. The changes in Section 7 regarding disqualification for compensation under the Victims Compensation Fund of persons convicted of A-E felonies is effective when the bill becomes law and applies to injuries occurring on or after that date. The remainder of the bill which includes the notification victim notification and participation provisions become effective July 1, 1999 and apply to offenses committed on or after that date.

**FELONY CLASSIFICATION
UNDER THE STRUCTURED SENTENCING ACT
Offenses committed on or after December 1, 1997**

FELONY CLASS	GENERAL STATUTES SECTION	OFFENSE
A	G.S. 14-17	Murder in the 1st degree.
B1	G.S. 14-27.2	1st degree rape.
B1	G.S. 14-27.4	1st degree sexual offense.
B1	G.S. 14-27.7A(a)	Statutory rape or sexual offense of person who is 13, 14, or 15 years old (defendant is at least six years older than victim).
B2	G.S. 14-17	Murder in the 2nd degree.
C	G.S. 14-7.6	Sentencing of habitual felons.
C	G.S. 14-27.3	2nd degree rape.
C	G.S. 14-27.5	2nd degree sexual offense.
C	G.S. 14-27.7A(b)	Statutory rape or sexual offense of person who is 13, 14, or 15 years old (defendant is more than four but less than six years older than victim).
C	G.S. 14-28	Malicious castration.
C	G.S. 14-30	Malicious maiming.
C	G.S. 14-32(a)	Assault with deadly weapon with intent to kill inflicting serious injury.
C	G.S. 14-32.2(b)(1)	Patient abuse and neglect, intentional conduct proximately causes death.
C	G.S. 14-34.4(a)	Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death.
C	G.S. 14-34.4(b)	Adulterated or misbranded food, drugs, etc.; intent to extort.
C	G.S. 14-39	Kidnapping in the 1st degree.
C	G.S. 14-74	Larceny by servants and other employees (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-90	Embezzlement of property received by virtue of office or employment (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-91	Embezzlement of State property by public officers and employees (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-92	Embezzlement of funds by public officers and trustees (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-93	Embezzlement by treasurers of charitable and religious organizations (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>

Felony Classification Continued

C	G.S. 14-94	Embezzlement by officers of railroad companies (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-97	Appropriation of partnership funds by partner to personal use (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-98	Embezzlement by surviving partner (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-99	Embezzlement of taxes by officers (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-100	Obtaining property by false pretenses (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 14-159.1	Contaminating a public water system.
C	G.S. 14-401.11(b)(3)	Distribution of certain food at Halloween and all other times prohibited (poisonous chemical/foreign substance).
C	G.S. 53-129	Misapplication, embezzlement of funds, etc. (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 58-2-162	Embezzlement by insurance agents, brokers, or administrators (amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 90-95(h)(4)c	Trafficking in opium or heroin (28 grams or more).
C	G.S. 90-95.1	Continuing criminal enterprise.
C	G.S. 90-210.70(a)	Penalties (Funeral and Burial Trust Funds; amount involved \$100,000 or more). <i>(Effective 12/1/97)</i>
C	G.S. 130A-26.1(i)(1)	Criminal Violation of Article 9 (Hazardous waste).
C	G.S. 143-215.6B(h)(1)	Enforcement procedures: criminal penalties (Water and air resources).
C	G.S. 143-215.88B(f)(1)	Enforcement procedures: criminal penalties (Oil pollution and hazardous substance control).
C	G.S. 143-215.94X(c)(1)	Enforcement procedures: criminal penalties (Hazardous substances).
C	G.S. 143-215.104Q(c)	Enforcement procedures; criminal penalties (dry-cleaning solvents; knowing and willful violation, place person in danger of death/serious bodily injury). <i>(Effective 1/1/98)</i>
C	G.S. 143-215.114B(h)(1)	Enforcement procedures: criminal penalties (Air pollution control).
D	G.S. 14-18	Voluntary manslaughter. <i>(was Class E - Effective 12/1/97)</i>
D	G.S. 14-49(a)	Malicious use of explosive or incendiary.
D	G.S. 14-49.1	Malicious damage of occupied property by use of explosive or incendiary.
D	G.S. 14-51	Burglary in the 1st degree.
D	G.S. 14-53	Breaking out of dwelling house burglary.
D	G.S. 14-57	Burglary with explosives.

Felony Classification Continued

D	G.S. 14-58	Arson in the 1st degree.
D	G.S. 14-58.2	Burning of mobile home, manufactured-type house or recreational trailer home.
D	G.S. 14-87	Robbery with firearms or other dangerous weapons.
D	G.S. 14-88	Train robbery.
D	G.S. 14-190.16	1st degree sexual exploitation of a minor.
D	G.S. 14-190.18	Promoting prostitution of a minor.
D	G.S. 90-95(e)(5)	Selling or delivering a controlled substance by a person 18 or over to a person under 16 or a pregnant female. <i>(was E - Effective 1/1/97)</i>
D	G.S. 90-95(h)(1)d	Trafficking in marijuana (10,000 pounds or more).
D	G.S. 90-95(h)(2)c	Trafficking in methaqualone (10,000 or more dosage units).
D	G.S. 90-95(h)(3)c	Trafficking in cocaine (400 grams or more).
D	G.S. 90-95(h)(3a)c	Trafficking in amphetamine (10,000 or more dosage units).
D	G.S. 90-95(h)(3b)c	Trafficking in methamphetamine (400 grams or more).
D	G.S. 90-95(h)(4a)c	Trafficking in Lysergic Acid Diethylamide (1,000 or more dosage units).
E	G.S. 14-27.7	Intercourse and sexual offense with certain victims (Parent, Custodian).
E	G.S. 14-29	Castration or other maiming without malice aforethought.
E	G.S. 14-30.1	Malicious throwing of corrosive acid or alkali.
E	G.S. 14-31	Maliciously assaulting in a secret manner.
E	G.S. 14-32(b)	Assault with deadly weapon inflicting serious injury.
E	G.S. 14-32(c)	Assault with deadly weapon with intent to kill.
E	G.S. 14-32.2(b)(2)	Patient abuse and neglect, culpably negligent conduct proximately causes death.
E	G.S. 14-34.1	Discharging certain barreled weapons or a firearm into occupied property.
E	G.S. 14-34.5	Assault with a firearm on a law enforcement officer.
E	G.S. 14-39	Kidnapping in the 2nd degree.
E	G.S. 14-49(b1)	Malicious use of explosive or incendiary. <i>(Effective 6/21/96)</i>
E	G.S. 14-62.2	Burning of churches and certain other religious buildings. <i>(Effective 6/21/96)</i>
E	G.S. 14-318.4(a)	Child abuse inflicting serious injury.
E	G.S. 14-318.4(a1)	Child abuse - prostitution.
E	G.S. 14-318.4(a2)	Child abuse - sexual act.
E	G.S. 90-95(e)(8)	Manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance within 300 feet of an elementary or secondary school.
E	G.S. 90-95(h)(4)b	Trafficking in opium or heroin (14 grams or more, less than 28 grams).

ARTICLE I

1

Sec. 37. (Effective upon certification of approval) Rights of victims of crime.

(1) *Basic rights.* Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

(2) *No money damages; other enforcement.* Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) *No ground for relief in criminal case.* The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding.

(1995, c. 438, s. 1.)

ARTICLE XI

1

Section 1. (Effective upon certification of approval) Punishments.

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

(1995, c. 429, s. 2.)

CHANGES MADE IN THE CURRENT DRAFT
OF THE PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 763

- Pages 8 & 9 - Adds a general 30-day time limit for required notifications by custodial agencies and by the Division of Adult Probation and Parole. Adds 72 hour time limit for notifying victim of defendant's escape or subsequent recapture.
- Page 10 - Adds legal guardian to list of persons who can exercise rights on behalf of minor or incompetent victim.
- Page 11 - (b) Requires court to order defendant to pay restitution when the offense is one that triggers the expanded victims right provided in the bill; (c) Makes restitution or reparation permissive in all other cases.
- Page 12 - (3) Makes it clear that measures of restitution specified for particular criminal offenses may be considered by the court in determining the amount of restitution. (For example, G.S. 14-159.2 provides that a defendant convicted of interference with animal research may be ordered to pay specific damages, including costs of repeating an experiment caused by defendant's interference); (4) Makes it clear that the list of items considered by the court in determining the amount of restitution, including medical expenses, is recoverable in addition to funeral expenses when the victim later dies from the bodily injuries.
- Page 13 - (c) Changes new Article to include reference to current law on restitution with regard to prisoners' work-release earnings; also includes reference to current law on restitution as a condition of parole or post-release supervision.
- Pages 13 & 14 - (c) Changes new Article to include existing provisions in current law on government agencies as beneficiaries of restitution or reparation; (d) also adds existing provisions in current law on third parties as beneficiaries of restitution.
- Page 14 - (a) Limits docketing of orders of restitution as civil judgments to orders under section that applies to victims entitled to expanded rights; only judgments in excess of \$250 will be docketed; (b) Additional clarifying language regarding docketing of restitution order as civil judgment; (c) Contains provision regarding accrual of interest as discussed in last week's committee meeting.
- Pages 15-18 - Sections 5 through 8 make conforming changes to existing laws on restitution to reference the new Article. The language deleted from G.S. 15A-1343(d) [on page 16] would duplicate provisions that are now set out in the new Article on restitution.

- Pages 18-19 – Section 9 of the bill makes a conforming change regarding the docketing of a judgment affecting real property, to provide that a restitution order subsequently docketed as a judgment will constitute a lien against the defendant's real property.
- Pages 21-27 make changes to the Victims Compensation Act.
 - Adds household support loss to the definition of economic loss recoverable under the act; defines household support loss as support victim would have received from spouse, limited to \$300/week for 26 weeks, available to unemployed victim whose spouse is the offender who committed the crime that is the basis of the victim's claim
 - Increases from \$200 to \$300 per week the compensation for work loss
 - Extends from 1 year to 2 the time in which a victim must file a claim
 - Increases limit on compensation from \$20,000 to \$30,000
 - Increases limit on short term medical from \$500 to \$1,000
- Page 27 & 28 - Section 13 directs the Conference of District Attorneys to report to the General Assembly on projected costs of providing expanded services to victims of domestic violence; Requests agencies to begin early implementation of victim notification provisions which are scheduled to become effective July 1, 1999.
- **Page 28 - Effective dates:**
 - When the act becomes law: Requirement for Conference of District attorneys to prepare report; Request that agencies begin early implementation of victim notification
 - October 1, 1998 : Change to Victims Compensation Fund is effective and applies to injuries occurring on or after that date.
 - December 1, 1998 : Definitions, rights to offer evidence of victim impact, and right to restitution and changes to criminal procedure act related to restitution are effective and applicable to offenses on or after that date.
 - July 1, 1999: Remainder of act becomes applicable to offenses committed on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Wednesday, August 26, 1998

SENATOR COOPER,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	763	Crime Victims Rights Act	
		Draft Number:	PCS 8853
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Aug 25 - 98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

Roshyn Sawitt	NC CADV, NC NOW
Debrah Ross	AChU
Cheryl Cromer	NCATL
Brenda Summers	NC Centre
Jane P. Gray	DOJ
Jae Stewart	Dept CCPS
George Reed	NC Council of Churches
Chris Fitzsimon	Common Sense Foundation
AK Cullen	NCFP
Rose White	NC PP
Laura Donnelly	NJC AOC
FB Towell	AOC
John Kinney	Chief of Superior Court - Wake
Jeanne Bonds	AOC
Of the Month	AOC
Queen Carolee	NC Council for Women
Bamy Bryant	Governors Crime Commission
Ligh House	Conference of District Attorney's
Fig Dorer	Conference of D.A.s
Tom Kera	DA-21
Rex Dou	Conference of District Attorneys - 13 th

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Belinda Foster	Conference of D.A's
Eric Sampson	ADA 21 st Dist.
John Z. Kuntz	NCFDC
Mike Miller	NC State Bar
Richard Kasper	CEPS
J. STEWART	CEPS
Lao Kubrow	CJPC
Al Smith	DOA/YATD
Eddie Caldwell	NC Don't Ho Arson/NC Law Eng off Arson
Amey de Baur	Smith Anderson
Tom Keller	Mass - Va alle

1998

**SENATE
JUDICIARY
COMMITTEE**

MINUTES

MINUTES
SENATE JUDICIARY COMMITTEE
October 13, 1998

The Senate Judiciary Committee met on Tuesday, October 13, 1998 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Culpepper to explain House Bill 1720 - AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH THE FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHANGES TO THE JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD ABUSE, NEGLECT AND DEPENDENCY.

Senator Soles moved to adopt a Proposed Committee Substitute to House Bill 1720 for discussion. The motion carried by a majority voice vote.

Jo McCants, Committee Co-Counsel, was recognized to explain the changes which are included in the Proposed Committee Substitute.

Senator William Martin, sponsor of the Senate version of the bill, was recognized to comment on the bill.

Senator Martin moved to amend the Proposed Committee Substitute on Page 52, Lines 18-42. The motion carried by a majority voice vote. (See attached amendment.)

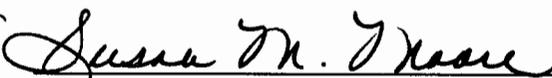
Chuck Harris, with the Division of Social Services, was recognized to respond to questions from the Committee.

Senator Ballance moved to amend the Proposed Committee Substitute on Page 47, Line 40; Page 50, Lines 3-5; Page 13, Lines 7-10; and Page 10, Lines 10-12. The motion carried by a majority voice vote. (See attached amendment.)

Senator Martin moved to give the Proposed Committee Substitute a favorable report as amended and re-refer it to the Finance Committee. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.


Sen. Roy A. Cooper, III, Chairman


Susan M. Moore, Committee Clerk

Princ. Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING

The Senate **Judiciary** Committee will meet at the following time:

Date: Tuesday, October 13, 1998
Time: 10:00 a.m.
Room: 1027

The following bills or resolutions are scheduled to be considered:

HB 1720 Adoptions & Safe Families Act Culpepper

Sen. Roy Cooper, III, Chairman

Posted: 10/08/98 12:22 PM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

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H1720-CSSE-010
PROPOSED COMMITTEE SUBSTITUTE
House Bill 1720
THIS IS A DRAFT 7-OCT-98 17:55:33
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Adoption & Safe Families Act. (Public)

Sponsors:

Referred to:

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF
3 ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION
4 IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT
5 REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH
6 COMMISSION TO STUDY CHANGES TO THE JUVENILE JUSTICE SYSTEM
7 PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY.
8 The General Assembly of North Carolina enacts:
9
10 PART I. ADOPTION AND SAFE FAMILIES ACT CHANGES - CERTAIN SECTIONS
11 EFFECTIVE UNTIL JUNE 30, 1999.
12 Section 1. G.S. 7A-517 reads as rewritten:
13 "§ 7A-517. Definitions.
14 Unless the context clearly requires otherwise, the following
15 words have the listed meanings:
16 (1) Abused juveniles. -- Any juvenile less than 18
17 years of age whose parent, guardian, custodian, or
18 caretaker:
19 a. Inflicts or allows to be inflicted upon the
20 juvenile a serious physical injury by other
21 than accidental means; or

- 1 b. Creates or allows to be created a substantial
2 risk of serious physical injury to the
3 juvenile by other than accidental means; or
4 b1. Uses or allows to be used upon the juvenile
5 cruel or grossly inappropriate procedures or
6 cruel or grossly inappropriate devices to
7 modify behavior; or
8 c. Commits, permits, or encourages the commission
9 of a violation of the following laws by, with,
10 or upon the juvenile: first degree rape, as
11 provided in G.S. 14-27.2; second degree rape
12 as provided in G.S. 14-27.3; first degree
13 sexual offense, as provided in G.S. 14-27.4;
14 second degree sexual offense, as provided in
15 G.S. 14-27.5; sexual act by a custodian, as
16 provided in G.S. 14-27.7; crime against
17 nature, as provided in G.S. 14-177; incest, as
18 provided in G.S. 14-178 and 14-179;
19 preparation of obscene photographs, slides or
20 motion pictures of the juvenile, as provided
21 in G.S. 14-190.5; employing or permitting the
22 juvenile to assist in a violation of the
23 obscenity laws as provided in G.S. 14-190.6;
24 dissemination of obscene material to the
25 juvenile as provided in G.S. 14-190.7 and G.S.
26 14-190.8; displaying or disseminating material
27 harmful to the juvenile as provided in G.S.
28 14-190.14 and G.S. 14-190.15; first and second
29 degree sexual exploitation of the juvenile as
30 provided in G.S. 14-190.16 and G.S. 14-190.17;
31 promoting the prostitution of the juvenile as
32 provided in G.S. 14-190.18; and taking
33 indecent liberties with the juvenile, as
34 provided in G.S. 14-202.1, regardless of the
35 age of the parties; or
36 d. Creates or allows to be created serious
37 emotional damage to the juvenile. Serious
38 emotional damage is evidenced by a juvenile's
39 severe anxiety, depression, withdrawal or
40 aggressive behavior toward himself or others;
41 or
42 e. Encourages, directs, or approves of delinquent
43 acts involving moral turpitude committed by
44 the juvenile.

- 1 (2) Aftercare. -- The supervision of a juvenile who has
2 been returned to the community on conditional
3 release after having been committed to the Division
4 of Youth Services.
- 5 (3) Administrator for Juvenile Services. -- The person
6 who is responsible for the planning, organization,
7 and administration of a statewide system of
8 juvenile intake, probation, and aftercare services.
- 9 (3a) Aggravated circumstances. -- Any circumstance
10 attending to the commission of an act of abuse or
11 neglect which increases its enormity or adds to its
12 injurious consequences, including, but not limited
13 to, abandonment, torture, chronic abuse, or sexual
14 abuse.
- 15 (4) Director of the Division of Youth Services. -- The
16 person responsible for the supervision of the
17 administration of institutional and detention
18 services.
- 19 (5) Caretaker. -- Any person other than a parent,
20 guardian, or custodian who has responsibility for
21 the health and welfare of a juvenile in a
22 residential setting. A person responsible for a
23 juvenile's health and welfare means a stepparent,
24 foster parent, an adult member of the juvenile's
25 household, an adult relative entrusted with the
26 juvenile's care, or any person such as a house
27 parent or cottage parent who has primary
28 responsibility for supervising a juvenile's health
29 and welfare in a residential child care facility or
30 residential educational facility. 'Caretaker' also
31 means any person who has the responsibility for the
32 care of a juvenile in a child care facility as
33 defined in Article 7 of Chapter 110 of the General
34 Statutes and includes any person who has the
35 approval of the care provider to assume
36 responsibility for the juveniles under the care of
37 the care provider. Nothing in this subdivision
38 shall be construed to impose a legal duty of
39 support under Chapter 50 or Chapter 110 of the
40 General Statutes. The duty imposed upon a caretaker
41 as defined in this subdivision shall be for the
42 purpose of Chapter 7A of the General Statutes only.
- 43 (6) Chief Court Counselor. -- The person responsible
44 for administration and supervision of juvenile

- 1 intake, probation, and aftercare in each judicial
2 district, operating under the supervision of the
3 Administrator for Juvenile Services.
- 4 (7) Clerk. -- Any clerk of superior court, acting
5 clerk, or assistant or deputy clerk.
- 6 (8) Community-based program. -- A program providing
7 nonresidential or residential treatment to a
8 juvenile in the community where his family lives. A
9 community-based program may include specialized
10 foster care, family counseling, shelter care, and
11 other appropriate treatment.
- 12 (9) Court. -- The District Court Division of the
13 General Court of Justice.
- 14 (9a) Court of competent jurisdiction. -- A court having
15 the power and authority of law to act at the time
16 of acting over the subject matter of the cause.
- 17 (10) Court counselor. -- A person responsible for
18 probation and aftercare services to juveniles on
19 probation or on conditional release from the
20 Division of Youth Services under the supervision of
21 the chief court counselor.
- 22 (11) Custodian. -- The person or agency that has been
23 awarded legal custody of a juvenile by a court.
- 24 (12) Delinquent juvenile. -- Any juvenile less than 16
25 years of age who has committed a crime or
26 infraction under State law or under an ordinance of
27 local government, including violation of the motor
28 vehicle laws.
- 29 (13) Dependent Juvenile. -- A juvenile in need of
30 assistance or placement because the juvenile has no
31 parent, guardian, or custodian responsible for the
32 juvenile's care or supervision or whose parent,
33 guardian, or custodian is unable to provide for the
34 care or supervision and lacks an appropriate
35 alternative child care arrangement.
- 36 (14) Detention. -- The confinement of a juvenile
37 pursuant to an order for secure custody pending an
38 adjudicatory or dispositional hearing or admission
39 to a placement with the Division of Youth Services.
- 40 (15) Detention home. -- An authorized facility providing
41 secure custody for juveniles.
- 42 (15a) District. -- Any district court district as
43 established by G.S. 7A-133.

- 1 (16) Holdover facility. -- A place in a jail which has
2 been approved by the Department of Health and Human
3 Services as meeting the State standards for
4 detention as required in G.S. 153A-221 providing
5 close supervision where the juvenile cannot
6 converse with, see, or be seen by the adult
7 population.
- 8 (16.1) In loco parentis. -- A person acting in loco
9 parentis means one, other than parents or
10 legal guardian, who has assumed the status and
11 obligation of a parent without being awarded
12 the legal custody of a juvenile by a court.
- 13 (17) Intake counselor. -- A person who screens a
14 petition alleging that a juvenile is delinquent or
15 undisciplined to determine whether the petition
16 should be filed.
- 17 (18) Interstate Compact on Juveniles. -- An agreement
18 ratified by 50 states and the District of Columbia
19 providing a formal means of returning a juvenile,
20 who is an absconder, escapee or runaway, to his
21 home state.
- 22 (19) Judge. -- Any district court judge.
- 23 (19a) Judicial district. -- Any district court
24 district as established by G.S. 7A-133.
- 25 (20) Juvenile. -- Any person who has not reached his
26 eighteenth birthday and is not married,
27 emancipated, or a member of the armed services of
28 the United States. For the purposes of subdivisions
29 (12) and (28) of this section, a juvenile is any
30 person who has not reached his sixteenth birthday
31 and is not married, emancipated, or a member of the
32 armed forces. A juvenile who is married,
33 emancipated, or a member of the armed forces, shall
34 be prosecuted as an adult for the commission of a
35 criminal offense. Wherever the term 'juvenile' is
36 used with reference to rights and privileges, that
37 term encompasses the attorney for the juvenile as
38 well.
- 39 (21) Neglected Juvenile. -- A juvenile who does not
40 receive proper care, supervision, or discipline
41 from the juvenile's parent, guardian, custodian, or
42 caretaker; or who has been abandoned; or who is not
43 provided necessary medical care; or who is not
44 provided necessary remedial care; or who lives in

- 1 an environment injurious to the juvenile's welfare;
2 or who has been placed for care or adoption in
3 violation of law. In determining whether a juvenile
4 is a neglected juvenile, it is relevant whether
5 that juvenile lives in a home where another
6 juvenile has died as a result of suspected abuse or
7 neglect or lives in a home where another juvenile
8 has been subjected to abuse or neglect by an adult
9 who regularly lives in the home.
- 10 (22) Petitioner. -- The individual who initiates court
11 action, whether by the filing of a petition or of a
12 motion for review alleging the matter for
13 adjudication.
- 14 (23) Probation. -- The status of a juvenile who has been
15 adjudicated delinquent, is subject to specified
16 conditions under the supervision of a court
17 counselor, and may be returned to the court for
18 violation of those conditions during the period of
19 probation.
- 20 (24) Prosecutor. -- The assistant district attorney
21 assigned by the district attorney to juvenile
22 proceedings.
- 23 (25) Protective supervision. -- The status of a juvenile
24 who has been adjudicated delinquent or
25 undisciplined and is under the supervision of a
26 court counselor.
- 27 (25a) Reasonable efforts. -- The diligent use of
28 preventive or reunification services by a
29 department of social services when a
30 juvenile's remaining at home or returning home
31 is consistent with achieving a safe, permanent
32 home for the juvenile within a reasonable
33 period of time. If a court of competent
34 jurisdiction determines that the juvenile is
35 not to be returned home, then reasonable
36 efforts means the diligent and timely use of
37 permanency planning services by a department
38 of social services to develop and implement a
39 permanent plan for the juvenile.
- 40 (26) Regional detention home. -- A state-supported and
41 administered regional facility providing detention
42 care.

- 1 (26a) Safe home. -- A home in which the child is not
2 at substantial risk of physical or emotional
3 abuse or neglect.
- 4 (27) Shelter care. -- The temporary care of a juvenile
5 in a physically unrestricting facility pending
6 court disposition.
- 7 (28) Undisciplined juvenile. -- A juvenile less than 16
8 years of age who is unlawfully absent from school;
9 or who is regularly disobedient to his parent,
10 guardian, or custodian and beyond their
11 disciplinary control; or who is regularly found in
12 places where it is unlawful for a juvenile to be;
13 or who has run away from home.
- 14 (29) Director of the department of social services. --
15 The director of the county department of social
16 services in the county in which the juvenile
17 resides or is found, or his representative as
18 authorized in G.S. 108A-14.

19 The singular includes the plural, the masculine singular
20 includes the feminine singular and masculine and feminine plural
21 unless otherwise specified."

22 Section 2. G.S. 7A-544 reads as rewritten:

23 "**§ 7A-544. Investigation by Director; access to confidential**
24 **information; notification of person making the report.**

25 When a report of abuse, neglect, or dependency is received, the
26 Director of the Department of Social Services shall make a prompt
27 and thorough investigation in order to ascertain the facts of the
28 case, the extent of the abuse or neglect, and the risk of harm to
29 the juvenile, in order to determine whether protective services
30 should be provided or the complaint filed as a petition. When the
31 report alleges abuse, the Director shall immediately, but no
32 later than 24 hours after receipt of the report, initiate the
33 investigation. When the report alleges neglect or dependency, the
34 Director shall initiate the investigation within 72 hours
35 following receipt of the report. The investigation and evaluation
36 shall include a visit to the place where the juvenile resides.
37 All information received by the Department of Social Services,
38 including the identity of the reporter, shall be held in
39 strictest confidence by the Department.

40 When a report of a juvenile's death as a result of suspected
41 maltreatment or a report of suspected abuse, neglect, or
42 dependency of a juvenile is received, the Director of the
43 Department of Social Services shall immediately ascertain if
44 other juveniles remain in the home, and, if so, initiate an

1 investigation in order to determine whether they require
2 protective services or whether immediate removal of the juveniles
3 from the home is necessary for their protection.

4 If the investigation indicates that abuse, neglect, or
5 dependency has occurred, the Director shall decide whether
6 immediate removal of the juvenile or any other juveniles in the
7 home is necessary for their protection. If immediate removal does
8 not seem necessary, the Director shall immediately provide or
9 arrange for protective services. If the parent or other caretaker
10 refuses to accept the protective services provided or arranged by
11 the Director, the Director shall sign a complaint seeking to
12 invoke the jurisdiction of the court for the protection of the
13 juvenile or juveniles.

14 If immediate removal seems necessary for the protection of the
15 juvenile or other juveniles in the home, the Director shall sign
16 a complaint which alleges the applicable facts to invoke the
17 jurisdiction of the court. Where the investigation shows that it
18 is warranted, a protective services worker may assume temporary
19 custody of the juvenile for the juvenile's protection pursuant to
20 Article 46 of this Chapter.

21 In performing any duties related to the investigation of the
22 complaint or the provision or arrangement for protective
23 services, the Director may consult with any public or private
24 agencies or individuals, including the available State or local
25 law-enforcement officers who shall assist in the investigation
26 and evaluation of the seriousness of any report of abuse,
27 neglect, or dependency when requested by the Director. The
28 Director or the Director's representative may make a written
29 demand for any information or reports, whether or not
30 confidential, that may in the Director's opinion be relevant to
31 the investigation of or the provision for protective services.
32 Upon the Director's or the Director's representative's request
33 and unless protected by the attorney-client privilege, any public
34 or private agency or individual shall provide access to and
35 copies of this confidential information and these records to the
36 extent permitted by federal law and regulations. If a custodian
37 of criminal investigative information or records believes that
38 release of the information will jeopardize the right of the State
39 to prosecute a defendant or the right of a defendant to receive a
40 fair trial or will undermine an ongoing or future investigation,
41 it may seek an order from a court of competent jurisdiction to
42 prevent disclosure of the information. In such an action, the
43 custodian of the records shall have the burden of showing by a
44 preponderance of the evidence that disclosure of the information

1 in question will jeopardize the right of the State to prosecute a
2 defendant or the right of a defendant to receive a fair trial or
3 will undermine an ongoing or future investigation. Actions
4 brought pursuant to this paragraph shall be set down for
5 immediate hearing, and subsequent proceedings in the actions
6 shall be accorded priority by the trial and appellate courts.

7 Within five working days after receipt of the report of abuse,
8 neglect, or dependency, the Director shall give written notice to
9 the person making the report, unless requested by that person not
10 to give notice, as to whether the report was accepted for
11 investigation and whether the report was referred to the
12 appropriate State or local law enforcement agency.

13 Within five working days after completion of the protective
14 services investigation, the Director shall give subsequent
15 written notice to the person making the report, unless requested
16 by that person not to give notice, as to whether there is a
17 finding of abuse, neglect, or dependency, whether the county
18 Department of Social Services is taking action to protect the
19 juvenile, and what action it is taking, including whether or not
20 a petition was filed. The person making the report shall be
21 informed of procedures necessary to request a review by the
22 prosecutor of the Director's decision not to file a petition. A
23 request for review by the prosecutor shall be made within five
24 working days of receipt of the second notification. The second
25 notification shall include notice that, if the person making the
26 report is not satisfied with the Director's decision, he may
27 request review of the decision by the prosecutor within five
28 working days of receipt. The person making the report may waive
29 the person's right to this notification and no notification is
30 required if the person making the report does not identify
31 himself to the Director."

32 Section 3. G.S. 7A-576 reads as rewritten:

33 "**§ 7A-576. Place of secure or nonsecure custody.**

34 (a) A juvenile meeting the criteria set out in G.S. 7A-574,
35 subsection (a), may be placed in nonsecure custody with the
36 Department of Social Services or a person designated in the order
37 for temporary residential placement in:

- 38 (1) A licensed foster home or a home otherwise
39 authorized by law to provide such care or
40 (2) A facility operated by the Department of Social
41 Services or
42 (3) Any other home or ~~facility~~ facility, including a
43 relative's home, approved by the court and
44 designated in the order.

1 In placing a juvenile in nonsecure custody under this ~~section~~
2 ~~and under G.S. 7A-629 and G.S. 7A-651, section,~~ the court shall
3 first consider whether a relative of the juvenile is willing and
4 able to provide proper care and supervision of the juvenile in a
5 safe home. If the court finds that the relative is willing and
6 able to provide proper care and supervision in a safe home, then
7 the court shall order placement of the juvenile with the
8 ~~relative.~~ relative unless the court finds that placement with the
9 relative would be contrary to the best interests of the juvenile.
10 ~~Prior to placement~~ In placing a juvenile in nonsecure custody
11 under this section, the court shall consider any federal law that
12 may apply. Placement of a juvenile with a relative outside of
13 this State, ~~the placement~~ State must be in accordance with the
14 Interstate Compact on the Placement of Children.

15 (b) A juvenile meeting the criteria set out in G.S. 7A-574(b)
16 may be temporarily detained in an approved county detention home
17 or a regional detention facility which shall be separate from any
18 jail, lockup, prison, or other adult penal institution. It shall
19 be unlawful for a county or any unit of government to operate a
20 juvenile detention home unless the facility meets the standards
21 promulgated by the Department of Health and Human Services."

22 Section 4. G.S. 7A-577 reads as rewritten:

23 "§ 7A-577. Hearing to determine need for continued secure or
24 nonsecure custody.

25 (a) No juvenile shall be held under a secure custody order for
26 more than five calendar days or under a nonsecure custody order
27 for more than seven calendar days, without a hearing on the
28 merits or a hearing to determine the need for continued custody.
29 A hearing on secure custody conducted under this subsection may
30 not be continued or waived. A hearing on nonsecure custody
31 conducted under this subsection may be continued for up to 10
32 business days with the consent of the juvenile's parent,
33 guardian, or custodian, and, if appointed, the juvenile's
34 guardian ad litem. In addition, the court may require the consent
35 of additional parties or may schedule the hearing on nonsecure
36 custody despite a party's consent to a continuance. In every case
37 in which an order has been entered by an official exercising
38 authority delegated pursuant to G.S. 7A-573, a hearing to
39 determine the need for continued custody shall be conducted on
40 the day of the next regularly scheduled session of district court
41 in the city or county where the order was entered if such session
42 precedes the expiration of the applicable time period set forth
43 in this subsection: Provided, that if such session does not
44 precede the expiration of the time period, the hearing may be

1 conducted at another regularly scheduled session of district
2 court in the district where the order was entered.

3 (b) Any juvenile who is alleged to be delinquent shall be
4 advised of the right to have legal representation as provided in
5 G.S. 7A-584 if the juvenile appears without counsel at the
6 hearing.

7 (c) At a hearing to determine the need for continued custody,
8 the judge shall receive testimony and shall allow the juvenile,
9 and the juvenile's parent, guardian, or custodian an opportunity
10 to introduce evidence, to be heard in their own behalf, and to
11 examine witnesses. The State shall bear the burden at every stage
12 of the proceedings to provide clear and convincing evidence that
13 restraints on the juvenile's liberty are necessary and that no
14 less intrusive alternative will suffice. The judge shall not be
15 bound by the usual rules of evidence at such hearings.

16 (d) The judge shall be bound by criteria set forth in G.S. 7A-
17 574 in determining whether continued custody is warranted.

18 (e) The judge shall impose the least restrictive interference
19 with the liberty of a juvenile who is released from secure
20 custody including:

21 (1) Release on the written promise of the juvenile's
22 parent, guardian, or custodian to produce the
23 juvenile in court for subsequent proceedings; or

24 (2) Release into the care of a responsible person or
25 organization; or

26 (3) Release conditioned on restrictions on activities,
27 associations, residence or travel if reasonably
28 related to securing the juvenile's presence in
29 court; or

30 (4) Any other conditions reasonably related to securing
31 the juvenile's presence in court.

32 (f) If the judge determines that the juvenile meets the
33 criteria in G.S. 7A-574 and should continue in custody, the judge
34 shall issue an order to that effect. The order shall be in
35 writing with appropriate findings of fact. The findings of fact
36 shall include the evidence relied upon in reaching the decision
37 and the purposes which continued custody is to achieve.

38 (g) Pending a hearing on the merits, further hearings to
39 determine the need for continued secure custody shall be held at
40 intervals of no more than seven calendar days. A subsequent
41 hearing on continued nonsecure custody shall be held within seven
42 business days, excluding Saturdays, Sundays, and legal holidays,
43 of the initial hearing required in subsection (a) of this section

1 and hearings thereafter shall be held at intervals of no more
2 than 30 calendar days.

3 (g1) Hearings conducted under subsection (g) of this section
4 may be waived as follows:

5 (1) In the case of a juvenile alleged to be delinquent,
6 only with the consent of the juvenile, through
7 counsel for the juvenile; and

8 (2) In the case of a juvenile alleged to be abused,
9 neglected, or dependent, only with the consent of
10 the juvenile's parent, guardian, or custodian, and,
11 if appointed, the juvenile's guardian ad litem.

12 The court may require the consent of additional parties or
13 schedule a hearing despite a party's consent to waiver.

14 ~~(h) Any order authorizing the continued nonsecure custody of a~~
15 ~~juvenile who is alleged to be abused, neglected, or dependent~~
16 ~~shall include findings as to whether reasonable efforts have been~~
17 ~~made to prevent or eliminate the need for placement of the~~
18 ~~juvenile in custody and may provide for services or other efforts~~
19 ~~aimed at returning the juvenile promptly to a safe home. A~~
20 ~~finding that reasonable efforts have not been made shall not~~
21 ~~preclude the entry of an order authorizing continued nonsecure~~
22 ~~custody when the court finds that continued nonsecure custody is~~
23 ~~necessary for the protection of the juvenile. Where efforts to~~
24 ~~prevent the need for the juvenile's placement were precluded by~~
25 ~~an immediate threat of harm to the juvenile, the court may find~~
26 ~~that the placement of the juvenile in the absence of such efforts~~
27 ~~was reasonable. If the court finds through written findings of~~
28 ~~fact that efforts to eliminate the need for placement of the~~
29 ~~juvenile in custody clearly would be futile or would be~~
30 ~~inconsistent with the juvenile's safety and need for a safe,~~
31 ~~permanent home within a reasonable period of time, then the court~~
32 ~~shall specify in its order that reunification efforts are not~~
33 ~~required or order that reunification efforts cease.~~

34 (i) At each hearing to determine the need for continued
35 nonsecure custody, the court shall:

36 (1) Inquire as to the identity and location of any
37 missing parent. The court shall include findings as
38 to the efforts undertaken to locate the missing
39 parent and to serve that parent. The order may
40 provide for specific efforts aimed at determining
41 the identity and location of any missing parent;

42 (2) Inquire as to whether a relative of the juvenile is
43 willing and able to provide proper care and
44 supervision of the juvenile in a safe home. If the

1 court finds that the relative is willing and able
2 to provide proper care and supervision in a safe
3 home, then the court shall order temporary
4 placement of the juvenile with the ~~relative.~~
5 relative unless the court finds that placement with
6 the relative would be contrary to the best
7 interests of the juvenile. Prior to placement In
8 placing a juvenile in nonsecure custody under this
9 section, the court shall first consider any federal
10 law that may apply. Placement of a juvenile with a
11 relative outside of this State, the placement State
12 must be in accordance with the Interstate Compact
13 on the Placement of Children; and
14 (3) Inquire as to whether there are other juveniles
15 remaining in the home from which the juvenile was
16 removed and, if there are, inquire as to the
17 specific findings of the investigation conducted
18 under G.S. 7A-544 and any actions taken or services
19 provided by the Director for the protection of the
20 other juveniles."

21 Section 4.1. Article 46 of Chapter 7A of the General
22 Statutes is amended by adding the following new section to read:
23 "§ 7A-577.1. Reasonable efforts.

24 (a) An order placing or continuing the placement of a juvenile
25 in the custody or placement responsibility of a county department
26 of social services, whether an order for continued nonsecure
27 custody, a dispositional order, or a review order:

28 (1) Shall contain a finding that the juvenile's
29 continuation in or return to the juvenile's own
30 home would be contrary to the juvenile's best
31 interest;

32 (2) Shall contain findings as to whether a county
33 department of social services has made reasonable
34 efforts to prevent or eliminate the need for
35 placement of the juvenile, unless the court has
36 previously determined under subsection (b) of this
37 section that such efforts are not required or shall
38 cease;

39 (3) Shall contain findings as to whether a county
40 department of social services should continue to
41 make reasonable efforts to prevent or eliminate the
42 need for placement of the juvenile, unless the
43 court has previously determined or determines under

- 1 subsection (b) of this section that such efforts
2 are not required or shall cease;
- 3 (4) Shall specify that the juvenile's placement and
4 care are the responsibility of the county
5 department of social services and that the agency
6 is to provide or arrange for the foster care or
7 other placement of the juvenile; and
- 8 (5) May provide for services or other efforts aimed at
9 returning the juvenile to a safe home or at
10 achieving another permanent plan for the juvenile.
- 11 A finding that reasonable efforts have not been made by a county
12 department of social services shall not preclude the entry of an
13 order authorizing the juvenile's placement when the court finds
14 that placement is necessary for the protection of the juvenile.
15 Where efforts to prevent the need for the juvenile's placement
16 were precluded by an immediate threat of harm to the juvenile,
17 the court may find that the placement of the juvenile in the
18 absence of such efforts was reasonable.
- 19 (b) In any order placing a juvenile in the custody or
20 placement responsibility of a county department of social
21 services, whether an order for continued nonsecure custody, a
22 dispositional order, or a review order, the court may direct that
23 reasonable efforts to eliminate the need for placement of the
24 juvenile shall not be required or shall cease if the court makes
25 written findings of fact that:
- 26 (1) Such efforts clearly would be futile or would be
27 inconsistent with the juvenile's health, safety,
28 and need for a safe, permanent home within a
29 reasonable period of time;
- 30 (2) A court of competent jurisdiction has determined
31 that the parent has subjected the child to
32 aggravated circumstances as defined in G.S. 7A-
33 517(3a);
- 34 (3) A court of competent jurisdiction has terminated
35 involuntarily the parental rights of the parent to
36 another child of the parent; or
- 37 (4) A court of competent jurisdiction has determined
38 that: the parent has committed murder or voluntary
39 manslaughter of another child of the parent; has
40 aided, abetted, attempted, conspired, or solicited
41 to commit murder or voluntary manslaughter of the
42 child or another child of the parent; or has
43 committed a felony assault resulting in serious

1 bodily injury to the child or another child of the
2 parent.

3 (c) At any hearing at which the court finds that reasonable
4 efforts to eliminate the need for the juvenile's placement are
5 not required or shall cease, the court shall direct that a
6 permanency planning hearing as required by G.S. 7A-657.1 be held
7 within 30 calendar days after the date of the hearing and, if
8 practicable, shall set the date and time for the permanency
9 planning hearing.

10 (d) In determining reasonable efforts to be made with respect
11 to a juvenile and in making such reasonable efforts, the
12 juvenile's health and safety shall be the paramount concern.
13 Reasonable efforts to preserve or reunify families may be made
14 concurrently with efforts to plan for the juvenile's adoption, to
15 place the juvenile with a legal guardian, or to place the
16 juvenile in another permanent arrangement."

17 Section 5. G.S. 7A-629 reads as rewritten:

18 "**§ 7A-629. Adjudicatory hearing.**

19 The adjudicatory hearing shall be held in the district at such
20 time and place as the chief district judge shall ~~designate.~~
21 designate but no later than 60 days from the filing of the
22 petition, unless the judge pursuant to G.S. 7A-632 orders that it
23 be held at a later time. The judge may exclude the public from
24 the hearing unless the juvenile moves that the hearing be open,
25 which motion shall be granted."

26 Section 6. G.S. 7A-647 reads as rewritten:

27 "**§ 7A-647. Dispositional alternatives for delinquent,**
28 **undisciplined, abused, neglected, or dependent juvenile.**

29 The following alternatives for disposition shall be available
30 to any judge exercising jurisdiction, and the judge may combine
31 any of the applicable alternatives when he finds such disposition
32 to be in the best interest of the juvenile:

33 (1) The judge may dismiss the case, or continue the
34 case in order to allow the juvenile, parent, or
35 others to take appropriate action.

36 (2) In the case of any juvenile who needs more adequate
37 care or supervision or who needs placement, the
38 judge may:

39 a. Require that he be supervised in his own home
40 by the Department of Social Services in his
41 county, a court counselor or other personnel
42 as may be available to the court, subject to
43 conditions applicable to the parent or the
44 juvenile as the judge may specify; or

- 1 b. Place him in the custody of a parent,
2 relative, private agency offering placement
3 services, or some other suitable person; or
4 c. Place him in the custody of the Department of
5 Social Services in the county of his
6 residence, or in the case of a juvenile who
7 has legal residence outside the State, in the
8 physical custody of the Department of Social
9 Services in the county where he is found so
10 that agency may return the juvenile to the
11 responsible authorities in his home state. The
12 Director may, unless otherwise ordered by the
13 judge, arrange for, provide, or consent to,
14 needed routine or emergency medical or
15 surgical care or treatment. In the case where
16 the parent is unknown, unavailable or unable
17 to act on behalf of their child or children,
18 the Director may, unless otherwise ordered by
19 the judge, arrange for, provide or consent to
20 any psychiatric, psychological, educational,
21 or other remedial evaluations or treatment for
22 the juvenile placed by a judge or his designee
23 in the custody or physical custody of a county
24 Department of Social Services under the
25 authority of this or any other Chapter of the
26 General Statutes. Prior to exercising this
27 authority, the Director shall make reasonable
28 efforts to obtain consent from a parent or
29 guardian of the affected child. If the
30 Director can not obtain such consent, the
31 Director shall promptly notify the parent or
32 guardian that care or treatment has been
33 provided and shall give him frequent status
34 reports on the circumstances of the child.
35 Upon request of a parent or guardian of the
36 affected child, the results or records of the
37 aforementioned evaluations, findings or
38 treatment shall be made available to such
39 parent or guardian by the Director unless
40 prohibited by G.S. 122C-53(d). If a juvenile
41 is removed from the home and placed in custody
42 or placement responsibility of a county
43 department of social services, the Director
44 shall not allow unsupervised visitation with,

1 or return physical custody of the juvenile to,
2 the parent or person standing in loco parentis
3 without a hearing at which the court finds
4 that the juvenile will receive proper care and
5 supervision in a safe home.

6 In placing a juvenile in out-of-home care
7 under this section, the court shall first
8 consider whether a relative of the juvenile is
9 willing and able to provide proper care and
10 supervision of the juvenile in a safe home.
11 If the court finds that the relative is
12 willing and able to provide proper care and
13 supervision in a safe home, then the court
14 shall order placement of the juvenile with the
15 relative unless the court finds that the
16 placement is contrary to the best interests of
17 the juvenile. Placement of a juvenile with a
18 relative outside of this State must be in
19 accordance with the Interstate Compact on the
20 Placement of Children.

21 (3) In any case, the judge may order that the juvenile
22 be examined by a physician, psychiatrist,
23 psychologist or other qualified expert as may be
24 needed for the judge to determine the needs of the
25 juvenile.

26 a. Upon completion of the examination, the judge
27 shall conduct a hearing to determine whether
28 the juvenile is in need of medical, surgical,
29 psychiatric, psychological, or other treatment
30 and who should pay the cost of the treatment.
31 The county manager, or such person who shall
32 be designated by the chairman of the county
33 commissioners, of the juvenile's residence
34 shall be notified of the hearing, and allowed
35 to be heard. If the judge finds the juvenile
36 to be in need of medical, surgical,
37 psychiatric, psychological or other treatment,
38 the judge shall permit the parent or other
39 responsible persons to arrange for treatment.
40 If the parent declines or is unable to make
41 necessary arrangements, the judge may order
42 the needed treatment, surgery or care, and the
43 judge may order the parent to pay the cost of
44 the care pursuant to G.S. 7A-650. If the judge

1 finds the parent is unable to pay the cost of
2 treatment, the judge shall order the county to
3 arrange for treatment of the juvenile and to
4 pay for the cost of the treatment. The county
5 department of social services shall recommend
6 the facility that will provide the juvenile
7 with treatment.

- 8 b. If the judge believes, or if there is evidence
9 presented to the effect that the juvenile is
10 mentally ill or is developmentally disabled,
11 the judge shall refer the juvenile to the area
12 mental health, developmental disabilities, and
13 substance abuse services director for
14 appropriate action. A juvenile shall not be
15 committed directly to a State hospital or
16 mental retardation center; and orders
17 purporting to commit a juvenile directly to a
18 State hospital or mental retardation center
19 except for an examination to determine
20 capacity to proceed shall be void and of no
21 effect. The area mental health, developmental
22 disabilities, and substance abuse director
23 shall be responsible for arranging an
24 interdisciplinary evaluation of the juvenile
25 and mobilizing resources to meet the
26 juvenile's needs. If institutionalization is
27 determined to be the best service for the
28 juvenile, admission shall be with the
29 voluntary consent of the parent or guardian.
30 If the parent, guardian, or custodian refuses
31 to consent to a mental hospital or retardation
32 center admission after such
33 institutionalization is recommended by the
34 area mental health, developmental
35 disabilities, and substance abuse director,
36 the signature and consent of the judge may be
37 substituted for that purpose. In all cases in
38 which a regional mental hospital refuses
39 admission to a juvenile referred for admission
40 by a judge and an area mental health,
41 developmental disabilities, and substance
42 abuse director or discharges a juvenile
43 previously admitted on court referral prior to
44 completion of his treatment, the hospital

1 shall submit to the judge a written report
2 setting out the reasons for denial of
3 admission or discharge and setting out the
4 juvenile's diagnosis, indications of mental
5 illness, indications of need for treatment,
6 and a statement as to the location of any
7 facility known to have a treatment program for
8 the juvenile in question.

- 9 (4) In any case in which a juvenile, who was at least
10 eleven years of age at the time of the offense, is
11 adjudicated delinquent for committing a violation
12 of G.S. 14-27.2 (first degree rape), G.S. 14-27.3
13 (second degree rape), 14-27.4 (first degree sexual
14 offense), 14-27.5 (second degree sexual offense),
15 or G.S. 14-27.6 (attempted rape or sexual offense),
16 the judge, upon a finding that the juvenile is a
17 danger to the community, may order that the
18 juvenile register in accordance with Part 4 of
19 Article 27A of Chapter 14 of the General Statutes."

20 Section 7. G.S. 7A-651 reads as rewritten:

21 "§ 7A-651. Dispositional order.

22 (a) The dispositional order shall be in writing and shall
23 contain appropriate findings of fact and conclusions of law. The
24 judge shall state with particularity, both orally and in the
25 written order of disposition, the precise terms of the
26 disposition including the kind, duration and the person who is
27 responsible for carrying out the disposition and the person or
28 agency in whom custody is vested.

29 (b) A dispositional order under which a juvenile is removed
30 from the custody of a parent or person standing in loco parentis
31 shall direct that the review hearing required by G.S. 7A-657 be
32 held within ~~six months of~~ 90 days from the date of the ~~juvenile's~~
33 ~~placement in custody~~ dispositional hearing and, if practicable,
34 shall set the date and time for the review hearing.

35 (c) Any dispositional order directing placement of a juvenile
36 ~~in foster care shall also contain:~~ shall comply with the
37 requirements of G.S. 7A-577.1.

38 ~~(1) A finding that the juvenile's continuation in or~~
39 ~~return to his own home would be contrary to the~~
40 ~~juvenile's best interest; and~~

41 ~~(2) Findings as to whether reasonable efforts have been~~
42 ~~made to prevent or eliminate the need for placement~~
43 ~~of the juvenile in foster care. A finding that~~
44 ~~reasonable efforts were not made shall not preclude~~

~~1 entry of a dispositional order authorizing
2 placement in foster care when the court finds that
3 such placement is needed for protection of the
4 juvenile. When efforts to prevent the need for the
5 juvenile's placement are precluded by an immediate
6 threat of harm to the juvenile, the court may find
7 that placement of the juvenile in the absence of
8 such efforts is reasonable.~~

~~9 The order may provide for services or other efforts aimed at
10 returning the juvenile promptly to a safe home. If the court
11 finds through written findings of fact that efforts to eliminate
12 the need for placement of the juvenile in custody clearly would
13 be futile or would be inconsistent with the juvenile's safety and
14 need for a safe, permanent home within a reasonable period of
15 time, the court shall specify in its order that reunification
16 efforts are not required or order that reunification efforts
17 cease.~~

~~18 (d) An order that places a juvenile in the custody of a county
19 department of social services for placement shall specify that
20 the juvenile's placement and care are the responsibility of the
21 county department of social services and that the county
22 department is to provide or arrange for the foster care or other
23 placement of the juvenile. Any dispositional order shall provide
24 for appropriate visitation as may be in the best interests of the
25 juvenile and consistent with the juvenile's health and safety.
26 If the juvenile is placed in the custody or placement
27 responsibility of a county department of social services, the
28 court may order the director to arrange, facilitate, and
29 supervise a visitation plan expressly approved by the court.~~

~~30 (e) An order that commits a juvenile to the Division of Youth
31 Services shall recite detailed findings that support commitment
32 to the Division as the least restrictive alternative in light of
33 the circumstances. These findings shall state that all
34 alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and
35 7A-649 have been attempted unsuccessfully or were considered and
36 found to be inappropriate and that the juvenile's behavior
37 constitutes a threat to persons or property in the community.
38 These findings shall be supported by substantial evidence in the
39 record that the judge determined the needs of the juvenile,
40 determined the appropriate community resources required to meet
41 those needs, and explored and exhausted or considered
42 inappropriate those resources prior to committing the juvenile to
43 the Division."~~

44 Section 8. G.S. 7A-657 reads as rewritten:

1 "§ 7A-657. Review of custody order.

2 (a) In any case where custody is removed from a ~~parent~~, parent
3 or person standing in loco parentis, the judge shall conduct a
4 review hearing within six months of 90 days from the date the
5 order was entered, of the dispositional hearing shall conduct a
6 second review within six months after the first review, and shall
7 conduct a subsequent ~~reviews~~ review hearing within six months at
8 least every year thereafter. The Director of Social Services
9 shall make a timely ~~requests~~ request to the clerk to calendar ~~the~~
10 case each review at a session of court scheduled for the hearing
11 of juvenile matters. ~~matters within six months of the date the~~
12 order was entered. The Director shall make timely requests for
13 calendaring subsequent reviews. The clerk shall give 15 days'
14 notice of the review and its purpose to the parent ~~or~~ and to any
15 the person standing in loco parentis, the juvenile if 12 years of
16 age or more, the guardian, any foster parent, relative, or
17 preadoptive parent providing care for the child, the custodian or
18 agency with custody, the guardian ad litem, and any other person
19 or agency the court may specify, indicating the court's impending
20 review. Nothing in this subsection shall be construed to make any
21 foster parent, relative, or preadoptive parent a party to the
22 proceeding solely based on receiving notice and an opportunity to
23 be heard.

24 (b) Notwithstanding other provisions of this Article, the
25 court may waive the holding of review hearings required by
26 subsection (a), may require written reports to the court by the
27 agency or person holding custody in lieu of review hearings, or
28 order that review hearings be held less often than every ~~12~~ six
29 months, if the court finds by clear, cogent and convincing
30 evidence that:

- 31 (1) The juvenile has resided with a relative or has
32 been in the custody of another suitable person for
33 a period of at least one year; and
34 (2) The placement is stable and continuation of the
35 placement is in the juvenile's best interest; and
36 (3) Neither the juvenile's best interests nor the
37 rights of any party require that review hearings be
38 held every ~~12~~ six months; and
39 (4) All parties are aware that the matter may be
40 brought before the court for review at any time by
41 the filing of a motion for review or on the court's
42 own motion; and

1 (5) The court order has designated the relative or
2 other suitable person as the juvenile's permanent
3 caretaker or guardian of the person.

4 The court may not waive or refuse to conduct a review hearing if
5 a party files a motion seeking the review.

6 (c) At every review hearing, the court shall consider
7 information from ~~the Department of Social Services, the court~~
8 ~~counselor, the juvenile, the parent or person standing in loco~~
9 ~~parentis, the custodian, the foster parent, the guardian ad~~
10 ~~litem, and any public or private agency~~ the parent, any person
11 standing in loco parentis, the juvenile, the guardian, any foster
12 parent, relative, or preadoptive parent providing care for the
13 child, the custodian or agency with custody, the guardian ad
14 litem, and any other person or agency which will aid it in its
15 review.

16 In each case the court shall consider the following criteria
17 and make written findings regarding those that are relevant:

18 (1) Services which have been offered to reunite the
19 family, or whether efforts to reunite the family
20 clearly would be futile or inconsistent with the
21 juvenile's safety and need for a safe, permanent
22 home within a reasonable period of time;

23 (2) Where the juvenile's return home is unlikely, the
24 efforts which have been made to evaluate or plan
25 for other methods of care;

26 (3) Goals of the foster care placement and the
27 appropriateness of the foster care plan;

28 (4) A new foster care plan, if continuation of care is
29 sought, that addresses the role the current foster
30 parent will play in the planning for the juvenile;

31 (5) Reports on the placements the juvenile has had and
32 any services offered to the juvenile and the
33 parent;

34 (5a) An appropriate visitation plan;

35 (5b) If the juvenile is 16 or 17 years of age, a report
36 on an independent living assessment of the juvenile
37 and, if appropriate, an independent living plan
38 developed for the juvenile;

39 (6) When and if termination of parental rights should
40 be considered;

41 (7) Any other criteria the court deems necessary.

42 (d) The judge, after making findings of fact, may appoint a
43 guardian of the person for the juvenile pursuant to G.S. 7A-585
44 or may make any disposition authorized by G.S. 7A-647, including

1 the authority to place the child in the custody of either parent
2 or any relative found by the court to be suitable and found by
3 the court to be in the best interest of the juvenile. ~~If the~~
4 ~~juvenile is placed in or remains in the custody of the department~~
5 ~~of social services, the court may authorize the department to~~
6 ~~arrange and supervise a visitation plan. Except for such~~
7 ~~visitation, the juvenile shall not be returned to the parent or~~
8 ~~person standing in loco parentis without a hearing at which the~~
9 ~~court finds sufficient facts to show that the juvenile will~~
10 ~~receive proper care and supervision.~~ The court may enter an order
11 continuing the placement under review or providing for a
12 different placement as is deemed to be in the best interest of
13 the juvenile. If at any time custody is restored to a parent, the
14 court shall be relieved of the duty to conduct periodic judicial
15 reviews of the placement.

16 ~~(d1) At a hearing designated by the court, but at least within~~
17 ~~12 months after the juvenile's placement, a review hearing shall~~
18 ~~be held under this section and designated as a permanency~~
19 ~~planning hearing. The purpose of the hearing shall be to develop~~
20 ~~a plan to achieve a safe, permanent home for the juvenile within~~
21 ~~a reasonable period of time. Notice of the hearing shall inform~~
22 ~~the parties of the purpose of the hearing. At the conclusion of~~
23 ~~the hearing, if the juvenile is not returned home, the judge~~
24 ~~shall make specific findings as to the best plan of care to~~
25 ~~achieve a safe, permanent home for the juvenile within a~~
26 ~~reasonable period of time and shall enter an order consistent~~
27 ~~with those findings.~~

28 (e) The provisions of ~~subsections (b), (c), and (d) of G.S.~~
29 ~~7A-651~~ G.S. 7A-577.1 shall apply to any order entered under this
30 ~~section which continues the foster care placement of a juvenile.~~
31 section."

32 Section 8.1. Article 52 of Chapter 7A of the General
33 Statutes is amended by adding the following new section to read:

34 "§ 7A-657.1. Permanency planning hearing.

35 (a) In any case where custody is removed from a parent or
36 person standing in loco parentis, the judge shall conduct a
37 review hearing designated as a permanency planning hearing within
38 12 months after the date of the initial order removing custody,
39 and the hearing may be combined, if appropriate, with a review
40 hearing required by G.S. 7A-657. The purpose of the permanency
41 planning hearing shall be to develop a plan to achieve a safe,
42 permanent home for the juvenile within a reasonable period of
43 time. Subsequent permanency planning hearings shall be held at
44 least every six months thereafter, or earlier as set by the

1 court, to review the progress made in finalizing the permanent
2 plan for the juvenile, or if necessary, to make a new permanent
3 plan for the juvenile. The Director of Social Services shall
4 make a timely request to the clerk to calendar each permanency
5 planning hearing at a session of court scheduled for the hearing
6 of juvenile matters. The clerk shall give 15 days' notice of the
7 hearing and its purpose to the parent and to any person standing
8 in loco parentis, the juvenile if 12 years of age or more, the
9 guardian, any foster parent, relative, or preadoptive parent
10 providing care for the child, the custodian or agency with
11 custody, the guardian ad litem, and any other person or agency
12 the court may specify, indicating the court's impending review.
13 Nothing in this provision shall be construed to make any foster
14 parent, relative, or preadoptive parent a party to the proceeding
15 solely based on receiving notice and an opportunity to be heard.

16 (b) At any permanency planning review, the court shall
17 consider information from the parent, any person standing in loco
18 parentis, the juvenile, the guardian, any foster parent,
19 relative, or preadoptive parent providing care for the child, the
20 custodian or agency with custody, the guardian ad litem, and any
21 other person or agency which will aid it in the court's review.
22 At the conclusion of the hearing, if the juvenile is not returned
23 home, the court shall consider the following criteria and make
24 written findings regarding those that are relevant:

25 (1) Whether it is possible for the juvenile to be
26 returned home immediately or within the next six
27 months, and if not, why it is not in the juvenile's
28 best interests to return home;

29 (2) Where the juvenile's return home is unlikely within
30 six months, whether legal guardianship or custody
31 with a relative or some other suitable person
32 should be established, and if so, the rights and
33 responsibilities which should remain with the
34 parents;

35 (3) Where the juvenile's return home is unlikely within
36 six months, whether adoption should be pursued, and
37 if so, any barriers to the juvenile's adoption;

38 (4) Where the juvenile's return home is unlikely within
39 six months, whether the juvenile should remain in
40 the current placement or be placed in another
41 permanent living arrangement and why;

42 (5) Whether the county department of social services
43 has since the initial permanency plan hearing made

1 reasonable efforts to implement the permanent plan
2 for the juvenile;

3 (6) Any other criteria the court deems necessary.

4 (c) At the conclusion of the hearing, the judge shall make
5 specific findings as to the best plan of care to achieve a safe,
6 permanent home for the juvenile within a reasonable period of
7 time. The judge may appoint a guardian of the person for the
8 juvenile pursuant to G.S. 7A-585 or make any disposition
9 authorized by G.S. 7A-647, including the authority to place the
10 child in the custody of either parent or any relative found by
11 the court to be suitable and found by the court to be in the best
12 interests of the juvenile. If the juvenile is not returned home,
13 the court shall enter an order consistent with its findings that
14 directs the department of social services to make reasonable
15 efforts to place the juvenile in a timely manner in accordance
16 with the permanent plan, to complete whatever steps are necessary
17 to finalize the permanent placement of the juvenile, and to
18 document such steps in the juvenile's case plan. If at any time
19 custody is restored to a parent, or findings are made in
20 accordance with G.S. 7A-657(b), the court shall be relieved of
21 the duty to conduct periodic judicial reviews of the placement.

22 If the court continues the juvenile's placement in the custody
23 or placement responsibility of a county department of social
24 services, the provisions of G.S. 7A-577.1 shall apply to any
25 order entered under this section.

26 (d) In the case of a juvenile who is in the custody or
27 placement responsibility of a county department of social
28 services, and has been in placement outside the home for 15 of
29 the most recent 22 months; or a court of competent jurisdiction
30 has determined that the parent has abandoned the child; or has
31 committed murder or voluntary manslaughter of another child of
32 the parent; or has aided, abetted, attempted, conspired, or
33 solicited to commit murder or voluntary manslaughter of the child
34 or another child of the parent, the court shall order the
35 director of the department of social services to initiate a
36 proceeding to terminate the parental rights of the parent unless
37 the court finds:

38 (1) The permanent plan for the juvenile is guardianship
39 or custody with a relative or some other suitable
40 person;

41 (2) The court makes specific findings why the filing of
42 a petition for termination of parental rights is
43 not in the best interests of the child; or

1 (3) The department of social services has not provided
2 the juvenile's family with such services as the
3 department deems necessary, when reasonable efforts
4 are still required to enable the juvenile's return
5 to a safe home.

6 (e) If a proceeding to terminate the parental rights of the
7 juvenile's parents is necessary in order to perfect the permanent
8 plan for the juvenile, the director of the department of social
9 services shall file a petition to terminate parental rights
10 within 60 calendar days from the date of the permanency planning
11 hearing unless the court makes written findings why the petition
12 cannot be filed within 60 days. If the court makes findings to
13 the contrary, the court shall specify the time frame in which any
14 needed petition to terminate parental rights shall be filed."

15 Section 9. G.S. 7A-659 reads as rewritten:

16 "§ 7A-659. Post termination of parental rights' placement court
17 review.

18 (a) The purpose of each placement review is to insure that
19 every reasonable effort is being made to provide for a permanent
20 placement plan for the child who has been placed in the custody
21 of a county director or licensed child-placing agency, which is
22 consistent with the child's best interest. At each review hearing
23 the court may consider information from the Department of Social
24 Services, the licensed child-placing agency, the guardian ad
25 litem, the child, ~~the~~ any foster parent, relative, or preadoptive
26 parent providing care for the child, and any other person or
27 agency the court determines is likely to aid in the review.

28 (b) The court shall conduct a placement review not later than
29 six months from the date of the termination hearing when parental
30 rights have been terminated by a petition brought by any person
31 or agency designated in G.S. 7A-289.24(2) through (5) and a
32 county director or licensed child-placing agency has custody of
33 the child. The court shall conduct reviews every six months
34 thereafter until the child is placed for adoption and the
35 adoption petition is filed by the adoptive parents.

36 (1) No more than 30 days and no less than 15 days prior
37 to each review, the clerk shall give notice of the
38 review to the child if he is at least 12 years of
39 age, the legal custodian of the child, ~~the~~ any
40 foster parent, relative, or preadoptive parent
41 providing care for the child, the guardian ad
42 litem, if any, and any other person or agency the
43 court may specify. Only the child if he is at least
44 12 years of age, the legal custodian of the child,

- 1 ~~the~~ any foster parent, relative, or preadoptive
2 parent providing care for the child, and the
3 guardian ad litem shall attend the review hearings,
4 except as otherwise directed by the court. Nothing
5 in this subdivision shall be construed to make any
6 foster parent, relative, or preadoptive parent a
7 party to the proceeding solely based on receiving
8 notice and an opportunity to be heard.
- 9 (2) If a guardian ad litem for the child has not been
10 appointed previously by the court in the
11 termination proceeding, the court, at the initial
12 six-month review hearing, may appoint a guardian ad
13 litem to represent the child. The court may
14 continue the case for such time as is necessary for
15 the guardian ad litem to become familiar with the
16 facts of the case.
- 17 (c) The court shall consider at least the following in its
18 review:
- 19 (1) The adequacy of the plan developed by the county
20 department of social services or a licensed
21 child-placing agency for a permanent placement
22 relative to the child's best interest and the
23 efforts of the department or agency to implement
24 such plan;
- 25 (2) Whether the child has been listed for adoptive
26 placement with the North Carolina Adoption Resource
27 Exchange, the North Carolina Photo Adoption Listing
28 Service (PALS), or any other specialized adoption
29 agency; and
- 30 (3) The efforts previously made by the department or
31 agency to find a permanent home for the child.
- 32 (d) The court, after making findings of fact, shall affirm the
33 county department's or child-placing agency's plans or require
34 specific additional steps which are necessary to accomplish a
35 permanent placement which is in the best interests of the child.
- 36 (e) If the child has been placed for adoption prior to the
37 date scheduled for the review, written notice of said placement
38 shall be given to the clerk to be placed in the court file and
39 the review hearing shall be cancelled, with notice of said
40 cancellation given by the clerk to all persons previously
41 notified.
- 42 (f) The process of selection of specific adoptive parents
43 shall be the responsibility of and within the discretion of the
44 county department of social services or licensed child-placing

1 agency. The guardian ad litem may request information from and
2 consult with the county department or child-placing agency
3 concerning the selection process. If the guardian ad litem
4 requests information about the selection process, the county
5 shall provide the information within five days. Any issue of
6 abuse of discretion by the county department or child-placing
7 agency in the selection process must be raised by the guardian ad
8 litem within 10 days following the date the agency notifies the
9 court and the guardian ad litem in writing of the filing of the
10 adoption petition."

11 Section 9.1. Article 24B of Chapter 7A of the General
12 Statutes is amended by adding the following new section to read:
13 "§ 7A-289.23.1. Pending child abuse, neglect, or dependency
14 hearings.

15 When a juvenile is currently within the jurisdiction of the
16 district court based upon an abuse, neglect, or dependency
17 proceeding, a petition for termination of parental rights to that
18 juvenile may be filed as a motion in the cause in the abuse,
19 neglect, or dependency proceeding. Any parent of that juvenile
20 who was previously served in the abuse, neglect, or dependency
21 proceeding in accordance with G.S. 7A-565 shall be served with
22 the petition to terminate parental rights in accordance with G.S.
23 1A-1, Rule 5."

24 Section 10. G.S. 7A-289.27 reads as rewritten:

25 "§ 7A-289.27. Issuance of summons.

26 (a) Except as provided in G.S. 7A-289.26, upon the filing of
27 the petition, the court shall cause a summons to be issued,
28 directed to the following persons or agency, not otherwise a
29 party petitioner, who shall be named as respondents:

- 30 (1) The parents of the child;
- 31 (2) Any person who has been judicially appointed as
32 guardian of the person of the child;
- 33 (3) The custodian of the child appointed by a court of
34 competent jurisdiction;
- 35 (4) Any county department of social services or
36 licensed child-placing agency to whom a child has
37 been released by one parent pursuant to Part 7 of
38 Article 3 of Chapter 48 of the General Statutes;
39 Statutes or any county department of social
40 services to whom placement responsibility for the
41 child has been given by a court of competent
42 jurisdiction; and
- 43 (5) The child, if he or she is 12 years of age or older
44 at the time the petition is filed.

1 Provided, no summons need be directed to or served upon any
2 parent who has previously surrendered the child to a county
3 department of social services or licensed child-placing agency,
4 nor to any parent who has consented to the adoption of the child
5 by the petitioner. The summons shall notify the respondents to
6 file a written answer within 30 days after service of the summons
7 and petition. Service of the summons shall be completed as
8 provided under the procedures established by G.S. 1A-1, Rule
9 4(j); but the parent of the child shall not be deemed to be under
10 disability even though such parent is a minor.

11 (b) The summons shall be issued for the purpose of terminating
12 parental rights pursuant to the provisions of subsection (a) of
13 this section and shall include:

- 14 (1) The name of the minor child;
- 15 (2) Notice that a written answer to the petition must
16 be filed with the clerk who signed the petition
17 within 30 days after service of the summons and a
18 copy of the petition, or the parent's rights may be
19 terminated;
- 20 (3) Notice that if they are indigent, the parents are
21 entitled to appointed counsel. The parents may
22 contact the clerk immediately to request counsel;
- 23 (4) Notice that this is a new case. Any attorney
24 appointed previously will not represent the parents
25 in this proceeding unless ordered by the court;
- 26 (5) Notice that the date, time and place of the hearing
27 will be mailed by the clerk upon filing of the
28 answer or 30 days from the date of service if no
29 answer is filed;
- 30 (6) Notice of the purpose of the hearing and notice
31 that the parents may attend the termination
32 hearing.

33 (c) If a county department of social services, not otherwise a
34 party petitioner, is served with a petition alleging that the
35 parental rights of the parent should be terminated pursuant to
36 G.S. 7A-289.32, the department shall file a written answer and
37 shall be deemed a party to the proceeding."

38 Section 11. G.S. 7A-289.32 reads as rewritten:

39 "§ 7A-289.32. Grounds for terminating parental rights.

40 The court may terminate the parental rights upon a finding of
41 one or more of the following:

- 42 (1) Repealed by Session Laws 1979, c. 669, s. 2.
- 43 (2) The parent has abused or neglected the child. The
44 child shall be deemed to be abused or neglected if

- 1 the court finds the child to be an abused child
2 within the meaning of G.S. 7A-517(1), or a
3 neglected child within the meaning of G.S. 7A-
4 517(21).
- 5 (3) The parent has willfully left the child in foster
6 care or placement outside the home for more than 12
7 months without showing to the satisfaction of the
8 court that reasonable progress under the
9 circumstances has been made within 12 months in
10 correcting those conditions which led to the
11 removal of the child. Provided, however, that no
12 parental rights shall be terminated for the sole
13 reason that the parents are unable to care for the
14 child on account of their poverty.
- 15 (3a) The burden in such proceedings shall be upon the
16 petitioner to prove the facts justifying such
17 termination by clear and convincing evidence.
- 18 (4) The child has been placed in the custody of a
19 county Department of Social Services, a licensed
20 child-placing agency, a child-caring institution,
21 or a foster home, and the parent, for a continuous
22 period of six months next preceding the filing of
23 the petition, has willfully failed for such period
24 to pay a reasonable portion of the cost of care for
25 the child although physically and financially able
26 to do so.
- 27 (5) One parent has been awarded custody of the child by
28 judicial decree, or has custody by agreement of the
29 parents, and the other parent whose parental rights
30 are sought to be terminated has for a period of one
31 year or more next preceding the filing of the
32 petition willfully failed without justification to
33 pay for the care, support, and education of the
34 child, as required by said decree or custody
35 agreement.
- 36 (6) The father of a child born out of wedlock has not
37 prior to the filing of a petition to terminate his
38 parental rights:
- 39 a. Establish(ed) paternity judicially or by
40 affidavit which has been filed in a central
41 registry maintained by the Department of
42 Health and Human Services; provided, the court
43 shall inquire of the Department of Health and
44 Human Services as to whether such an affidavit

- 1 has been so filed and shall incorporate into
2 the case record the Department's certified
3 reply; or
4 b. Legitimated the child pursuant to provisions
5 of G.S. 49-10, or filed a petition for this
6 specific purpose; or
7 c. Legitimated the child by marriage to the
8 mother of the child; or
9 d. Provided substantial financial support or
10 consistent care with respect to the child and
11 mother.
- 12 (7) That the parent is incapable of providing for the
13 proper care and supervision of the child, such that
14 the child is a dependent child within the meaning
15 of G.S. 7A-517(13), and that there is a reasonable
16 probability that such incapability will continue
17 for the foreseeable future. Incapability under this
18 subdivision may be the result of substance abuse,
19 mental retardation, mental illness, organic brain
20 syndrome, or any other similar cause or condition.
- 21 (8) The parent has willfully abandoned the child for at
22 least six consecutive months immediately preceding
23 the filing of the petition. ~~For the purpose of this~~
24 ~~subdivision, a child may be willfully abandoned by~~
25 ~~his or her natural father if the mother of the~~
26 ~~child had been willfully abandoned by and was~~
27 ~~living separate and apart from the father at the~~
28 ~~time of the child's birth, although the father may~~
29 ~~not have known of such birth; but in any event the~~
30 ~~child must be over the age of three months at the~~
31 ~~time of the filing of the petition.~~
- 32 (9) The parent has committed murder or voluntary
33 manslaughter of another child of the parent or
34 other child residing in the home; has aided,
35 abetted, attempted, conspired, or solicited to
36 commit murder or voluntary manslaughter of the
37 child, another child of the parent, or other child
38 residing in the home; or has committed a felony
39 assault that results in serious bodily injury to
40 the child, another child of the parent, or other
41 child residing in the home.
- 42 (10) The parental rights of the parent with respect to
43 another child of the parent have been terminated
44 involuntarily by a court of competent jurisdiction

1 and the parent lacks the ability or willingness to
2 establish a safe home."

3 Section 12. G.S. 48-1-101 is amended by adding a new
4 subdivision to read:

5 "§ 48-1-101. Definitions.

6 In this Chapter, the following definitions apply:

- 7 (1) 'Adoptee' means an individual who is adopted, is
8 placed for adoption, or is the subject of a
9 petition for adoption properly filed with the
10 court.
- 11 (2) 'Adoption' means the creation by law of the
12 relationship of parent and child between two
13 individuals.
- 14 (3) 'Adult' means an individual who has attained 18
15 years of age, or if under the age of 18, is either
16 married or has been emancipated under the
17 applicable State law.
- 18 (3a) 'Adoption facilitator' means an individual or a
19 nonprofit entity that assists biological parents in
20 locating and evaluating prospective adoptive
21 parents without charge.
- 22 (4) 'Agency' means a public or private association,
23 corporation, institution, or other person or entity
24 that is licensed or otherwise authorized by the law
25 of the jurisdiction where it operates to place
26 minors for adoption. 'Agency' also means a county
27 department of social services in this State.
- 28 (5) 'Child' means a son or daughter, whether by birth
29 or adoption.
- 30 (5a) 'Criminal history' means a county, State, or
31 federal criminal history of conviction or a pending
32 indictment of a crime, whether a misdemeanor or a
33 felony, that bears upon an individual's fitness to
34 have responsibility for the safety and well-being
35 of children, including the following North Carolina
36 crimes contained in any of the following Articles
37 of Chapter 14 of the General Statutes: Article 6,
38 Homicide; Article 7A, Rape and Kindred Offenses;
39 Article 8, Assaults; Article 10, Kidnapping and
40 Abduction; Article 13, Malicious Injury or Damage
41 by Use of Explosive or Incendiary Device or
42 Material; Article 26, Offenses Against Public
43 Morality and Decency; Article 27, Prostitution;
44 Article 39, Protection of Minors; Article 40,

- 1 Protection of the Family; and Article 59, Public
2 Intoxication. Such crimes also include possession
3 or sale of drugs in violation of the North Carolina
4 Controlled Substances Act, Article 5 of Chapter 90
5 of the General Statutes, and alcohol-related
6 offenses such as sale to underage persons in
7 violation of G.S. 18B-302 or driving while impaired
8 in violation of G.S. 20-138.1 through G.S. 20-
9 138.5. In addition to the North Carolina crimes
10 listed in this subdivision, such crimes also
11 include similar crimes under federal law or under
12 the laws of other states.
- 13 (6) 'Department' means the North Carolina Department of
14 Health and Human Services.
- 15 (7) 'Division' means the Division of Social Services of
16 the Department.
- 17 (8) 'Guardian' means an individual, other than a
18 parent, appointed by a clerk of court in North
19 Carolina to exercise all of the powers conferred by
20 G.S. 35A-1241, including a standby guardian
21 appointed under Article 21 of Chapter 35A of the
22 General Statutes whose authority has actually
23 commenced; and also means an individual, other than
24 a parent, appointed in another jurisdiction
25 according to the law of that jurisdiction who has
26 the power to consent to adoption under the law of
27 that jurisdiction.
- 28 (9) 'Legal custody' of an individual means the general
29 right to exercise continuing care of and control
30 over the individual as authorized by law, with or
31 without a court order, and:
- 32 a. Includes the right and the duty to protect,
33 care for, educate, and discipline the
34 individual;
- 35 b. Includes the right and the duty to provide the
36 individual with food, shelter, clothing, and
37 medical care; and
- 38 c. May include the right to have physical custody
39 of the individual.
- 40 (10) 'Minor' means an individual under 18 years of age
41 who is not an adult.
- 42 (11) 'Party' means a petitioner, adoptee, or any person
43 whose consent to an adoption is necessary under
44 this Chapter but has not been obtained.

- 1 (12) 'Physical custody' means the physical care of and
2 control over an individual.
- 3 (13) 'Placement' means transfer of physical custody of a
4 minor to the selected prospective adoptive parent.
5 Placement may be either:
- 6 a. Direct placement by a parent or the guardian
7 of the minor; or
- 8 b. Placement by an agency.
- 9 (14) 'Preplacement assessment' means a document, whether
10 prepared before or after placement, that contains
11 the information required by G.S. 48-3-303 and any
12 rules adopted by the Social Services Commission.
- 13 (15) 'Relinquishment' means the voluntary surrender of a
14 minor to an agency for the purpose of adoption.
- 15 (16) 'Report to the court' means a document prepared in
16 accordance with G.S. 48-2-501, et seq.
- 17 (17) 'State' means a state as defined in G.S. 12-3(11).
- 18 (18) 'Stepparent' means an individual who is the spouse
19 of a parent of a child, but who is not a legal
20 parent of the child."

21 Section 13. G.S. 48-3-203 reads as rewritten:

22 "§ 48-3-203. Agency placement adoption.

23 (a) An agency may acquire legal and physical custody of a
24 minor for purposes of adoptive placement only by means of a
25 relinquishment pursuant to Part 7 of this Article or by a court
26 order terminating the rights and duties of a parent or guardian
27 of the minor.

28 (b) An agency shall give any individual upon request a written
29 statement of the services it provides and of its procedure for
30 selecting a prospective adoptive parent for a minor, including
31 the role of the minor's parent or guardian in the selection
32 process. This statement must include a schedule of any fee or
33 expenses charged or required to be paid by the agency and a
34 summary of the provisions of this Chapter that pertain to the
35 requirements and consequences of a relinquishment and to the
36 selection of a prospective adoptive parent.

37 (c) An agency may notify the parent when a placement has
38 occurred and when an adoption decree is issued.

39 (d) The selection of a prospective adoptive parent for a minor
40 shall be made by the agency on the basis of a preplacement
41 assessment. The selection may not be delegated, but may be based
42 on criteria requested by a parent who relinquishes the child to
43 the agency.

1 (d1) A minor who is in the custody or placement responsibility
2 of a county department of social services shall not be placed
3 with a selected prospective adoptive parent prior to the
4 completion of an investigation of the individual's criminal
5 history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based
6 on the criminal history, a determination as to the individual's
7 fitness to have responsibility for the safety and well-being of
8 children.

9 (e) In addition to the authority granted in G.S. 131D-10.5,
10 the Social Services Commission may adopt rules for placements by
11 agencies consistent with the purposes of this Chapter."

12 Section 14. G.S. 48-3-303 reads as rewritten:

13 "§ 48-3-303. Content and timing of preplacement assessment.

14 (a) A preplacement assessment shall be completed within 90
15 days after a request has been accepted.

16 (b) The preplacement assessment must be based on at least one
17 personal interview with each individual being assessed in the
18 individual's residence and any report received pursuant to
19 subsection (c) of this section.

20 (c) The preplacement assessment must, after a reasonable
21 investigation, report on the following about the individual being
22 assessed:

- 23 (1) Age and date of birth, nationality, race, or
24 ethnicity, and any religious preference;
- 25 (2) Marital and family status and history, including
26 the presence of any children born to or adopted by
27 the individual and any other children in the
28 household;
- 29 (3) Physical and mental health, including any addiction
30 to alcohol or drugs;
- 31 (4) Educational and employment history and any special
32 skills;
- 33 (5) Property and income, and current financial
34 information provided by the individual;
- 35 (6) Reason for wanting to adopt;
- 36 (7) Any previous request for an assessment or
37 involvement in an adoptive placement and the
38 outcome of the assessment or placement;
- 39 (8) Whether the individual has ever been a respondent
40 in a domestic violence proceeding or a proceeding
41 concerning a minor who was allegedly abused,
42 dependent, neglected, abandoned, or delinquent, and
43 the outcome of the proceeding;

- 1 (9) Whether the individual has ever been convicted of a
2 crime other than a minor traffic violation;
- 3 (10) Whether the individual has located a parent
4 interested in placing a child with the individual
5 for adoption and a brief, nonidentifying
6 description of the parent and the child; and
- 7 (11) Any other fact or circumstance that may be relevant
8 to a determination of the individual's suitability
9 to be an adoptive parent, including the quality of
10 the environment in the home and the functioning of
11 any children in the household.

12 When any of the above is not reasonably available, the
13 preplacement assessment shall state why it is unavailable.

14 (d) The agency shall conduct an investigation for any criminal
15 record as permitted by law. If a prospective adoptive parent is
16 seeking to adopt a minor who is in the custody or placement
17 responsibility of a county department of social services, a
18 county department of social services shall have the individual's
19 criminal history investigated pursuant to G.S. 48-3-309, and
20 based on the criminal history, make a determination pursuant to
21 subsection (e) of this section as to the individual's fitness to
22 have responsibility for the safety and well-being of children.

23 (e) In the preplacement assessment, the agency shall review
24 the information obtained pursuant to subsections (b), (c), and
25 (d) of this section and evaluate the individual's strengths and
26 weaknesses to be an adoptive parent. The agency shall then
27 determine whether the individual is suitable to be an adoptive
28 parent.

29 (f) If the agency determines that the individual is suitable
30 to be an adoptive parent, the preplacement assessment shall
31 include specific factors which support that determination.

32 (g) If the agency determines that the individual is not
33 suitable to be an adoptive parent, the replacement assessment
34 shall state the specific concerns which support that
35 determination. A specific concern is one that reasonably
36 indicates that placement of any minor, or a particular minor, in
37 the home of the individual would pose a significant risk of harm
38 to the well-being of the minor.

39 (h) In addition to the information and finding required by
40 subsections (c) through (g) of this section, the preplacement
41 assessment must contain a list of the sources of information on
42 which it is based.

1 (i) The Social Services Commission shall have authority to
2 establish by rule additional standards for preplacement
3 assessments."

4 Section 15. Effective January 1, 1999, Article 3 of
5 Chapter 48 of the General Statutes is amended by adding the
6 following new section to read:

7 "§ 48-3-309. Mandatory preplacement criminal checks of
8 prospective adoptive parents seeking to adopt a minor who is in
9 the custody or placement responsibility of a county department of
10 social services.

11 (a) The department shall ensure that the criminal histories of
12 all prospective adoptive parents seeking to adopt a minor who is
13 in the custody or placement responsibility of a county department
14 of social services are checked prior to placement and, based on
15 the criminal history, a determination is made as to the
16 individual's fitness to have responsibility for the safety and
17 well-being of children. The department shall ensure that all
18 prospective adoptive parents seeking to adopt a minor who is in
19 the custody or placement responsibility of a county department of
20 social services are checked prior to placement for county, state,
21 and federal criminal histories.

22 (b) A county department of social services may issue an
23 unfavorable preplacement assessment to a prospective adoptive
24 parent if the county department of social services determines
25 pursuant to G.S. 48-3-303(e) that the individual is unfit to have
26 responsibility for the safety and well-being of children based on
27 the criminal history.

28 (c) The Department of Justice shall provide to the Department
29 of Health and Human Services the criminal history of such a
30 prospective adoptive parent obtained from the State and National
31 Repositories of Criminal Histories as requested by the
32 Department. The Department shall provide to the Department of
33 Justice, along with the request, the fingerprints of the
34 prospective adoptive parent to be checked, any additional
35 information required by the Department of Justice, and a form
36 consenting to the check of the criminal record and to the use of
37 fingerprints and other identifying information required by the
38 State or National Repositories signed by the individual to be
39 checked. The fingerprints of the prospective adoptive parent
40 shall be forwarded to the State Bureau of Investigation for a
41 search of the State's criminal history record file, and the State
42 Bureau of Investigation shall forward a set of fingerprints to
43 the Federal Bureau of Investigation for a national criminal
44 history record check.

1 (d) At the time of the request for a preplacement assessment
2 or at a subsequent time prior to placement, a prospective
3 adoptive parent whose criminal history is to be checked shall be
4 furnished with a statement substantially similar to the
5 following:

6 'NOTICE

7 MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES
8 THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT
9 ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO
10 IS IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY
11 DEPARTMENT OF SOCIAL SERVICES.

12
13 'Criminal history' means a county, state, or federal criminal
14 history of conviction or a pending indictment of a crime,
15 whether a misdemeanor or a felony, that bears upon an
16 individual's fitness to have responsibility for the safety
17 and well-being of children, including the following North
18 Carolina crimes contained in any of the following Articles of
19 Chapter 14 of the General Statutes: Article 6, Homicide;
20 Article 7A, Rape and Kindred Offenses; Article 8, Assaults;
21 Article 10, Kidnapping and Abduction; Article 13, Malicious
22 Injury or Damage by Use of Explosive or Incendiary Device or
23 Material; Article 26, Offenses Against Public Morality and
24 Decency; Article 27, Prostitution; Article 39, Protection of
25 Minors; Article 40, Protection of the Family; and Article 59,
26 Public Intoxication; violation of the North Carolina
27 Controlled Substances Act, Article 5 of Chapter 90 of the
28 General Statutes, and alcohol-related offenses such as sale
29 to underage persons in violation of G.S. 18B-302 or driving
30 while impaired in violation of G.S. 20-138.1 through G.S. 20-
31 138.5; or similar crimes under federal law or under the laws
32 of other states. Your fingerprints will be used to check the
33 criminal history records of the State Bureau of Investigation
34 (SBI) and the Federal Bureau of Investigation (FBI).

35
36 If it is determined, based on your criminal history, that you
37 are unfit to have responsibility for the safety and well-
38 being of children, you shall have the opportunity to
39 complete, or challenge the accuracy of, the information
40 contained in the SBI or FBI identification records.

41
42 If you are denied a favorable preplacement assessment by a
43 county department of social services as a result of the

1 criminal history check, you may request a review of the
2 assessment pursuant to G.S. 48-3-308(a).

3
4 Any prospective adoptive parent who intentionally falsifies
5 any information required to be furnished to conduct the
6 criminal history is guilty of a Class 2 misdemeanor.'

7
8 Refusal to consent to a criminal history check is grounds for
9 the issuance by a county department of social services of an
10 unfavorable preplacement assessment. Any prospective adoptive
11 parent who intentionally falsifies any information required to be
12 furnished to conduct the criminal history is guilty of a Class 2
13 misdemeanor.

14 (e) The department shall notify the prospective adoptive
15 parent's supervising county department of social services of the
16 results of the criminal history check in accordance with the
17 federal and State law regulating the dissemination of the
18 contents of the criminal history file. The department shall not
19 release nor disclose any portion of the prospective adoptive
20 parent's criminal history to the prospective adoptive parent.
21 The department shall also ensure that the prospective adoptive
22 parent is notified of the prospective adoptive parent's right to
23 review the criminal history information, the procedure for
24 completing or challenging the accuracy of the criminal history,
25 and the prospective adoptive parent's right to contest the
26 preplacement assessment of the county department of social
27 services.

28 A prospective adoptive parent who disagrees with the
29 preplacement assessment of the county department of social
30 services may request a review of the assessment pursuant to G.S.
31 48-3-308(a).

32 (f) All the information that the department receives through
33 the checking of the criminal history is privileged information
34 and is not a public record but is for the exclusive use of the
35 department and those persons authorized under this section to
36 receive the information. The department may destroy the
37 information after it is used for the purposes authorized by this
38 section, after one calendar year.

39 (g) There is no liability for negligence on the part of a
40 State or local agency, or the employees of a State or local
41 agency, arising from any action taken or omission by any of them
42 in carrying out the provisions of this section. The immunity
43 established by this subsection shall not extend to gross
44 negligence, wanton conduct, or intentional wrongdoing that would

1 otherwise be actionable. The immunity established by this
2 subsection shall be deemed to have been waived to the extent of
3 indemnification by insurance, indemnification under Article 31A
4 of Chapter 143 of the General Statutes, and to the extent
5 sovereign immunity is waived under the Tort Claims Act, as set
6 forth in Article 31 of Chapter 143 of the General Statutes.

7 (h) The Department of Justice shall perform the State and
8 national criminal history checks on prospective adoptive parents
9 seeking to adopt a minor in the custody or placement
10 responsibility of a county department of social services and
11 shall charge the Department of Health and Human Services a
12 reasonable fee only for conducting the checks of the national
13 criminal history records authorized by this section. The
14 Division of Social Services, Department of Health and Human
15 Services, shall bear the costs of implementing this section."

16 Section 16. Article 4 of Chapter 114 of the General
17 Statutes is amended by adding the following new section to read:
18 "§ 114-19.7. Criminal record checks prior to placement of
19 prospective adoptive parents seeking to adopt a minor who is in
20 the custody or placement responsibility of a county department of
21 social services.

22 The Department of Justice may provide to the Division of Social
23 Services, Department of Health and Human Services, the criminal
24 history from the State and National Repositories of Criminal
25 Histories as defined in G.S. 48-1-101(5a). The Division shall
26 provide to the Department of Justice, along with the request, the
27 fingerprints of the prospective adoptive parent seeking to adopt
28 a minor who is in the custody or placement responsibility of a
29 county department of social services, any additional information
30 required by the Department of Justice, and a form consenting to
31 the check of the criminal record and to the use of fingerprints
32 and other identifying information required by the State or
33 National Repositories signed by the individual to be checked.
34 The fingerprints of the prospective adoptive parent shall be
35 forwarded to the State Bureau of Investigation for a search of
36 the State's criminal history record file, and the State Bureau of
37 Investigation shall forward a set of fingerprints to the Federal
38 Bureau of Investigation for a national criminal history record
39 check. The Division shall keep all information pursuant to this
40 section privileged, as provided in G.S. 48-3-309(f). The
41 Department of Justice shall charge a reasonable fee only for
42 conducting the checks of the national criminal history records
43 authorized by this section."

1 Section 17. The Legislative Research Commission may
2 study changes proposed to the juvenile justice system contained
3 in House Bill 1561 and Senate Bill 1513, 1997 General Assembly.
4 The study may include other issues relevant to child abuse,
5 neglect, and dependency cases. The Commission shall report its
6 findings, recommendations, and any legislative proposals to the
7 1999 General Assembly.

8

9 **PART II. ADOPTION AND SAFE FAMILIES ACT - EFFECTIVE JULY 1, 1999.**

10 Section 18. G.S. 7B-101, as rewritten and recodified by
11 enacted Senate Bill 1260, 1997 General Assembly, reads as
12 rewritten:

13 **"§ 7B-101. Definitions.**

14 As used in this Subchapter, unless the context clearly requires
15 otherwise, the following words have the listed meanings:

- 16 (1) Abused juveniles. -- Any juvenile less than 18
17 years of age whose parent, guardian, custodian, or
18 caretaker:
- 19 a. Inflicts or allows to be inflicted upon the
20 juvenile a serious physical injury by other
21 than accidental means;
 - 22 b. Creates or allows to be created a substantial
23 risk of serious physical injury to the
24 juvenile by other than accidental means;
 - 25 c. Uses or allows to be used upon the juvenile
26 cruel or grossly inappropriate procedures or
27 cruel or grossly inappropriate devices to
28 modify behavior;
 - 29 d. Commits, permits, or encourages the commission
30 of a violation of the following laws by, with,
31 or upon the juvenile: first-degree rape, as
32 provided in G.S. 14-27.2; second degree rape
33 as provided in G.S. 14-27.3; first-degree
34 sexual offense, as provided in G.S. 14-27.4;
35 second degree sexual offense, as provided in
36 G.S. 14-27.5; sexual act by a custodian, as
37 provided in G.S. 14-27.7; crime against
38 nature, as provided in G.S. 14-177; incest, as
39 provided in G.S. 14-178 and G.S. 14-179;
40 preparation of obscene photographs, slides, or
41 motion pictures of the juvenile, as provided
42 in G.S. 14-190.5; employing or permitting the
43 juvenile to assist in a violation of the
44 obscenity laws as provided in G.S. 14-190.6;

- 1 dissemination of obscene material to the
2 juvenile as provided in G.S. 14-190.7 and G.S.
3 14-190.8; displaying or disseminating material
4 harmful to the juvenile as provided in G.S.
5 14-190.14 and G.S. 14-190.15; first and second
6 degree sexual exploitation of the juvenile as
7 provided in G.S. 14-190.16 and G.S. 14-190.17;
8 promoting the prostitution of the juvenile as
9 provided in G.S. 14-190.18; and taking
10 indecent liberties with the juvenile, as
11 provided in G.S. 14-202.1, regardless of the
12 age of the parties;
- 13 e. Creates or allows to be created serious
14 emotional damage to the juvenile. Serious
15 emotional damage is evidenced by a juvenile's
16 severe anxiety, depression, withdrawal, or
17 aggressive behavior toward himself or others;
18 or
- 19 f. Encourages, directs, or approves of delinquent
20 acts involving moral turpitude committed by
21 the juvenile.
- 22 (1a) Aggravated circumstances. -- Any circumstance
23 attending to the commission of an act of abuse or
24 neglect which increases its enormity or adds to its
25 injurious consequences, including, but not limited
26 to, abandonment, torture, chronic abuse, or sexual
27 abuse.
- 28 (2) Caretaker. -- Any person other than a parent,
29 guardian, or custodian who has responsibility for
30 the health and welfare of a juvenile in a
31 residential setting. A person responsible for a
32 juvenile's health and welfare means a stepparent,
33 foster parent, an adult member of the juvenile's
34 household, an adult relative entrusted with the
35 juvenile's care, or any person such as a house
36 parent or cottage parent who has primary
37 responsibility for supervising a juvenile's health
38 and welfare in a residential child care facility or
39 residential educational facility. 'Caretaker' also
40 means any person who has the responsibility for the
41 care of a juvenile in a child care facility as
42 defined in Article 7 of Chapter 110 of the General
43 Statutes and includes any person who has the
44 approval of the care provider to assume

- 1 responsibility for the juveniles under the care of
2 the care provider. Nothing in this subdivision
3 shall be construed to impose a legal duty of
4 support under Chapter 50 or Chapter 110 of the
5 General Statutes. The duty imposed upon a caretaker
6 as defined in this subdivision shall be for the
7 purpose of this Subchapter only.
- 8 (3) Clerk. -- Any clerk of superior court, acting
9 clerk, or assistant or deputy clerk.
- 10 (4) Community-based program. -- A program providing
11 nonresidential or residential treatment to a
12 juvenile in the community where the juvenile's
13 family lives. A community-based program may include
14 specialized foster care, family counseling, shelter
15 care, and other appropriate treatment.
- 16 (5) Court. -- The district court division of the
17 General Court of Justice.
- 18 (5a) Court of competent jurisdiction. -- A court having
19 the power and authority of law to act at the time
20 of acting over the subject matter of the cause.
- 21 (6) Custodian. -- The person or agency that has been
22 awarded legal custody of a juvenile by a court or a
23 person, other than parents or legal guardian, who
24 has assumed the status and obligation of a parent
25 without being awarded the legal custody of a
26 juvenile by a court.
- 27 (7) Dependent juvenile. -- A juvenile in need of
28 assistance or placement because the juvenile has no
29 parent, guardian, or custodian responsible for the
30 juvenile's care or supervision or whose parent,
31 guardian, or custodian is unable to provide for the
32 care or supervision and lacks an appropriate
33 alternative child care arrangement.
- 34 (8) Director. -- The director of the county department
35 of social services in the county in which the
36 juvenile resides or is found, or the director's
37 representative as authorized in G.S. 108A-14.
- 38 (9) District. -- Any district court district as
39 established by G.S. 7A-133.
- 40 (10) Judge. -- Any district court judge.
- 41 (11) Judicial district. -- Any district court district
42 as established by G.S. 7A-133.
- 43 (12) Juvenile. -- A person who has not reached the
44 person's eighteenth birthday and is not married,

- 1 emancipated, or a member of the armed forces of the
2 United States.
- 3 (13) Neglected juvenile. -- A juvenile who does not
4 receive proper care, supervision, or discipline
5 from the juvenile's parent, guardian, custodian, or
6 caretaker; or who has been abandoned; or who is not
7 provided necessary medical care; or who is not
8 provided necessary remedial care; or who lives in
9 an environment injurious to the juvenile's welfare;
10 or who has been placed for care or adoption in
11 violation of law. In determining whether a juvenile
12 is a neglected juvenile, it is relevant whether
13 that juvenile lives in a home where another
14 juvenile has died as a result of suspected abuse or
15 neglect or lives in a home where another juvenile
16 has been subjected to abuse or neglect by an adult
17 who regularly lives in the home.
- 18 (14) Petitioner. -- The individual who initiates court
19 action, whether by the filing of a petition or of a
20 motion for review alleging the matter for
21 adjudication.
- 22 (15) Prosecutor. -- The district attorney or assistant
23 district attorney assigned by the district attorney
24 to juvenile proceedings.
- 25 (16) Reasonable efforts. -- The diligent use of
26 preventive or reunification services by a
27 department of social services when a juvenile's
28 remaining at home or returning home is consistent
29 with achieving a safe, permanent home for the
30 juvenile within a reasonable period of time. If a
31 court of competent jurisdiction determines that the
32 juvenile is not to be returned home, then
33 reasonable efforts means the diligent and timely
34 use of permanency planning services by a department
35 of social services to develop and implement a
36 permanent plan for the juvenile.
- 37 (17) Safe home. -- A home in which the juvenile is not
38 at substantial risk of physical or emotional abuse
39 or neglect.
- 40 (18) Shelter care. -- The temporary care of a juvenile
41 in a physically unrestricting facility pending
42 court disposition.

1 The singular includes the plural, the masculine singular
2 includes the feminine singular and masculine and feminine plural
3 unless otherwise specified."

4 Section 19. G.S. 7B-302, as rewritten and recodified by
5 enacted Senate Bill 1260, 1997 General Assembly, reads as
6 rewritten:

7 "§ 7B-302. Investigation by director; access to confidential
8 information; notification of person making the report.

9 When a report of abuse, neglect, or dependency is received, the
10 director of the department of social services shall make a prompt
11 and thorough investigation in order to ascertain the facts of the
12 case, the extent of the abuse or neglect, and the risk of harm to
13 the juvenile, in order to determine whether protective services
14 should be provided or the complaint filed as a petition. When the
15 report alleges abuse, the director shall immediately, but no
16 later than 24 hours after receipt of the report, initiate the
17 investigation. When the report alleges neglect or dependency, the
18 director shall initiate the investigation within 72 hours
19 following receipt of the report. The investigation and evaluation
20 shall include a visit to the place where the juvenile resides.
21 All information received by the department of social services,
22 including the identity of the reporter, shall be held in
23 strictest confidence by the department.

24 When a report of a juvenile's death as a result of suspected
25 maltreatment or a report of suspected abuse, neglect, or
26 dependency of a juvenile is received, the director of the
27 department of social services shall immediately ascertain if
28 other juveniles remain in the home, and, if so, initiate an
29 investigation in order to determine whether they require
30 protective services or whether immediate removal of the juveniles
31 from the home is necessary for their protection.

32 If the investigation indicates that abuse, neglect, or
33 dependency has occurred, the director shall decide whether
34 immediate removal of the juvenile or any other juveniles in the
35 home is necessary for their protection. If immediate removal does
36 not seem necessary, the director shall immediately provide or
37 arrange for protective services. If the parent, guardian,
38 custodian, or caretaker refuses to accept the protective services
39 provided or arranged by the director, the director shall sign a
40 complaint seeking to invoke the jurisdiction of the court for the
41 protection of the juvenile or juveniles.

42 If immediate removal seems necessary for the protection of the
43 juvenile or other juveniles in the home, the director shall sign
44 a complaint which alleges the applicable facts to invoke the

1 jurisdiction of the court. Where the investigation shows that it
2 is warranted, a protective services worker may assume temporary
3 custody of the juvenile for the juvenile's protection pursuant to
4 Article 5 of this Chapter.

5 In performing any duties related to the investigation of the
6 complaint or the provision or arrangement for protective
7 services, the director may consult with any public or private
8 agencies or individuals, including the available State or local
9 law enforcement officers who shall assist in the investigation
10 and evaluation of the seriousness of any report of abuse,
11 neglect, or dependency when requested by the director. The
12 director or the director's representative may make a written
13 demand for any information or reports, whether or not
14 confidential, that may in the director's opinion be relevant to
15 the investigation of or the provision for protective services.
16 Upon the director's or the director's representative's request
17 and unless protected by the attorney-client privilege, any public
18 or private agency or individual shall provide access to and
19 copies of this confidential information and these records to the
20 extent permitted by federal law and regulations. If a custodian
21 of criminal investigative information or records believes that
22 release of the information will jeopardize the right of the State
23 to prosecute a defendant or the right of a defendant to receive a
24 fair trial or will undermine an ongoing or future investigation,
25 it may seek an order from a court of competent jurisdiction to
26 prevent disclosure of the information. In such an action, the
27 custodian of the records shall have the burden of showing by a
28 preponderance of the evidence that disclosure of the information
29 in question will jeopardize the right of the State to prosecute a
30 defendant or the right of a defendant to receive a fair trial or
31 will undermine an ongoing or future investigation. Actions
32 brought pursuant to this paragraph shall be set down for
33 immediate hearing, and subsequent proceedings in the actions
34 shall be accorded priority by the trial and appellate courts.

35 Within five working days after receipt of the report of abuse,
36 neglect, or dependency, the director shall give written notice to
37 the person making the report, unless requested by that person not
38 to give notice, as to whether the report was accepted for
39 investigation and whether the report was referred to the
40 appropriate State or local law enforcement agency.

41 Within five working days after completion of the protective
42 services investigation, the director shall give subsequent
43 written notice to the person making the report, unless requested
44 by that person not to give notice, as to whether there is a

1 finding of abuse, neglect, or dependency, whether the county
2 department of social services is taking action to protect the
3 juvenile, and what action it is taking, including whether or not
4 a petition was filed. The person making the report shall be
5 informed of procedures necessary to request a review by the
6 prosecutor of the director's decision not to file a petition. A
7 request for review by the prosecutor shall be made within five
8 working days of receipt of the second notification. The second
9 notification shall include notice that, if the person making the
10 report is not satisfied with the director's decision, the person
11 may request review of the decision by the prosecutor within five
12 working days of receipt. The person making the report may waive
13 the person's right to this notification, and no notification is
14 required if the person making the report does not identify
15 himself to the director."

16 Section 20. G.S. 7B-505, as rewritten and recodified by
17 enacted Senate Bill 1260, 1997 General Assembly, reads as
18 rewritten:

19 "§ 7B-505. Place of nonsecure custody.

20 A juvenile meeting the criteria set out in G.S. 7B-503 may be
21 placed in nonsecure custody with the department of social
22 services or a person designated in the order for temporary
23 residential placement in:

- 24 (1) A licensed foster home or a home otherwise
25 authorized by law to provide such care; or
- 26 (2) A facility operated by the department of social
27 services; or
- 28 (3) Any other home or ~~facility~~ facility, including a
29 relative's home approved by the court and
30 designated in the order.

31 In placing a juvenile in nonsecure custody under this section,
32 the court shall first consider whether a relative of the juvenile
33 is willing and able to provide proper care and supervision of the
34 juvenile in a safe home. If the court finds that the relative is
35 willing and able to provide proper care and supervision in a safe
36 home, then the court shall order placement of the juvenile with
37 ~~the relative~~ relative unless the court finds that placement with
38 the relative would be contrary to the best interests of the
39 juvenile. In placing a juvenile in nonsecure custody under this
40 section, the court shall consider any federal law that may apply.
41 ~~Prior to placement~~ Placement of a juvenile with a relative
42 outside of this ~~State, the placement~~ State must be in accordance
43 with the Interstate Compact on the Placement of Children, Article
44 38 of this Chapter."

1 Section 21. G.S. 7B-506, as rewritten and recodified by
2 enacted Senate Bill 1260, 1997 General Assembly, reads as
3 rewritten:

4 "§ 7B-506. Hearing to determine need for continued nonsecure
5 custody.

6 (a) No juvenile shall be held under a nonsecure custody order
7 for more than seven calendar days without a hearing on the merits
8 or a hearing to determine the need for continued custody. A
9 hearing on nonsecure custody conducted under this subsection may
10 be continued for up to 10 business days with the consent of the
11 juvenile's parent, guardian, custodian, or caretaker and, if
12 appointed, the juvenile's guardian ad litem. In addition, the
13 court may require the consent of additional parties or may
14 schedule the hearing on custody despite a party's consent to a
15 continuance. In every case in which an order has been entered by
16 an official exercising authority delegated pursuant to G.S. 7B-
17 502, a hearing to determine the need for continued custody shall
18 be conducted on the day of the next regularly scheduled session
19 of district court in the city or county where the order was
20 entered if such session precedes the expiration of the applicable
21 time period set forth in this subsection: Provided, that if such
22 session does not precede the expiration of the time period, the
23 hearing may be conducted at another regularly scheduled session
24 of district court in the district where the order was entered.

25 (b) At a hearing to determine the need for continued custody,
26 the court shall receive testimony and shall allow the guardian ad
27 litem, or juvenile, and the juvenile's parent, guardian,
28 custodian, or caretaker an opportunity to introduce evidence, to
29 be heard in the person's own behalf, and to examine witnesses.
30 The State shall bear the burden at every stage of the proceedings
31 to provide clear and convincing evidence that the juvenile's
32 placement in custody is necessary. The court shall not be bound
33 by the usual rules of evidence at such hearings.

34 (c) The court shall be bound by criteria set forth in G.S. 7B-
35 503 in determining whether continued custody is warranted.

36 (d) If the court determines that the juvenile meets the
37 criteria in G.S. 7B-503 and should continue in custody, the court
38 shall issue an order to that effect. The order shall be in
39 writing with appropriate findings of fact. The findings of fact
40 shall include the evidence relied upon in reaching the decision
41 and the purposes which continued custody is to achieve.

42 (e) If the court orders at the hearing required in subsection
43 (a) of this section that the juvenile remain in custody, a
44 subsequent hearing on continued custody shall be held within

1 seven business days of that hearing, excluding Saturdays,
2 Sundays, and legal holidays, and pending a hearing on the merits,
3 hearings thereafter shall be held at intervals of no more than 30
4 calendar days.

5 (f) Hearings conducted under subsection (e) of this section
6 may be waived only with the consent of the juvenile's parent,
7 guardian, custodian, or caretaker, and, if appointed, the
8 juvenile's guardian ad litem.

9 The court may require the consent of additional parties or
10 schedule a hearing despite a party's consent to waiver.

11 ~~(g) Any order authorizing the continued custody of a juvenile~~
12 ~~shall include findings as to whether reasonable efforts have been~~
13 ~~made to prevent or eliminate the need for placement of the~~
14 ~~juvenile in custody and may provide for services or other efforts~~
15 ~~aimed at returning the juvenile promptly to a safe home. A~~
16 ~~finding that reasonable efforts have not been made shall not~~
17 ~~preclude the entry of an order authorizing continued custody when~~
18 ~~the court finds that continued custody is necessary for the~~
19 ~~protection of the juvenile. Where efforts to prevent the need for~~
20 ~~the juvenile's placement were precluded by an immediate threat of~~
21 ~~harm to the juvenile, the court may find that the placement of~~
22 ~~the juvenile in the absence of such efforts was reasonable. If~~
23 ~~the court finds through written findings of fact that efforts to~~
24 ~~eliminate the need for placement of the juvenile in custody~~
25 ~~clearly would be futile or would be inconsistent with the~~
26 ~~juvenile's safety and need for a safe, permanent home within a~~
27 ~~reasonable period of time, then the court shall specify in its~~
28 ~~order that reunification efforts are not required or order that~~
29 ~~reunification efforts cease.~~

30 (h) At each hearing to determine the need for continued
31 custody, the court shall:

- 32 (1) Inquire as to the identity and location of any
33 missing parent. The court shall include findings as
34 to the efforts undertaken to locate the missing
35 parent and to serve that parent. The order may
36 provide for specific efforts aimed at determining
37 the identity and location of any missing parent;
- 38 (2) Inquire as to whether a relative of the juvenile is
39 willing and able to provide proper care and
40 supervision of the juvenile in a safe home. If the
41 court finds that the relative is willing and able
42 to provide proper care and supervision in a safe
43 home, then the court shall order temporary
44 placement of the juvenile with the relative.

1 relative unless the court finds that placement with
2 the relative would be contrary to the best
3 interests of the juvenile. In placing a juvenile in
4 nonsecure custody under this section, the court
5 shall consider any federal law that may apply.

6 Placement of a juvenile with a relative outside of
7 this State must be in accordance with the
8 Interstate Compact on the Placement of Children set
9 forth in Article 38 of this Chapter; and

- 10 (3) Inquire as to whether there are other juveniles
11 remaining in the home from which the juvenile was
12 removed and, if there are, inquire as to the
13 specific findings of the investigation conducted
14 under G.S. 7B-302 and any actions taken or services
15 provided by the director for the protection of the
16 other juveniles."

17 Section 21.1. If Senate Bill 1260, 1997 General
18 Assembly, is enacted into law by the 1997 General Assembly, then
19 G.S. 7A-577.1, as enacted in Part I of this act is recodified as
20 G.S. 7B-506.1 and reads as rewritten:

21 "§ 7B-506.1. Reasonable efforts.

22 (a) An order placing or continuing the placement of a juvenile
23 in the custody or placement responsibility of a county department
24 of social services, whether an order for continued nonsecure
25 custody, a dispositional order, or a review order:

- 26 (1) Shall contain a finding that the juvenile's
27 continuation in or return to the juvenile's own
28 home would be contrary to the juvenile's best
29 interest;

- 30 (2) Shall contain findings as to whether a county
31 department of social services has made reasonable
32 efforts to prevent or eliminate the need for
33 placement of the juvenile, unless the court has
34 previously determined under subsection (b) of this
35 section that such efforts are not required or shall
36 cease;

- 37 (3) Shall contain findings as to whether a county
38 department of social services should continue to
39 make reasonable efforts to prevent or eliminate the
40 need for placement of the juvenile, unless the
41 court has previously determined or determines under
42 subsection (b) of this section that such efforts
43 are not required or shall cease;

- 1 (4) Shall specify that the juvenile's placement and
2 care are the responsibility of the county
3 department of social services and that the agency
4 is to provide or arrange for the foster care or
5 other placement of the juvenile; and
6 (5) May provide for services or other efforts aimed at
7 returning the juvenile to a safe home or at
8 achieving another permanent plan for the juvenile.
- 9 A finding that reasonable efforts have not been made by a county
10 department of social services shall not preclude the entry of an
11 order authorizing the juvenile's placement when the court finds
12 that placement is necessary for the protection of the juvenile.
13 Where efforts to prevent the need for the juvenile's placement
14 were precluded by an immediate threat of harm to the juvenile,
15 the court may find that the placement of the juvenile in the
16 absence of such efforts was reasonable.
- 17 (b) In any order placing a juvenile in the custody or
18 placement responsibility of a county department of social
19 services, whether an order for continued nonsecure custody, a
20 dispositional order, or a review order, the court may direct that
21 reasonable efforts to eliminate the need for placement of the
22 juvenile shall not be required or shall cease if the court makes
23 written findings of fact that:
- 24 (1) Such efforts clearly would be futile or would be
25 inconsistent with the juvenile's health, safety,
26 and need for a safe, permanent home within a
27 reasonable period of time;
- 28 (2) A court of competent jurisdiction has determined
29 that the parent has subjected the child to
30 aggravated circumstances as defined in G.S.
31 ~~7A-517(3a)~~; 7B-101;
- 32 (3) A court of competent jurisdiction has terminated
33 involuntarily the parental rights of the parent to
34 another child of the parent; or
- 35 (4) A court of competent jurisdiction has determined
36 that: the parent has committed murder or voluntary
37 manslaughter of another child of the parent; has
38 aided, abetted, attempted, conspired, or solicited
39 to commit murder or voluntarily manslaughter of the
40 child or another child of the parent; or has
41 committed a felony assault resulting in serious
42 bodily injury to the child or another child of the
43 parent.

1 (c) At any hearing at which the court finds that reasonable
2 efforts to eliminate the need for the juvenile's placement are
3 not required or shall cease, the court shall direct that a
4 permanency planning hearing as required by G.S. ~~7A-657.1~~ 7B-906.1
5 be held within 30 calendar days after the date of the hearing
6 and, if practicable, shall set the date and time for the
7 permanency planning hearing.

8 (d) In determining reasonable efforts to be made with respect
9 to a juvenile and in making such reasonable efforts, the
10 juvenile's health and safety shall be the paramount concern.
11 Reasonable efforts to preserve or reunify families may be made
12 concurrently with efforts to plan for the juvenile's adoption, to
13 place the juvenile with a legal guardian, or to place the
14 juvenile in another permanent arrangement."

15 Section 22. G.S. 7B-801, as rewritten and recodified by
16 enacted Senate Bill 1260, 1997 General Assembly, reads as
17 rewritten:

18 "§ 7B-801. Adjudicatory hearing.

19 The adjudicatory hearing shall be held in the district at such
20 time and place as the chief district court judge shall ~~designate-~~
21 designate, but no later than 60 days from the filing of the
22 petition unless the judge pursuant to G.S. 7B-803 orders that it
23 be held at a later time. The court may exclude the public from
24 the hearing unless the juvenile moves that the hearing be open,
25 which motion shall be granted. The court in its discretion shall
26 determine whether the hearing or any part of the hearing shall be
27 closed to the public. In determining whether to close the
28 hearing or any part of the hearing, the court shall consider the
29 circumstances of the case, including, but not limited to the
30 following factors:

- 31 (1) The nature of the allegations against the
32 juvenile's parent, guardian, custodian or
33 caretaker;
- 34 (2) The age and maturity of the juvenile;
- 35 (3) The benefit to the juvenile of confidentiality;
- 36 (4) The benefit to the juvenile of an open hearing; and
- 37 (5) The extent to which the confidentiality afforded
38 the juvenile's record pursuant to G.S. 132-1.4(1)
39 and G.S. 7B-2901 will be compromised by an open
40 hearing.

41 No hearing or part of a hearing shall be closed by the court if
42 the juvenile requests that it remain open.

1 Section 23. G.S. 7B-903, as rewritten and recodified by
2 enacted Senate Bill 1260, 1997 General Assembly, reads as
3 rewritten:

4 "§ 7B-903. Dispositional alternatives for abused, neglected, or
5 dependent juvenile.

6 The following alternatives for disposition shall be available
7 to any court exercising jurisdiction, and the court may combine
8 any of the applicable alternatives when the court finds the
9 disposition to be in the best interests of the juvenile:

- 10 (1) The court may dismiss the case or continue the case
11 in order to allow the parent, guardian, custodian,
12 caretaker or others to take appropriate action.
- 13 (2) In the case of any juvenile who needs more adequate
14 care or supervision or who needs placement, the
15 court may:
- 16 a. Require that the juvenile be supervised in the
17 juvenile's own home by the department of
18 social services in the juvenile's county, or
19 by other personnel as may be available to the
20 court, subject to conditions applicable to the
21 parent, guardian, custodian, or caretaker as
22 the court may specify; or
- 23 b. Place the juvenile in the custody of a parent,
24 relative, private agency offering placement
25 services, or some other suitable person; or
- 26 c. Place the juvenile in the custody of the
27 department of social services in the county of
28 the juvenile's residence, or in the case of a
29 juvenile who has legal residence outside the
30 State, in the physical custody of the
31 department of social services in the county
32 where the juvenile is found so that agency may
33 return the juvenile to the responsible
34 authorities in the juvenile's home state. The
35 director may, unless otherwise ordered by the
36 court, arrange for, provide, or consent to,
37 needed routine or emergency medical or
38 surgical care or treatment. In the case where
39 the parent is unknown, unavailable, or unable
40 to act on behalf of the juvenile, the director
41 may, unless otherwise ordered by the court,
42 arrange for, provide, or consent to any
43 psychiatric, psychological, educational, or
44 other remedial evaluations or treatment for

1 the juvenile placed by a court or the court's
2 designee in the custody or physical custody of
3 a county department of social services under
4 the authority of this or any other Chapter of
5 the General Statutes. Prior to exercising this
6 authority, the director shall make reasonable
7 efforts to obtain consent from a parent or
8 guardian of the affected juvenile. If the
9 director cannot obtain such consent, the
10 director shall promptly notify the parent or
11 guardian that care or treatment has been
12 provided and shall give the parent frequent
13 status reports on the circumstances of the
14 juvenile. Upon request of a parent or guardian
15 of the affected juvenile, the results or
16 records of the aforementioned evaluations,
17 findings, or treatment shall be made available
18 to such parent or guardian by the director
19 unless prohibited by G.S. 122C-53(d). If a
20 juvenile is removed from the home and placed
21 in custody or placement responsibility of a
22 county department of social services, the
23 director shall not allow unsupervised
24 visitation with, or return physical custody of
25 the juvenile to, the parent, guardian,
26 custodian, or caretaker without a hearing at
27 which the court finds that the juvenile will
28 receive proper care and supervision in a safe
29 home.

30 In placing a juvenile in out-of-home care
31 under this section, the court shall first
32 consider whether a relative of the juvenile is
33 willing and able to provide proper care and
34 supervision of the juvenile in a safe home.
35 If the court finds that the relative is
36 willing and able to provide proper care and
37 supervision in a safe home, then the court
38 shall order placement of the juvenile with the
39 relative unless the court finds that the
40 placement is contrary to the best interests of
41 the juvenile. Placement of a juvenile with a
42 relative outside of this State must be in
43 accordance with the Interstate Compact on the
44 Placement of Children.

- 1 (3) In any case, the court may order that the juvenile
2 be examined by a physician, psychiatrist,
3 psychologist, or other qualified expert as may be
4 needed for the court to determine the needs of the
5 juvenile:
- 6 a. Upon completion of the examination, the court
7 shall conduct a hearing to determine whether
8 the juvenile is in need of medical, surgical,
9 psychiatric, psychological, or other treatment
10 and who should pay the cost of the treatment.
11 The county manager, or such person who shall
12 be designated by the chairman of the county
13 commissioners, of the juvenile's residence
14 shall be notified of the hearing, and allowed
15 to be heard. If the court finds the juvenile
16 to be in need of medical, surgical,
17 psychiatric, psychological, or other
18 treatment, the court shall permit the parent
19 or other responsible persons to arrange for
20 treatment. If the parent declines or is unable
21 to make necessary arrangements, the court may
22 order the needed treatment, surgery, or care,
23 and the court may order the parent to pay the
24 cost of the care pursuant to G.S. 7B-904. If
25 the court finds the parent is unable to pay
26 the cost of treatment, the court shall order
27 the county to arrange for treatment of the
28 juvenile and to pay for the cost of the
29 treatment. The county department of social
30 services shall recommend the facility that
31 will provide the juvenile with treatment.
- 32 b. If the court believes, or if there is evidence
33 presented to the effect that the juvenile is
34 mentally ill or is developmentally disabled,
35 the court shall refer the juvenile to the area
36 mental health, developmental disabilities, and
37 substance abuse services director for
38 appropriate action. A juvenile shall not be
39 committed directly to a State hospital or
40 mental retardation center; and orders
41 purporting to commit a juvenile directly to a
42 State hospital or mental retardation center
43 except for an examination to determine
44 capacity to proceed shall be void and of no

1 effect. The area mental health, developmental
2 disabilities, and substance abuse director
3 shall be responsible for arranging an
4 interdisciplinary evaluation of the juvenile
5 and mobilizing resources to meet the
6 juvenile's needs. If institutionalization is
7 determined to be the best service for the
8 juvenile, admission shall be with the
9 voluntary consent of the parent or guardian.
10 If the parent, guardian, custodian, or
11 caretaker refuses to consent to a mental
12 hospital or retardation center admission after
13 such institutionalization is recommended by
14 the area mental health, developmental
15 disabilities, and substance abuse director,
16 the signature and consent of the court may be
17 substituted for that purpose. In all cases in
18 which a regional mental hospital refuses
19 admission to a juvenile referred for admission
20 by a court and an area mental health,
21 developmental disabilities, and substance
22 abuse director or discharges a juvenile
23 previously admitted on court referral prior to
24 completion of treatment, the hospital shall
25 submit to the court a written report setting
26 out the reasons for denial of admission or
27 discharge and setting out the juvenile's
28 diagnosis, indications of mental illness,
29 indications of need for treatment, and a
30 statement as to the location of any facility
31 known to have a treatment program for the
32 juvenile in question."

33 Section 24. G.S. 7B-905, as rewritten and recodified by
34 enacted Senate Bill 1260, 1997 General Assembly, reads as
35 rewritten:

36 "§ 7B-905. Dispositional order.

37 (a) The dispositional order shall be in writing and shall
38 contain appropriate findings of fact and conclusions of law. The
39 court shall state with particularity, both orally and in the
40 written order of disposition, the precise terms of the
41 disposition including the kind, duration, and the person who is
42 responsible for carrying out the disposition and the person or
43 agency in whom custody is vested.

1 (b) A dispositional order under which a juvenile is removed
2 from the custody of a parent, guardian, custodian, or caretaker
3 shall direct that the review hearing required by G.S. 7B-906 be
4 held within ~~six months~~ of 90 days from of the date of the
5 ~~juvenile's placement in custody~~ dispositional hearing and, if
6 practicable, shall set the date and time for the review hearing.

7 (c) Any dispositional order directing placement of a juvenile
8 ~~in foster care shall also contain:~~ shall comply with the
9 requirements of G.S. 7B-506.1.

10 (1) ~~A finding that the juvenile's continuation in or~~
11 ~~return to the juvenile's home would be contrary to~~
12 ~~the juvenile's best interests; and~~

13 (2) ~~Findings as to whether reasonable efforts have been~~
14 ~~made to prevent or eliminate the need for placement~~
15 ~~of the juvenile in foster care. A finding that~~
16 ~~reasonable efforts were not made shall not preclude~~
17 ~~entry of a dispositional order authorizing~~
18 ~~placement in foster care when the court finds that~~
19 ~~such placement is needed for protection of the~~
20 ~~juvenile. When efforts to prevent the need for the~~
21 ~~juvenile's placement are precluded by an immediate~~
22 ~~threat of harm to the juvenile, the court may find~~
23 ~~that placement of the juvenile in the absence of~~
24 ~~such efforts is reasonable.~~

25 ~~The order may provide for services or other efforts aimed at~~
26 ~~returning the juvenile promptly to a safe home. If the court~~
27 ~~finds through written findings of fact that efforts to eliminate~~
28 ~~the need for placement of the juvenile in custody clearly would~~
29 ~~be futile or would be inconsistent with the juvenile's safety and~~
30 ~~need for a safe, permanent home within a reasonable period of~~
31 ~~time, the court shall specify in its order that reunification~~
32 ~~efforts are not required or order that reunification efforts~~
33 ~~cease.~~

34 (d) ~~An order that places a juvenile in the custody of a county~~
35 ~~department of social services for placement shall specify that~~
36 ~~the juvenile's placement and care are the responsibility of the~~
37 ~~county department of social services and that the county~~
38 ~~department is to provide or arrange for the foster care or other~~
39 ~~placement of the juvenile. Any dispositional order shall provide~~
40 ~~for appropriate visitation as may be in the best interests of the~~
41 ~~juvenile and consistent with the juvenile's health and safety.~~
42 ~~If the juvenile is placed in the custody or placement~~
43 ~~responsibility of a county department of social services, the~~

1 court may order the director to arrange, facilitate, and
2 supervise a visitation plan expressly approved by the court."

3 Section 25. G.S. 7B-906, as rewritten and recodified by
4 enacted Senate Bill 1260, 1997 General Assembly, reads as
5 rewritten:

6 "§ 7B-906. Review of custody order.

7 (a) In any case where custody is removed from a parent,
8 guardian, custodian, or caretaker the court shall conduct a
9 review hearing within ~~six months of~~ 90 days from the date the
10 ~~order was entered, of the dispositional hearing shall conduct a~~
11 ~~second review within six months after the first review, and shall~~
12 ~~conduct subsequent reviews at least every year thereafter, a~~
13 review hearing within six months thereafter. The director of
14 social services shall make ~~timely requests~~ a timely request to
15 the clerk to calendar ~~the case~~ each review at a session of court
16 scheduled for the hearing of juvenile ~~matters within six months~~
17 ~~of the date the order was entered, matters.~~ matters. ~~The director shall~~
18 ~~make timely requests for calendaring subsequent reviews.~~ The
19 clerk shall give 15 days' notice of the review and its purpose to
20 the parent, the juvenile, if 12 years of age or more, the
21 guardian, any foster parent, relative, or preadoptive parent
22 providing care for the child, the custodian or agency with
23 custody, the guardian ad litem, and any other person or agency
24 the court may specify, indicating the court's impending review.
25 Nothing in this subsection shall be construed to make any foster
26 parent, relative, or preadoptive parent a party to the proceeding
27 solely based on receiving notice and an opportunity to be heard.

28 (b) Notwithstanding other provisions of this Article, the
29 court may waive the holding of review hearings required by
30 subsection (a) of this section, may require written reports to
31 the court by the agency or person holding custody in lieu of
32 review hearings, or order that review hearings be held less often
33 than every ~~12~~ six months, if the court finds by clear, cogent,
34 and convincing evidence that:

- 35 (1) The juvenile has resided with a relative or has
36 been in the custody of another suitable person for
37 a period of at least one year;
- 38 (2) The placement is stable and continuation of the
39 placement is in the juvenile's best interests;
- 40 (3) Neither the juvenile's best interests nor the
41 rights of any party require that review hearings be
42 held every ~~12~~ six months;
- 43 (4) All parties are aware that the matter may be
44 brought before the court for review at any time by

1 the filing of a motion for review or on the court's
2 own motion; and
3 (5) The court order has designated the relative or
4 other suitable person as the juvenile's permanent
5 caretaker or guardian of the person.
6 The court may not waive or refuse to conduct a review hearing if
7 a party files a motion seeking the review.

8 (c) At every review hearing, the court shall consider
9 information from the ~~department of social services, the juvenile,~~
10 ~~the parent, the guardian, the custodian, the foster parent, the~~
11 ~~guardian ad litem, and any public or private agency which will~~
12 ~~aid it in its review.~~ parent, the juvenile, the guardian, any
13 foster parent, relative, or preadoptive parent providing care for
14 the child, the custodian or agency with custody, the guardian ad
15 litem, and any other person or agency which will aid in its
16 review.

17 In each case the court shall consider the following criteria
18 and make written findings regarding those that are relevant:

19 (1) Services which have been offered to reunite the
20 family, or whether efforts to reunite the family
21 clearly would be futile or inconsistent with the
22 juvenile's safety and need for a safe, permanent
23 home within a reasonable period of time.

24 (2) Where the juvenile's return home is unlikely, the
25 efforts which have been made to evaluate or plan
26 for other methods of care.

27 (3) Goals of the foster care placement and the
28 appropriateness of the foster care plan.

29 (4) A new foster care plan, if continuation of care is
30 sought, that addresses the role the current foster
31 parent will play in the planning for the juvenile.

32 (5) Reports on the placements the juvenile has had and
33 any services offered to the juvenile and the
34 parent, guardian, custodian, or caretaker.

35 (5a) An appropriate visitation plan.

36 (5b) If the juvenile is 16 or 17 years of age, a report
37 on an independent living assessment of the juvenile
38 and, if appropriate, an independent living plan
39 developed for the juvenile.

40 (6) When and if termination of parental rights should
41 be considered.

42 (7) Any other criteria the court deems necessary.

43 (d) The court, after making findings of fact, may appoint a
44 guardian of the person for the juvenile pursuant to G.S. 7B-600

1 or may make any disposition authorized by G.S. 7B-903, including
2 the authority to place the juvenile in the custody of either
3 parent or any relative found by the court to be suitable and
4 found by the court to be in the best interests of the juvenile.
5 ~~If the juvenile is placed in or remains in the custody of the~~
6 ~~department of social services, the court may authorize the~~
7 ~~department to arrange and supervise a visitation plan. Except for~~
8 ~~such visitation, the juvenile shall not be returned to the~~
9 ~~parent, guardian, custodian, or caretaker without a hearing at~~
10 ~~which the court finds sufficient facts to show that the juvenile~~
11 ~~will receive proper care and supervision.~~ The court may enter an
12 order continuing the placement under review or providing for a
13 different placement as is deemed to be in the best interests of
14 the juvenile. If at any time custody is restored to a parent,
15 guardian, custodian, or caretaker the court shall be relieved of
16 the duty to conduct periodic judicial reviews of the placement.

17 ~~(e) At a hearing designated by the court, but at least within~~
18 ~~12 months after the juvenile's placement, a review hearing shall~~
19 ~~be held under this section and designated as a~~
20 ~~permanency-planning hearing. The purpose of the hearing shall be~~
21 ~~to develop a plan to achieve a safe, permanent home for the~~
22 ~~juvenile within a reasonable period of time. Notice of the~~
23 ~~hearing shall inform the parties of the purpose of the hearing.~~
24 ~~At the conclusion of the hearing, if the juvenile is not returned~~
25 ~~home, the court shall make specific findings as to the best plan~~
26 ~~of care to achieve a safe, permanent home for the juvenile within~~
27 ~~a reasonable period of time and shall enter an order consistent~~
28 ~~with those findings.~~

29 (f) The provisions of ~~subsections (b), (c), and (d) of G.S.~~
30 ~~7B-905~~ G.S. 7B-506.1 shall apply to any order entered under this
31 ~~section which continues the foster care placement of a juvenile.~~
32 section."

33 Section 25.1. If Senate Bill 1260, 1997 General
34 Assembly, is enacted into law by the 1997 General Assembly, then
35 G.S. 7A-657.1, as enacted in Part I of this act, is recodified as
36 G.S. 7B-906.1 and reads as rewritten:

37 "§ 7B-906.1. Permanency planning hearing.

38 (a) In any case where custody is removed from a ~~parent or~~
39 ~~person standing in loco parentis,~~ parent, guardian, custodian, or
40 caretaker, the judge shall conduct a review hearing designated as
41 a permanency planning hearing within 12 months after the date of
42 the initial order removing custody, and the hearing may be
43 combined, if appropriate, with a review hearing required by G.S.
44 ~~7A-657.~~ 7B-906. The purpose of the permanency planning hearing

1 shall be to develop a plan to achieve a safe, permanent home for
2 the juvenile within a reasonable period of time. Subsequent
3 permanency planning hearings shall be held at least every six
4 months thereafter, or earlier as set by the court, to review the
5 progress made in finalizing the permanent plan for the juvenile,
6 or if necessary, to make a new permanent plan for the juvenile.
7 The Director of Social Services shall make a timely request to
8 the clerk to calendar each permanency planning hearing at a
9 session of court scheduled for the hearing of juvenile matters.
10 The clerk shall give 15 days' notice of the hearing and its
11 purpose to the ~~parent and to any person standing in loco~~
12 ~~parentis,~~ parent, the juvenile if 12 years of age or more, the
13 guardian, any foster parent, relative, or preadoptive parent
14 providing care for the child, the custodian or agency with
15 custody, the guardian ad litem, and any other person or agency
16 the court may specify, indicating the court's impending review.
17 Nothing in this provision shall be construed to make any foster
18 parent, relative, or preadoptive parent a party to the proceeding
19 solely based on receiving notice and an opportunity to be heard.

20 (b) At any permanency planning review, the court shall
21 consider information from the parent, ~~any person standing in loco~~
22 ~~parentis,~~ the juvenile, the guardian, any foster parent, relative
23 or preadoptive parent providing care for the child, the custodian
24 or agency with custody, the guardian ad litem, and any other
25 person or agency which will aid it in the court's review. At the
26 conclusion of the hearing, if the juvenile is not returned home,
27 the court shall consider the following criteria and make written
28 findings regarding those that are relevant:

- 29 (1) Whether it is possible for the juvenile to be
30 returned home immediately or within the next six
31 months, and if not, why it is not in the juvenile's
32 best interests to return home;
- 33 (2) Where the juvenile's return home is unlikely within
34 six months, whether legal guardianship or custody
35 with a relative or some other suitable person
36 should be established, and if so, the rights and
37 responsibilities which should remain with the
38 parents;
- 39 (3) Where the juvenile's return home is unlikely within
40 six months, whether adoption should be pursued and
41 if so, any barriers to the juvenile's adoption;
- 42 (4) Where the juvenile's return home is unlikely within
43 six months, whether the juvenile should remain in

1 the current placement or be placed in another
2 permanent living arrangement and why;

3 (5) Whether the county department of social services
4 has since the initial permanency plan hearing made
5 reasonable efforts to implement the permanent plan
6 for the juvenile;

7 (6) Any other criteria the court deems necessary.

8 (c) At the conclusion of the hearing, the judge shall make
9 specific findings as to the best plan of care to achieve a safe,
10 permanent home for the juvenile within a reasonable period of
11 time. The judge may appoint a guardian of the person for the
12 juvenile pursuant to G.S. ~~7A-585~~ 7B-600 or make any disposition
13 authorized by G.S. ~~7A-647~~ 7B-903 including the authority to place
14 the child in the custody of either parent or any relative found
15 by the court to be suitable and found by the court to be in the
16 best interest of the juvenile. If the juvenile is not returned
17 home, the court shall enter an order consistent with its findings
18 that directs the department of social services to make reasonable
19 efforts to place the juvenile in a timely manner in accordance
20 with the permanent plan, to complete whatever steps are necessary
21 to finalize the permanent placement of the juvenile, and to
22 document such steps in the juvenile's case plan. If at any time
23 custody is restored to a parent, or findings are made in
24 accordance with G.S. ~~7A-657(b)~~, 7B-906(b), the court shall be
25 relieved of the duty to conduct periodic judicial reviews of the
26 placement.

27 If the court continues the juvenile's placement in the custody
28 or placement responsibility of a county department of social
29 services, the provisions of G.S. ~~7A-577.1~~ 7B-506.1 shall apply to
30 any order entered under this section.

31 (d) In the case of a juvenile who is in the custody or
32 placement responsibility of a county department of social
33 services, and has been in placement outside the home for 15 of
34 the most recent 22 months; or a court of competent jurisdiction
35 has determined that the parent has abandoned the child; or has
36 committed murder or voluntary manslaughter of another child of
37 the parent; or has aided, abetted, attempted, conspired, or
38 solicited to commit murder or voluntary manslaughter of the child
39 or another child of the parent, the court shall order the
40 director of the department of social services to initiate a
41 proceeding to terminate the parental rights of the parent unless
42 the court finds:

- 1 (1) The permanent plan for the juvenile is guardianship
2 or custody with a relative or some other suitable
3 person;
4 (2) The court makes specific findings why the filing of
5 a petition for termination of parental rights is
6 not in the best interests of the child; or
7 (3) The department of social services has not provided
8 the juvenile's family with such services as the
9 department deems necessary, when reasonable efforts
10 are still required to enable the juvenile's return
11 to a safe home.

12 (e) If a proceeding to terminate the parental rights of the
13 juvenile's parents is necessary in order to perfect the permanent
14 plan for the juvenile, the director of the department of social
15 services shall file a petition to terminate parental rights
16 within 60 calendar days from the date of the permanency planning
17 hearing unless the court makes written findings why the petition
18 cannot be filed within 60 days. If the court makes findings to
19 the contrary, the court shall specify the time frame in which any
20 needed petition to terminate parental rights shall be filed."

21 Section 26. G.S. 7B-907, as rewritten and recodified by
22 enacted Senate Bill 1260, 1997 General Assembly, reads as
23 rewritten:

24 "§ 7B-907. Posttermination of parental rights' placement court
25 review.

26 (a) The purpose of each placement review is to ensure that
27 every reasonable effort is being made to provide for a permanent
28 placement plan for the juvenile who has been placed in the
29 custody of a county director or licensed child-placing agency,
30 which is consistent with the juvenile's best interests. At each
31 review hearing the court may consider information from the
32 department of social services, the licensed child-placing agency,
33 the guardian ad litem, the juvenile, the child, any foster
34 parent, relative, or preadoptive parent providing care for the
35 child, and any other person or agency the court determines is
36 likely to aid in the review.

37 (b) The court shall conduct a placement review not later than
38 six months from the date of the termination hearing when parental
39 rights have been terminated by a petition brought by any person
40 or agency designated in G.S. 7B-1102(2) through (5) and a county
41 director or licensed child-placing agency has custody of the
42 juvenile. The court shall conduct reviews every six months
43 thereafter until the juvenile is placed for adoption and the
44 adoption petition is filed by the adoptive parents:

- 1 (1) No more than 30 days and no less than 15 days prior
2 to each review, the clerk shall give notice of the
3 review to the juvenile if the juvenile is at least
4 12 years of age, the legal custodian of the
5 juvenile, the any foster parent, relative, or
6 preadoptive parent providing care for the juvenile,
7 the guardian ad litem, if any, and any other person
8 or agency the court may specify. Only the
9 juvenile, if the juvenile is at least 12 years of
10 age, the legal custodian of the juvenile, the any
11 foster parent, relative, or preadoptive parent
12 providing care for the juvenile, and the guardian
13 ad litem shall attend the review hearings, except
14 as otherwise directed by the court. Nothing in this
15 subdivision shall be construed to make any foster
16 parent, relative, or preadoptive parent a party to
17 the proceeding solely based on receiving notice and
18 an opportunity to be heard.
- 19 (2) If a guardian ad litem for the juvenile has not
20 been appointed previously by the court in the
21 termination proceeding, the court, at the initial
22 six-month review hearing, may appoint a guardian ad
23 litem to represent the juvenile. The court may
24 continue the case for such time as is necessary for
25 the guardian ad litem to become familiar with the
26 facts of the case.
- 27 (c) The court shall consider at least the following in its
28 review:
- 29 (1) The adequacy of the plan developed by the county
30 department of social services or a licensed
31 child-placing agency for a permanent placement
32 relative to the juvenile's best interests and the
33 efforts of the department or agency to implement
34 such plan;
- 35 (2) Whether the juvenile has been listed for adoptive
36 placement with the North Carolina Adoption Resource
37 Exchange, the North Carolina Photo Adoption Listing
38 Service (PALS), or any other specialized adoption
39 agency; and
- 40 (3) The efforts previously made by the department or
41 agency to find a permanent home for the juvenile.
- 42 (d) The court, after making findings of fact, shall affirm the
43 county department's or child-placing agency's plans or require
44 specific additional steps which are necessary to accomplish a

1 permanent placement which is in the best interests of the
2 juvenile.

3 (e) If the juvenile has been placed for adoption prior to the
4 date scheduled for the review, written notice of said placement
5 shall be given to the clerk to be placed in the court file, and
6 the review hearing shall be cancelled with notice of said
7 cancellation given by the clerk to all persons previously
8 notified.

9 (f) The process of selection of specific adoptive parents
10 shall be the responsibility of and within the discretion of the
11 county department of social services or licensed child-placing
12 agency. The guardian ad litem may request information from and
13 consult with the county department or child-placing agency
14 concerning the selection process. If the guardian ad litem
15 requests information about the selection process, the county
16 shall provide the information within five days. Any issue of
17 abuse of discretion by the county department or child-placing
18 agency in the selection process must be raised by the guardian ad
19 litem within 10 days following the date the agency notifies the
20 court and the guardian ad litem in writing of the filing of the
21 adoption petition."

22 Section 26.1. If Senate Bill 1260, 1997 General
23 Assembly, is enacted into law by the 1997 General Assembly, then
24 G.S. 7A-289.23.1, as enacted in Part I of this act, is recodified
25 as G.S. 7B-1101.1 and reads as rewritten:

26 "§ 7B-1101.1. Pending child abuse, neglect, or dependency
27 hearings.

28 When a juvenile is currently within the jurisdiction of the
29 district court based upon an abuse, neglect, or dependency
30 proceeding, a petition for termination of parental rights to that
31 juvenile may be filed as a motion in the cause in the abuse,
32 neglect, or dependency proceeding. Any parent of that juvenile
33 who was previously served in the abuse, neglect, or dependency
34 proceeding in accordance with G.S. ~~7A-565~~ 7B-407 shall be served
35 with the petition to terminate parental rights in accordance
36 with G.S. 1A-1, Rule 5."

37 Section 27. G.S. 7B-1105, as rewritten and recodified by
38 enacted Senate Bill 1260, 1997 General Assembly, reads as
39 rewritten:

40 "§ 7B-1105. Issuance of summons.

41 (a) Except as provided in G.S. 7B-1104, upon the filing of the
42 petition, the court shall cause a summons to be issued. The
43 summons shall be directed to the following persons or agency, not
44 otherwise a party petitioner, who shall be named as respondents:

- 1 (1) The parents of the juvenile;
- 2 (2) Any person who has been judicially appointed as
- 3 guardian of the person of the juvenile;
- 4 (3) The custodian of the juvenile appointed by a court
- 5 of competent jurisdiction;
- 6 (4) Any county department of social services or
- 7 licensed child-placing agency to whom a juvenile
- 8 has been released by one parent pursuant to Part 7
- 9 of Article 3 of Chapter 48 of the General ~~Statutes;~~
- 10 Statutes or any county department of social
- 11 services to whom placement responsibility for the
- 12 child has been given by a court of competent
- 13 jurisdiction; and
- 14 (5) The juvenile, if the juvenile is 12 years of age or
- 15 older at the time the petition is filed.

16 Provided, no summons need be directed to or served upon any
17 parent who has previously surrendered the juvenile to a county
18 department of social services or licensed child-placing agency
19 nor to any parent who has consented to the adoption of the
20 juvenile by the petitioner. The summons shall notify the
21 respondents to file a written answer within 30 days after service
22 of the summons and petition. Service of the summons shall be
23 completed as provided under the procedures established by G.S.
24 1A-1, Rule 4(j); but the parent of the juvenile shall not be
25 deemed to be under disability even though the parent is a minor.

26 (b) The summons shall be issued for the purpose of terminating
27 parental rights pursuant to the provisions of subsection (a) of
28 this section and shall include:

- 29 (1) The name of the minor juvenile;
- 30 (2) Notice that a written answer to the petition must
- 31 be filed with the clerk who signed the petition
- 32 within 30 days after service of the summons and a
- 33 copy of the petition, or the parent's rights may be
- 34 terminated;
- 35 (3) Notice that if they are indigent, the parents are
- 36 entitled to appointed counsel. The parents may
- 37 contact the clerk immediately to request counsel;
- 38 (4) Notice that this is a new case. Any attorney
- 39 appointed previously will not represent the parents
- 40 in this proceeding unless ordered by the court;
- 41 (5) Notice that the date, time, and place of the
- 42 hearing will be mailed by the clerk upon filing of
- 43 the answer or 30 days from the date of service if
- 44 no answer is filed; and

1 (6) Notice of the purpose of the hearing and notice
2 that the parents may attend the termination
3 hearing.

4 (c) If a county department of social services, not otherwise a
5 party petitioner, is served with a petition alleging that the
6 parental rights of the parent should be terminated pursuant to
7 G.S. 7B-1110, the department shall file a written answer and
8 shall be deemed a party to the proceeding."

9 Section 28. G.S. 7B-1110, as rewritten and recodified by
10 enacted Senate Bill 1260, 1997 General Assembly, reads as
11 rewritten:

12 **"§ 7B-1110. Grounds for terminating parental rights.**

13 (a) The court may terminate the parental rights upon a finding
14 of one or more of the following:

15 (1) The parent has abused or neglected the juvenile.
16 The juvenile shall be deemed to be abused or
17 neglected if the court finds the juvenile to be an
18 abused juvenile within the meaning of G.S. 7B-101
19 or a neglected juvenile within the meaning of G.S.
20 7B-101.

21 (2) The parent has willfully left the juvenile in
22 foster care or placement outside the home for more
23 than 12 months without showing to the satisfaction
24 of the court that reasonable progress under the
25 circumstances has been made within 12 months in
26 correcting those conditions which led to the
27 removal of the juvenile. Provided, however, that no
28 parental rights shall be terminated for the sole
29 reason that the parents are unable to care for the
30 juvenile on account of their poverty.

31 (3) The juvenile has been placed in the custody of a
32 county department of social services, a licensed
33 child-placing agency, a child-caring institution,
34 or a foster home, and the parent, for a continuous
35 period of six months next preceding the filing of
36 the petition, has willfully failed for such period
37 to pay a reasonable portion of the cost of care for
38 the juvenile although physically and financially
39 able to do so.

40 (4) One parent has been awarded custody of the juvenile
41 by judicial decree or has custody by agreement of
42 the parents, and the other parent whose parental
43 rights are sought to be terminated has for a period
44 of one year or more next preceding the filing of

- 1 the petition willfully failed without justification
2 to pay for the care, support, and education of the
3 juvenile, as required by said decree or custody
4 agreement.
- 5 (5) The father of a juvenile born out of wedlock has
6 not, prior to the filing of a petition to terminate
7 parental rights:
- 8 a. Established paternity judicially or by
9 affidavit which has been filed in a central
10 registry maintained by the Department of
11 Health and Human Services; provided, the court
12 shall inquire of the Department of Health and
13 Human Services as to whether such an affidavit
14 has been so filed and shall incorporate into
15 the case record the Department's certified
16 reply; or
- 17 b. Legitimated the juvenile pursuant to
18 provisions of G.S. 49-10 or filed a petition
19 for this specific purpose; or
- 20 c. Legitimated the juvenile by marriage to the
21 mother of the juvenile; or
- 22 d. Provided substantial financial support or
23 consistent care with respect to the juvenile
24 and mother.
- 25 (6) That the parent is incapable of providing for the
26 proper care and supervision of the juvenile, such
27 that the juvenile is a dependent juvenile within
28 the meaning of G.S. 7B-101, and that there is a
29 reasonable probability that such incapability will
30 continue for the foreseeable future. Incapability
31 under this subdivision may be the result of
32 substance abuse, mental retardation, mental
33 illness, organic brain syndrome, or any other
34 similar cause or condition.
- 35 (7) The parent has willfully abandoned the juvenile for
36 at least six consecutive months immediately
37 preceding the filing of the petition. ~~For the
38 purpose of this subdivision, a juvenile may be
39 willfully abandoned by the juvenile's natural
40 father if the mother of the juvenile had been
41 willfully abandoned by and was living separate and
42 apart from the father at the time of the juvenile's
43 birth, although the father may not have known of
44 such birth; but in any event the juvenile must be~~

- 1 ~~over the age of three months at the time of the~~
2 ~~filing of the petition.~~
- 3 (8) The parent has committed murder or voluntary
4 manslaughter of another child of the parent or
5 other child residing in the home; has aided,
6 abetted, attempted, conspired, or solicited to
7 commit murder or voluntary manslaughter of the
8 child, another child of the parent, or other child
9 residing in the home; or has committed a felony
10 assault that results in serious bodily injury to
11 the child, another child of the parent, or other
12 child residing in the home.
- 13 (9) The parental rights of the parent with respect to
14 another child of the parent have been terminated
15 involuntarily by a court of competent jurisdiction
16 and the parent lacks the ability or willingness to
17 establish a safe home.
- 18 (b) The burden in such proceedings shall be upon the
19 petitioner to prove the facts justifying such termination by
20 clear and convincing evidence."
- 21 Section 29. Sections 1 through 9 of this act become
22 effective January 1, 1999, and apply to abuse, neglect, and
23 dependency reports received, juvenile petitions filed, and review
24 hearings commenced on and after that date. Sections 10 and 11 of
25 this act become effective January 1, 1999, and apply to
26 termination of parental rights petitions filed on and after that
27 date. Sections 12 through 16 of this act become effective
28 January 1, 1999, and apply to any placement of a minor who is in
29 the custody or placement responsibility of a county department of
30 social services on and after that date. If the 1997 General
31 Assembly enacts Senate Bill 1260, Sections 1 through 4, 5 through
32 8, 9, 10, and 11 of this act expire June 30, 1999, and Sections
33 18 through 28 of this act become effective on July 1, 1999. The
34 remainder of this act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1720

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of ____

H1720-ASE-001

Date 10/13, 1998

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator MARTIN

1 moves to amend the bill on page 52, lines 18 through 42,
2 by rewriting those lines to read:

3

4 "§ 7B-801. Hearings.

5 (a) At any hearing authorized or required under this Subchapter,
6 the court in its discretion shall determine whether the hearing or
7 any part of the hearing shall be closed to the public. In
8 determining whether to close the hearing or any part of the hearing,
9 the court shall consider the circumstances of the case, including,
10 but not limited to the following factors:

- 11 (1) The nature of the allegations against the
12 juvenile's parent, guardian, custodian or
13 caretaker;
14 (2) The age and maturity of the juvenile;
15 (3) The benefit to the juvenile of confidentiality;
16 (4) The benefit to the juvenile of an open hearing; and
17 (5) The extent to which the confidentiality afforded the
18 juvenile's record pursuant to G.S. 132-1.4(1) and G.S.
19 7B-2901 will be compromised by an open hearing.

20 (b) No hearing or part of a hearing shall be closed by the court
21 if the juvenile requests that it remain open.

22 (c) The adjudicatory hearing shall be held in the district at such
23 time and place as the chief district court judge shall designate,



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1720

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 2 of ____

H1720-ASE-001

1 but no later than 60 days from the filing of the petition unless the
2 judge pursuant to G.S. 7B-803 orders that it be held at a later
3 time.
4

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 10-13-98

S. B. No. 1720

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) BALLANCE
Sen.)

1 moves to amend the bill on page 47, line 40
2 () WHICH CHANGES THE TITLE deleting the phrase "any federal law that
3 by rewriting that line to read "may apply" and
4 "Section, the court shall consider" the
5 Indian Child Welfare Act and the Multi-
6 ethnic Placement Act as they may apply."

7
8 and again on page 50, lines 3-5;
9 page 13, lines 7-10; and page 10, lines 10-12
10 by making a corresponding change.

11
12 The appropriate citation to the federal
13 acts shall also be inserted.

SIGNED Frank Ballance

ADOPTED _____ FAILED _____ TABLED _____

Summary
Proposed Committee Substitute
for
H1720 - Adoption and Safe Families Act
H1720-CSSE-010

The proposed committee substitute for H1720 has 2 Parts. Part I makes changes to the current law that are necessary in order for the State to be in compliance with P.L. 105-89, The Adoption and Safe Families Act, 1997. Sections 1-16 of Part I become effective January 1, 1999. Section 17 of the bill directs the Legislative Research Commission to study the proposed changes to the juvenile justice system as contained in House Bill 1561 and Senate Bill 1513. (Juvenile Law Revision). The changes pertain to abuse, neglect, and dependency cases. Section 17 is effective upon becoming law.

Part II of the bill is necessary only if Senate Bill 1260, Juvenile Justice Reform, is enacted. Since H1720 and S1260 make changes to the same general laws, the bill that is enacted later will affect the changes made in the bill that was enacted earlier. Part II is, therefore, conditioned upon the enactment of Senate Bill 1260, re-enacts the changes made in Part I, and repeals Part I changes effective June 30, 1999.

Changes made in Part I to the current law reflect the requirements and intent of the federal law to assure that children are placed in safe homes in a timely manner; to expedite reunification of children when that is in the child's best interest; to place children permanently with relatives when appropriate; to terminate the parental rights of parents who do not provide for their children; and to facilitate the timely adoption of children for whom reunification is inappropriate. Following is a summary of the changes made in Part I.

Section 1

Defines two new terms ("aggravated circumstances", "court of competent jurisdiction") and further defines the term "reasonable efforts".

Section 2

Adds language to G.S. 7A-544 inadvertently repealed in S.L. 1997-390.

Sections 3, 4, and 4.1

Clarifies current law on placement in secure or nonsecure custody and also on the hearing to determine the need for continued secure or nonsecure custody.

Section 4

Recodifies current law on "reasonable efforts" into one section in the General Statutes. (See section 4.1) "Reasonable efforts" are the diligent use of preventive or reunification services or permanency planning services by a local DSS with respect to a juvenile's remaining in, returning to, or not being returned to the home. Under this section, specific

findings are required of the court with respect to the use, non-use, or cessation of reasonable efforts.

Sections 5, 6, 7, 8

These sections shorten the time periods for the adjudicatory, dispositional, and review of custody order hearings, specify dispositional alternatives for juveniles, and at review hearings, require the court to consider information from specified persons (parents, juvenile, guardian, foster parent, relative, custodian, agency, etc.) that will aid the court in its review. Also with respect to review hearings, Section 8 adds language requiring the court to consider and make written findings regarding appropriate visitation plans and, if the juvenile is 16 or 17 years old, report on any independent living assessment or plan.

Section 8.1.

Adds language requiring a permanency planning hearing when custody has been removed from a parent. The purpose of the hearing is to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. The hearing must be held within 12 months after the date of the initial order removing the juvenile. Subsequent hearings must be held every six months thereafter, or earlier, to review progress made in finalizing the permanent plan. The clerk of court must give 15 days' notice of the hearing to the juvenile, the parents, and specified others, and the court must consider information from the juvenile, the parents, and specified others that will aid the court in its review. The court must also make specified written findings. Under specified circumstances (as required under federal law), the court must order the director of social services to initiate a proceeding to terminate parental rights unless the court makes specified contrary findings.

Sections 9, 10, 11

These sections relate to proceedings for the termination of parental rights. Section 9 pertains to notice to and information from specified persons interested in the proceedings (relatives or preadoptive parents providing care for the child). Section 9.1 avoids the necessity for a separate proceeding to terminate parental rights when the court currently has jurisdiction in an abuse, neglect, or dependency proceeding. Section 10 pertains to the issuance of summons when a petition to terminate parental rights has been filed, and makes local DSS a party to the proceeding when a petition has been filed and served on DSS. Section 11 adds two new grounds for termination of parental rights, as required by federal law.

Sections 12 through 16

These sections amend Chapter 48 (adoption) to ensure compliance with federal requirements. Requirements are that criminal history checks of all foster and prospective adoptive parents who foster or adopt children for whom foster care maintenance payments or adoption assistance payments are made.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, October 13, 1998

SENATOR COOPER,
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)1720	Adoption & Safe Families Act	
	Draft Number:	PCS 4220
	Sequential Referral:	None
	Recommended Referral:	Finance
	Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

VISITOR REGISTRATION SHEET

Judicial Meetings

10-12-98

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Roslyn Sawitt	Child Care Coalition
Susan Schmidt	NCJCDC
Sharon Kinsome	DSS
Chuck Harris	DSS
John Lamm	DSS
Tom Bennett	NCCFTF
Jean McAusker	DSS
AL DEITCH	DOA/YAID
Martha Livegood	YAID
LANA DIAL	AOC
Bob Atkinson	AOC
TANASIJE MARINKOVIC	ACLU
Mindy Brown	Capital Group
John Hunt	NCFPC
Amir Go Bain	Smith Anderson
Lisa Rees	the insider
Anna Gregory	Poyner & Spruill