2003-2004

HOUSE
JUDICIARY IV

COMMITTEE
MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

MEMBER		ASSISTANT	PHONE	OFFICE	SEAT
MUNFORD, Don	Chairman	Carla Farmer Committee Assistant	733-5809	539	41
GLAZIER, Rick	Vice Chair	Carin Savel	733-5601	2215	107
STILLER, Bonner	Vice Chair	Ferebee Stainback	733-5974	508	29
BOWIE, Joni		Sharon Gaudette	733-5877	538	78
EARLE, Beverly		Ann Raeford	755-2530	634	95
GOFORTH, Bruce		Ann Jordan	733-5746	1220	115
HAIRE, Phil		Sara Jane Lennard	755-3005	419B	47
JEFFUS, Maggie		Mary Lee Robinson	733-5191	1013	79
JUSTUS, Carolyn		Glenda Jones	733-5904	1023	27
KISER, Joe		Marilyn Holder	733-5782	1326	18

EX-OFFICIO MEMBERS

BRUBAKER, Harold	Cindy Coley	755-4946	1229	2
CULPEPPER, Bill	Dot Crocker	755-3028	404	36
CUNNINGHAM, Pete	Valerie Rustin	733-5778	541	7
EDDINS, Rick	Dorie Monroe	733-5828	1002	26

Trina Griffin, Staff
Dianna Jessup, Staff
Steve Rose, Staff

NORTH CAROLINA GENERAL ASSEMBLY

JUDICIARY IV
2003 – 2004 SESSION



Rep. Munford
Chair



Rep. Glazier
Vice chair



Rep. Stiller
Vice chair



Rep. Bowie
Member



Rep. Earle
Member



Rep. Goforth
Member



Rep. Haire
Member



Rep. Jeffus
Member



Rep. Justus
Member



Rep. Kiser
Member



Rep. Brubaker
Ex-officio



Rep. Culpepper
Ex-officio



Rep. Cunningham
Ex-officio



Rep. Eddins
Ex-officio

North Carolina General Assembly
COMMITTEE SUMMARY REPORT
HOUSE: JUDICIARY IV

Bill	Introducer	Short Title	Latest Action	In Date	Out Date	Signed by Gov.
HB 18	McLawhorn	Worthless Check Program Pitt Co.	PCS/Passed	2/13/03	5/21	Rolled into H 1026
HB 25	Gillespie	Worthless Check Program Additions	PCS/Passed	2/17/03	5/21	Rolled into H 1026
HB 78	Culpepper	Revised UCC Article on Bulk Transfers	PCS/Passed	2/25/03	5/21	Rolled into H 1026
HB 83	Goforth	Worthless Check Program/Buncombe	PCS/Passed	2/26/03	5/21	Rolled into H 1026
HB 126	Glazier	Evidence in Juvenile Hearings	PCS/Passed	2/27/03	3/6	5/20
HB 202	Culpepper	Amend Child Support Enforcement Law	Hold	3/04/03		
HB 241	Haire	Amend Drug Trafficking Laws	Hold	3/06/03		
HB 242	Haire	Amend Habitual Felony Law	Hold	3/06/03		
HB 243	Haire	Reclassify Statutory Rape/Sex Offense	Fav. Rpt. No go on Floor Re-referred back to J-4	3/06/03		
HB 244	Haire	Arson Offenses – Sent. Commission	PCS/Passed	3/06/03	4/14	
HB 245	Haire	Amend Special Probation Definition	Hold	3/06/03		
HB 246	Haire	Adjust B1- E Felony Penalties	Hold	3/06/03		
HB 247	Haire	Restructure Prior Criminal Records Pts.	Hold	3/06/03		
HB 264	Haire	Sentence Lengths	Hold	3/06/03		
HB 273	Glazier	Adverse Reactions to Smallpox Vaccination	PCS Passed	3/06/03	4/2	6/12

Bill	Introducer	Short Title	Latest Action	In Date	Out Date	Signed by Gov.
HB 352	Haire	Drug Screening and Assessment- AB	Fav. Report	3/06/03	4/9/03	6/4
HB 353	Haire	Explosive Devices Offenses - AB	Hold	3/06/03		
HB 380	Bowie	Guilford/Worthless Check Program	PCS Passed	3/10/03	5/21	Rolled into H 1026
HB 602	Owens	Worthless Check Program/More Counties	PCS Passed	3/24/03	5/21	Rolled into H 1026
HB 623	Bowie	Limit Handheld Phone Use While Driving	Study Bill	3/24/03	Study Committee	
HB 636	Munford	Modernize Judgment Docketing Laws	PCS Passed	3/25/03	4/7/03	5/20
HB 637	Munford	Amend Powers/Settlor of Revocable Trust	Fav. Report	3/25/03	4/7/03	6/19
HB 656	Culpepper	Amend Trust Administration Act	PCS Passed	3/25/03	4/7/03	6/26
HB 689	Glazier	Conform Evidence Rule 103	Favorable Report	3/26/03	4/16/03	5/31
HB 754	Culpepper	Amortization Moratorium	PCS Passed	3/24	4/23	Presented 7/20
HB 785	Haire	Rules of Civil Procedure	PCS Passed	3/27	4/28	6/26
HB 807	Culpepper	Rewrite Rule 45/Elective Share	PCS Passed	3/31	4/23	7/4
HB 880	Justus	DWI Blood Test Result – Directly to Clerk	PCS Passed Re-ref to J 1	4/7	7/16	
HB 883	Insko	MH Reform Wavier	PCS Passed	4/28	4/29	6/12
HB 889	Eddins	Analogues/Schedule I **SAME AS SB 694 PASSED OUT**	Hold	5/13		
HB 911	Eddins	No Profit from Crime	Hold	5/7		

Bill	Introducer	Short Title	Latest Action	In Date	Out Date	Signed by Gov.
HB 925	Luebke	County Appeals of Certain Juv. Orders	Fav. Report	4/8	4/28	6/2
HB 956	Haire	Deter Juvenile Escapes Study	PCS Passed Re-ref to Rules	4/8	4/29	
HB 1026	Sexton	Worthless Check Program/Statewide	PCS Passed Re-refer to Finance	4/10	5/21	8/1
HB 1030	Glazier	Handgun Permit Fee/Retired Law Officer	PCS Passed Re-refer to Finance	4/10	6/9	8/1
HB 1033	Glazier	Child Custody/Guardianship	Hold			
HB 1035	Kiser	Bail Bonds/Real Estate as Security	Hold			
HB 1055	Glazier	Proportionality Review/All Capital	Hold			
HB 1072	Miner	Regulate Ticket Brokers	PCS Passed- RR Fin.	6/18	6/24	
HB 1156	Warren	Firefighters and Rescue Workers/Arson	Hold			
HB 1187	Luebke	Felony Murder/No Death Penalty	Pulled/no vote taken			
HB 1305	Earle	Homebuilder Responsibility	Hold			

Bill	Introducer	Short Title	Latest Action	In Date	Out Date	Signed by Gov.
SB 93	Gulley	Amend Special Probation Definition	Fav. Report	4/8	5/21	6/4
SB 161	Clodfelter	Redistrict Court Ordered Probation	Hold	4/15		
SB 293	Thomas	Sales Representative Comm. Revisions	PCS Passed	4/8	6/2	7/20
SB 323	F. Hartsell	Gen. Contractors/Project Info	Fav. Report	4/24	5/14	5/30
SB 421	Thomas	Amend Child Welfare Laws	PCS Passed	4/17	6/5	7/4
SB 423	Thomas	Amend Child Support	PCS Passed	4/10	6/9	7/4
SB 468	F. Hartsell	Clarify Irrevocable Trust Law	Fav. Report	4/28	5/14	5/22
SB 470	F. Hartsell	Compensation of Trustee/Other Fiduciaries	Hold	4/17		
SB 549	Hagan	Uniform Principal and Income Act	PCS Passed	4/30	6/2	6/19
SB 693	Thomas	Amend Enhanced Sentences Laws	PCS Passed	4/29	5/19	8/1
SB 694	Thomas	Analogues/Schedule I Cont. Substance	Fav. Report	5/13	6/9	6/26
SB 716	F. Hartsell	Revised Uniform Arbitration Act	PCS Passed	5/1	6/25	7/27
SB 753	C. Jenkins	Qualif. For Magistrates	PCS Passed	4/28	6/9	8/1
SB 784	F. Hartsell	Judgment Bonding Legislation	Fav. Report	4/8	4/10	4/23
SB 846	Gulley	Solar Energy Systems	Hold	5/1		
SB 919	Rand	Homicide Prevention Act	PCS Passed	5/7	6/11	8/13
SB 974	Jenkins	Notification of Private Road	Hold	5/5		

Effective for Offenses Committed on or after 12/1/95

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
A	Death or Life Without Parole					
B1	A *240-300* 192-240 *144-192*	A *288-360* 230-288 *173-230*	A *336-420* 269-336 *202-269*	A *384-480* 307-384 *230-307*	A *Life Without Parole* 346-433 *260-346*	A *Life Without Parole* 384-480 *288-384*
B2	A *157 - 196* 125 - 157 *94 - 125*	A *189 - 237* 151 - 189 *114 - 151*	A *220 - 276* 176 - 220 *132 - 176*	A *251 - 313* 201 - 251 *151 - 201*	A *282 - 353* 225 - 282 *169 - 225*	A *313 - 392* 251 - 313 *188 - 251*
C	A *73 - 92* 58 - 73 *44 - 58*	A *100 - 125* 80 - 100 *60 - 80*	A *116 - 145* 93 - 116 *70 - 93*	A *133 - 167* 107-133 *80 - 107*	A *151 - 188* 121 - 151 *90 - 121*	A *168 - 210* 135 - 168 *101-135*
D	A *64 - 80* 51 - 64 *38 - 51*	A *77 - 95* 61 - 77 *46 - 61*	A *103 - 129* 82 - 103 *61 - 82*	A *117 - 146* 94 - 117 *71 - 94*	A *133 - 167* 107 - 133 *80 - 107*	A *146 - 183* 117 - 146 *88 - 117*
E	I/A *25 - 31* 20 - 25 *15 - 20*	I/A *29 - 36* 23 - 29 *17 - 23*	A *34 - 42* 27 - 34 *20 - 27*	A *46 - 58* 37 - 46 *28 - 37*	A *53 - 66* 42 - 53 *32 - 42*	A *59 - 74* 47 - 59 *35 - 47*
F	I/A *16 - 20* 13 - 16 *10 - 13*	I/A *19 - 24* 15 - 19 *11 - 15*	I/A *21 - 26* 17 - 21 *13 - 17*	A *25 - 31* 20 - 25 *15 - 20*	A *34 - 42* 27 - 34 *20 - 27*	A *39 - 49* 31 - 39 *23 - 31*
G	I/A *13 - 16* 10 - 13 *8 - 10*	I/A *15 - 19* 12 - 15 *9 - 12*	I/A *16 - 20* 13 - 16 *10 - 13*	I/A *20 - 25* 16 - 20 *12 - 16*	A *21 - 26* 17 - 21 *13 - 17*	A *29 - 36* 23 -29 *17 - 23*
H	C/I/A *6 - 8* 5 - 6 *4 - 5*	I/A *8 - 10* 6 - 8 *4 - 6*	I/A *10 - 12* 8 - 10 *6 - 8*	I/A *11 - 14* 9 - 11 *7 - 9*	I/A *15 - 19* 12 - 15 *9 - 12*	A *20 - 25* 16 - 20 *12 - 16*
I	C *6 - 8* 4 - 6 *3 - 4*	C/I *6 - 8* 4 - 6 *3 - 4*	I *6 - 8* 5 - 6 *4 - 5*	I/A *8 - 10* 6 - 8 *4 - 6*	I/A *9 - 11* 7 - 9 *5 - 7*	I/A *10 - 12* 8 -10 *6 - 8*

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment
*Numbers shown are in months and represent the range of minimum sentences.

Revised: 08-04-95

FIGURE B: MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the nu to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 mo or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-3
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-3
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-39
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

SAMPLE OFFENSES
AS OF 12/1/02

CLASS A FELONIES	Maximum Punishment of Death or Life Without Parole
Murder, First Degree (14-17)	
CLASS B1 FELONIES	**Maximum Punishment of Life Without Parole**
Rape, First Degree (14-27.2)	Sexual Offense, First Degree (14-27.4)
CLASS B2 FELONIES	**Maximum Punishment of 479 Months**
Murder, Second Degree (14-17)	
CLASS C FELONIES	**Maximum Punishment of 261 Months**
Habitual Felon (14-7.6)	Assault W/D/W/I/K/I/S/I (14-32(a))
Rape, Second Degree (14-27.3)	Kidnapping, First Degree (14-39)
Sexual Offense, Second Degree (14-27.5)	Embezzlement (amount involved $100,000 or more) (14-90)
CLASS D FELONIES	**Maximum Punishment of 229 Months**
Voluntary Manslaughter (14-18)	Arson, First Degree (14-58)
Malicious Use of Explosive or Incendiary (14-49(a))	Armed Robbery (14-87)
Burglary, First Degree (14-51)	Sell or Deliver a Controlled Substance to a Person Under 16 But More Than 13 Years of Age (90-95(e)(5))
CLASS E FELONIES	**Maximum Punishment of 98 Months**
Intercourse and Sexual Offenses with Certain Victims (Substitute Parent/Custodian) (14-27.7)	Assault with a Firearm on a Law Enforcement Officer (14-34.5)
Assault W/D/W/I/S/I (14-32(b))	Kidnapping, Second Degree (14-39)
Assault W/D/W/I/K (14-32(c))	Child Abuse I/S/I (14-318.4)
Discharging Weapon Into Occupied Property (14-34.1)	Sell or Deliver a Controlled Substance Within 300 Feet of a School (90-95(e)(8))
CLASS F FELONIES	**Maximum Punishment of 59 Months**
Involuntary Manslaughter (14-18)	Burning of Certain Other Buildings (14-62)
Assault Inflicting Serious Bodily Injury (14-32.4)	Incest Between Certain Near Relatives (14-178)
Assault W/D/W on a Governmental Officer or Employee (14-34.2)	Indecent Liberties with Children (14-202.1)
Assault on a Law Enforcement Officer (14-34.7)	Possess Weapon of Mass Destruction (14-288.8)
Felonious Restraint (14-43.3)	Habitual Impaired Driving (20-138.5)
CLASS G FELONIES	**Maximum Punishment of 44 Months**
Burglary, Second Degree (14-51)	Possession of Firearms, etc., by Felon (14-415.1)
Arson, Second Degree (14-58)	Death by Vehicle (20-141.4)
Common Law Robbery (14-87.1)	Sale of a Schedule I or II Controlled Substance (90-95(a)(1))
CLASS H FELONIES	**Maximum Punishment of 30 Months**
Habitual Misdemeanor Assault (14-33.2)	Obtaining Property by False Pretenses (amount involved less than $100,000) (14-100)
Breaking or Entering Buildings (14-54(a))	Intimidating/Interfering with Witnesses (14-226)
Fraudulently Setting Fire to Dwelling House (14-65)	Hit and Run Involving Personal Injury/Death (20-166(a))

Possessing Stolen Goods Worth More than $1,000 (14-71.1)	Sale of a Schedule III, IV, V, or VI Controlled Substance (90-95(a)(1))
Larceny of Property Worth More than $1,000 (14-72)	Possession W/I/M/S/D Cocaine (90-95(a)(1))
Embezzlement (amount involved less than $100,000) (14-90)	Escaping From State Prison System (felon) (148-45(b))
CLASS I FELONIES	**Maximum Punishment of 15 Months**
Breaking or Entering Motor Vehicles (14-56)	Possession W/I/M/S/D Marijuana (90-95(a)(1))
Financial Transaction Card Theft (14-113.9)	Possess Cocaine (90-95(a)(3))
Forgery of Notes, Checks, Securities (14-119)	Maintain Dwelling or Motor Vehicle for Keeping or Selling a Controlled Substance (90-108(a)(7),(b))
Uttering Forged Paper or Instrument (14-120)	Obtain a Controlled Substance by Fraud (90-108(a)(10),(b))
CLASS A1 MISDEMEANORS	**Maximum Punishment of 150 Days**
Assault Inflicting Serious Injury or Using a Deadly Weapon (14-33(c)(1))	Assault on a State Officer or Employee (14-33(c)(4))
Assault On a Female (14-33(c)(2))	Assault by pointing a gun (14-34)
Assault on a Child Under 12 Years of Age (14-33(c)(3))	Violation of a valid protective order (50B-4.1)
CLASS 1 MISDEMEANORS	**Maximum Punishment of 120 Days**
Breaking or Entering Buildings (14-54(b))	Willful Injury to Real Property (14-127)
Larceny of Property Worth $1,000 or Less (14-72)	Communicating Threats (14-277.1)
Unauthorized Use of a Motor Vehicle (14-72.2)	Possession of Drug Paraphernalia (90-113.22)
Worthless Check/Closed Account (14-107(4))	Misrepresentation to Obtain Employment Security Benefits (96-18)
CLASS 2 MISDEMEANORS	**Maximum Punishment of 60 Days**
Simple Assault/Assault and Battery (14-33(a))	Failure to Return Rental Property (14-167)
Obtaining Property in Return for Worthless Check (14-106)	Using Profane, Indecent or Threatening Language to Any Person Over Telephone (14-196)
Worthless Check/$2,000 or Less (14-107(1))	Resisting Officers (14-223)
Trespass, First Degree (14-159.12)	Carrying Concealed Weapons (14-269)
Willful Injury to Personal Property (14-160(a))	Disorderly Conduct (14-288.4)
CLASS 3 MISDEMEANORS	**Maximum Punishment of 20 Days**
Concealment of merchandise in mercantile establishments (first conviction) (14-72.1)	Operate Motorboat Without Lifesaving Device (75A-6)
Trespass, Second Degree (14-159.13)	Hunting Without a License (113-270.2)
Intoxicated and Disruptive in Public (14-444)	Fishing Without a License (113-271)
Unsealed Wine/Liquor in Passenger Area (18B-401)	Possess Marijuana (½ ounce or less) (90-95(a)(3))

CONSPIRACY to commit an offense is classified as one class lower than the offense the person conspired to commit. (14-2.4)

ATTEMPT to commit an offense is classified as one class lower than the offense the person attempted to commit. (14-2.5)

SOLICITATION to commit an offense is classified as two classes lower than the offense the person solicited the other person to commit. (14-2.6)

ACCESSORY BEFORE THE FACT punishable as the principal felon. (14-5.2)

ACCESSORY AFTER THE FACT punishable as two classes lower than the felony the principal felon committed. (14-7)

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

REVISED POPULATION PROJECTIONS
FISCAL YEAR 2002/2003 to FISCAL YEAR 2011/2012

Prepared in Conjunction with the
Department of Correction=s Office of Research and Planning

RELEASED: JANUARY 2003

INTRODUCTION:

The attached table shows ten-year prison population projections by fiscal year. The prison population projections were completed in two parts. The Sentencing Commission prepared prison population projections for all offenders sentenced on or after July 1, 2002 (new population). The Department of Correction prepared projections for all offenders in prison as of June 30, 2002 (resident prison population). The final combined projections take into account the decline of the resident prison population (structured sentencing releases, parole releases, and Amax-outs@) and the buildup of the new inmate population (new sentences, probation revocations, parole revocations, and post-release supervision revocations). Added to these figures is the estimated number of Asafekeepers@ and DWI offenders held in the state prison system.

ASSUMPTIONS:

- All Fair Sentencing Act (FSA) and pre-FSA prisoners will serve the same percentage of their Active sentence as the percentage served by prisoners paroled in FY 2001/02.

- On average, all Structured Sentencing Act (SSA) felons will serve 109 percent of their minimum Active sentences and all SSA misdemeanants will serve 95 percent of their Active sentences (the actual percentages served by SSA offenders released from prison during FY 2001/02).

- Rates of Active sentences will match rates during FY 2001/02 for all SSA offenders. Overall, 35 percent of felons received an Active sentence, with an average estimated time served of 42 months. These rates assume no changes in judicial or prosecutorial behavior regarding convictions.

- Probation revocation rates will match rates during FY 2001/02.

CHANGES FROM PREVIOUS PROJECTIONS:

The 2003 revised population projections are higher than the previous year=s projections. In addition to an anticipated increase in growth in general, the projected increase in the prison population can be attributed to changes in two of the primary determining factors of the prison population: 1) an

increase in the number of new convictions, which directly impacts the number of prison admissions resulting from the commission of new crimes; and 2) FSA and pre-FSA inmates are serving longer sentences than previously projected.

< While the Sentencing Commission=s *Forecasting Advisory Group* found no reason to adjust the projected growth rate for misdemeanor convictions, the group adjusted the projected growth rate for felony convictions upward for the first year of the projection period.[1]

	Felony		Misdemeanor	
	Previous	Revised	Previous	Revised
Time Period	Growth Rate	Growth Rate	Growth Rate	Growth Rate
FY 2002/03	1%	2%	1%	1%
FY 2003/04	2%	2%	1%	1%
FY 2004/05	2%	2%	1%	1%
FY 2005/06	2%	2%	1%	1%
FY 2006/07	2%	2%	1%	1%

< An overall increase in felony convictions accounts for a large part of the higher population projections. This increase in felony convictions includes an increase in convictions for serious felonies (Classes A-D), with increases in convictions for certain specific offenses (such as murder, robbery, and drug trafficking).

< Prison population projections are and will continue to be affected by parole practices, due to a still-sizeable inmate population of FSA and pre-FSA offenders. On November 30, 2002, there were 6,314 FSA and pre-FSA offenders in prison (including 2,852 with life sentences and 107 with death sentences), representing about 19 percent of the state=s inmates. The percent of sentence served by FSA and pre-FSA prison releases (excluding those with life or death sentences) has been increasing (from 32% in FY 1997/98 to 39% in FY 2001/02), as has their average time served (from an average of 43 months in FY 1997/98 to 99 months in FY 2001/02).

< This projection includes impact from several legislative changes to criminal penalties from the 2002 Session of the General Assembly, including increasing punishments for financial identity fraud, incest, stalking, and several misdemeanor offenses.

< This projection does not include any increases in the prison population resulting from legislative changes that either created new offenses for which there are no historical data or amended penalties for existing offenses with elements that could not be modeled.

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[1] The *Forecasting Advisory Group* convenes annually and consists of representatives from the Sentencing Commission, Administrative Office of the Courts, Department of Correction, Department of Juvenile Justice and Delinquency Prevention, State Bureau of Investigation, Governor=s Crime Commission, and Office of State Budget and Management. The group forecasts growth rates after reviewing recent crime trends, arrest trends, court filing trends, state demographic trends, and prison admission trends.

< This projection does not include any potential decreases in the prison population resulting from legislative changes that will permit the transfer of convicted offenders to the country of which they are citizens or nationals pursuant to international treaties.

PROJECTED PRISON POPULATION:

Projected Prison Population and Capacity

The population projected by the Commission=s simulation model for June 30, 2002 was **33,188**. The actual average population for June 2002 was **33,111**, a difference of 77 prison beds (or less than one half of a percent). The first table and the following chart present the projected prison population and capacity for FY 2002/03 through FY 2011/12.

Updated prison capacity projections were provided by the Department of Correction=s Division of Prisons in December 2002. These projections include both the Expanded Operating Capacity (EOC) and the Standard Operating Capacity (SOC) of all prison facilities. Based on these figures, the projected prison population will exceed both standard and expanded operating prison capacity for all ten years of the projection.

Projected Prison Population by Offense Class

The Sentencing Commission also provides data on the distribution of the projected prison population of felons by offense class, as shown in the second table. This distribution might serve as an indication of changing custody level needs.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

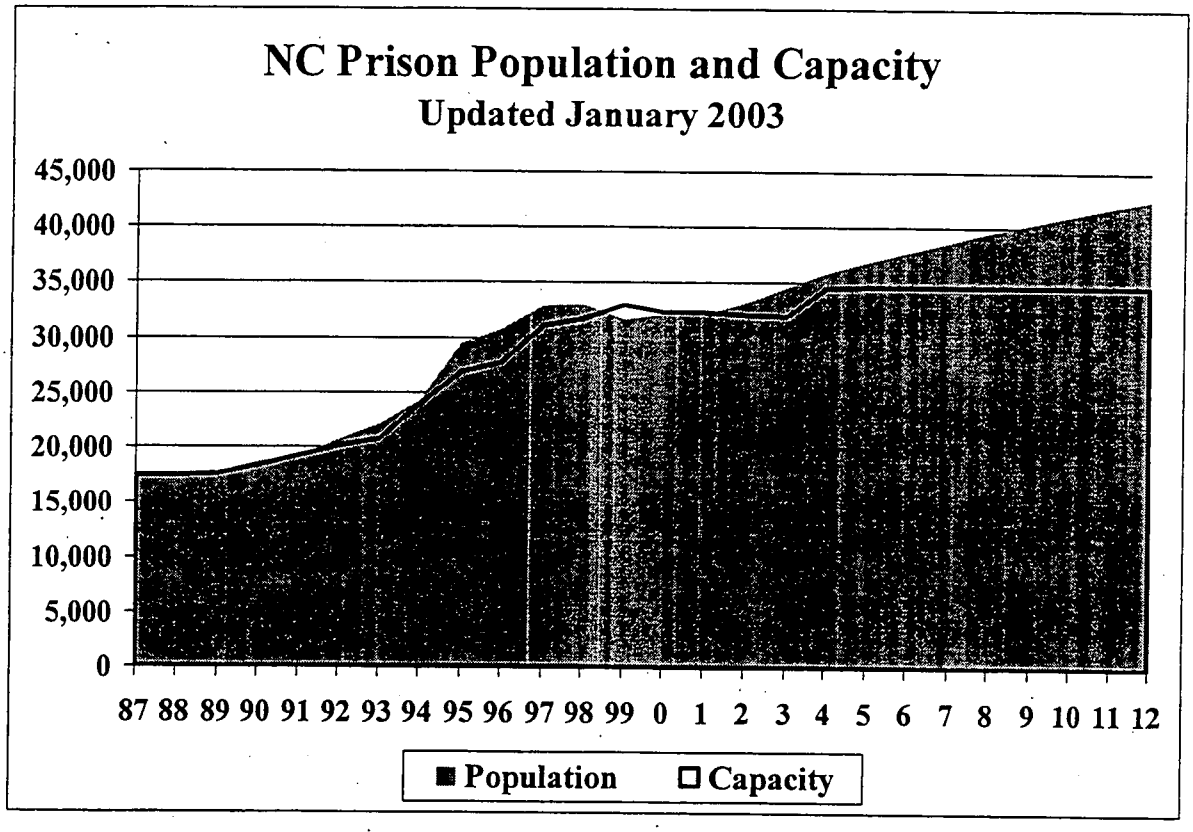
PRISON POPULATION PROJECTIONS:
UPDATED JANUARY 2003

PREPARED IN CONJUNCTION WITH THE DEPARTMENT OF CORRECTION'S OFFICE OF RESEARCH AND PLANNING

FISCAL YEAR	PREVIOUS PROJECTION as of June 30	**REVISED PROJECTION as of June 30**	*ESTIMATE OF EXPANDED OPERATING PRISON CAPACITY*[1]	*ESTIMATE OF STANDARD OPERATING PRISON CAPACITY*[2]
2003	34,129	**34,570**	31,969	28,501
2004	34,840	**35,851**	34,561	31,093
2005	35,647	**36,787**	34,729	31,261
2006	36,485	**37,739**	34,729	31,261
2007	37,405	**38,687**	34,729	31,261
2008	38,306	**39,557**	34,729	31,261
2009	39,203	**40,345**	34,729	31,261
2010	40,077	**41,068**	34,729	31,261
2011	41,052	**41,768**	34,729	31,261
2012	N/A	**42,413**	34,729	31,261

[1] Expanded Operating Capacity (EOC) is the bed space count yielded by calculating the number of general population single cells with one inmate per cell, the number of cells that house two inmates, and the number of inmates in dormitories operating at varying percentages beyond their Standard Operating Capacity (SOC) which is rounded up to the closest double bunk configuration.

[2] Standard Operating Capacity (SOC) is the bed space count yielded by calculating the number of general population single cells with one inmate per cell plus the number of inmates who can be housed in dormitories by dividing the gross square feet of each dormitory by 50 square feet and rounding to the closest double bunk configuration.



Note: Prison capacity figures reflect Expanded Operating Capacity.

SOURCE: NC Sentencing and Policy Advisory Commission and NC Department of Correction

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

PRISON POPULATION PROJECTIONS:
UPDATED JANUARY 2003

PREPARED IN CONJUNCTION WITH THE DEPARTMENT OF CORRECTION=S OFFICE OF RESEARCH AND PLANNING

DISTRIBUTION OF THE PROJECTED PRISON POPULATION BY OFFENSE CLASS FELONIES ONLY

Offense Class	Average Estimated Time Served in Months[2]	Percent by Fiscal Year		
		2003	2007	2012
A	600	4.0	4.7	5.8
3 Strikes	600	0.0	0.0	0.1
B1	291	4.9	5.5	6.4
B2	193	6.2	7.6	8.9
C	102	21.1	22.6	22.4
D	76	16.1	15.9	15.2
A-D SUBTOTAL	134	52.3	56.3	58.8
E	34	5.8	6.1	5.8
F	24	7.9	7.6	7.1
G	19	11.1	10.3	9.8
E-G SUBTOTAL	23	24.8	24.0	22.7
H	11	16.6	13.8	13.0
I	7	4.2	3.9	3.8
H-I SUBTOTAL	10	20.8	17.7	16.8
Unknown	N/A	2.2	1.9	1.6
TOTAL	42	100.0	100.0	100.0

NOTE: Percentages may not add to 100% due to rounding.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2001/2002 Structured Sentencing Simulation Model

[2] For analysis purposes, the sentence length imposed for convictions resulting in life or death sentences was estimated at 600 months.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

THE OFFENSE CLASSIFICATION CRITERIA

The Sentencing Commission was required by G.S. 164-41 to ".... classify criminal offenses into felony and misdemeanor categories on the basis of their severity." The Commission developed a classification criteria to guide the classification process and to ensure that there was a systematic and rational basis for the classifications. The Commission decided that the severity of an offense should be directly related to the harm to the victim that normally results or tends to result from the criminal conduct.

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria.

The purpose of establishing the classification criteria was to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.

Under the classification criteria, the most serious offense classes (A through F) primarily involve personal injury, the risk of personal injury, serious societal injury or widespread societal injury. The lower offense levels (G through I) primarily involve property loss or less serious societal injury. The degree of harm is divided into three levels; injury to person, property or society; significant injury to person, property or society; and serious injury to person, property or society.

The Commission also assigned misdemeanor offenses to three classes: class 1, class 2 or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	! Reserved for First Degree Murder
	[Reasonably tends to result or does result in]:
B	! Serious debilitating long-term personal injury
C	! Serious long-term personal injury ! Serious long-term or widespread societal injury
D	! Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	! Serious personal injury
F	! Significant personal injury ! Serious societal injury
G	! Serious property loss: Loss from the person or from the person's dwelling
H	! Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal ! Personal injury ! Significant societal injury
I	! Serious property loss: All other felonious property loss ! Societal injury
M	! All other misdemeanors

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* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

IMPOSING SENTENCES FOR FELONIES

The sentencing laws use a Felony Punishment Chart which classifies offenders based on the seriousness of their crime and on the extent and gravity of their prior record. Based on this classification, the chart then prescribes the types of sentences which may be imposed (active, intermediate or community punishments) and the range of minimum sentence lengths which may be selected. Following is a description of the steps required to impose felony sentences under the structured sentencing laws.

STEPS REQUIRED TO DETERMINE THE SENTENCE FOR FELONIES

1. DETERMINE THE OFFENSE CLASS FOR EACH FELONY CONVICTION

↓

2. DETERMINE THE PRIOR RECORD LEVEL FOR THE OFFENDER

↓

3. CONSIDER AGGRAVATING AND MITIGATING FACTORS

↓

4. SELECT A MINIMUM SENTENCE FROM THE APPROPRIATE MINIMUM SENTENCE RANGE

↓

5. DETERMINE THE MAXIMUM SENTENCE

↓

6. DETERMINE THE SENTENCE DISPOSITION:

↓	↓	↓
6A. IMPOSE AN ACTIVE PUNISHMENT	**6B. IMPOSE AN INTERMEDIATE PUNISHMENT**	**6C. IMPOSE A COMMUNITY PUNISHMENT**
↓	↓	↓
1. Activate the minimum and maximum sentence	*1. Suspend the minimum and maximum sentence* *2. Impose supervised probation* *3. Impose one or more intermediate punishments* *4. Impose any appropriate community punishments*	*1. Suspend the minimum and maximum sentence* *2. Impose probation and/or any other appropriate community punishment*

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
THE OFFENSE CLASSIFICATION CRITERIA

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The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria.

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The Commission also assigned misdemeanor offenses to three classes: class 1, class 2 or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	Reserved for First Degree Murder
	[Reasonably tends to result or does result in]:
B	Serious debilitating long-term personal injury
C	Serious long-term personal injury Serious long-term or widespread societal injury
D	Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	Serious personal injury
F	Significant personal injury Serious societal injury
G	Serious property loss: Loss from the person or from the person's dwelling
H	Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal Personal injury Significant societal injury
I	Serious property loss: All other felonious property loss Societal injury
M	All other misdemeanors

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* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE		POINTS
	Prior Felony Class A Conviction	x 10	
	Prior Felony Class B1 Conviction	x 9	
	Prior Felony Class B2 or C or D Conviction	x 6	
	Prior Felony Class E or F or G Conviction	x 4	
	Prior Felony Class H or I Conviction	x 2	
	Prior Misdemeanor Class A1 or 1 Conviction*, Prior Impaired Driving Conviction, or Prior Impaired Driving in a Commercial Vehicle Conviction	x 1	
		SUBTOTAL	
If all the elements of the present offense are included in any prior offense, whether or not the prior offense was used in determining prior record level		+ 1	
If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape		+ 1	
		TOTAL	

** Class 1 misdemeanor offenses under Chapter 20 are not assigned any points except for misdemeanor death by vehicle [G.S. 20-141.4(a)(2)]*

II. CLASSIFYING PRIOR RECORD LEVEL

POINTS	LEVEL
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	VI

PRIOR RECORD LEVEL _____

Effective for Offenses Committed on or after 12/1/95

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
A	Death or Life Without Parole					
B1	A *240-300* 192-240 *144-192*	A *288-360* 230-288 *173-230*	A *336-420* 269-336 *202-269*	A *384-480* 307-384 *230-307*	A *Life Without Parole* 346-433 *260-346*	A *Life Without Parole* 384-480 *288-384*
B2	A *157 - 196* 125 - 157 *94 - 125*	A *189 - 237* 151 - 189 *114 - 151*	A *220 - 276* 176 - 220 *132 - 176*	A *251 - 313* 201 - 251 *151 - 201*	A *282 - 353* 225 - 282 *169 - 225*	A *313 - 392* 251 - 313 *188 - 251*
C	A *73 - 92* 58 - 73 *44 - 58*	A *100 - 125* 80 - 100 *60 - 80*	A *116 - 145* 93 - 116 *70 - 93*	A *133 - 167* 107-133 *80 - 107*	A *151 - 188* 121 - 151 *90 - 121*	A *168 - 210* 135 - 168 *101-135*
D	A *64 - 80* 51 - 64 *38 - 51*	A *77 - 95* 61 - 77 *46 - 61*	A *103 - 129* 82 - 103 *61 - 82*	A *117 - 146* 94 - 117 *71 - 94*	A *133 - 167* 107 - 133 *80 - 107*	A *146 - 183* 117 - 146 *88 - 117*
E	I/A *25 - 31* 20 - 25 *15 - 20*	I/A *29 - 36* 23 - 29 *17 - 23*	A *34 - 42* 27 - 34 *20 - 27*	A *46 - 58* 37 - 46 *28 - 37*	A *53 - 66* 42 - 53 *32 - 42*	A *59 - 74* 47 - 59 *35 - 47*
F	I/A *16 - 20* 13 - 16 *10 - 13*	I/A *19 - 24* 15 - 19 *11 - 15*	I/A *21 - 26* 17 - 21 *13 - 17*	A *25 - 31* 20 - 25 *15 - 20*	A *34 - 42* 27 - 34 *20 - 27*	A *39 - 49* 31 - 39 *23 - 31*
G	I/A *13 - 16* 10 - 13 *8 - 10*	I/A *15 - 19* 12 - 15 *9 - 12*	I/A *16 - 20* 13 - 16 *10 - 13*	I/A *20 - 25* 16 - 20 *12 - 16*	A *21 - 26* 17 - 21 *13 - 17*	A *29 - 36* 23 -29 *17 - 23*
H	C/I/A *6 - 8* 5 - 6 *4 - 5*	I/A *8 - 10* 6 - 8 *4 - 6*	I/A *10 - 12* 8 - 10 *6 - 8*	I/A *11 - 14* 9 - 11 *7 - 9*	I/A *15 - 19* 12 - 15 *9 - 12*	A *20 - 25* 16 - 20 *12 - 16*
I	C *6 - 8* 4 - 6 *3 - 4*	C/I *6 - 8* 4 - 6 *3 - 4*	I *6 - 8* 5 - 6 *4 - 5*	I/A *8 - 10* 6 - 8 *4 - 6*	I/A *9 - 11* 7 - 9 *5 - 7*	I/A *10 - 12* 8 -10 *6 - 8*

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment
*Numbers shown are in months and represent the range of minimum sentences.

Revised: 08-04-95

FIGURE B: MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents t' corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 mon or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-39
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-3
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-39
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

DISPOSITIONS

ACTIVE PUNISHMENT

- Active sentence to the state prison system.

INTERMEDIATE PUNISHMENT

- A suspended prison sentence, supervised probation with at least one of the following conditions:

    1. Special Probation
    2. Residential Program
    3. House Arrest with Electronic Monitoring
    4. Intensive Probation
    5. Day Reporting Center

COMMUNITY PUNISHMENT

- A fine and/or a suspended prison sentence with supervised or unsupervised probation. May include:

    1. Out-Patient Treatment
    2. Community Service
    3. Restitution
    4. Any authorized conditions of probation not defined as Intermediate Punishments

Convictions and Sentences by Offense Class and Prior Record Level
FY 2001/02 Felonies

Offense Class	Prior Record Level						Total
	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	A A = 53 (100%) (n=53) Life/Death	A A = 21 (100%) (n=21) Life/Death	A A = 15 (100%) (n=15) Life/Death	A A = 9 (100%) (n=9) Life/Death	A A = 3 (100%) (n=3) Life/Death	A A = 3 (100%) (n=3) Life/Death	A A = 104 (100%) (n=104) Life/Death
B1	A A = 36 (100%) (n=36) 208 min 262 max	A A = 29 (100%) (n=29) 243 min 300 max	A A = 25 (100%) (n=25) 294 min 363 max	A A = 11 (100%) (n=11) 331 min 405 max	A A = 3 (100%) (n=3) 347 min 425 max	A A = 3 (100%) (n=3) 384 min 470 max	A A = 107 (100%) (n=107) 258 min 320 max
B2	A A = 90 (100%) (n=90) 138 min 174 max	A A = 78 (100%) (n=78) 175 min 220 max	A A = 47 (100%) (n=47) 198 min 247 max	A A = 32 (100%) (n=32) 241 min 298 max	A A = 7 (100%) (n=7) 215 min 267 max	A A = 5 (100%) (n=5) 281 min 345 max	A A = 259 (100%) (n=259) 177 min 222 max
C	A A = 118 (100%) (n=118) 63 min 85 max	A A = 165 (100%) (n=165) 78 min 103 max	A A = 197 (100%) (n=197) 89 min 116 max	A A = 257 (100%) (n=257) 99 min 128 max	A A = 87 (100%) (n=87) 113 min 145 max	A A = 82 (100%) (n=82) 124 min 158 max	A A = 906 (100%) (n=906) 92 min 120 max
D	A A = 294 (100%) (n=294) 50 min 69 max	A A = 233 (100%) (n=233) 61 min 83 max	A A = 184 (100%) (n=184) 84 min 111 max	A A = 98 (100%) (n=98) 95 min 124 max	A A = 27 (100%) (n=27) 113 min 145 max	A A = 20 (100%) (n=20) 130 min 165 max	A A = 856 (100%) (n=856) 69 min 93 max
E	I/A I = 248 (70%) A = 105 (30%) (n=353) 22 min 35 max	I/A I = 266 (66%) A = 135 (34%) (n=401) 26 min 40 max	A A = 139 (100%) (n=139) 30 min 46 max	A A = 107 (100%) (n=107) 40 min 58 max	A A = 16 (100%) (n=16) 49 min 68 max	A A = 24 (100%) (n=24) 58 min 78 max	I/A I = 514 (49%) A = 526 (51%) (n=1,040) 31 min 47 max

Convictions and Sentences by Offense Class and Prior Record Level (continued)
FY 2001/02 Felonies

Offense Class	Prior Record Level						Total
	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
F	**I/A** I = 423 (74%) A = 150 (26%) (n=573) 15 min 18 max	**I/A** I = 387 (62%) A = 239 (38%) (n=626) 16 min 19 max	**I/A** I = 205 (50%) A = 206 (50%) (n=411) 18 min 22 max	**A** A = 187 (100%) (n=187) 21 min 26 max	**A** A = 30 (100%) (n=30) 27 min 32 max	**A** A = 19 (100%) (n=19) 33 min 40 max	**I/A** I = 1,015 (55%) A = 831 (45%) (n=1,846) 18 min 22 max
G	**I/A** I = 499 (79%) A = 133 (21%) (n=632) 11 min 14 max	**I/A** I = 702 (71%) A = 282 (29%) (n=984) 13 min 16 max	**I/A** I = 372 (50%) A = 371 (50%) (n=743) 14 min 17 max	**I/A** I = 172 (37%) A = 290 (63%) (n=462) 18 min 22 max	**A** A = 86 (100%) (n=86) 19 min 23 max	**A** A = 52 (100%) (n=52) 26 min 32 max	**I/A** I = 1,745 (59%) A = 1,214 (41%) (n=2,959) 15 min 19 max
H	**C/I/A** C = 1,624 (60%) I = 829 (31%) A = 253 (9%) (n=2,706) 6 min 7 max	**I/A** I = 2,355 (75%) A = 770 (25%) (n=3,125) 7 min 9 max	**I/A** I = 1,291 (56%) A = 1,014 (44%) (n=2,305) 9 min 11 max	**I/A** I = 551 (36%) A = 979 (64%) (n=1,530) 10 min 12 max	**I/A** I = 119 (28%) A = 300 (72%) (n=419) 13 min 16 max	**A** A = 255 (100%) (n=255) 18 min 22 max	**C/I/A** C = 1,624 (16%) I = 5,145 (50%) A = 3,571 (34%) (n=10,340) 10 min 12 max
I	**C** C = 1,874 (100%) (n=1,874) N/A	**C/I** C = 2,059 (68%) I = 964 (32%) (n=3,023) N/A	**I** I = 1,079 (100%) (n=1,079) N/A	**I/A** I = 397 (49%) A = 405 (51%) (n=802) 7 min 9 max	**I/A** I = 76 (36%) A = 136 (64%) (n=212) 8 min 10 max	**I/A** I = 42 (26%) A = 120 (74%) (n=162) 9 min 11 max	**C/I/A** C = 3,933 (55%) I = 2,558 (36%) A = 661 (9%) (n=7,152) 8 min 9 max
TOTAL	**C/I/A** C = 3,498 (52%) I = 1,999 (30%) A = 1,232 (18%) (n=6,729) 42 min 56 max	**C/I/A** C = 2,059 (24%) I = 4,674 (54%) A = 1,952 (22%) (n=8,685) 33 min 43 max	**I/A** I = 2,947 (57%) A = 2,198 (43%) (n=5,145) 33 min 42 max	**I/A** I = 1,120 (32%) A = 2,375 (68%) (n=3,495) 31 min 39 max	**I/A** I = 195 (22%) A = 695 (78%) (n=890) 34 min 43 max	**I/A** I = 42 (7%) A = 583 (93%) (n=625) 42 min 53 max	**C/I/A** C = 5,557 (22%) I = 10,977 (43%) A = 9,035 (35%) (n=25,569) 34 min 44 max

Note: Of the 28,712 felony convictions in FY 2001/02, 3,143 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing or extraordinary mitigation). Sentences resulting in life without parole or death were excluded from the calculation of the average minimum and maximum sentences.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2001/02 Felony Statistical Report Data.

MISDEMEANOR PUNISHMENT CHART
(Effective for offenses committed on or after 12/1/95)

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	1 - 60 days **C/I/A**	1 - 75 days **C/I/A**	1 - 150 days **C/I/A**
1	1 - 45 days **C**	1 - 45 days **C/I/A**	1 - 120 days **C/I/A**
2	1 - 30 days **C**	1 - 45 days **C/I**	1 - 60 days **C/I/A**
3	1 - 10 days **C**	1 - 15 days **C/I**	1 - 20 days **C/I/A**

A - Active Punishment **I - Intermediate Punishment** **C - Community Punishment**

Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95

Effective for Offenses Committed on or after 12/1/95

MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	1 - 60 days C/I/A	1 - 75 days C/I/A	1 - 150 days C/I/A
1	1 - 45 days C	1 - 45 days C/I/A	1 - 120 days C/I/A
2	1 - 30 days C	1 - 45 days C/I	1 - 60 days C/I/A
3	1 - 10 days C	1 - 15 days C/I	1 - 20 days C/I/A

A - Active Punishment I - Intermediate Punishment C - Community Punishment

Cells with slash allow either disposition at the discretion of the judge.

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Effective for Offenses Committed on or after 12/1/95

FELONY PUNISHMENT CHART

*Numbers shown are in months and represent the range of minimum sentences.

PRIOR RECORD LEVEL

	I	II	III	IV	V	VI	
	0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts	
A			Death or Life Without Parole				
B1	A	A	A	A	A	A	DISPOSITION
	240-300	*288-360*	*336-420*	*384-480*	*Life Without Parole*	*Life Without Parole*	*Aggravated Range*
	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE RANGE
	144-192	*173-230*	*202-269*	*230-307*	*260-346*	*288-384*	*Mitigated Range*
B2	A	A	A	A	A	A	
	157 - 196	*189 - 237*	*220 - 276*	*251 - 313*	*282 - 353*	*313 - 392*	
	125 - 157	151 - 189	176 - 220	201 - 251	225 - 282	251 - 313	
	94 - 125	*114 - 151*	*132 - 176*	*151 - 201*	*169 - 225*	*188 - 251*	
C	A	A	A	A	A	A	
	73 - 92	*100 - 125*	*116 - 145*	*133 - 167*	*151 - 188*	*168 - 210*	
	58 - 73	80 - 100	93 - 116	107-133	121 - 151	135 - 168	
	44 - 58	*60 - 80*	*70 - 93*	*80 - 107*	*90 - 121*	*101-135*	
D	A	A	A	A	A	A	
	64 - 80	*77 - 95*	*103 - 129*	*117 - 146*	*133 - 167*	*146 - 183*	
	51 - 64	61 - 77	82 - 103	94 - 117	107 - 133	117 - 146	
	38 - 51	*46 - 61*	*61 - 82*	*71 - 94*	*80 - 107*	*88 - 117*	
E	I/A	I/A	A	A	A	A	
	25 - 31	*29 - 36*	*34 - 42*	*46 - 58*	*53 - 66*	*59 - 74*	
	20 - 25	23 - 29	27 - 34	37 - 46	42 - 53	47 - 59	
	15 - 20	*17 - 23*	*20 - 27*	*28 - 37*	*32 - 42*	*35 - 47*	
F	I/A	I/A	I/A	A	A	A	
	16 - 20	*19 - 24*	*21 - 26*	*25 - 31*	*34 - 42*	*39 - 49*	
	13 - 16	15 - 19	17 - 21	20 - 25	27 - 34	31 - 39	
	10 - 13	*11 - 15*	*13 - 17*	*15 - 20*	*20 - 27*	*23 - 31*	

G	I/A	I/A	I/A	I/A	A	A
	13 - 16	*15 - 19*	*16 - 20*	*20 - 25*	*21 - 26*	*29 - 36*
	10 - 13	12 - 15	13 - 16	16 - 20	17 - 21	23 -29
	8 - 10	*9 - 12*	*10 - 13*	*12 - 16*	*13 - 17*	*17 - 23*
H	C/I/A	I/A	I/A	I/A	I/A	A
	6 - 8	*8 - 10*	*10 - 12*	*11 - 14*	*15 - 19*	*20 - 25*
	5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	16 - 20
	4 - 5	*4 - 6*	*6 - 8*	*7 - 9*	*9 - 12*	*12 - 16*
I	C	C/I	I	I/A	I/A	I/A
	6 - 8	*6 - 8*	*6 - 8*	*8 - 10*	*9 - 11*	*10 - 12*
	4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 -10
	3 - 4	*3 - 4*	*4 - 5*	*4 - 6*	*5 - 7*	*6 - 8*

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment

***Numbers shown are in months and represent the range of minimum sentences.**

Revised: 08-04-95

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FIGURE B: MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	
16-29	57-78	98-127	139-176	180-225	221-275	262-324	302-372
17-30	58-79	99-128	140-177	181-227	222-276	263-325	303-373
18-31	59-80	100-129	141-179	182-228	223-277	264-326	304-374
19-32	60-81	101-131	142-180	183-229	224-278	265-327	305-375
20-33	61-83	102-132	143-181	184-230	225-279	266-329	306-377
21-35	62-84	103-133	144-182	185-231	226-281	267-330	307-378
22-36	63-85	104-134	145-183	186-233	227-282	268-331	308-379
23-37	64-86	105-135	146-185	187-234	228-283	269-332	309-380
24-38	65-87	106-137	147-186	188-235	229-284	270-333	310-381
25-39	66-89	107-138	148-187	189-236	230-285	271-335	311-383
26-41	67-90	108-139	149-188	190-237	231-287	272-336	312-384
27-42	68-91	109-140	150-189	191-239	232-288	273-337	313-385
28-43	69-92	110-141	151-191	192-240	233-289	274-338	314-386
29-44	70-93	111-143	152-192	193-241	234-290	275-339	315-387
30-45	71-95	112-144	153-193	194-242	235-291	276-341	316-389

31-47	72-96	113-145	154-194	195-243	236-293	277-342	317-390
32-48	73-97	114-146	155-195	196-245	237-294	278-343	318-391
33-49	74-98	115-147	156-197	197-246	238-295	279-344	319-392
34-50	75-99	116-149	157-198	198-247	239-296	280-345	320-393
35-51	76-101	117-150	158-199	199-248	240-297	281-347	321-395
36-53	77-102	118-151	159-200	200-249	241-299	282-348	322-396
37-54	78-103	119-152	160-201	201-251	242-300	283-349	323-397
38-55	79-104	120-153	161-203	202-252	243-301	284-350	324-398
39-56	80-105	121-155	162-204	203-253	244-302	285-351	325-399
40-57	81-107	122-156	163-205	204-254	245-303	286-353	326-401
41-59	82-108	123-157	164-206	205-255	246-305	287-354	327-402
42-60	83-109	124-158	165-207	206-257	247-306	288-355	328-403
43-61	84-110	125-159	166-209	207-258	248-307	289-356	329-404
44-62	85-111	126-161	167-210	208-259	249-308	290-357	330-405
45-63	86-113	127-162	168-211	209-260	250-309	291-359	331-407
46-65	87-114	128-163	169-212	210-261	251-311	292-360	332-408
47-66	88-115	129-164	170-213	211-263	252-312	293-361	333-409
48-67	89-116	130-165	171-215	212-264	253-313	294-362	334-410
49-68	90-117	131-167	172-216	213-265	254-314	295-363	335-411
50-69	91-119	132-168	173-217	214-266	255-315	296-365	336-413
51-71	92-120	133-169	174-218	215-267	256-317	297-366	337-414

52-72	93-121	134-170	175-219	216-269	257-318	298-367	338-415
53-73	94-122	135-171	176-221	217-270	258-319	299-368	339-416
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

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ATTENDANCE

JUDICIARY IV)

DATES	3/9	NO MTG.	3/13	3/18	3/20	NO MTG.	3/27	NO MTG.	4/3	4/8	4/10	4/15	NO MTG.	4/22	4/24
Representative Munford, Chair	√		√	√	√		√		√	√	√	√		√	√
Representative Glazier, Vice Chair	√		√	√	√		√		√	√	√	√		√	√
Representative Stiller, Vice Chair	√		√	√	√		√		√	√		√		√	√
Representative Bowie	√		√	√	√		√		√	√	√	√		√	√
Representative Earle	√									√					√
Representative Goforth	√		√	√	√		√		√	√	√	√		√	√
Representative Haire	√			√	√					√	√	√		√	√
Representative Jeffus	√		√	√	√		√		E	√	√	√		√	√
Representative Justus	√		√	√	√		√		√	√	√	√		√	√
Representative Kiser	√		√	√	√		√		√	√	√	√		√	√
Rep. Brubaker, Ex-officio														√	
Rep. Culpepper, Ex-officio														√	
Rep. Cunningham, Ex-officio														√	
Rep. Eddins, Ex-officio														√	

ATTENDANCE

JUDICIARY IV)

DATES	4/29	NO MTG.	NO MTG.	5/13	5/15	5/20	5/22	5/27	NO MTG.	6/3	6/5	6/10	6/12	6/23	
Representative Munford, Chair	√			√	√	√	√	√		√	√	√	√	√	
Representative Glazier, Vice Chair	√			√	√			√		√	√	√	√	√	
Representative Stiller, Vice Chair	√			√	√	√	√	√		√		√	√	√	
Representative Bowie	√			√	√	√	√	√		√	√	√		√	
Representative Earle	√							√		√	√				
Representative Goforth	√			√	√	√	√	√		√	√	√	√	√	
Representative Haire	√			√	√	√	√			√	√	√	√	√	
Representative Jeffus	√			√	√	√	√	√		√	√	√	√	√	
Representative Justus	√			√	√	√	√	√		√	√	√	√	√	
Representative Kiser	√			√	√	√	√	√		√	√	√	√	√	
Rep. Brubaker, Ex-officio	√														
Rep. Culpepper, Ex-officio	√														
Rep. Cunningham, Ex-officio	√														
Rep. Eddins, Ex-officio	√										√				

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

March 6, 2003

The House Committee on Judiciary IV met on March 6, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Representatives Bowie, Earle, Goforth, Haire, Jeffus, Justus, and Kiser. Staff Council Dianna Jessup, Trina Griffin and Steve Rose were in attendance. A Visitor Registration list is attached and made part of these minutes:

The Chairman called the meeting to order to consider the following bill:

Representative Rick Glazier was recognized to explain HB 126, A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW GOVERNING EVIDENCE ADMISSIBLE IN CERTAIN JUVENILE HEARINGS. Upon motion made by Representative Glazier, the original bill received an unfavorable report and a Committee Substitute was made to the bill. Representative Glazier made a motion to amend the bills' effective date, which received a favorable report. Upon motion made by Representative Glazier and seconded by Representative Earle, the Committee Substitute was voted a favorable report and unfavorable as to the original bill.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY IV — 3/6/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Dobson	NC State Watch
Tasha Clay	YAIO
Matt Osborne	AOC
Michelle Frazier	NC Bar Ass'n
Gary Roberts	Associated Press
Rob Right	Intern (Rep Hackney)
Paula L. Wolf	Covenant w/ NC's Children
Jane Pinsky	NCCAI
John Rustin	NCFPC
Kendall Byrum	Rep. Kiser's intern
Renee Wilson	

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

March 6, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair
Representative Rick Glazier, Vice Chair
Representative Bonner Stiller, Vice Chair

AGENDA ITEMS

HB 126 **EVIDENCE IN JUVENILE HEARINGS**
Representative Glazier, Primary Sponsor

H 1

HOUSE BILL 126

Short Title:	Evidence in Juvenile Hearings.	(Public)
Sponsors:	Representatives Glazier, Moore (Primary Sponsors); Bordsen, Carney, Gibson, Haire, Insko, Sauls, and Warner.	
Referred to:	Judiciary IV.	

February 27, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING EVIDENCE ADMISSIBLE IN CERTAIN JUVENILE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-901 reads as rewritten:

"**§ 7B-901. Dispositional hearing.**

The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

SECTION 2. G.S. 7B-906(c) reads as rewritten:

"(c) At every review hearing, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

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

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with

the juvenile's safety and need for a safe, permanent home within a reasonable period of time.

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

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

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

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.

(6) An appropriate visitation plan.

(7) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.

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

(9) Any other criteria the court deems necessary."

SECTION 3. G.S. 7B-907(b) reads as rewritten:

"(b) At any permanency planning review, the court shall consider information from the parent, the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary."

SECTION 4. G.S. 7B-908(a) reads as rewritten:

"(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition."

SECTION 5. G.S. 7B-2501(a) reads as rewritten:

"(a) The dispositional hearing may be informal, and the court may consider written reports or other evidence concerning the needs of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition."

SECTION 6. This act becomes effective October 1, 2003, and applies to acts and offenses committed on or after that date.

HOUSE BILL 126:
Evidence in Juvenile Hearings

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Glazier, Moore
Date:	March 6, 2003	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 126 would clarify the current practice in juvenile dispositional, review, and permanency planning hearings to permit the introduction of hearsay evidence in order to determine the needs of the juvenile and the most appropriate disposition. The act would become effective October 1, 2003 and apply to acts and offenses committed on or after that date.***

CURRENT LAW: Chapter 7B of the General Statutes, the Juvenile Code, contains the process and procedure for determining whether a juvenile has been abused, neglected, or is dependent (Subchapter I), and for determining whether a juvenile is undisciplined or delinquent (Subchapter II). This is known as "adjudication". Adjudication proceedings are formal court proceedings in which the rules of evidence strictly apply.

The Code also provides for what a court should do in the event it has been found (adjudicated) that a juvenile has been abused, neglected, or is dependent, or is undisciplined or delinquent. This is known as "disposition". Dispositional hearings are informal. The purpose of dispositional hearings is to determine the appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. The Code also provides for review hearings for juveniles in nonsecure and secure custody to determine whether nonsecure or secure custody should continue.

Proceedings under Chapter 7B are civil proceedings, not criminal proceedings.

Generally, under our evidence code, a statement, other than one made by a person while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted is inadmissible as hearsay.

BILL ANALYSIS: House Bill 126 would make it clear that for dispositional, permanency planning, and review hearings hearsay evidence would be admissible, so long as the court finds the evidence to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. For example, a DSS worker could testify (and the court could consider) what someone told the worker in an interview, if the court found the worker's testimony otherwise meets the criteria (relevant, reliable, necessary).

BACKGROUND: In a 2001 case *(In re Dula)* concerning an abused juvenile who had been placed outside the home (nonsecure custody), the Court of Appeals noted that certain evidence offered in the permanency planning hearing should not be considered by the trial court on remand because it is hearsay. This "note" by the court raised concern from DSS attorneys and district court judges, who had been operating under the assumption that "informal" as provided in the statutes meant that attorneys could present, and judges could consider, hearsay evidence in dispositional, permanency planning, and review proceedings.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 126

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H126-ASW-1 [v.1]

Date _____,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative Glazier

moves to amend the bill on page 3, lines 20-21, by rewriting the lines to read:
"**SECTION 6.** This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Munford** (Chair/Chairs) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 126 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW GOVERNING EVIDENCE ADMISSIBLE IN CERTAIN JUVENILE HEARINGS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#), ☐ which changes the title~~, unfavorable as to ~~(~~the original bill~~) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on)~~.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

1/29/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

March 13, 2003

The House Committee on Judiciary IV met on March 13, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Representatives Bowie, Goforth, Jeffus, Justus, and Kiser. Staff Council Steve Rose, and Trina Griffin were in attendance. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Representative Rick Glazier was recognized to explain HB 273 A BILL TO BE ENTITLED AN ACT TO ENSURE THAT STATE EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALL POX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURE BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY FAMILY MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE ABLE TO RECOVER FOR ANY ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

Upon recommendation by Representative Glazier, a committee substitute was introduced for consideration. Grainger Barrett, a County Attorney in Cumberland County, and Chris Hoke of DHHS Public Health were asked to discuss some of the practical aspects of the smallpox vaccination process and related risks.

The committee substitute will be further discussed at the next meeting to be held on March 18, 2003.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary IV — 3/13/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Ruscablow	NC StateWatch
Jim LORE	R. James Lore Atty at Law
Grainger Barrett	Cumberland County - County Attn.
[illegible]	DHHS Public Health
Bob Lamm	DHHS
STEVE KEENE	NC MEDICAL SOCIETY
AMY JO HORNE	✓ ✓
Richard Chesbrod	UTU
Mike Okun	NC State AFL-CIO
Kim Hibbard	NCLM
PAUL Meyer	NCACC
Theresa Mitchell	GA Staff
Tim Crowley	CWCTU
Michelle Frazier	NC Bar Ass'n
Hugh Wilson	NCHA

Chris Hoke - Public DHHS Public Hea

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

March 13, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 273 ADVERSE REACTIONS TO SMALLPOX VACCINATION
Representative Glazier, Primary Sponsor

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 273*

Short Title:	Adverse Reactions to Smallpox Vaccination.	(Public)
Sponsors:	Representatives Glazier, Warner, Lucas, Goodwin (Primary Sponsors); G. Allen, Bordsen, Carney, Dickson, England, McLawhorn, and Munford.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT STATE EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY FAMILY MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE ABLE TO RECOVER FOR ANY ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee voluntarily receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act,

Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C § 233(p)).

...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is a family member living in the home of a State employee who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the State employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by a State employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(b) Absence from work by a State employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is a family member living in the home of the person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination."

SECTION 5. This act is effective when it becomes law.

HB 273:
Adverse Reactions To Smallpox Vaccination

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Glazier
Date:	March 13, 2003	**Summary by:**	Steven Rose
Version:	Draft PCS H273-CSRL-2 [v.1]		Committee Counsel

SUMMARY: HB 273 provides various coverages for those injured as a result of smallpox vaccinations received in connection with their employment. Those protected are the recipients of the vaccine as well as household members injured as a result of contact with the vaccinated person.

CURRENT LAW: Many years have passed since there has been a smallpox vaccination program in this country. Therefore, the applicability of workers' compensation laws and the state health plan to those who suffer an adverse reaction is uncertain. State employees who are injured as a result of adverse reactions to the vaccine would have to use sick leave, and compensation for members of the employee's household who suffered an adverse reaction because of their proximity to the vaccinated person would have difficulty proving their claim against the state under the State Tort Claims Act. The combined effect of all this would be that workers who are encouraged to be vaccinated pursuant to the Homeland Security Act in order to work in the event of a smallpox emergency will be discouraged from getting the vaccination.

BILL ANALYSIS: Section 1--Adds adverse medical reactions as a result of smallpox vaccination to list of covered expenses under the Teachers' and State Employees' Comprehensive Major Medical Plan.

Section 2—Adds adverse medical reactions from in employment smallpox vaccinations to the list of occupational illnesses covered by workers' compensation.

Section3—Provides a method for persons living in the home of a State employee, community college employee, or employee of the University of North Carolina or its affiliates, who are injured because of an adverse medical reaction resulting from in employment smallpox vaccination of the employee to make a tort claim similar to those made under the State Tort Claims Act, EXCEPT that no showing of negligence on the part of the State or the State employee is required, and the defense of contributory negligence is not allowed. The Industrial Commission hears the claim and the maximum recovery from one incident is $500,000.

Section 4—Subsection (a) provides that absence from work by a State employee, community college employee, or UNC or UNC affiliate employee due to an adverse medical reaction from smallpox vaccination shall not be counted against sick leave and that the employee's full salary shall continue to be paid.

Subsection (b) provides that the State employees described above will have the same protections from loss of sick leave or salary if they are out of work because a person in the household (who may or may not be a State employee) receives a smallpox vaccination and causes the State employee to have an adverse

medical reaction, or because the State employee needs to stay out of work to care for the vaccinated person who is having an adverse medical reaction.

Section 5—The act is effective when it becomes law, and applies retroactively as well as prospectively.

NOTE: Committee counsel feels that the definition of the employees to whom the act applies is in need of refinement before the bill is reported out.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 273*
PROPOSED COMMITTEE SUBSTITUTE H273-CSRL-2 [v.1]

3/12/2003 4:55:48 PM

Short Title: Adverse Reactions to Smallpox Vaccination (Public)

Sponsors:

Referred to:

DRAFT

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY HOUSEHOLD MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE COVERED FOR ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee voluntarily receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act,

Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C § 233(p)).

...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is permanently or temporarily living in the home of a State employee, a community college employee, or an employee of the University of North Carolina or its affiliates, who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting

DRAFT

from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees, community college employees, and employees of the University of North Carolina or its affiliates."

SECTION 5. This act is effective when it becomes law and applies to claims arising from adverse medical reactions related to smallpox vaccinations incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub.L. No.107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. §233 (p)) whether the adverse medical reactions occurred before or after the effective date of this act.

DRAFT

North Carolina's Professional Fire Fighters
Small Pox Vaccination

Good Morning. My name is Jimmy Parker, President of the Raleigh Professional Fire Fighters Association, and I am here to speak on behalf of the Professional Fire Fighters and Paramedics of North Carolina in support of the General Assembly of North Carolina House Bill 273 that would provide benefits to state employees and their families that have adverse reactions to small pox vaccinations that they voluntarily received in employment. My testimony will address why it is imperative that this State's fire and emergency response personnel be covered in this legislation. First, it is important to understand what our organization is and whom we represent as it relates to health and safety issues of fire fighters and emergency medical personnel.

The Professional Fire Fighters and Paramedics of North Carolina represents the over 2,500 professional fire fighters and paramedics that are employed by various parties that include counties, cities, municipalities, fire districts, airports, industrial manufacturers, and so on. The Professional Fire Fighters and Paramedics of North Carolina is the state affiliate of the International Association of Fire Fighters. At the present time, the IAFF represents over 265,000 paid professional fire and emergency service employees in the United States and Canada.

The profession of fire fighting is, and has always been a hazardous occupation. Every year the IAFF publishes an annual *Death and Injury Survey,* and each year the hazards of fire fighting continue to exist and display ever-varied forms. During the last ten year period, the *Death and Injury Survey* has found that professional fire fighters experienced 342 line-of-duty deaths, 502 occupational disease deaths, 343,861 injuries and 6,632 forced retirements due to occupationally induced diseases or

injuries. Fire fighter line-of-duty fatalities have ranked fire fighting among other publicized hazardous occupations in the private sector, such as mining and construction.

Three-hundred-forty-seven members of the IAFF were killed in New York on September 11, 2001 and thousands more of IAFF fire fighters and paramedics responded in the days, weeks and months following the attacks on the World Trade Center and the Pentagon. In the aftermath of September 11th, our Nation went to war against terrorism, which is being fought on two fronts: one internationally by our armed forces; and the other here at home by fire fighters, paramedics and other first responders. The federal government has taken the necessary steps to properly train, equip and staff our military forces for action against such threats, but it has failed to provide the same level of support to our first responders across the nation. This nation's fire fighters – and specifically the fire fighters in North Carolina -- are committed to responding once again to a terrorist attack, but they need assistance to maximize their own protection as they put themselves in harm's way to protect the public.

The risk of smallpox, a disease which was eradicated from the general population, was considered extremely low for decades. However, the government of the United States now believes that there is a real threat of a possible biological attack on our civilians utilizing the smallpox virus. Smallpox has significant health effects, including death, for those exposed. There is no treatment for smallpox and the only effective way of preventing the disease is vaccination.

The International Association of Fire Fighters has assessed all aspects of the smallpox issue over the last 18 months, dating back to late September 2001 (following the 9/11 attacks) when our General President, Harold A. Schaitberger, urged Health and Human Services Secretary Tommy

Thompson to take action on smallpox and anthrax threats to fire fighters and other first responders. The IAFF has urged all its affiliates and their fire department management to consider the specific risk to their communities before deciding whether to vaccinate their fire fighters. The IAFF has further addressed all the medical risks associated with the vaccine, even if the state or local program follows all government and IAFF recommendations.

In December of 2002, the IAFF advised all of its members not to proceed with smallpox vaccinations if their employer failed to agree to a comprehensive smallpox vaccination program, developed by the IAFF and derived from and consistent with recommendations from the Department of Health and Human Services (HHS), the Centers for Disease and Prevention (CDC), the Department of Defense (DOD) and the Advisory Committee on Immunization Practices (ACIP). A complete copy of the IAFF Guidelines is being provided to you with our testimony for this Committee's review. The IAFF is also continuing with legislative efforts – at the federal and state levels -- that will provide a fair compensation system to assist our members and their families who may be injured from receiving the vaccine or coming into contact with someone who received it.

One of the largest hurdles facing this Nation's vaccination program has been the issues of medical screening, education and compensation for adverse reactions—including medical coverage and medical injury time from work. The program includes a three-phase implementation plan. Phase One vaccinations would be provided to public health staff and key health care workers at local hospitals who might be called upon to treat and manage initial smallpox cases. Fire and emergency medical personnel with the potential for exposure will be included in Phase Two of the vaccination program. Phase Three will involve immunizations to the public; but, the details of this phase are not yet available. The first two

phases include approximately 500,000 employees. The vaccination of these two groups was to be accomplished within 30 days of the January 24, 2003 start date. However, to date only approximately 12,000 employees have been vaccinated, largely due to employee fears that they would not be taken care of if they had an adverse reaction to the vaccination.

The General Assembly of North Carolina through House Bill 273 has gone a long way in resolving this issue. This bill clearly establishes the voluntary action of an employee receiving the vaccine as being employment related and assures that any adverse medical reactions are treated as an occupational injury. This provides the employee the ability to recover any associated medical cost and for continuation of pay, that is not tied to personal or sick leave, during any medical absence. Also the proposed legislation rightfully addresses coverage for family members.

Unfortunately it fails to address our front line first responders -- North Carolina's fire department and emergency medical personnel that are not employed by the state. President George W. Bush announced that smallpox vaccinations are to be provided for the military as well as medical professionals, emergency responders and response teams that will be the first on the scene at a biological attack. The President recognized that first responders – our Nation's fire fighters and emergency medical personnel – are first on the scene and will assist in the treatment of civilians in a crisis. To do this job effectively, the President declared that fire fighters and emergency medical personnel must be protected against the disease. Accordingly, all North Carolina's fire fighters and paramedics must be protected.

Just as a fire fighter would be compensated for injuries that occurred after falling through the roof of a burning structure, a fire fighter that has an adverse reaction after he or she received a vaccination in employment

should be compensated. Once such protection exists, we strongly believe that the fire fighters and paramedics will decide to be vaccinated.

This is not an issue of cost. The adverse health effects data from vaccination of our military personnel, reports approximately 3 % of our soldiers that were recently vaccinated (well over 100,000) had lost one or more days of work. The average was 1.2 days. Based on this data, it can be assumed that up to 3% of North Carolina's 5,000 professional career fire fighters and paramedics may have an adverse health effect. This would include only 150 fire fighters and paramedics. If they all averaged 1.2 lost work days, this group would only lose a total of up to 180 days of work. Severe reactions were also minimal. Within the military group, there were only 3 severe adverse reactions (2 encephalitis and 1 myocarditis cases). All 3 soldiers fully recovered and are back on duty.

We are here today asking that you protect your fire fighters and paramedics who will be this State's first responder to any biological terrorist incident. Please amend this legislation to ensure that all of North Carolina's fire department and paramedic employees who voluntarily receive, in employment, the vaccination against smallpox are provided the same abilities to recover for any adverse medical reactions.

Thank you.

IAFF Guidance on Smallpox Vaccinations

The government of the United States believes that there is a threat of a possible biological attack on our civilians utilizing the smallpox virus. Smallpox has significant health effects, including death, for those exposed.

There is no treatment for smallpox and the only effective way of preventing the disease is vaccination. However, there are also serious complications and contraindications associated with smallpox vaccination.

The decision whether to receive the smallpox vaccine is a personal one for IAFF members and other first responders. The goal of this document, prepared by the IAFF, is to provide every IAFF member with the best possible information on smallpox vaccination so each fire fighter and other first responder can make an informed and educated decision based on his or her individual circumstances.

Besides insuring that the employer has adopted a comprehensive vaccination program, each IAFF member must thoroughly review the pros and cons of smallpox vaccination outlined in this document. It is your health and, in some cases, your life at stake – and no one can make that decision but you.

Why Smallpox and the Vaccination Can Be Dangerous

Smallpox is an acute, contagious disease that can be fatal in up to 30% of those who contract it. Survivors are usually scarred and in rare cases may be blinded. The virus is usually spread from person to person through close contact.

The smallpox vaccine has known complications and known side effects. Most people will experience mild reactions that include a sore arm, fever, and body aches. It has been reported that 1 out of 3 vaccinated individuals will miss time from work, school, or recreational activities. It has been estimated that for every million people vaccinated, 15 will have life-threatening reactions, and one or two deaths will occur.

In addition, there are individuals who are at high-risk for complications from the vaccine and should not be part of the vaccination program. Persons with conditions such as suppressed immune systems (either through disease or treatment); with eczema or atopic dermatitis; acute, chronic or exfoliative skin conditions; or that have a moderate or severe short-term illness should decline the vaccine. In addition, those that are pregnant, plan to become pregnant within one month, or are breast feeding; that are allergic to the vaccine or any of its ingredients; or have a history of chronic use of steroids are also at significant risk for complications.

However, fire fighters, emergency medical personnel and other first responders that are exposed to smallpox should get the vaccination, since the risk of smallpox outweighs the complications associated with the vaccine.

The IAFF will continuously update this information as more data is generated and as conditions change.

Factors You Must Consider

Here are some of the factors that must be considered:

- Do you reside in an area that is at a perceived risk for a terrorist attack?
- Do you understand that there is no treatment for smallpox?

- Have you studied the adverse impacts of smallpox vaccination outlined in this document?
- Do you have any health conditions, as outlined in this document, which may adversely affect your reaction to the vaccine?
- Do your household contacts or co-workers have any health conditions, as outlined in this document, which may adversely affect them if you are vaccinated?
- Has your decision been thoroughly discussed and reviewed with your family?
- Has your employer adopted a comprehensive vaccination program, including training and medical monitoring, as recommended by the IAFF?
- Has your employer addressed the issue of compensation and leave for individuals that experience adverse reactions from the vaccine?
- Are you, your family, and your employer prepared to deal with any adverse reaction that may result from receiving the vaccination?

Comprehensive Smallpox Vaccination Program

The IAFF believes that before any vaccination program is initiated by the employers of our membership, each of the IAFF-endorsed provisions detailed below must be fully implemented.

The IAFF advises all of its members not to proceed with smallpox vaccinations if your employer fails to agree to this comprehensive smallpox vaccination program, which has been derived from and is consistent with recommendations from the Department of Health and Human Services (HHS), the Centers for Disease and Prevention (CDC), the Department of Defense (DOD) and the Advisory Committee on Immunization Practices (ACIP).

The IAFF recommends that:

- Smallpox vaccinations shall be made available, at no cost, by their employer to all fire fighters and emergency medical personnel and such vaccinations shall be provided while the employee is on duty.
- Fire fighters or emergency medical personnel shall be entitled to decline the smallpox vaccine. Any employee who declines to receive the vaccine shall not be subject to discrimination at work. If an employee declines to receive the vaccination, he/she must sign a waiver. The waiver shall include the following language (language is consistent with waiver language promulgated by U.S. OSHA for hepatitis B vaccination and Section 4(b)(4) of the OSH Act):

"I understand that due to my occupation, I may be at risk of being exposed to and acquiring smallpox. I have been given the opportunity to be vaccinated with smallpox vaccine, at no charge to myself. However, I decline the smallpox vaccine at this time. I understand the by declining this vaccine, I continue to be at risk of acquiring smallpox, a serious disease. If in the future I want to be vaccinated with the smallpox vaccine, I can receive the vaccination at no charge to me. My statement of declination of smallpox vaccination is not intended to supersede or in any manner affect any workers' compensation law or to enlarge or diminish or

affect in any other manner to common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment. I also understand that I will not be discriminated against by my employers if I decline to be vaccinated."

- If an employee initially declines vaccination but decides later to get vaccinated, the employer shall make the vaccine available at no cost. If at some point the U.S. Public Health Service recommends that people who have had the vaccination should be revaccinated, they shall be made available to all employees at no cost.

Training for First Responders

Prior to vaccination employees shall receive training, which shall be provided at no cost during working hours to all fire fighters and emergency medical personnel. The training must include at a minimum:

- General explanations of the epidemiology and symptoms of smallpox;
- Specific information on how smallpox is transmitted, including modes of delivery as a weapon;
- Actions and procedures to be followed in the event of exposure;
- The employer's exposure control plan and how the employees can obtain a copy;
- Information on how to recognize tasks that may involve exposures to smallpox;
- Up-to-date information on the *vaccinia* (smallpox) vaccine;
- The method of vaccination and the spectrum of normal and adverse vaccination reactions, including the benefits, the risks and the fact that it is provided at no cost to the employee;
- Risks to non-vaccinated family members and fellow employees;
- Specific information on vaccination-site care;
- Copies and explanation of all CDC and DOD protocols on the subject of smallpox;
- A description of the post-exposure evaluation;
- The methods (and limitations of those methods) that may prevent exposures to smallpox, including personal protective clothing and equipment (PPE), work practices and decontamination;
- The selection of appropriate PPE; and
- The proper use, location, removal, handling, decontamination and disposal of PPE.

Medical Monitoring

It is essential to medically screen vaccine recipients, their family and fire station contacts for contraindications before vaccination to prevent serious complications. While the standard of practice for all immunizations requires medical screening, smallpox vaccination is unique in that there is a need to screen for risks among family/household contacts and employee contacts in the fire station.

Prior to vaccination the employer shall provide medical screening to ensure the vaccine is not contraindicated for medical reasons. Such reasons shall be:

- Weakened immune system (Note: cancer treatment, an organ transplant, HIV, or medications to treat autoimmune disorders and other illnesses can weaken the immune system).

- Any fire service member who is concerned that they could have HIV infection may request and the employer shall provide confidential HIV testing. The confidential results shall be reported to the potential vaccinee before vaccination, and the results of the test and the fact that the test was requested shall remain confidential and not recorded in the medial file.
- HIV testing is recommended for anyone who has a history of risk factors for HIV infection or is not sure of his or HIV-infection status. Anyone who is concerned that they may be HIV-infected should request confidential screening prior to smallpox vaccination.
- Any fire service member who has a weakened immune system due to medical treatment (i.e. cancer drug or radiation) or chronic steroid use.

- Employees with eczema or atopic dermatitis should not get the vaccine even if the condition is not currently active, mild or experienced as a child;
- Acute, chronic or exfoliative skin conditions such as burns, chickenpox, shingles, impetigo, herpes, severe or uncontrolled acne or psoriasis. Employees with any of these conditions should not get the vaccine until the condition has resolved or a physician affirms it is under maximal control. However, employees with contraindicated skin conditions who received smallpox vaccine earlier in life may be revaccinated after medical consultation for individual risk-benefit decision making;
- Pregnancy or plans to become pregnant within one month of vaccination. Vaccine shall not be provided during pregnancy nor shall it be provided to employees who live in a household with a pregnant individual; and
  - Women of childbearing potential shall be provided with screening/questioning for pregnancy before receiving immunizations. Any woman who is uncertain about pregnancy status shall be medically tested for pregnancy before immunization. Vaccination shall be deferred for pregnant women at least until resumption of full duties following pregnancy, or later as postpartum care may require, or while they are currently breastfeeding.

In addition, individuals should not get the smallpox vaccine if they:

- Are allergic to the vaccine or any of its ingredients.
- Have a moderate or severe short-term illness. These people should wait until they are completely recovered to get the vaccine.
- Have a history of chronic use of steroids.

Employees who have any of the above conditions, or live with someone who does, should NOT get the smallpox vaccine unless they have been directly exposed to the smallpox virus.

If directly exposed to the smallpox virus, fire fighters and EMS personnel who were not vaccinated should get the vaccine immediately, regardless of their health status. If exposed, the risk of smallpox outweighs the complications associated with the vaccination. After an exposure, any non-vaccinated employee must be quarantined until vaccinated and medically released.

Vaccinations

The vaccine shall only be made available after the employee has received the required training and after the employee has been medically evaluated.

Vaccinations are to be given by or under the supervision of a licensed physician or other health care professional according to the recommendations of the U.S. Public Health Service. The employer shall ensure that health care professionals used for vaccinating their employees remain alert to modifications in clinical recommendations as the smallpox vaccination program progresses. The employer shall implement a quality assurance program to assess vaccination technique of vaccinators.

The vaccination is usually provided at the deltoid muscle of the non-dominant arm, avoiding any skin conditions, tattoos or skin folds. The vaccination consists of three (3) punctures with a bifurcated needle for individuals who were never vaccinated or fifteen (15) punctures for those who have been previously vaccinated or for vaccination retakes.

An assessment of vaccine take is required for all vaccines. The employer shall ensure that medical personnel trained in vaccination evaluation inspect the vaccination site of all vaccinees at six (6) to eight (8) days after vaccination administration. All employees shall be instructed to report if they do not develop a characteristic smallpox vaccination reaction.

If a characteristic vaccination reaction does not manifest within six (6) to eight (8) days after smallpox vaccination, the employee shall be provided with revaccination. Such revaccination shall only be repeated once. For those individuals who do not respond to vaccination with a visible skin lesion, referral for immunologic evaluation is required.

Adverse Reactions

Any individual who experiences any adverse reaction from the smallpox vaccine shall be provided with immediate medical and follow-up care at no cost to the employee.

Any fire fighter or emergency medical personnel who has an adverse reaction to the smallpox vaccine and is unable to perform his/her duties shall be entitled to receive occupational disability benefits as provided by the employer for on-duty injuries/illnesses for the duration of the disability. Any leave of absence associated with an adverse reaction shall be immediately classified and treated as a line-of-duty injury. All medical costs associated with the vaccination and adverse reaction treatment shall be borne by the employer.

The IAFF will continue with legislative effects that will provide a fair compensation system – like the federal Vaccine Injury Compensation Fund – to assist our members and their families who may be injured from receiving the vaccine or coming into contact with someone who received it. Vaccine manufacturers and those who administer it have been offered immunity from liability through recent Homeland Security legislation.

If an employee experiences any adverse reaction to the vaccine, the employer shall immediately file a Vaccine Adverse Event Reporting System (VAERS) form. Additional information on filing a VAER report can be found at the following CDC/FDA Web site: www.vaers.org.

Vaccination-Site Care

The virus used in the vaccination (*vaccinia*) can be cultured from the site of the vaccination beginning at the time of development of a papule (two to five days after

vaccination) and until the vaccination scab separates from the skin. During this entire period, the employee must care for the site to prevent spread of this virus to another area of the body or to another person through inadvertent contact.

Site care will also assist in preventing any secondary infection. High-risk individuals may be especially vulnerable to virus shedding and scab particles from a vaccinated employee during the post-vaccination healing period.

Hand washing is the most important measure to prevent inadvertent contact spread from vaccination sites. Hands must be washed after any touching of the vaccination site area with soap and water or when unavailable with an alcohol-based waterless antiseptic solution.

The employer shall evaluate and direct any fire or EMS activities (including emergency response and training) that may subject employees' vaccination sites to undue pressure (may burst a pustule), rubbing or prolonged immersion in water (may cause tissue breakdown or secondary infection). Many fire or EMS activities, including donning and doffing heavy protective clothing, donning and doffing SCBA, carrying heavy objects (hose or high-rise packs), and leaning against walls while using hose lines at a fire may lead to injury of the vaccination site.

The employer must defer any non-emergency activities, including training, that may complicate vaccine site care and cleanliness. Any vaccination site injury must be reported, immediately evaluated, and if necessary treated by medical personnel. General vaccination site care recommends leaving the site unbandaged. However, for fire and EMS personnel, bandaging may be more appropriate to help reduce spread and accidental infection.

Prior to initiating a small-pox vaccination program, fire departments must develop plans for: site-care stations; personnel to monitor employees' vaccination sites; procedures and training to promote effective bandaging; procedures and training for scrupulous hand washing hygiene; and bio-hazardous waste procedures for disposal of contaminated bandages and dressing, as well as laundering decontamination procedures for clothing (bleach shall not be used for protective clothing), towels, sheets or other cloth materials that have had contact with the site.

The employer must provide employees with occlusive (wound-sealing) dressings, such as semi-permeable polyurethane dressings (e.g. Opsite® or Tega Derm®). Be aware that occlusive dressings, including non-permeable (hard) or semi-permeable (i.e. polyurethane) coverings, allow for the accumulation of viral contaminated exudate, which requires extra care when removed to prevent viral contamination. Also fluid can accumulate under such dressings, which may increase the maceration of the vaccination site. Occlusive dressings require the vaccination site to first be covered with dry gauze and then applying dressing over the gauze.

Fire fighters are involved in arduous work in wet environments. If the employee becomes wet from their environment or from perspiration, any clothing, bandage, and/or dressing must be removed as soon as practical and replaced with clean clothing and dressings.

The IAFF and our medical advisors will be investigating alternative vaccine administration sites (i.e. lower medial or lateral thigh) for fire fighters and EMS personnel.

Family, Patient and Co-worker Contacts

The employer is required to develop procedures to minimize contact of newly vaccinated employees with unvaccinated employees and the public.

For employees who have risk factors and accordingly have not been vaccinated, the employer shall ensure that they are physically separated and exempt from activities that pose the likelihood of contact with recently vaccinated employees and potentially infectious materials. Employees with contraindications to vaccination shall not share or use common sleeping space, linens, towels, protective clothing (e.g. protective clothing) and equipment (SCBA, etc.) with employees who have been vaccinated.

- The employer must make provisions for pregnant fire fighters and emergency medical personnel to ensure they are not exposed to vaccinated employees.
- The employer must make provisions for immuno-compromised fire fighters and emergency medical personnel to ensure they are not exposed to vaccinated employees.
- The employer must ensure that non-vaccinated fire fighters and emergency medical personnel with eczema, atopic dermatitis, or acute, chronic or exfoliative skin conditions are not exposed to vaccinated employees.

The employers shall formally educate employees through procedures and training, of the risks of close physical contact with family members, including those who may have risk factors and infants less than one year old. Employees must be instructed that, while off-duty, vaccination site care (including bandaging and wearing of long sleeved shirts) must continue and that continued hand-hygiene is essential.

The employer shall also inform employees that blood donations must be deferred until the scab spontaneously separates from the vaccination site or if the scab is otherwise removed, blood must not be donated for at least two months after the date of vaccination. Any employee who had any vaccine complication must defer donation of blood until fourteen (14) days after complications have been completely resolved.

Recordkeeping

The employer is required to **maintain records** according to the following schedule:

- ***Medical records*** (including the employee's name, social security number, smallpox vaccination status, all examinations and evaluations, healthcare professionals' written opinions, and information provided to the healthcare professionals) for the duration of employment, plus at least 30 years; and
- ***Training records*** for three (3) years from the date on which the training occurred. Medical records are confidential and may not be disclosed or reported without the employee's written consent. Medical records are to be available to employees and to anyone having written consent of the employees upon request. Training records are available to the employee or employee representative upon request.

Resources

The following resources support the above information and recommendations. These organizations' web sites provide additional information and recommendations on smallpox and the

smallpox vaccination. The list provides links to governmental and non-governmental sites dedicated to vaccines, immunization practices, and vaccine safety.

- Centers for Disease Control and Prevention (http://www.bt.cdc.gov/agent/smallpox/index.asp)
- National Library of Medicine/National Institutes of Health (http://www.nlm.nih.gov/medlineplus/smallpox.html)
- World Health Organization (http://www.who.int/emc/diseases/smallpox/factsheet.html)
- American College of Physicians/American Society of Internal Medicine (http://www.acponline.org/bioterro/index.html)
- Agency for Healthcare Research and Quality (http://www.bioterrorism.uab.edu/EIPBA/Smallpox/moreExtInfo.html)
- American Medical Association (http://www.ama-assn.org/ama/pub/category/6206.html)
- Department of Defense (http://www.vaccines.army.mil)
- Vaccine Healthcare Center (http://www.vhcinfo.org)
- US Food and Drug Administration (http://www.fda.gov/cber/products/smalwye102502.htm)
- New England Journal of Medicine: Smallpox and Smallpox Vaccination (http://nejm.org/earlyrelease/early.asp)

Background Information

Fire Fighters/EMS Personnel and Smallpox

Smallpox is a serious, contagious, and sometimes fatal infectious disease. There is no specific treatment for smallpox, and the only prevention is vaccination. Smallpox can cause a severe rash covering the whole body that can leave permanent scars, high fever, severe headache or backache, dizziness, severe abdominal pain and delirium.

Smallpox kills about three out of 10 people infected. The incubation period is seven to 17 days, yet the infected individual would not be contagious until the appearance of a rapidly spreading rash. If the infected individual survives, contagion lasts until the very noticeable scabs from smallpox pustules have completely healed, which usually takes three weeks.

Smallpox is usually spread by contact with infected persons. Generally, direct and fairly prolonged face-to-face contact is required to spread smallpox from one person to another. Smallpox also can be spread through direct contact with infected bodily fluids or contaminated objects such as bedding or clothing.

Historically, indirect spread was less common. Rarely was smallpox spread by virus carried in the air in enclosed settings such as buildings, buses, and trains. Smallpox is not known to be transmitted by insects or animals. However, the deliberate release of smallpox as a weapon of mass destruction is now regarded as a possibility, and the United States is taking precautions to deal with this potential terrorism threat.

In the United States, routine vaccination against smallpox ended around 1972. In May 1980, the World Health Organization declared the global eradication of smallpox as a naturally occurring disease and recommended that all countries cease vaccination. Military smallpox vaccination programs continued longer. In 1984, routine military vaccinations were limited to recruits entering basic training. This practice was discontinued in 1990.

In the wake of the terrorist attacks of September 11, 2001 and the subsequent anthrax letter attacks, the U.S. government reassessed the threat of a smallpox attack. The resumption of a smallpox vaccination program is intended to ensure that the first responders, including fire fighters and emergency medical personnel, can achieve its missions in case smallpox is used as a biological weapon.

On Friday, Dec. 13, 2002, President George W. Bush announced that smallpox vaccinations are to be provided for the military as well as medical professionals, emergency responders and response teams that will be the first on the scene at a biological attack. The President recognized that first responders – our Nation's fire fighters and emergency medical personnel – are first on the scene and will assist in the treatment of civilians in a crisis. To do this job effectively, the President declared that fire fighters and emergency medical personnel should be protected against the disease.

The President's program includes a three-phase implementation plan. Phase One vaccinations would be provided to public health staff and key health care workers at local hospitals who might be called upon to treat and manage initial smallpox cases. Fire and emergency medical personnel with the potential for exposure will be included in Phase Two of the vaccination program. Phase Three will involve immunizations to the public; but, the details of this phase are not yet available.

The smallpox vaccine helps the body develop immunity to smallpox. The vaccine is made from a virus called *vaccinia*, which is a "pox"-type virus related to smallpox. The smallpox vaccine contains the "live" vaccinia virus-not dead viruses like many other vaccines. For that reason, the vaccination site must be cared for carefully to prevent the virus from spreading.

Historically, the vaccine has been effective in preventing smallpox infection in 95% of those vaccinated. In addition, the vaccine was proven to prevent or substantially lessen infection when given within a few days of exposure.

The smallpox vaccine is not given as a shot with a hypodermic needle. The vaccine is given using a bifurcated (two-pronged) needle that is dipped into the vaccine solution. When removed, the needle retains a droplet of the vaccine. The needle is used to prick the skin a number of times in a few seconds, usually in the upper arm. The pricking is not deep, but it will cause a sore spot and one or two droplets of blood to form.

If the vaccination is successful, a red and itchy bump develops at the vaccine site in three or four days. In the first week, the bump becomes a large blister, fills with pus, and begins to drain. During the second week, the blister begins to dry up and a scab forms. The scab falls off in the third week, leaving a small scar.

Vaccine Complications

For about three weeks, the vaccination is highly contagious and can cause infection in the person who received the vaccine or other people in close contact. Fever is common after the vaccination. Generalized rashes and secondary pyogenic (pus-producing) infections at the site of the vaccine may also occur. Inadvertant vaccination at other sites is the most frequent complication, which usually results from autoinoculation of the vaccinia virus which was transferred from the vaccine site. The most common sites are the eyes face eyelids, nose, mouth, genitalia and rectum. Accidental infection (autoinoculation) of the eye may lead to blindness. Again, prevention includes vaccine site management and hand hygiene.

Generalized vaccinia among persons without any underlying illness may occur. It is characterized by a rash, which is usually self-limited and usually requires no therapy, except among individuals whose conditions appear toxic or those that have a serious underlying illness.

More serious complications that may follow vaccination include inflammation of the brain (encephalitis) and spinal column (encephalomyelitis) which is characterized by an influx of cells, dysfunction of the brain associated with confusion and decreased mental capacity (encephalopathy), systemic (total body) vaccinia infection (progressive vaccinia) and extensive scaling of the skin on which vaccinia infection is superimposed (eczema vaccinatum). These complications, which are rare, may result in severe disability, permanent neurological sequelae and/or death. Death most often results from post vaccination encephalitis or progressive vaccinia. Approximately 1 death per million primary vaccinations and 1 death per 4 million

revaccinations have occurred after smallpox vaccinations. Deaths have also been reported in unvaccinated contacts of individuals who have been vaccinated.

In revaccinated individuals, the risks of complications have been low. Most complications have occurred in patients with underlying diseases or who have received therapy which impairs the immunologic system or those who have not received the vaccine in many years.

Individuals at risk for experiencing increased side affects from the vaccine are those who have skin conditions such as eczema and/or atopic dermatitis, have weakened immune systems such as transplant patients, are HIV-positive or chemotherapy patients, are pregnant or plan to become pregnant within a month, have known severe reaction to the smallpox vaccine from the past and those with a history of chronic steroid use. Anyone who falls into these categories or who lives with individuals in these categories should not receive the vaccine, unless exposed to smallpox.

Accordingly, formal training and medical screening of potential vaccine recipients is essential to ensure that those at risk do not receive the vaccine.

There are two treatments that may help people who have certain serious reactions to the smallpox vaccine. These are: Vaccinia Immune Globulin (VIG) and Cidofovir. Patients receiving these drugs would need to stay in the hospital for observation and possible additional treatment, as the VIG and Cidofovir may cause a number of side effects as well. CDC will review summary reports of adverse events and will investigate all individual reports of serious events.

The federal government has also directed the states to work with hospitals to set up systems to diagnose, manage, and treat people who experience adverse reactions from the vaccine. This will include rapid access to the primary treatment for most serious adverse events.

The IAFF and our medical advisors will continue to review the progress and any additional problems with the vaccination program as it is implemented in the United States and abroad.

The IAFF is consulting with the Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) so our membership is protected and prepared to protect the nation in the event of a smallpox outbreak. Further updates on this important issue will be posted on www.iaff.org.

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MEMORANDUM

TO: Representative Rick Glazier

FROM: Sam Byrd, Fiscal Research Division

DATE: March 13, 2003

SUBJECT: Actuarial Note (House Bill 273, Sections 1 & 5)

Re: Coverage of Adverse Medical Reactions from Smallpox Vaccinations under the Teachers' & State Employees' Comprehensive Major Medical Plan.

In accordance with North Carolina General Statute 120-114 and applicable Rules of the North Carolina Senate and House of Representatives, attached is a copy of an original actuarial note on the above subject as prepared by the General Assembly's Consulting Actuary. A copy of an original actuarial note on the same subject from the Plan Executive Administrator's Consulting Actuary is also attached for your review.

cc: Rep. Don Munford, Committee on Judiciary IV
Principal Clerk, House

Attachment(s):
(1) House Bill 273.
(2) Actuarial Note, Hartman & Associates, House Bill 273, March 11, 2003.
(3) Actuarial Note, Aon Consulting, House Bill 273, March 11, 2003.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 273*

Short Title:	Adverse Reactions to Smallpox Vaccination.	(Public)
Sponsors:	Representatives Glazier, Warner, Lucas, Goodwin (Primary Sponsors); G. Allen, Bordsen, Carney, Dickson, England, McLawhorn, and Munford.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT STATE EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY FAMILY MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE ABLE TO RECOVER FOR ANY ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee voluntarily receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act,

Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C § 233(p)).

...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is a family member living in the home of a State employee who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the State employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by a State employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(b) Absence from work by a State employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is a family member living in the home of the person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination."

SECTION 5. This act is effective when it becomes law.

HARTMAN & ASSOCIATES, LLC
ACTUARIAL CONSULTING

MARK V. HARTMAN, FSA, MAAA, MCA, EA

Phone: (336) 731-4038
Fax: (336) 731-2583

668 Link Road
Lexington, NC 27295

March 11, 2003

Mr. Sam Byrd
Fiscal Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: House Bill 273: An Act to Provide Coverage in the Teachers' and State Employees' Major Medical Plan for Adverse Medical Reactions from Smallpox Vaccinations

Dear Mr. Byrd:

Section 1 of this bill amends G.S. 135-40.6(8) to add treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures as Other Covered Charges in the Teachers' and State Employees' Comprehensive Major Medical Plan. This act is effective when it becomes law.

Based on our understanding of current Plan provisions, these charges would currently be covered. Thus, this bill is not expected to produce a cost to the Plan.

If you have any questions, let me know.

Sincerely,

Mark Hartman

Mark V. Hartman, FSA, MAAA, MCA, EA
Consulting Actuary

MVH/mt

NORTH CAROLINA TEACHERS' & STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN

• • •

House Bill 273
Sections 1 & 5

Coverage of Adverse Medical Reactions
From Smallpox Vaccinations

Prepared by:

Aon Consulting
One Piedmont Center
3565 Piedmont Road, N.E.
Atlanta, Georgia 30363

March 2003

ACTUARIAL STATEMENT

The State of North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (Plan) has requested that Aon Consulting prepare an Actuarial Note in response to House Bill 273, Sections 1 & 5 entitled "An Act to ensure that state employees who volunteer for vaccination against smallpox incident to the administration of smallpox countermeasures by health professionals under Section 304 of the Federal Homeland Security Act of 2002 and any family members living in the homes of these vaccinated employees will be able to recover for any adverse medical reactions due to the vaccination".

The Actuarial Note was prepared according to generally accepted actuarial principles and practices, in compliance with General Statute 120-114. As required by statute, the Note includes an explanatory statement of the proposed change(s) and, to the extent possible, an estimate of the financial and actuarial effect of the proposed change(s) on the Plan. The Actuarial Note makes no comment or opinion with regard to the merits of the measure for which the Note is prepared; however, any identified technical or mechanical defects have been noted.

We have reviewed the input and results of our analysis for reasonableness, and relied upon the data and information provided by the Plan and their Claims Processing Contractor.

Kenneth C. Vieira, F.S.A., M.A.A.A.
Senior Vice President

3/11/2003
Date

COVERAGE OF ADVERSE MEDICAL REACTIONS FROM SMALLPOX VACCINATIONS

PLAN CHANGES

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:
"(8) Other Covered Charges. -
...
u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:
"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.** The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:
...
(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee voluntarily receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C § 233(p)).
...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:
"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.** The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is a family member living in the home of a State employee who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the State employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by a State employeeshall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(b) Absence from work by a State employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is a family member living in the home of the person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination."

SECTION 5. This act is effective when it becomes law.

PROJECTED COSTS

	% Increase			Based on Midpoint Increase (in millions)		
Plan Design Change	Low	Mid	High	2003-2004 Fiscal Year Cost	2004-2005 Fiscal Year Cost	Total Biennium Cost
Complications From Smallpox Vaccinations	No Cost Impact					

Based on projected claims of $1,492,240,472 and $1,685,994,218 for the 2004 and 2005 fiscal years respectively.

PRICING APPROACH AND COMMENTS

The following information was compiled and utilized in determining the projected costs or savings of each benefit component addressed in this actuarial note:

- A small number of individuals would be covered under this statute.
- The Plan is already obligated to pay these claims based on currently policy. The bill would now require coverage by Statute versus policy.
- The combination of the above would cause this bill to have no cost to the Plan.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

March 18, 2003

The House Committee on Judiciary IV met on March 18, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Representatives Bowie, Goforth, Haire, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup were in attendance. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to continue further discussion on:

HB 273 A BILL TO BE ENTITLED AN ACT TO ENSURE THAT STATE EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURE BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY FAMILY MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE ABLE TO RECOVER FOR ANY ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

Jimmy Parker of the Professional Fire Fighters and Paramedics and Lorin Mueller of the North Carolina Coalition of Police were in attendance and spoke on the impact of this bill. Andy Romenst of the North Carolina League of Municipalities spoke as well as Paul Meyer of the North Carolina Association of County Commissioners. Dr. James Kirkpatrick assisted with several questions from the committee on the impact of the vaccination itself and gave several statistics.

After hearing from all of the above, the Chairman appointed a subcommittee headed by Representative Glazier to consider revisions to this bill, and Representatives Bowie and Kiser were appointed to serve on the subcommittee.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY IV — 3/18/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy PARKER	Professional FIREFIGHTERS & PARAMEDICS of NC
Rick Armstrong	North Carolina Coalition of Police
LORIN MUELLER	NC COALITION of POLICE
Starla McKenney	NC Dept. of Health & Human Svcs.
Ardis Watkins	SEANC
Leanne Winner	NCSBA
Evelyn Hardcastle	ETGR
Andy Romanet	NCLM
PAUL Mayer	NCACC
FRED TAYLOR	NCPAL
Gary McLeod	DOJ
ANN LOCKE	DVDS

VISITOR REGISTRATION SHEET

JUDICIARY IV — 3/18/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Barkley	NC DOJ
James Kirkpatrick	NC DPtl
Jim Lore	R. James Lore Atty at Law
Bill Wilson	NCATL
Mike Okun	NC State AFL-CIO
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN, LLP
Eddie Caldwell	Hafer & Caldwell P.A.
Ken Melton	Alley Associates
John Bowdish	AstraZeneca
Rob Hamme	NC DHHS

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

March 18, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 273 Adverse Reactions to Smallpox Vaccination Rep. Glazier

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 273*
PROPOSED COMMITTEE SUBSTITUTE H273-CSRL-2 [v.1]

3/12/2003 4:55:48 PM

Short Title: Adverse Reactions to Smallpox Vaccination. (Public)

Sponsors:

Referred to:

DRAFT

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY HOUSEHOLD MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE COVERED FOR ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee voluntarily receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act,

Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C § 233(p)).

...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is permanently or temporarily living in the home of a State employee, a community college employee, or an employee of the University of North Carolina or its affiliates, who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting

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from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees, community college employees, and employees of the University of North Carolina or its affiliates."

SECTION 5. This act is effective when it becomes law and applies to claims arising from adverse medical reactions related to smallpox vaccinations incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub.L. No.107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. §233 (p)) whether the adverse medical reactions occurred before or after the effective date of this act.

DRAFT

HB 273:
Adverse Reactions To Smallpox Vaccination

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Glazier
Date:	March 13, 2003	**Summary by:**	Steven Rose
Version:	Draft PCS H273-CSRL-2 [v.1]		Committee Counsel

SUMMARY: HB 273 provides various coverages for those injured as a result of smallpox vaccinations received in connection with their employment. Those protected are the recipients of the vaccine as well as household members injured as a result of contact with the vaccinated person.

CURRENT LAW: Many years have passed since there has been a smallpox vaccination program in this country. Therefore, the applicability of workers' compensation laws and the state health plan to those who suffer an adverse reaction is uncertain. State employees who are injured as a result of adverse reactions to the vaccine would have to use sick leave, and compensation for members of the employee's household who suffered an adverse reaction because of their proximity to the vaccinated person would have difficulty proving their claim against the state under the State Tort Claims Act. The combined effect of all this would be that workers who are encouraged to be vaccinated pursuant to the Homeland Security Act in order to work in the event of a smallpox emergency will be discouraged from getting the vaccination.

BILL ANALYSIS: Section 1--Adds adverse medical reactions as a result of smallpox vaccination to the list of covered expenses under the Teachers' and State Employees' Comprehensive Major Medical Plan.

Section 2—Adds adverse medical reactions from in employment smallpox vaccinations to the list of occupational illnesses covered by workers' compensation.

Section3—Provides a method for persons living in the home of a State employee, community college employee, or employee of the University of North Carolina or its affiliates, who are injured because of an adverse medical reaction resulting from in employment smallpox vaccination of the employee to make a tort claim similar to those made under the State Tort Claims Act, EXCEPT that no showing of negligence on the part of the State or the State employee is required, and the defense of contributory negligence is not allowed. The Industrial Commission hears the claim and the maximum recovery from one incident is $500,000.

Section 4—Subsection (a) provides that absence from work by a State employee, community college employee, or UNC or UNC affiliate employee due to an adverse medical reaction from smallpox vaccination shall not be counted against sick leave and that the employee's full salary shall continue to be paid.

Subsection (b) provides that the State employees described above will have the same protections from loss of sick leave or salary if they are out of work because a person in the household (who may or may not be a State employee) receives a smallpox vaccination and causes the State employee to have an adverse

medical reaction, or because the State employee needs to stay out of work to care for the vaccinated person who is having an adverse medical reaction.

Section 5—The act is effective when it becomes law, and applies retroactively as well as prospectively.

NOTE: Committee counsel feels that the definition of the employees to whom the act applies is in need of refinement before the bill is reported out.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

March 20, 2003

The House Committee on Judiciary IV met on March 20, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Representatives Bowie, Goforth, Haire, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup were in attendance. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to discuss the following bill:

A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PROGRAM IN PITT COUNTY FOR COLLECTION IN WORTHLESS CHECK CASES. District Attorney Clark Everett from Pitt County spoke on the benefits of this bill. Peg Dorer with the Conference of District Attorneys8 also spoke. Tom Sri and Andy Ellen of the North Carolina Retail Merchants Association were available to provide statistics and answer questions. Upon review of the bill, a decision was make to roll this bill and other similar bills on the agenda into one committee substitute for review at the next meeting scheduled for Thursday, March 27th.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary IV — 3/20/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debbie Dawes	Sentencing Commission
Matt Osborne	AOC
Andy Ellen	NCRMA
Tom Sri	NCRMA
Clark Everett	DA P.H Co
Tony Moore	Senate member
Peg Dorer	Conference of D.As
Elisa Wolper	AOC

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

March 20, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 18 **Worthless Check Program/Pitt County**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 18

Short Title:	Worthless Check Program/Pitt Co.	(Local)
Sponsors:	Representatives McLawhorn; C. Johnson and Warren.	
Referred to:	Judiciary IV.	

February 13, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROGRAM IN PITT COUNTY FOR COLLECTION IN WORTHLESS CHECK CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-107.2(e) reads as rewritten:

"(e) This section applies only to Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Pitt, Rockingham, Wake, and Wilson Counties."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 18:
Worthless Check Progam/Pitt Co.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Marian McLawhorn
Date:	March 20, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 18 authorizes the District Attorney in Pitt County to establish a program for the collection of worthless checks. Under this program, a person who passes a worthless check may, in order to escape potential criminal liability, pay a $60 court fee and restitution, including the amount of the check, service charges, and any processing fees. The bill is effective when it becomes law.***

CURRENT LAW:

I. Worthless Check Offense

A person is guilty of making or uttering a worthless check if he or she (1) makes and delivers (2) a check or draft (3) without having sufficient funds or credit with the bank for the check or draft to be paid, and (4) knows that there are insufficient funds or credit available for the payment. There are three possible sentencing classifications for this offense:

- The violation is punishable as a **Class I felony** if the amount of the worthless check is more than $2,000. The range of punishment for a Class I felony is a minimum of community punishment with a 3-month suspended sentence to 15 months active, depending on various mitigating and aggravating factors.
- The violation is punishable as a **Class 1 misdemeanor** if the amount of the worthless check is $2,000 or less and any of the following apply:
  - The check is drawn upon a nonexistent account.
  - The check is drawn upon an account the drawer knows to be closed.
  - The conviction is the person's fourth or subsequent conviction for this offense. Additionally, the sentencing judge must order, as a part of probation for the repeat offender on his fourth offense, that the offender refrain from maintaining a checking account or making or uttering a check for three years.

  The range of punishment for a Class 1 misdemeanor is from 1-120 days, with the possibility of an active sentence depending on the number of prior convictions.
- In other cases where the amount of the worthless check is $2,000 or less, the violation is punishable as a **Class 2 misdemeanor**. The range of punishment for a Class 2 misdemeanor is 1-60 days.

II. Worthless Check Collection Program

G.S. 14-107.2 authorizes district attorneys in certain counties to establish a program for the collection of worthless checks in cases that would be otherwise punishable as misdemeanors, felonies, or both. Under the program, a district attorney may not prosecute a worthless check case if the check passer pays a $60 fee to the Collection of Worthless Checks Fund and provides restitution to the check taker for: (1) the amount of the worthless check, (2) any service charge imposed on the check taker by a bank for processing the dishonored check, and (3) a processing fee imposed by the check taker of up to $25.

While the district attorney has some discretion to establish the criteria for the operation of the program in his or her district, the program typically follows this basic procedure:

1) The check taker first attempts to collect on his own.
2) If unsuccessful, the check taker refers the check and documentation of the collection effort to the Worthless Check office of the District Attorney.
3) The Worthless Check office sends the worthless check writer a letter informing the writer of his participation in the program. A payment form is included with the letter.
4) The worthless check writer who participates brings the full restitution amount and the program fee to the office of the Clerk of Superior Court within thirty days. The check writer must also bring the payment form sent by the Worthless Check office.
5) The clerk validates the form as paid and forwards the form to the Worthless Check office.
6) The Clerk's office forwards the restitution amount to the check taker and forwards the program fee to the Worthless Check fund.
7) If the worthless check writer does not comply with the requirements of the program, the Office of the District Attorney either requests the issuance of a warrant or criminal summons or authorizes the check taker to do so.

Currently, the district attorneys of Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties have authority to establish a worthless check collection program.

BILL ANALYSIS: House Bill 18 adds Pitt County (Judicial District 3A) to the list of counties authorized to establish a worthless check collection program.

BACKGROUND: The worthless check collection program statute had its origin as an uncodified pilot program enacted in the 1997 Budget Bill. At that time, Columbus, Durham and Rockingham were the only counties authorized to establish a program. In 1998, Wake County was added to the list of authorized counties. In 1999, Brunswick, Bladen, New Hanover, and Pender counties were added. In 2000, Cumberland, Edgecombe, Nash, Onslow, and Wilson counties were added to the program.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 25

Short Title:	Worthless Check Program Additions.	(Public)
Sponsors:	Representatives Gillespie, Church (Primary Sponsors); Frye, Hilton, Mitchell, Pate, Ray, Setzer, and Starnes.	
Referred to:	Judiciary IV.	

February 17, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE PROGRAM FOR COLLECTION IN WORTHLESS CHECK CASES IN BURKE, CALDWELL, CATAWBA, AND MCDOWELL COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-107.2(e) reads as rewritten:

"(e) This section applies only to Bladen, Brunswick, Burke, Caldwell, Catawba, Columbus, Cumberland, Durham, Edgecombe, McDowell, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties."

SECTION 2. This act becomes effective July 1, 2003.

HOUSE BILL 25:
Worthless Check Progam Additions.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Gillespie
Date:	March 20, 2003	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 25 authorizes the District Attorneys in Judicial District 25 (Burke, Caldwell and Catawba Counties) and Judicial District 29 (Henderson, McDowell, Polk, Rutherford, and Transylvania Counties) to establish a program for the collection of worthless checks. Under this program, a person who passes a worthless check may, in order to escape potential criminal liability, pay a $60 court fee and restitution, including the amount of the check, service charges, and any processing fees. The bill is effective when it becomes law.***

CURRENT LAW:

I. Worthless Check Offense

A person is guilty of making or uttering a worthless check if he or she (1) makes and delivers (2) a check or draft (3) without having sufficient funds or credit with the bank for the check or draft to be paid, and (4) knows that there are insufficient funds or credit available for the payment. There are three possible sentencing classifications for this offense:

- The violation is punishable as a **Class I felony** if the amount of the worthless check is more than $2,000. The range of punishment for a Class I felony is a minimum of community punishment with a 3-month suspended sentence to 15 months active, depending on various mitigating and aggravating factors.
- The violation is punishable as a **Class 1 misdemeanor** if the amount of the worthless check is $2,000 or less and any of the following apply:
  - The check is drawn upon a nonexistent account.
  - The check is drawn upon an account the drawer knows to be closed.
  - The conviction is the person's fourth or subsequent conviction for this offense. Additionally, the sentencing judge must order, as a part of probation for the repeat offender on his fourth offense, that the offender refrain from maintaining a checking account or making or uttering a check for three years.

  The range of punishment for a Class 1 misdemeanor is from 1-120 days, with the possibility of an active sentence depending on the number of prior convictions.
- In other cases where the amount of the worthless check is $2,000 or less, the violation is punishable as a **Class 2 misdemeanor**. The range of punishment for a Class 2 misdemeanor is 1-60 days.

II. Worthless Check Collection Program

G.S. 14-107.2 authorizes district attorneys in certain counties to establish a program for the collection of worthless checks in cases that would be otherwise punishable as misdemeanors, felonies, or both. Under the program, a district attorney may not prosecute a worthless check case if the check passer pays a $60 fee to the Collection of Worthless Checks Fund and provides restitution to the check taker for: (1) the amount of the worthless check, (2) any service charge imposed on the check taker by a bank for processing the dishonored check, and (3) a processing fee imposed by the check taker of up to $25.

While the district attorney has some discretion to establish the criteria for the operation of the program in his or her district, the program typically follows this basic procedure:

1) The check taker first attempts to collect on his own.
2) If unsuccessful, the check taker refers the check and documentation of the collection effort to the Worthless Check office of the District Attorney.
3) The Worthless Check office sends the worthless check writer a letter informing the writer of his participation in the program. A payment form is included with the letter.
4) The worthless check writer who participates brings the full restitution amount and the program fee to the office of the Clerk of Superior Court within thirty days. The check writer must also bring the payment form sent by the Worthless Check office.
5) The clerk validates the form as paid and forwards the form to the Worthless Check office.
6) The Clerk's office forwards the restitution amount to the check taker and forwards the program fee to the Worthless Check fund.
7) If the worthless check writer does not comply with the requirements of the program, the Office of the District Attorney either requests the issuance of a warrant or criminal summons or authorizes the check taker to do so.

Currently, the district attorneys of Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties have authority to establish a worthless check collection program.

BILL ANALYSIS: House Bill 25 adds to the list of counties authorized to establish a worthless check collection program Burke, Caldwell, and Catawba Counties, which comprise the 25th Judicial District, and McDowell County, which represents only one of the five counties that comprise the 29th Judicial District.

The proposed committee substitute for House Bill 25 adds Henderson, Polk, Rutherford, and Transylvania Counties so that the entire 29th Judicial District is included.

BACKGROUND: The worthless check collection program statute had its origin as an uncodified pilot program enacted in the 1997 Budget Bill. At that time, Columbus, Durham and Rockingham were the only counties authorized to establish a program. In 1998, Wake County was added to the list of authorized counties. In 1999, Brunswick, Bladen, New Hanover, and Pender counties were added. In 2000, Cumberland, Edgecombe, Nash, Onslow, and Wilson counties were added to the program.

H25-SMSV-01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 25
PROPOSED COMMITTEE SUBSTITUTE H25-CSLT-1 [v.3]

3/19/2003 3:01:04 PM

Short Title: Worthless Check Program Additions. (Public)

Sponsors:

Referred to:

February 18, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE PROGRAM FOR COLLECTION IN WORTHLESS CHECK CASES IN BURKE, CALDWELL, CATAWBA, HENDERSON, MCDOWELL, POLK, RUTHERFORD, AND TRANSYLVANIA COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-107.2(e) reads as rewritten:

"(e) This section applies only to Bladen, Brunswick, Burke, Caldwell, Catawba, Columbus, Cumberland, Durham, Edgecombe, Henderson, McDowell, Nash, New Hanover, Onslow, Pender, Polk, Rockingham, Rutherford, Transylvania, Wake, and Wilson Counties."

SECTION 2. This act becomes effective July 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 83

Short Title:	Worthless Check Program/Buncombe.	(Local)
Sponsors:	Representatives Goforth; and Sherrill.	
Referred to:	Judiciary IV.	

February 26, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROGRAM IN BUNCOMBE COUNTY FOR COLLECTION IN WORTHLESS CHECK CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-107.2(e) reads as rewritten:

"(e) This section applies only to Bladen, Brunswick, Buncombe, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 83:
Worthless Check Progam/Buncombe.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. D. Bruce Goforth
Date:	March 20, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 83 authorizes the District Attorney in Buncombe County to establish a program for the collection of worthless checks. Under this program, a person who passes a worthless check may, in order to escape potential criminal liability, pay a $60 court fee and restitution, including the amount of the check, service charges, and any processing fees. The bill is effective when it becomes law.

CURRENT LAW:

I. Worthless Check Offense

A person is guilty of making or uttering a worthless check if he or she (1) makes and delivers (2) a check or draft (3) without having sufficient funds or credit with the bank for the check or draft to be paid, and (4) knows that there are insufficient funds or credit available for the payment. There are three possible sentencing classifications for this offense:

- The violation is punishable as a **Class I felony** if the amount of the worthless check is more than $2,000. The range of punishment for a Class I felony is a minimum of community punishment with a 3-month suspended sentence to 15 months active, depending on various mitigating and aggravating factors.
- The violation is punishable as a **Class 1 misdemeanor** if the amount of the worthless check is $2,000 or less and any of the following apply:
  - The check is drawn upon a nonexistent account.
  - The check is drawn upon an account the drawer knows to be closed.
  - The conviction is the person's fourth or subsequent conviction for this offense. Additionally, the sentencing judge must order, as a part of probation for the repeat offender on his fourth offense, that the offender refrain from maintaining a checking account or making or uttering a check for three years.

  The range of punishment for a Class 1 misdemeanor is from 1-120 days, with the possibility of an active sentence depending on the number of prior convictions.
- In other cases where the amount of the worthless check is $2,000 or less, the violation is punishable as a **Class 2 misdemeanor**. The range of punishment for a Class 2 misdemeanor is 1-60 days.

II. Worthless Check Collection Program

G.S. 14-107.2 authorizes district attorneys in certain counties to establish a program for the collection of worthless checks in cases that would be otherwise punishable as misdemeanors, felonies, or both. Under the program, a district attorney may not prosecute a worthless check case if the check passer pays a $60 fee to the Collection of Worthless Checks Fund and provides restitution to the check taker for: (1) the amount of the worthless check, (2) any service charge imposed on the check taker by a bank for processing the dishonored check, and (3) a processing fee imposed by the check taker of up to $25.

While the district attorney has some discretion to establish the criteria for the operation of the program in his or her district, the program typically follows this basic procedure:

1) The check taker first attempts to collect on his own.
2) If unsuccessful, the check taker refers the check and documentation of the collection effort to the Worthless Check office of the District Attorney.
3) The Worthless Check office sends the worthless check writer a letter informing the writer of his participation in the program. A payment form is included with the letter.
4) The worthless check writer who participates brings the full restitution amount and the program fee to the office of the Clerk of Superior Court within thirty days. The check writer must also bring the payment form sent by the Worthless Check office.
5) The clerk validates the form as paid and forwards the form to the Worthless Check office.
6) The Clerk's office forwards the restitution amount to the check taker and forwards the program fee to the Worthless Check fund.
7) If the worthless check writer does not comply with the requirements of the program, the Office of the District Attorney either requests the issuance of a warrant or criminal summons or authorizes the check taker to do so.

Currently, the district attorneys of Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties have authority to establish a worthless check collection program.

BILL ANALYSIS: House Bill 83 adds Buncombe County (Judicial District 28) to the list of counties authorized to establish a worthless check collection program.

BACKGROUND: The worthless check collection program statute had its origin as an uncodified pilot program enacted in the 1997 Budget Bill. At that time, Columbus, Durham and Rockingham were the only counties authorized to establish a program. In 1998, Wake County was added to the list of authorized counties. In 1999, Brunswick, Bladen, New Hanover, and Pender counties were added. In 2000, Cumberland, Edgecombe, Nash, Onslow, and Wilson counties were added to the program.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

HOUSE BILL 380*

Short Title:	Guilford/Worthless Check Program.	(Local)
Sponsors:	Representatives Jeffus, Adams, Bowie (Primary Sponsors); Wood and Jones.	
Referred to:	Judiciary IV.	

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A PROGRAM FOR COLLECTION OF WORTHLESS CHECKS IN GUILFORD COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-107.2(e) reads as rewritten:

"(e) This section applies only to Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Guilford, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 380:
Guilford/Worthless Check Progam.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Jeffus
Date:	March 20, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 380 authorizes the District Attorney in Guilford County to establish a program for the collection of worthless checks. Under this program, a person who passes a worthless check may, in order to escape potential criminal liability, pay a $60 court fee and restitution, including the amount of the check, service charges, and any processing fees. The bill is effective when it becomes law.***

CURRENT LAW:

I. Worthless Check Offense

A person is guilty of making or uttering a worthless check if he or she (1) makes and delivers (2) a check or draft (3) without having sufficient funds or credit with the bank for the check or draft to be paid, and (4) knows that there are insufficient funds or credit available for the payment. There are three possible sentencing classifications for this offense:

- The violation is punishable as a **Class I felony** if the amount of the worthless check is more than $2,000. The range of punishment for a Class I felony is a minimum of community punishment with a 3-month suspended sentence to 15 months active, depending on various mitigating and aggravating factors.
- The violation is punishable as a **Class 1 misdemeanor** if the amount of the worthless check is $2,000 or less and any of the following apply:
  - The check is drawn upon a nonexistent account.
  - The check is drawn upon an account the drawer knows to be closed.
  - The conviction is the person's fourth or subsequent conviction for this offense. Additionally, the sentencing judge must order, as a part of probation for the repeat offender on his fourth offense, that the offender refrain from maintaining a checking account or making or uttering a check for three years.

  The range of punishment for a Class 1 misdemeanor is from 1-120 days, with the possibility of an active sentence depending on the number of prior convictions.
- In other cases where the amount of the worthless check is $2,000 or less, the violation is punishable as a **Class 2 misdemeanor**. The range of punishment for a Class 2 misdemeanor is 1-60 days.

II. Worthless Check Collection Program

G.S. 14-107.2 authorizes district attorneys in certain counties to establish a program for the collection of worthless checks in cases that would be otherwise punishable as misdemeanors, felonies, or both. Under the program, a district attorney may not prosecute a worthless check case if the check passer pays a $60 fee to the Collection of Worthless Checks Fund and provides restitution to the check taker for: (1) the amount of the worthless check, (2) any service charge imposed on the check taker by a bank for processing the dishonored check, and (3) a processing fee imposed by the check taker of up to $25.

While the district attorney has some discretion to establish the criteria for the operation of the program in his or her district, the program typically follows this basic procedure:

1) The check taker first attempts to collect on his own.
2) If unsuccessful, the check taker refers the check and documentation of the collection effort to the Worthless Check office of the District Attorney.
3) The Worthless Check office sends the worthless check writer a letter informing the writer of his participation in the program. A payment form is included with the letter.
4) The worthless check writer who participates brings the full restitution amount and the program fee to the office of the Clerk of Superior Court within thirty days. The check writer must also bring the payment form sent by the Worthless Check office.
5) The clerk validates the form as paid and forwards the form to the Worthless Check office.
6) The Clerk's office forwards the restitution amount to the check taker and forwards the program fee to the Worthless Check fund.
7) If the worthless check writer does not comply with the requirements of the program, the Office of the District Attorney either requests the issuance of a warrant or criminal summons or authorizes the check taker to do so.

Currently, the district attorneys of Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties have authority to establish a worthless check collection program.

BILL ANALYSIS: House Bill 380 adds Guilford County (Judicial District 18) to the list of counties authorized to establish a worthless check collection program.

BACKGROUND: The worthless check collection program statute had its origin as an uncodified pilot program enacted in the 1997 Budget Bill. At that time, Columbus, Durham and Rockingham were the only counties authorized to establish a program. In 1998, Wake County was added to the list of authorized counties. In 1999, Brunswick, Bladen, New Hanover, and Pender counties were added. In 2000, Cumberland, Edgecombe, Nash, Onslow, and Wilson counties were added to the program.

Memorandum

To Trina Griffin
Research Division

From Douglas Holbrook
Fiscal Research

Re Worthless Check Programs

Date March 19, 2003

The Worthless Check Program authorizes, but does not require, District Attorneys in specific counties to operate a program in which people who write bad checks are given an opportunity to avoid criminal prosecution by making restitution for the amount of the check, any associated fees assessed to the check taker, and a $60 fee for the operation of the program. These $60 fees are intended to offset the cost of the program; as a matter of course, the programs do not produce enough revenue in the first two years to sustain the operation.

Typical worthless check programs operate with two staff positions, one legal assistant and one investigator. AOC estimates the first-year costs for these two positions to total $101,703. The cost of positions declines in the second year to $91,585 because initial position costs always include certain non-recurring items such as office furniture, computers, and other attendant needs. Additionally, the program requires a specific equipment package that includes a high-volume copier, a laser printer, and a fax machine. These costs total $12,726 in the first year, with an ongoing maintenance cost of $3,892. Thus, the total cost of a program is $114,429 in the first year, and $95,477 in the second and subsequent years.

History indicates that these programs do not produce enough revenues to support their operations fully until the third year, and in some cases, the fourth. By the fifth year, most programs are producing enough to support their operation, and are producing surplus funds that revert to the General Fund, unless the General Assembly authorizes the AOC to keep and use the funds for other purposes. For example, in 2002, the General Assembly authorized the AOC to buy equipment for District Attorneys' offices where worthless check programs were in operation.

In order to operate this program in every prosecutorial district, the State would need to provide $3.45 million for first-year costs, and $2.8 million for the next year. After the second year, programs should be self-supporting. The Administrative Office of the Courts may make proposals for phased implementation of programs based on funds available with a lesser amount of seed funding from the General Assembly.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

March 27, 2003

The House Committee on Judiciary IV met on March 27, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Representatives Bowie, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup were in attendance. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Representative Rick Glazier was recognized to explain HB 273 A BILL TO BE ENTITLED AN ACT TO ENSURE THAT STATE EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALL POX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURE BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY FAMILY MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE ABLE TO RECOVER FOR ANY ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

Representatives Glazier, Bowie and Stiller had previously met as a sub-committee on this bill and two amendments were brought forth to be discussed in addition to a revised committee substitute. The committee adopted the committee substitute with amendments and voted favorable to the new committee substitute and unfavorable to the original bill.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary IV — 3/27/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lauren Harper	SEANC
Roger Bone	Bone and Assoc.
Sheila McKenney	NC DHHS
Lorin Mueller	NC Coalition of Police
BOBBY RIDDLE	PFFPNC
Paul Meyer	NCAFL
R.H. Westbrook	UTU
Doris Weaver	NC CWA Political Council
Tom Coley	"
Richard O'Brien	PFFPNC
Andy Romanet	NCLM

VISITOR REGISTRATION SHEET

Judiciary IV — 3/27/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anne Winner	Atty
Elizabeth Dalton	Bone & Associates
FRED TAYLOR	WRAC
Amy Dobson	NC Statewatch.
[illegible]	Public Health
Gregg Jo Horne	NCMS

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

March 27, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 273 Adverse Reactions to Smallpox Vaccination
Representative Rick Glazier, Primary Sponsor

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 273*
PROPOSED COMMITTEE SUBSTITUTE H273-CSRL-4 [v.5]

3/27/2003 8:26:14 AM

Short Title: Adverse Reactions to Smallpox Vaccination. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT EMPLOYEES WHO RECEIVE VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY HOUSEHOLD MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE COVERED FOR ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C

§ 233(p)), or when the infection or adverse medical reaction is due to the employee being exposed to another employee vaccinated as described in this subdivision.

...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is permanently or temporarily living in the home of a State employee who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination received by the employee. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination. The provisions of this act shall apply for a maximum of 480 employment hours. The employing department, agency, institution or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act,

Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination. The provisions of this act shall apply for a maximum of 480 employment hours. The employing department, agency, institution or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees."

SECTION 5. In the event that federal regulatory or statutory provisions providing compensation and benefits to persons for infection with smallpox, infection with vaccinia, or any adverse medical reaction incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. §233(p)) are adopted, a condition precedent to recovery under this act shall be that the person claiming compensation and benefits under this act shall first seek compensation and benefits under the federal provisions, with those provisions constituting primary coverage and the person then being entitled to compensation and benefits under this act not exceeding a total recovery under the federal provisions and this act equal to the amount available under the applicable provisions of this act.

SECTION 6. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 7. This act is effective when it becomes law and applies to claims arising from infection or adverse medical reactions related to smallpox vaccinations incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub.L. No.107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. §233 (p)) whether the infection or adverse medical reactions occurred before, on, or after the effective date of this act.

HB 273:
Adverse Reactions To Smallpox Vaccination

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Glazier
Date:	March 13, 2003	**Summary by:**	Steven Rose
Version:	Draft PCS H273-CSRL-2 [v.1]		Committee Counsel

SUMMARY: HB 273 provides various coverages for those injured as a result of smallpox vaccinations received in connection with their employment. Those protected are the recipients of the vaccine as well as household members injured as a result of contact with the vaccinated person.

CURRENT LAW: Many years have passed since there has been a smallpox vaccination program in this country. Therefore, the applicability of workers' compensation laws and the state health plan to those who suffer an adverse reaction is uncertain. State employees who are injured as a result of adverse reactions to the vaccine would have to use sick leave, and compensation for members of the employee's household who suffered an adverse reaction because of their proximity to the vaccinated person would have difficulty proving their claim against the state under the State Tort Claims Act. The combined effect of all this would be that workers who are encouraged to be vaccinated pursuant to the Homeland Security Act in order to work in the event of a smallpox emergency will be discouraged from getting the vaccination.

BILL ANALYSIS: Section 1--Adds adverse medical reactions as a result of smallpox vaccination to the list of covered expenses under the Teachers' and State Employees' Comprehensive Major Medical Plan.

Section 2—Adds adverse medical reactions from in employment smallpox vaccinations to the list of occupational illnesses covered by workers' compensation.

Section3—Provides a method for persons living in the home of a State employee, community college employee, or employee of the University of North Carolina or its affiliates, who are injured because of an adverse medical reaction resulting from in employment smallpox vaccination of the employee to make a tort claim similar to those made under the State Tort Claims Act, EXCEPT that no showing of negligence on the part of the State or the State employee is required, and the defense of contributory negligence is not allowed. The Industrial Commission hears the claim and the maximum recovery from one incident is $500,000.

Section 4—Subsection (a) provides that absence from work by a State employee, community college employee, or UNC or UNC affiliate employee due to an adverse medical reaction from smallpox vaccination shall not be counted against sick leave and that the employee's full salary shall continue to be paid.

Subsection (b) provides that the State employees described above will have the same protections from loss of sick leave or salary if they are out of work because a person in the household (who may or may not be a State employee) receives a smallpox vaccination and causes the State employee to have an adverse

medical reaction, or because the State employee needs to stay out of work to care for the vaccinated person who is having an adverse medical reaction.

Section 5—The act is effective when it becomes law, and applies retroactively as well as prospectively.

NOTE: Committee counsel feels that the definition of the employees to whom the act applies is in need of refinement before the bill is reported out.

Proposed addition to H273 for City Employees and Volunteers

SECTION 4. Chapter 160 of the General Statutes is amended by adding a new section to read:

"**§ 160A-162. No sick leave taken for absences by County or Volunteer First Responder employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(c) Absence from work by a "First Responder", to include, Paid Professional Firefighters, Paramedics, Rescue Workers, and Law Enforcement Personnel as well as Volunteers, Auxiliary, or Reservists which respond to emergency situations shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(d) Absence from work by aforementioned "First Responder" in paragraph (a) above shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is a family member living in the home of the person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination."

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 273*
PROPOSED COMMITTEE SUBSTITUTE H273-CSRL-2 [v.1]

3/12/2003 4:55:48 PM

Short Title: Adverse Reactions to Smallpox Vaccination (Public)

Sponsors:

Referred to:

DRAFT

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY HOUSEHOLD MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE COVERED FOR ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

...

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee voluntarily receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act,

Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C § 233(p)).

...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is permanently or temporarily living in the home of a State employee, a community college employee, or an employee of the University of North Carolina or its affiliates, who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting

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from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees, community college employees, and employees of the University of North Carolina or its affiliates."

SECTION 5. This act is effective when it becomes law and applies to claims arising from adverse medical reactions related to smallpox vaccinations incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub.L. No.107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. §233 (p)) whether the adverse medical reactions occurred before or after the effective date of this act.

DRAFT

North Carolina General Assembly
Legislative Services Office

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MEMORANDUM

TO: Representative Rick Glazier

FROM: Sam Byrd, Fiscal Research Division

DATE: March 13, 2003

SUBJECT: Actuarial Note (House Bill 273, Sections 1 & 5)

Re: Coverage of Adverse Medical Reactions from Smallpox Vaccinations under the Teachers' & State Employees' Comprehensive Major Medical Plan.

In accordance with North Carolina General Statute 120-114 and applicable Rules of the North Carolina Senate and House of Representatives, attached is a copy of an original actuarial note on the above subject as prepared by the General Assembly's Consulting Actuary. A copy of an original actuarial note on the same subject from the Plan Executive Administrator's Consulting Actuary is also attached for your review.

cc: Rep. Don Munford, Committee on Judiciary IV
Principal Clerk, House

Attachment(s):
(1) House Bill 273.
(2) Actuarial Note, Hartman & Associates, House Bill 273, March 11, 2003.
(3) Actuarial Note, Aon Consulting, House Bill 273, March 11, 2003.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

HARTMAN & ASSOCIATES, LLC
ACTUARIAL CONSULTING

MARK V. HARTMAN, FSA, MAAA, MCA, EA

Phone: (336) 731-4038
Fax: (336) 731-2583

668 Link Road
Lexington, NC 27295

March 11, 2003

Mr. Sam Byrd
Fiscal Research Division
North Carolina General Assembly
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: House Bill 273: An Act to Provide Coverage in the Teachers' and State Employees' Major Medical Plan for Adverse Medical Reactions from Smallpox Vaccinations

Dear Mr. Byrd:

Section 1 of this bill amends G.S. 135-40.6(8) to add treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures as Other Covered Charges in the Teachers' and State Employees' Comprehensive Major Medical Plan. This act is effective when it becomes law.

Based on our understanding of current Plan provisions, these charges would currently be covered. Thus, this bill is not expected to produce a cost to the Plan.

If you have any questions, let me know.

Sincerely,

Mark Hartman

Mark V. Hartman, FSA, MAAA, MCA, EA
Consulting Actuary

MVH/mt

NORTH CAROLINA TEACHERS' & STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN

• • •

House Bill 273
Sections 1 & 5

Coverage of Adverse Medical Reactions
From Smallpox Vaccinations

Prepared by:

Aon Consulting
One Piedmont Center
3565 Piedmont Road, N.E.
Atlanta, Georgia 30363

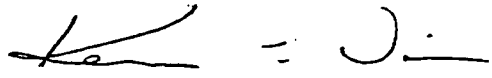
March 2003

ACTUARIAL STATEMENT

The State of North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (Plan) has requested that Aon Consulting prepare an Actuarial Note in response to House Bill 273, Sections 1 & 5 entitled "An Act to ensure that state employees who volunteer for vaccination against smallpox incident to the administration of smallpox countermeasures by health professionals under Section 304 of the Federal Homeland Security Act of 2002 and any family members living in the homes of these vaccinated employees will be able to recover for any adverse medical reactions due to the vaccination".

The Actuarial Note was prepared according to generally accepted actuarial principles and practices, in compliance with General Statute 120-114. As required by statute, the Note includes an explanatory statement of the proposed change(s) and, to the extent possible, an estimate of the financial and actuarial effect of the proposed change(s) on the Plan. The Actuarial Note makes no comment or opinion with regard to the merits of the measure for which the Note is prepared; however, any identified technical or mechanical defects have been noted.

We have reviewed the input and results of our analysis for reasonableness, and relied upon the data and information provided by the Plan and their Claims Processing Contractor.



Kenneth C. Vieira, F.S.A., M.A.A.A.
Senior Vice President

3/11/2003
Date

COVERAGE OF ADVERSE MEDICAL REACTIONS FROM SMALLPOX VACCINATIONS

PLAN CHANGES

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:
"(8) Other Covered Charges. -
...
u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:
"**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.** The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:
..."
(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee voluntarily receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C § 233(p)).
...."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:
"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.** The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is a family member living in the home of a State employee who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination. A person covered by this section shall be entitled to recover from the State damages incurred by the person that are directly attributable to the vaccination of the State employee under this section. No showing of negligence is required under this section. The provisions of G.S 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination of certain health professionals against smallpox.**

(a) Absence from work by a State employeeshall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination.

(b) Absence from work by a State employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is a family member living in the home of the person who voluntarily receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination."

SECTION 5. This act is effective when it becomes law.

PROJECTED COSTS

	% Increase			Based on "Midpoint" Increase (in millions)		
Plan Design Change	Low	Mid	High	2003-2004 Fiscal Year Cost	2004-2005 Fiscal Year Cost	Total Biennium Cost
Complications From Smallpox Vaccinations	No Cost Impact					

Based on projected claims of $1,492,240,472 and $1,685,994,218 for the 2004 and 2005 fiscal years respectively.

PRICING APPROACH AND COMMENTS

The following information was compiled and utilized in determining the projected costs or savings of each benefit component addressed in this actuarial note:

- A small number of individuals would be covered under this statute.
- The Plan is already obligated to pay these claims based on currently policy. The bill would now require coverage by Statute versus policy.
- The combination of the above would cause this bill to have no cost to the Plan.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
H.B. 273 A BILL TO BE ENTITLED AN ACT TO ENSURE THAT STATE EMPLOYEES WHO VOLUNTEER FOR VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY FAMILY MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE ABLE TO RECOVER FOR ANY ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(# ———),~~ ☒ which changes the title, unfavorable as to (the original bill) ~~(Committee Substitute Bill # ———), (and recommendation that the committee substitute bill # ———) be re-referred to the Committee on ———.)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

April 3, 2003

The House Committee on Judiciary IV met on April3, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Representatives Bowie, Haire, Goforth, Justus, and Kiser. Ex-Officio Member Representative Bill Culpepper attended along with Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Chairman Munford relinquished his position as Chair to Vice-Chair Rick Glazier to allow Representative Munford to explain his two bills in committee.

Representative Don Munford was recognized to explain HB 636, A BILL TO BE ENTITLED AN ACT TO GIVE EFFECT TO ELECTRONIC JUDGMENT DOCKETS BY MODERNIZING LAW REGARDING JUDGMENTS AND REESTABLISHING THE EFFECTIVE DATE OF CIVIL JUDGMENT LIENS AND THE DATE FROM WHICH INTEREST ACCRUES ON JUDGMENTS. Upon a motion made by Representative Munford, the original bill received an unfavorable report and a PCS was adopted which received a favorable report. Bill will be reported out of committee next week.

Representative Don Munford was again recognized to explain HB 637, A BILL TO BE ENTITLED AN ACT TO PERMIT THE SETTLOR OF A REVOCABLE TRUST TO RELIEVE THE TRUSTEE OF DUTIES, RESTRICTION, AND LIABILITIES IMPOSED BY THE UNIFORM TRUSTS ACT. This bill received a favorable report after a short explanation and will be reported out of committee next week.

Chairman Munford resumed the duties of Chair for the remainder of the meeting.

Representative Bill Culpepper was recognized to explain HB 656, A BILL TO BE ENTITLED AN ACT TO AMEND THE TRUST ADMINISTRATION ACT AND TO MAKE RELATED CHANGES TO THE LAW GOVERNING ACCOUNTINGS IN TESTAMENTARY TRUSTS. Upon a motion made by Representative Culpepper, the original bill received an unfavorable report and a PCS was adopted. There was a title change included in the PCS. Upon review of the bill and input from the Administrative Office of the Court, an amendment was made and will be rolled over into a updated PCS showing the new wording. The PCS was voted on and received a favorable report and will be reported out of committee next week. An amendment has been attached to these minutes.

Representative Joni Bowie was recognized to explain HB 623, A BILL TO BE ENTITLED AN ACT TO LIMIT USE OF HANDHELD PHONES WHILE DRIVING. Representatives Luebke and McAllister, also primary sponsors of this bill gave brief explanations of the bill. After some discussion and debate, the bill was placed in a sub-committee for further review. Representative Bowie, Glazier and Stiller were appointed to the subcommittee, and asked to report back to the committee at a later date.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY IV — 4/3/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Kaylor	Kaylor Law Firm
Bertson	At+t wireless - Cingular wireless
Mike McLaughlin	NC Center for Public Policy Research
Ran Coble	" "
William V. McPherson, Jr	Est. Planning & Fiduciary Law Section, NC Bar Assn.
David Stoller	State Farm Ins. Cos.
Chris Nichols	Hunton + Williams
Marcos Arellano	Intern (Rep. Luebke)
Chris Meares	Rep. Joe Kiser
Michelle Frazier	NC Bar Ass'n
Bill McPherson	NC Bar Ass'n - Estate Planning Section

VISITOR REGISTRATION SHEET

JUDICIARY IV — 4/3/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Moore	Sprint
Jane Pinsky	AAA Carolinas
Debra Dean	BellSouth
Mark Benson	Capitol Group
Brad Crawford	NC AOC
Pamela Bell	AOC
Rick Zechini	NC Association of Realtors
Susan Valauri	Nationwide
Sam Watts	N.C. Center for Public Policy Research
Barbara Conaty	MFS
Julie Allen	NC Statewatch

VISITOR REGISTRATION SHEET

JUDICIARY IV — 4/3/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Miller	CUCA
John Mettling	Gov Office

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

April 3, 2003
~~March 27, 2003~~
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 623	Limit Handheld Phone Use While Driving Rep. Bowie, Luebke, and McAllister
HB 636	Modernized Judgment Docketing Laws Rep. Munford
HB 637	Amend Powers/Settlor of Revocable Trust Rep. Munford
HB 656	Amend Trust Administration Act Rep. Culpepper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 636

Short Title:	Modernize Judgment Docketing Laws.	(Public)
Sponsors:	Representatives Munford; Glazier, LaRoque, McHenry, McMahan, Moore, Ross, Setzer, Stam, and Stiller.	
Referred to:	Judiciary IV.	

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO GIVE EFFECT TO ELECTRONIC JUDGMENT DOCKETS BY MODERNIZING LAWS REGARDING JUDGMENTS AND REESTABLISHING THE EFFECTIVE DATE OF CIVIL JUDGMENT LIENS AND THE DATE FROM WHICH INTEREST ACCRUES ON JUDGMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-232 reads as rewritten:

"**§ 1-232. Judgment roll.**

Unless the party or his attorney furnishes a judgment ~~roll,~~ roll or the documents referred to in this section are already on file, the clerk, immediately after entering the judgment, shall attach together and file the following papers which constitute the judgment roll:

(1) In case the complaint is not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

(2) In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment."

SECTION 2. G.S. 1-233 reads as rewritten:

"**§ 1-233. Docketed and indexed; held as of first day of session.**

Every judgment of the superior or district court, affecting ~~the right~~ title to real property, or requiring in whole or in part the payment of money, shall be ~~entered~~ indexed and recorded by the clerk of said superior court on the judgment docket of the court. The docket entry must contain the file number for the case in which the judgment was entered, the names of the parties, the address, if known, of each party and against whom judgment is rendered, ~~and~~ the relief granted, ~~date of judgment, and~~ the date, ~~hour~~ hour, and minute of ~~docketing; and the~~ the entry of judgment under G.S. 1A-1, Rule 58,

and the date, hour, and minute of the indexing of the judgment. The clerk shall keep a cross-index of the whole, with the dates and file numbers thereof; however, error or omission in the entry of the address or addresses shall in no way affect the validity, finality or priority of the judgment docketed. ~~In all cases affecting the title to real property the clerk shall enter upon the judgment docket the number and page of the minute docket where the judgment is recorded, and if the judgment does not contain particular description of the lands, but refers to a description contained in the pleadings, the clerk shall enter upon the minute docket, immediately following the judgment, the description so referred to.~~

~~All judgments rendered in any county by the superior or district court, during a session of the court, and docketed during the same session, or within 10 days thereafter, are held and deemed to have been rendered and docketed on the first day of said session, for the purpose only of establishing equality of priority as among such judgments.~~"

SECTION 3. G.S. 1-234 reads as rewritten:

"**§ 1-234. Where and how docketed; lien.**

Upon ~~filing a judgment roll upon a judgment~~ the entry of a judgment under G.S. 1A-1, Rule 58, affecting the title of real property, or directing in whole or in part the payment of money, ~~it shall be docketed~~ the clerk of superior court shall index and record the judgment on the judgment docket of the court of the county where the judgment ~~roll~~ was ~~filed, and~~ entered. The judgment may be docketed on the judgment docket of the court of any other county upon the filing with the clerk thereof of a transcript of the original ~~docket, and~~ docket. The judgment lien is effective as against third parties from and after the indexing of the judgment as provided in G.S. 1-233. The judgment is a lien on the real property in the county where the same is docketed of every person against whom any such judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for 10 years from the date of the ~~rendition~~ entry of the ~~judgment.~~ judgment under G.S. 1A-1, Rule 58, in the county where the judgment was originally entered. But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the 10 years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith.

A judgment docketed pursuant to G.S. 15A-1340.38 shall constitute a lien against the property of a defendant as provided for under this section."

SECTION 4. G.S. 24-5 reads as rewritten:

"**§ 24-5. Interest on judgments.**

(a) Actions on Contracts. – In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract

that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal rate or the contract rate. For purposes of this section, "after judgment" means after the date of entry of judgment under G.S. 1A-1, Rule 58.

(a1) Actions on Penal Bonds. – In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~docketing of judgment~~ entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied.

(b) Other Actions. – In an action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, except the costs, bears interest from the date of ~~entry of judgment~~ entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate."

SECTION 5. This act becomes effective September 1, 2003, and applies to all judgments entered, indexed, and docketed on or after that date.

HOUSE BILL 636:
Modernize Judgment Docketing Laws

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Munford
Date:	April 3, 2003	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition		Committee Counsel

SUMMARY: ***House Bill 636 modernizes the laws governing judgments by giving effect to electronic judgment dockets and by reestablishing the effective date of civil judgment liens and the date from which interest accrues on judgments.***

CURRENT LAW: Once a civil judgment has been rendered, G.S. 1-232 requires the clerk of superior court to attach several documents, such as the complaint, the summons, the pleadings, the verdict, and all other papers related to the merits of the case or affecting the judgment, to a copy of the judgment, which constitutes the judgment roll.

G.S. 1-233 requires the clerk to docket all judgments entered by the court. The recording of a judgment is a three-step process. First, the judgment is entered. Rule 58 of the NC Rules of Civil Procedure provides that a judgment is rendered or entered in a case when it is reduced to writing, signed by the judge, and filed with the court. Second, the judgment is indexed by the clerk. Third, the judgment is docketed, which involves abstracting certain information, such as the names of the parties, the address of the party against whom the judgment is rendered, the relief granted, the date of the judgment, and the date, hour, and minute of docketing, onto the physical Judgment Docket Books. In cases affecting the title to real property, the clerk must enter upon the judgment docket the number and page of the minute docket where the judgment is recorded. If the judgment does not contain a property description, the clerk must also enter the description upon the minute docket immediately following the judgment.

Once a judgment is docketed, a lien is established as against third parties. In those instances where multiple judgments are rendered during the same session of court, they are deemed to have been rendered and docketed on the first day of the session. The lien is effective for 10 years from the date of the rendition of the judgment.

The point at which interest begins to accrue on a money judgment depends on the nature of the underlying action. For contract actions, the legal rate of interest (8%) will apply after judgment, unless the parties agreed that the contract rate will apply. In an action on a penal bond, the amount of the judgment bears the legal rate of interest from the date of docketing. In all other judgments, the amount of the judgment, other than that portion designated as compensatory damages, bears interest from the date of entry of judgment.

BILL ANALYSIS:

Section 1 – Judgment roll

Section 1 of the bill provides that if all of the named documents are already on file, then the clerk need not provide additional copies for purposes of creating the judgment roll. This language more accurately reflects current practice.

Section 2 – Docketing judgments

Section 2 of the bill requires clerk of superior court to record in the docket the date, hour, and minute of both the entry of judgment and the indexing of the judgment. Section 2 also deletes the language (i) requiring the clerk to record the number and page of the minute docket where a judgment affecting title to real property is recorded, and (ii) deeming all judgments rendered during the same session of court as docketed on the first day of the session.

Section 3 – Creation of lien

Section 3 of the bill changes the point at which a judgment becomes a lien from the time it is docketed to the time at which it is indexed. This section also clarifies that a judgment is a lien on real property for 10 years from the date of the entry of the judgment in the county where the judgment was originally entered.

Section 4 – Interest on judgments

Section 4 of the bill provides that post-judgment interest in all types of actions begins to accrue after the date of entry of the judgment under G.S. 1A-1, Rule 58. Under Rule 58, a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.

Section 5 – Effective Date

The act would become effective on September 1, 2003 and apply to all judgments entered, indexed, and docketed on or after that date.

BACKGROUND: Because of the inefficiencies and inherent difficulties of the current manual docketing process, the Administrative Office of the Courts is seeking to automate and streamline the process through the Judgment Abstracting Project, part of a broader effort to further develop the Civil Case Processing System. This Project will provide an automated method for abstracting judgments, applying payments to judgments, calculating judgment payoff, and gathering forms related to processing judgments. House Bill 636 is designed to facilitate and advance the goals of the Project.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 636
PROPOSED COMMITTEE SUBSTITUTE H636-CSSV-3 [v.1]

4/3/2003 12:07:34 AM

Short Title: Modernize Judgment Docketing Laws. (Public)

Sponsors:

Referred to:

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO GIVE EFFECT TO ELECTRONIC JUDGMENT DOCKETS BY MODERNIZING LAWS REGARDING JUDGMENTS AND REESTABLISHING THE EFFECTIVE DATE OF CIVIL JUDGMENT LIENS AND THE DATE FROM WHICH INTEREST ACCRUES ON JUDGMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-232 reads as rewritten:

"**§ 1-232. Judgment roll.**

Unless the party or his attorney furnishes a judgment ~~roll,~~ roll or the documents referred to in this section are already on file, the clerk, immediately after entering the judgment, shall attach together and file the following papers which constitute the judgment roll:

(1) In case the complaint is not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

(2) In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment."

SECTION 2. G.S. 1-233 reads as rewritten:

"**§ 1-233. Docketed and ~~indexed; held as of first day of session.~~indexed.**

Every judgment of the superior or district court, affecting ~~the right~~ title to real property, or requiring in whole or in part the payment of money, shall be ~~entered~~ indexed and recorded by the clerk of said superior court on the judgment docket of the court. The docket entry must contain the file number for the case in which the judgment was entered, the names of the parties, the address, if known, of each party and against whom judgment is rendered, ~~and~~ the relief granted, ~~date of judgment, and~~ the date, ~~hour~~ hour, and minute of ~~docketing; and the~~ the entry of judgment under G.S. 1A-1, Rule 58,

and the date, hour, and minute of the indexing of the judgment. The clerk shall keep a cross-index of the whole, with the dates and file numbers thereof; however, error or omission in the entry of the address or addresses shall in no way affect the validity, finality or priority of the judgment docketed. ~~In all cases affecting the title to real property the clerk shall enter upon the judgment docket the number and page of the minute docket where the judgment is recorded, and if the judgment does not contain particular description of the lands, but refers to a description contained in the pleadings, the clerk shall enter upon the minute docket, immediately following the judgment, the description so referred to.~~

~~All judgments rendered in any county by the superior or district court, during a session of the court, and docketed during the same session, or within 10 days thereafter, are held and deemed to have been rendered and docketed on the first day of said session, for the purpose only of establishing equality of priority as among such judgments.~~"

SECTION 3. G.S. 1-234 reads as rewritten:

"**§ 1-234. Where and how docketed; lien.**

Upon ~~filing a judgment roll upon a judgment~~ the entry of a judgment under G.S. 1A-1, Rule 58, affecting the title of real property, or directing in whole or in part the payment of money, ~~it shall be docketed~~ the clerk of superior court shall index and record the judgment on the judgment docket of the court of the county where the judgment ~~roll~~ was ~~filed, and~~ entered. The judgment may be docketed on the judgment docket of the court of any other county upon the filing with the clerk thereof of a transcript of the original ~~docket, and~~ docket. The judgment lien is effective as against third parties from and after the indexing of the judgment as provided in G.S. 1-233. The judgment is a lien on the real property in the county where the same is docketed of every person against whom any such judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for 10 years from the date of the ~~rendition~~ entry of the ~~judgment.~~ judgment under G.S. 1A-1, Rule 58, in the county where the judgment was originally entered. But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the 10 years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith.

A judgment docketed pursuant to G.S. 15A-1340.38 shall constitute a lien against the property of a defendant as provided for under this section."

SECTION 4. G.S. 24-5 reads as rewritten:

"**§ 24-5. Interest on judgments.**

(a) Actions on Contracts. – In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract

that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal rate or the contract rate. For purposes of this section, "after judgment" means after the date of entry of judgment under G.S. 1A-1, Rule 58.

(a1) Actions on Penal Bonds. – In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~docketing of judgment~~ entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied.

(b) Other Actions. – In an action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, except the costs, bears interest from the date of ~~entry of judgment~~ entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate."

SECTION 5. This act becomes effective September 1, 2003, and applies to all judgments entered, indexed, and docketed on or after that date.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 636 A BILL TO BE ENTITLED AN ACT TO GIVE EFFECT TO ELECTRONIC JUDGMENT DOCKETS BY MODERNIZING LAWS REGARDING JUDGMENTS AND REESTABLISHING THE EFFECTIVE DATE OF CIVIL JUDGMENT LIENS AND THE DATE FROM WHICH INTEREST ACCRUES ON JUDGMENTS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill (#), ~~☐ which changes the title~~, unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

H 1

HOUSE BILL 637

Short Title:	Amend Powers/Settlor of Revocable Trust.	(Public)
Sponsors:	Representatives Munford; Glazier, Haire, LaRoque, McMahan, Moore, Ross, Sauls, Setzer, Stam, and Stiller.	
Referred to:	Judiciary IV.	

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE SETTLOR OF A REVOCABLE TRUST TO RELIEVE THE TRUSTEE OF DUTIES, RESTRICTIONS, AND LIABILITIES IMPOSED BY THE UNIFORM TRUSTS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36A-78 reads as rewritten:

"**§ 36A-78. Power of settlor.**

The settlor of any trust affected by this Article may, by provision in the instrument creating the trust if the trust was created by a writing, or by oral statement to the trustee at the time of the creation of the trust if the trust was created orally, or by an amendment of the trust if the settlor reserved the power to amend the trust, or by written instrument delivered to the trustee of a revocable trust, relieve the trustee from any or all duties, restrictions, and liabilities which would otherwise be imposed upon ~~him~~ the trustee by this Article; or alter or deny to ~~his~~ the trustee any or all of the privileges and powers conferred upon the trustee by this Article; or add duties, restrictions, liabilities, privileges, or powers, to those imposed or granted by this Article; but no act of the settlor who has not reserved the power to revoke the trust shall relieve a trustee from the duties, restrictions, and liabilities imposed upon ~~him~~ the trustee by G.S. 36A-62, 36A-63 and G.S. 36A-66."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 637:
Amend Powers/Settlor of Revocable Trust

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Munford
Date:	April 3, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 637 authorizes the settlor of a revocable trust to relieve the trustee of any and all duties, restrictions, and liabilities imposed by the Uniform Trusts Act and authorizes an additional method by which the settlor may relieve the trustee of those duties and liabilities.***

CURRENT LAW: The Uniform Trusts Act, originally enacted in North Carolina in 1939, provides rules about certain trustee responsibilities and obligations. These include the duty of loyalty, the registration and voting of securities, and trustee liability to persons other than beneficiaries. In addition, the Act authorizes a settlor to modify certain rules pertaining to the trustee's powers, duties, and liabilities. The statute provides three methods by which this modification may be made:

- By express statement in the original trust document;
- By an amendment to the trust, if the settlor retained the right to amend; or
- By oral statement, if the trust was created orally.

However, a settlor is prohibited from relieving a trustee from the duties, restrictions, and liabilities with regard to the following activities:

- Loaning trust funds to itself, its employees, or any affiliate. (G.S. 36A-62).
- Holding funds uninvested longer than reasonable. (G.S. 36A-63).
- If a bank, depositing funds in its own savings or commercial department unless adequate security is given. (G.S. 36A-63).
- Buying or selling any property, directly or indirectly, for the trust from or to itself or an affiliate. (G.S. 36A-66).

BILL ANALYSIS: House Bill 637 does two things:

- It authorizes an additional method by which the settlor of a revocable trust may relieve a trustee from any and all duties, restrictions, or liabilities imposed by the Uniform Trusts Act – by written instrument delivered to the trustee.
- It eliminates the prohibition against the settlor of a revocable trust from relieving a trustee from the duties, restrictions, and liabilities imposed regarding:
  - Loaning trust funds to itself, its employees, or any affiliate.
  - Holding funds uninvested longer than reasonable.
  - If a bank, depositing funds in its own savings or commercial department unless adequate security is given.
  - Buying or selling any property, directly or indirectly, for the trust from or to itself or an affiliate.

  The removal of this limitation on a settlor's powers would be consistent with the law in 46 other states and the principles embodied in the Uniform Trust Code, approved and recommended by the National Conference of Commissioners on Uniform State Laws in 2000 for adoption by the states, that while a

trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

The act would become effective when it becomes law.

BACKGROUND:

Definition of a Trust. – Generally, a trust is a right in real or personal property that is held in a fiduciary relationship by one party for the benefit of another. The *settlor* is the person who creates the trust, the *trustee* is the person who holds legal title to the trust property, and the *beneficiary* is the person who receives the benefits of the trust. In order to create a trust, the settlor must deliver the trust property to the trustee with the intent to create a trust, whereupon the trustee holds, manages, and administers the property for the benefit of the beneficiaries.

Powers of a Trustee. – Generally, a trustee can exercise those powers that are expressly conferred by the terms of the trust, that are implied as necessary or appropriate to carry out the purposes of the trust, and that are authorized by court decree or statute. By statute in North Carolina, a trustee has the general power to preserve, manage, use, and distribute the trust estate in a way that achieves the trust's purpose and is in the best interest of the trust beneficiaries. In addition, the Uniform Trusts Act specifically identifies the following powers exercisable by trustees:

- Open bank accounts and draw checks
- Enter safe-deposit boxes rented by the trust
- Employ attorneys and accountants
- List property for taxes and prepare and file State, municipal, and county tax returns
- Collect claims and debts due the trust and give receipts
- Pay or compromise claims and pay debts of the trust
- Have custody of property of the trust

Duties of a Trustee. – The primary duty of a trustee is the preservation of trust assets. Additional duties include the duty of loyalty, the duty to keep trust assets separate from personal assets, the duty to make trust property productive, the duty to protect trust assets from claims of others, and the duty to account and keep adequate records of trust activities.

Liabilities of a Trustee. – If a trustee breaches his duties, the beneficiaries may ask the court to remove him, deny him compensation, or require payment of damages suffered. The trustee is personally liable for torts committed in the course of the trust administration. A trustee may also be personally liable to third parties on contracts entered into with them in the course of the trust administration unless the contract excludes personal liability. North Carolina also permits a third party to bring a contract claim against the trustee in his representative capacity and to collect any judgment directly from the trust property.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 637 A BILL TO BE ENTITLED AN ACT TO PERMIT THE SETTLOR OF A REVOCABLE TRUST TO RELIEVE THE TRUSTEE OF DUTIES, RESTRICTIONS, AND LIABILITIES IMPOSED BY THE UNIFORM TRUSTS ACT.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

HOUSE BILL 656

Short Title:	Amend Trust Administration Act.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary IV.	

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRUST ADMINISTRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36A-23.1(a) reads as rewritten:

"(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings ~~to modify or terminate trusts.~~ governed by Article 11A of this Chapter. Except as provided in subdivision (3) of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this subsection are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(1a) To permit a trustee to resign or renounce; however, no trustee shall be required to initiate a proceeding to resign or renounce as trustee where a successor trustee named in the governing instrument or in accordance with a procedure provided in the governing instrument is willing to serve, unless the trustee is required to account to the clerk;

(2) To review trustees' fees pursuant to ~~G.S. 32-50~~ Article 5 of Chapter 32 of the General Statutes and review and settle interim or final accounts; and

(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to

determine an issue listed in this subdivision shall be originally heard by a superior court judge."

SECTION 2. G.S. 36A-24.1(b) reads as rewritten:

"(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts ~~is in~~ is:

(1) In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary ~~resides.~~ resides; or

(2) In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered."

SECTION 3. G.S. 36A-26.1 reads as rewritten:

"**§ 36A-26.1. Trust proceedings; necessary parties.**

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as an estate matter. All ~~known beneficiaries, trustees, or cotrustees~~ trustees and interested persons not joined as petitioners shall be joined as respondents. The clerk shall issue the summons for the respondents. The clerk may order ~~notification of~~ that additional persons be joined as respondents and shall issue the summons for such additional persons. ~~An order is valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to~~ The summons shall notify the respondents to appear and answer the petition ~~and to offer evidence against granting the petition. The clerk shall then proceed to hear~~ within 10 days after its service upon the respondents. The summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the clerk shall indicate on the summons by appropriate words that the summons is issued in an estate matter and not in a special proceeding or in a civil action. The clerk shall set the matter for hearing after the period for respondents to answer the petition has expired and shall provide notice of such hearing to respondents. At the hearing, petitioners and respondents shall have the right to offer evidence for and against granting the petition, and the clerk shall decide and determine the matter as provided ~~for in G.S. 1-301.3.~~ in G.S. 1-301.3. An order entered by the clerk is valid as to all persons to whom a summons is issued."

SECTION 4. G.S. 36A-29 reads as rewritten:

"**§ 36A-29. ~~Final accounting before resignation.~~ Accounting to the clerk.**

(a) No trustee, including a trustee appointed by the clerk, shall be required to account to the clerk of superior court unless the governing instrument directs that the trustee shall be required to account to the clerk or unless the trustee is otherwise required by law to account to the clerk.

(b) If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be permitted to resign as trustee until a final account of the trust estate is filed with the clerk, and until the court shall be satisfied that the account is true and correct."

SECTION 5. G.S. 36A-31 reads as rewritten:

"**§ 36A-31. When bond required.**

A trustee ~~need not~~ shall provide bond to secure performance of the trustee's duties ~~unless required by the~~ if:

(1) The terms of the governing ~~instrument, reasonably requested by a beneficiary, or found by the clerk to be necessary~~ instrument require the trustee to provide bond;

(2) A beneficiary requests the trustee to provide bond and the clerk finds the request to be reasonable; or

(3) The clerk finds that it is necessary for the trustee to provide bond in order to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented.

However, in no event shall bond be required of a trustee, including a trustee appointed by the clerk, if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. ~~If the governing instrument is silent as to the requirement of a bond and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond requirement, the clerk's decision must be approved by a superior court judge unless all beneficiaries have been notified of the decision.~~ If bond is required, it shall be in a sum double the value of the personal property to come into the trustee's hands when bond is executed by a personal surety, and in an amount not less than one and one-fourth times the value of all personal property of the trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of the trustee's duties and for the payment to the persons entitled to receive all moneys, assets, or other things of value which may come into the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk."

SECTION 6. G.S. 36A-32 reads as rewritten:

"**§ 36A-32. Rights and duties devolve on successor.**

A successor ~~trustee~~ trustee, including a successor trustee appointed by the clerk, shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the governing ~~instrument~~ instrument or unless the order appointing the successor trustee provides otherwise."

SECTION 7. This act becomes effective January 1, 2004, and applies to all trusts created before or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 656
PROPOSED COMMITTEE SUBSTITUTE H656-CSSW-7 [v.4]

4/3/2003 9:39:14 AM

Short Title: Amend Trust Administration Act. (Public)

Sponsors:

Referred to:

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRUST ADMINISTRATION ACT AND TO MAKE RELATED CHANGES TO THE LAW GOVERNING ACCOUNTINGS IN TESTAMENTARY TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36A-23.1(a) reads as rewritten:

"(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings ~~to modify or terminate trusts.~~ governed by Article 11A of this Chapter. Except as provided in subdivision (3) of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this subsection are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(1a) To permit a trustee to resign or renounce; however, unless the trustee is required to account to the clerk, when the governing instrument names or provides a procedure to name a successor trustee, and the successor trustee is willing to serve, no trustee shall be required to initiate a proceeding to resign or renounce as trustee;

(2) To review trustees' fees pursuant to ~~G.S. 32-50~~ Article 5 of Chapter 32 of the General Statutes and review and settle interim or final accounts; and

(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or

nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by a superior court judge."

SECTION 2. G.S. 36A-24.1(b) reads as rewritten:

"(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts ~~is in~~ is:

(1) In the case of an inter vivos trust, in any county of this State in which the trust has its principal place of administration or where any beneficiary ~~resides.~~ resides; or

(2) In the case of a testamentary trust, in any county of this State in which the trust has its principal place of administration, where any beneficiary resides, or in which the testator's estate was administered."

SECTION 3. G.S. 36A-26.1 reads as rewritten:

"**§ 36A-26.1. Trust proceedings; necessary parties.**

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as an estate matter. All ~~known beneficiaries, trustees, or cotrustees~~ trustees and interested persons not joined as petitioners shall be joined as respondents. The clerk shall issue the summons for the respondents. The clerk may order ~~notification of~~ that additional persons be joined as respondents and shall issue the summons for the additional persons. ~~An order is valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to~~ The summons shall notify the respondents to appear and answer the petition ~~and to offer evidence against granting the petition. The clerk shall then proceed to hear~~ within 10 days after its service upon the respondents. The summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the clerk shall indicate on the summons by appropriate words that the summons is issued in an estate matter and not in a special proceeding or in a civil action. The clerk shall set the matter for hearing after the period for respondents to answer the petition has expired and shall provide notice of the hearing to respondents. At the hearing, petitioners and respondents may offer evidence for and against granting the petition, and the clerk shall decide and determine the matter as provided ~~for in G.S. 1-301.3.~~ in G.S. 1-301.3. An order entered by the clerk is valid as to all persons upon whom a summons is served."

SECTION 4. G.S. 36A-29 reads as rewritten:

"**§ 36A-29. ~~Final accounting before resignation.~~ Accounting to the clerk.**

(a) No trustee, including a trustee appointed by the clerk, shall be required to account to the clerk of superior court unless the governing instrument directs that the trustee shall be required to account to the clerk or unless the trustee is otherwise required by law to account to the clerk.

(b) If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be permitted to

resign as trustee until a final account of the trust estate is filed with the clerk, and until the court shall be satisfied that the account is true and correct."

SECTION 5. G.S. 36A-31 reads as rewritten:

"**§ 36A-31. When bond required.**

A trustee ~~need not~~ shall provide bond to secure performance of the trustee's duties ~~unless required by the~~ if:

(1) The terms of the governing ~~instrument, reasonably requested by a beneficiary, or found by the clerk to be necessary~~ instrument require the trustee to provide bond;

(2) A beneficiary requests the trustee to provide bond and the clerk finds the request to be reasonable; or

(3) The clerk finds that it is necessary for the trustee to provide bond in order to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented.

However, in no event shall bond be required of a trustee, including a trustee appointed by the clerk, if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. ~~If the governing instrument is silent as to the requirement of a bond and the clerk finds that no bond is necessary, or if the clerk excuses or reduces the bond requirement, the clerk's decision must be approved by a superior court judge unless all beneficiaries have been notified of the decision.~~ If bond is required, it shall be in a sum double the value of the personal property to come into the trustee's hands when bond is executed by a personal surety, and in an amount not less than one and one-fourth times the value of all personal property of the trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of the trustee's duties and for the payment to the persons entitled to receive all moneys, assets, or other things of value which may come into the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk."

SECTION 6. G.S. 36A-32 reads as rewritten:

"**§ 36A-32. Rights and duties devolve on successor.**

A successor ~~trustee~~ trustee, including a successor trustee appointed by the clerk, shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the governing ~~instrument~~ instrument or unless the order appointing the successor trustee provides otherwise."

SECTION 7. G.S. 36A-107 reads as rewritten:

"**§ 36A-107. Trustees in wills to qualify and file inventories and accounts.**

~~Trustees~~In any will creating a testamentary trust ~~appointed in any will~~ admitted to probate in this ~~State, into whose hands assets come under the provisions of the will,~~ State that directs that the trustee shall be required to account to the clerk, the trustee shall first qualify under the laws applicable to executors, and shall file in the office of the clerk of the county where the will is probated inventories of the assets ~~which~~ that come into ~~his~~ the trustee's hands and annual and final accounts ~~thereof,~~of the trust ~~such~~ that are the same as are required of executors and administrators. The power of the clerk to enforce the filing and ~~his~~the clerk's duties ~~in respect to auditing and approving~~ to audit and approve the trustee's inventories and accounts shall be the same as ~~in such cases.~~ the clerk's powers and duties with respect to the inventories and accounts of executors and administrators. This section shall not apply to the extent that any will makes a different provision. No trustee, including a trustee appointed by the clerk shall be required to account to the clerk unless the subject will directs that the trustee shall be required to account to the clerk or unless otherwise required by law."

SECTION 8. Sections 4 and 7 of this act are effective retroactively to January 1, 1978, and apply to all trusts in existence on or after that date for which no accounting has been filed and no proceeding to compel an accounting is instituted prior to January 1, 2004; for all other trusts, Sections 4 and 7 become effective January 1, 2004. The remainder of this act becomes effective January 1, 2004, and applies to all trusts created before or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 656 DATE 4/3/03

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE CSSW-7

(Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 32

2 ( ) WHICH CHANGES THE TITLE

3 by inserting between "shall" and "provide" the

4 phrase "direct the petitioners to".

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 656 A BILL TO BE ENTITLED AN ACT TO AMEND THE TRUST ADMINISTRATION ACT AND TO MAKE RELATED CHANGES TO THE LAW GOVERNING ACCOUNTINGS IN TESTAMENTARY TRUSTS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#),~~ ☐ which changes the title, unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on FINANCE.~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐. Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 623

Short Title:	Limit Handheld Phone Use While Driving.	(Public)
Sponsors:	Representatives Bowie, Luebke, McAllister (Primary Sponsors); Adams, Hunter, L. Johnson, Michaux, Parmon, Rayfield, and A. Williams.	
Referred to:	Judiciary IV.	

March 24, 2003

A BILL TO BE ENTITLED

AN ACT TO LIMIT USE OF HANDHELD PHONES WHILE DRIVING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-140.6. Cellular telephone or car phone; use of hands-free apparatus.**

(a) The driver of a motor vehicle shall not use a telephone while operating a motor vehicle on a street or highway in this State unless the telephone is equipped with, and the driver uses, an apparatus that allows the driver to talk and listen without holding the handset or receiver while operating the motor vehicle except to enable the apparatus, enter the telephone number, or hang up or turn off the telephone. As used in this section, 'telephone' means a cellular telephone, portable telephone, car phone, or other telephone that may be used from within a moving motor vehicle.

(b) This section shall not apply to any of the following:

(1) A peace officer.

(2) The driver of an ambulance, fire-fighting vehicle, or other emergency vehicle, while on duty.

(3) A taxicab driver on duty.

(4) Any person for medical emergency reasons.

(5) Any person in physical danger or who reasonably believes himself or herself or another to be in physical danger.

(c) Violation of this section shall be an infraction. Any person violating this section during the period from December 1, 2003, to February 29, 2004, shall be given a warning of violation only. Thereafter, for a first violation of this section, the person shall pay a penalty of twenty-five dollars ($25.00), and the infraction shall have no consequence other than payment of the penalty. A person found responsible for a first violation of this section may not be assessed court costs. For a second or subsequent violation of this section, the penalty for the infraction shall be determined pursuant to

G.S. 20-176. A person found responsible for a second or subsequent violation of this section shall be assessed court costs.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(e) The telephone of a person charged for this offense shall not be seized by a law enforcement officer.

(f) A person shall not be found responsible for a first violation of this section if, after being charged with the infraction, and prior to the date the person is required to appear in court, the person provides proof that he or she possesses a hands-free telephone."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HB 623:
Limit Handheld Phone Use While Driving

BILL ANALYSIS

Committee:	House JIV	**Introduced by:**	Rep. Bowie
Date:	April 3, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: HB 623 prohibits use of a handheld cellular phone while driving.

BILL ANALYSIS: HB 623 adds a new provision to Chapter 20 of the General Statutes prohibiting use of handheld cellular phones. Use of a phone is allowed if it is used with a device allowing hands free use except for enabling, dialing, or disconnecting. There are exceptions for police and other first responders on duty. There are also exceptions for taxi drivers on duty, medical emergencies, and persons in physical danger or who believe another to be in danger.

Violation is an infraction. Warnings are given until February 29, 2004. Thereafter, a first offense is a $25 fine without court costs. Second and subsequent offenses are punishable by a penalty of up to $100, and court costs are assessed. No license or insurance points may be assessed. A first violation is excused if the accused shows proof of having secured a hands free device prior to the court date.

The act is effective December 1, 2003 and applies to offenses committed on or after that date.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

April 8, 2003

The House Committee on Judiciary IV met on April 8, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Representatives Bowie, Haire, Goforth, Justus, and Kiser. Ex-Officio Member Representative Pete Cunningham attended along with Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Representative Haire was asked to explain HB 243 A BILL TO BE ENTITLED AN ACT TO RECLASSIFY STATUTORY RAPE OR SEXUAL OFFENSE OF A PERSON WHO IS THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD BY A DEFENDANT WHO IS MORE THAN FOUR YEARS BUT LESS THAN SIX YEARS OLDER. After much discussion, this bill was carried over to the next meeting.

Representative Haire then explained HB 244 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON AND TO REQUIRE THAT PHYSICIANS AND HOSPITALS REPORT CERTAIN TYPES OF BURN CASES, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION. A PCS for this bill was introduced and was adopted by the committee. Upon further review of this bill, staff realized this bill needed to be re-referred to the Appropriations Committee. This motion will be made at the meeting on April 10th.

Representative Haire then explained HB 352 AN ACT TO AMEND THE LAW REGARDING DRUG SCREENING AND ASSESSMENT OF A CRIMINAL DEFENDANT FOR CHEMICAL DEPENDENCY, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION. Lattie Baker with the Department of Corrections spoke in support of this bill. This bill received a favorable report.

Committee Chair

Carla Farmer

Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY IV — 4/8/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
SHERWOOD LAPPING	LAPPING & LAPPING & Hyp CARTHAGE
Bruce Cunningham	Attorney with FAMM
Mildred Spearman	Dept. of Correction
Karen Gottlieb	Sentencing Comm.
Lattie Baker	Dept of Correction
Ginny Hevener	Sentencing Comm.
S. Katzenelson	-11-
John Madler	-11-
Lou Rubert	CJPC
James W. Billy Smith	AARP - Raleigh
Peg Dorer	Conference of DAs

VISITOR REGISTRATION SHEET

JUDICIARY IV — 4/8/03

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colon Willoughby	Wake Co. D.A. Office
Jo McCants	AOC

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

April 8, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 242	Amend Habitual Felon Law	Rep. Haire
HB 243	Reclassify Statutory Rape/Sex Offense	Rep. Haire
HB 244	Arson Offenses-Sent. Commission	Rep. Haire
HB 352	Drug Screening & Assessment	Rep. Haire

H 1

HOUSE BILL 243

Short Title:	Reclassify Statutory Rape/Sex Offense.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO RECLASSIFY STATUTORY RAPE OR SEXUAL OFFENSE OF A PERSON WHO IS THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD BY A DEFENDANT WHO IS MORE THAN FOUR YEARS BUT LESS THAN SIX YEARS OLDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.7A(b) reads as rewritten:

"(b) A defendant is guilty of a Class ~~C~~ F 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."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 243:
Reclassify Statutory Rape/Sex Offense.-AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 8, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 243 reclassifies the statutory rape or sexual offense of a person who is 13, 14, or 15 years old by a person is who more than four years but less than 6 years older from a Class C felony to a Class F felony. The act would become effective December 1, 2003 and would apply to offenses committed on or after that date.

CURRENT LAW: There are two "degrees" of statutory rape in North Carolina. A person who engages in vaginal intercourse or other sexual act with a child who is 13, 14, or 15 years old and who is at least six years older than the child is guilty of a Class B1 felony. A person who engages in the same type of act with a child who is 13, 14, or 15 years old, and who is more than four but less than six years older is guilty of a Class C felony. House Bill 243 deals only with the latter type of statutory rape. In fiscal year 2001-2002, there were six convictions for the Class C type of statutory rape.

The presumptive minimum sentence for a defendant with no prior convictions who is convicted of a Class C felony is 58 months active (4.8 years).[1] The maximum that a defendant could serve for this offense is 261 months (21.8 years). This maximum would apply to a defendant with the highest level of prior convictions and where there are aggravating circumstances involved in the offense.

BILL ANALYSIS: House Bill 243 reclassifies the statutory rape or sexual offense of a 13, 14, or 15 years old by a person who is more than four but less than six years older from a Class C to a Class F felony. The presumptive minimum punishment for a Class F felony is 13 months, which may involve either an active or an intermediate punishment.[2] The maximum punishment for a Class F felony is 59 months (4.9 years). This maximum would apply to a defendant with the highest level of prior convictions and where there are aggravating circumstances involved in the offense.

BACKGROUND: In January 2001, the Sentencing Commission, in conjunction with the Department of Correction's Research and Planning Office submitted prison population projections to the General Assembly, which showed that there would be a shortage of prison beds as of June 30, 2002, and that 7,600 additional prison beds would be needed by Fiscal Year 2010. During the 2001 Session, the General Assembly approved the building of three prisons. The 2001 General Assembly also directed the North Carolina Sentencing and Policy Advisory Commission to study and review the State's sentencing laws in view of the projected growth in the prison population by 2010. Areas of review included the classification of offenses and offenders, the relationship of the sentence length to the offense, and the sentence dispositions available to judges. The Sentencing Commission responded by forming two subcommittees to study these issues. Final reports of the subcommittees' work were submitted to the full

[1] Under structured sentencing, a judge selects a minimum sentence from within a minimum sentence range, after taking into consideration any mitigating or aggravating factors. The minimum sentence will then have a corresponding maximum sentence. The 58-month minimum sentence reflects the shortest possible sentence from within the minimum sentence presumptive range. The corresponding maximum for the 58-month minimum is 79 months (6.6 years).

[2] The corresponding maximum punishment for a defendant who is sentenced to 13 months minimum is 16 months.

Commission and the Commission adopted its final report in March 15, 2002. House Bill 243 is one of several recommendations contained in the Commission's final report.

During its study, the Commission identified the classification of the offense of statutory rape or sexual offense of a person who is 13, 14, or 15 years old as one warranting review. Class C felonies are those which reasonably tend to result in or do result in serious long-term personal injury or serious long-term or widespread societal injury, such as second degree rape or sexual offense, assault with a deadly weapon with intent to kill, first-degree kidnapping, and child abuse inflicting serious injury. Several members of the Commission stated that in their experience the defendant and the victim were usually both teenagers and the relationship was consensual; their age is the element that triggers the offense. The Commission decided that this offense would be more appropriately classified as a Class F felony where offenses reasonably tend to result or do result in significant personal injury or serious societal injury.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 244

Short Title:	Arson Offenses-Sent. Commission.-AB	(Public)
Sponsors:	Representatives Haire; and Glazier.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON AND TO REQUIRE THAT PHYSICIANS AND HOSPITALS REPORT CERTAIN TYPES OF BURN CASES, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-58 reads as rewritten:

"**§ 14-58. Punishment for arson.**

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a Class D felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a Class ~~G~~ E felony."

SECTION 2. G.S. 90-21.20(b) reads as rewritten:

"(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, ~~and~~ every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of ~~violence.~~violence, and every case of a burn which covers approximately ten percent (10%) or more of the patient's body if it appears to the physician or surgeon treating the case that a criminal act was involved."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 244:
Arson Offenses - Sen. Commission - AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 8, 2003	**Summary by:**	Dianna Jessup
Version:	PCS H244-CSSW-8		Committee Counsel

SUMMARY: ***House Bill 244 is a recommendation of the North Carolina Sentencing and Policy Advisory Commission. The bill would increase the penalty for second-degree arson by making it punishable as a Class E felony rather than a Class G felony. The bill would add certain burn cases to the types of injuries that physicians and hospitals must report to local law enforcement. The act would become effective December 1, 2003 and apply to offenses committed on or after that date.***

The PCS would make two technical changes: change "patient's" to "person's" on line 25 to make the language consistent with the rest of the statute, and to change "which" to "that" on line 24.

CURRENT LAW: Under G.S. 14-58, arson is the willful and malicious burning of the dwelling house of another. If someone is present inside the dwelling at the time of the burning, the offense is first-degree arson – a Class D felony. If the dwelling was unoccupied at the time of the burning, the offense is second-degree arson – a Class G felony. The presumptive minimum sentence for a Class G felony, assuming no prior convictions, is 10-13 months' intermediate or active punishment.

Physicians and hospitals are required by statute to report certain wounds, injuries or illnesses to local law enforcement. Currently, these include bullet wounds, gunshot wounds, and illnesses from poisoning (whether or not it appears a criminal act was involved), and knife wounds (if it appears to the physician that a criminal act was involved) or grave injuries or illnesses if it appears to the physician or surgeon treating the case that the wound or illness resulted from a criminal act of violence. The statute prescribes what information must be reported. Physicians, hospitals, and other persons participating in good faith in making the required report are immune from civil or criminal liability that might arise from making the report.

BILL ANALYSIS: *Section 1* of House Bill 244 would increase the penalty for second-degree arson by making it punishable as a Class E felony rather than a Class G felony. The presumptive minimum sentence for a Class E felony, assuming no prior convictions, is 20-25 months' intermediate or active punishment. The bill would essentially double the length of the punishment for the offense of second-degree arson. Raising the offense class would also have the effect of requiring the imposition of an active sentence at Prior Record Level III (5-8 points), rather than at a Prior Record Level V (15-18 points).

Section 2 of the bill would add to the reportable injuries for physicians and hospitals every case of a burn that covers approximately 10% of more of the person's body if, as in the case of knife wounds, it appears to the treating physician or surgeon that a criminal act was involved.

Section 3 would make the bill effective December 1, 2003 and apply to offenses committed on or after that date.

BACKGROUND: In the studies bill last session (S.L. 2001-491, Sec. 21.2), the General Assembly authorized the North Carolina Sentencing and Policy Advisory Commission to "study the State's criminal laws with regard to arson and other burnings and whether conforming changes to the statutory medical reporting requirements regarding burn injuries that appear to result from a criminal act are needed." In the report to the General Assembly of the results of its study, the Commission recommended raising the penalty for second-degree arson from a Class G to a Class E felony. According to the felony offense classification criteria established by the Commission, Class G felonies are those which "reasonably tend to result or do result in serious property loss: loss from the person or from the person's dwelling". The Commission thought that the punishment for the burning of an unoccupied dwelling (second-degree arson) was not in line with the punishment for offenses associated with the burning of other buildings, which are classified as Class F felonies. The Commission thought that the burning of a person's dwelling, even though it was unoccupied, might "reasonably tend to result in" serious personal mental injury and, therefore, should be classified as a Class E felony. The Commission also thought that the medical reporting statute should include burn injuries to assist law enforcement officers investigating arson cases. The Commission suggested giving physicians and hospitals discretion to report a burn case.

H244-SMSW-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 352

Short Title:	Drug Screening & Assessment.-AB (Public)
Sponsors:	Representative Haire.
Referred to:	Judiciary IV.

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING DRUG SCREENING AND ASSESSMENT OF A CRIMINAL DEFENDANT FOR CHEMICAL DEPENDENCY, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343 is amended by adding a new subsection to read:

"(b3) Screening and assessing for chemical dependency. – A defendant ordered to submit to a period of residential treatment in the Drug Alcohol Recovery Treatment program (DART) operated by the Department of Correction must undergo a screening to determine chemical dependency. If the screening indicates the defendant is chemically dependent, the court shall order an assessment to determine the appropriate level of treatment. The assessment may be conducted either before or after the court imposes the condition, but participation in the program shall be based on the results of the assessment."

SECTION 2. G.S. 15A-1351(h) is repealed.

SECTION 3. G.S. 143B-262.1(h) reads as rewritten:

"(h) Admission priorities shall be established as follows:

~~(1) Court recommendation.~~

(2) Evaluation and referral from reception and diagnostic centers.

(3) General staff referral.

(4) Self-referral.

(i) The Program shall include extensive follow-up after the period of intensive treatment. There will be specific plans for each departing inmate for follow-up, including active involvement with Alcoholics Anonymous, community resources, and personal sponsorship."

SECTION 4. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 352 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING DRUG SCREENING AND ASSESSMENT OF A CRIMINAL DEFENDANT FOR CHEMICAL DEPENDENCY, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

April 10, 2003

The House Committee on Judiciary IV met on April 10, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Haire, Goforth, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Senator Hartsell was recognized to explain SB 784 A BILL TO BE ENTITLED AN ACT CONCERNING BONDING OF CERTAIN JUDGMENTS. After a brief explanation this bill received a favorable report.

Chairman Munford informed the committee of a change that had occurred with HB 244 AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON AND TO REQUIRE THAT PHYSICIANS AND HOSPITALS REPORT CERTAIN TYPES OF BURN CASES, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION. This bill needed to be re-referred to the Appropriations committee. A PCS to this bill previously received a favorable review and now will be reported out and go to the Appropriations committee.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY IV — April 10, 2003

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sgt Sanders	WCSR
Roger Bone	Bone & Assoc.
Gene Ainsworth	RJR
[illegible]	Altria
Amy Dobson	NC State Watch.
Bruce Cunningham	FAMM
Pat Dorer	Conference of D. As
John Kuffy	DA - 21st
Allwood Lapping	Lapping & Lapping & Hyp Carthage
Nancy Thompson	NMC
Lloyd E. Chad	FAMM
Elizabeth Dutton	Bone & Assoc.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

April 10, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 784	**Judgment Bonding Legislation**	**Rep. Munford**
HB 241	**Amend Drug Trafficking Law**	**Rep. Haire**
HB 242	**Amend Habitual Felon Law**	**Rep. Haire**
HB 243	**Reclassify Statutory Rape/Sex Offense**	**Rep. Haire**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 241

Short Title:	Amend Drug Trafficking Laws.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DRUG TRAFFICKING LAWS, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h) reads as rewritten:

"(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article. Sentences imposed pursuant to this subsection may not be suspended and must include a minimum and maximum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender, as specified in G.S. 15A-1340.17.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of ~~10~~5 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of ~~10~~5 pounds, but less than 50 pounds, such person shall be punished as a Class ~~H~~ F felon ~~and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than ~~2,000~~ 500 pounds, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is ~~2,000~~ 500 pounds or more, but less than ~~10,000~~ 5,000 pounds, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

d. Is ~~10,000~~ 5,000 pounds or more, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or

identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Repealed by Session Laws 1999-370, s. 1.

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine or amphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class ~~E~~ C felon ~~and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class ~~C~~ B1 felon ~~and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months~~ and, in addition to

an active punishment in the State's ~~prison and~~ prison, shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class ~~E~~ C felon ~~and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class ~~C~~ B1 felon ~~and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84~~

~~months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in MDA/MDMA." If the quantity of the substance or mixture involved:

a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred fifty thousand dollars ($250,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge,

provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

SECTION 2. G.S. 90-95(i) reads as rewritten:

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy or attempt to commit any of the offenses described in subsection (h) of this section.

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 241:
Amend Drug Trafficking Laws-AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 15, 2003	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 241 is a recommendation of the North Carolina Sentencing and Policy Advisory Commission. The bill would reclassify drug trafficking offenses two classes higher than their current classification, require active punishments for persons convicted of drug trafficking offenses, lower the threshold amounts for trafficking in marijuana, and require active punishment for attempted trafficking offenses. The act would become effective December 1, 2003 and apply to offenses committed on or after that date.

CURRENT LAW: Selling, manufacturing, delivering, transporting or possessing a statutorily prescribed amount of certain controlled substances is considered "drug trafficking". Drug trafficking offenses are currently classified as Class C, D, E, F, G and H felonies, depending on the controlled substance and the amount, and convictions carry an active sentence. However, the classifications do not relate to the punishments available for these felony classifications under structured sentencing because these offenses are subject to predetermined mandatory sentences that do not allow a judge to take into account the offender's prior record and any aggravating or mitigating factors.

For trafficking in marijuana, the threshold amounts and corresponding class offenses are as follows:

- 10 to less than 50 pounds – Class H
- 50 to less than 2,000 pounds – Class G
- 500 to less than 10,000 pounds – Class F
- 10,000 pounds or more – Class D

Conspiracy to drug traffic carries the same mandatory sentence as drug trafficking. On the other hand, persons convicted of attempted drug trafficking are sentenced according to the structured sentencing felony punishment chart.

BILL ANALYSIS: House Bill 241 would reclassify the drug trafficking offenses two classes higher and put the offenses under structured sentencing. See the chart attached. This would make the sentences available in the first prior record level approximately the same as the current mandatory sentence for each of these offenses and would permit the judge to take into account the offender's prior record and any aggravating or mitigating factors in the case. According to the North Carolina Sentencing and Policy Advisory Commission, more drug trafficking offenders will be eligible for the firearm enhancement and for violent habitual felon status, and almost all offenders convicted of drug trafficking offenses will receive post-release supervision as a result of this reclassification.

All drug trafficking offenses currently receive an active punishment. Incorporating the offenses into structured sentencing would result in some offenses being eligible for an intermediate punishment (depending on prior record level). The bill would continue the requirement for an active punishment.

The bill would lower the threshold amounts for trafficking in marijuana as follows:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

HOUSE BILL 242

Short Title:	Amend Habitual Felon Law.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PUNISH HABITUAL FELONS THREE CLASSES HIGHER THAN THE OFFENSE CLASSIFICATION FOR THE PRINCIPAL OFFENSE, BUT IN NO CASE HIGHER THAN CLASS C, AND REQUIRE AN ACTIVE SENTENCE, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-7.6 reads as rewritten:

"**§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced as a felon three classes higher than the principal felony, but in no case higher than a Class C felon. Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, the felon shall be sentenced to an active punishment. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HB 242:
Amend Habitual Felon Law

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 8, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: HB 242 amends G.S. 14-7.6 to require habitual felons to be sentenced three classes higher than the felony that made them eligible to be sentenced as a habitual felon, not exceeding sentencing as a Class C felon. Any sentence must be active, meaning the person must be imprisoned.

CURRENT LAW: Currently, a person sentenced as a habitual felon, generally upon conviction of the fourth felony, is sentenced for that felony as a Class C felon, unless the crime would have required a higher sentence. Presumptive sentences for Class C convictions range from 58-73 months to 135-168 months, depending on prior convictions.

BACKGROUND: The NC Sentencing and Policy Advisory Commission recommended this bill. The effect would be to lower prison time for some fourth felony convictions, and thus lower prison population.

The act is effective December 1, 2003, and applies to offenses committed on or after that date.

Most Serious Crime Associated with Habitual Felon Convictions by Offense Class and Offense FY 2001/02 Felonies

Offense Class	Offense	Total
Class A	First Degree Murder	1
	Subtotal	1
Class B1	1st Degree Sex Offense Child	1
	Subtotal	1
Class B2	Attempted Murder	1
	Attempted 1st Degree Rape	1
	Subtotal	2
Class C	1st Degree Kidnapping	1
	2nd Degree Rape	1
	2nd Degree Sex Offense	1
	Other Robbery Offense	1
	AWDWIKISI	3
	Other Assault Offense	1
	Other Drug Offense	3
	Habitual Felon*	15
	Other Property Offense	1
	Subtotal	27
Class D	Voluntary Manslaughter	3
	Attempted 2nd Degree Rape	1
	Att. Robbery - Dangerous Weapon	4
	Robbery - Dangerous Weapon	30
	1st Degree Arson	1
	1st Degree Burglary	4
	Subtotal	43

Offense Class	Offense	Total
Class E	2nd Degree Kidnapping	5
	AWDW Serious Injury	7
	Assault LEO/PO/Other w/ Firearm	1
	Attempted 1st Degree Burglary	2
	Possess C.S.w/in 300 FT of School	1
	Other Assault Offense	1
	Other Impaired Driving Offense	1
	Subtotal	18
Class F	Involuntary Manslaughter	2
	Indecent Liberties with Child	6
	Fail to Register as Sex Offender	3
	AWDW - Government Official	7
	Trafficking in Cocaine	3
	Habitual Impaired Driving	8
	Subtotal	28
Class G	Common Law Robbery	26
	2nd Degree Burglary	7
	Other Property Offense	1
	Sell Cocaine	35
	Sell Schedule I C.S.	1
	Sell Schedule II C.S.	5
	Conspire Sell Cocaine	2
	Trafficking in Cocaine	4
	Other Drug Offense	24

SOURCE: NC Sentencing Commission, Fiscal Year 2001/02 Statistical Report

Most Serious Crime Associated with Habitual Felon Convictions by Offense Class and Offense (continued) FY 2001/02 Felonies

Offense Class	Offense	Total
Class G (cont.)	Possession of Firearm by Felon	20
	Subtotal	125
Class H	Attempted Common Law Robbery	2
	Habitual Misdemeanor Assault	3
	Breaking and/or Entering	130
	Felony Larceny	21
	Larceny of a Firearm	2
	Larceny by Anti-Inventory Device	1
	Larceny from the Person	4
	Possession of Stolen Goods	23
	Larceny after Break/Enter	4
	Larceny of Motor Vehicle	1
	Obtain Property by False Pretenses	28
	Financial Identity Fraud	2
	Other Fraud Offense	3
	Embezzlement	1
	Possess C.S. Prison/Jail Premises	2
	Sell Marijuana	2
	Sell Schedule III C.S.	1
	Deliver Cocaine	1
	Conspire Deliver Cocaine	1
	PWIMSD Schedule I Contr. Subst.	1
	PWIMSD Schedule II C. S.	4
	Trafficking in Marijuana	1
	Manufacture Cocaine	1
	PWISD Cocaine	31
	PWIMSD Cocaine	6

Offense Class	Offense	Tota
Class H (cont.)	PWIMSD Heroin	1
	Escape from State Prison	2
	Possess Stolen Motor Vehicle	5
	Hit/Run Personal Injury	1
	Flee/Elude Arrest W/ Motor Veh.	14
	Subtotal	299
Class I	Possession of Burglary Tools	2
	Break/Enter Motor Vehicle	16
	Other Larceny Offense	1
	Forgery of Instrument	7
	Uttering Forged Instrument	7
	Uttering Forged Endorsement	1
	Financial Card Theft	3
	Financial Card Fraud	1
	Obtain Contr. Subst. by Fraud	2
	Sell or Deliver Counterfeit C.S.	3
	Possess Schedule I C.S.	1
	Possess Schedule II C.S.	10
	Manufacture Marijuana	1
	PWISD Marijuana	12
	PWIMSD Marijuana	2
	Felony Possession of Cocaine	22
	Possess Heroin	1
	Other Drug Offense	2
	Subtotal	94
TOTAL		638

* Of the 638 habitual felon convictions, the most serious associated conviction could not be determined for 15 convictions. These 15 convictions are represented in the table as Class C habitual felon convictions.

SOURCE: NC Sentencing Commission, Fiscal Year 2001/02 Statistical Report

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 244 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON AND TO REQUIRE THAT PHYSICIANS AND HOSPITALS REPORT CERTAIN TYPES OF BURN CASES, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill (#), ~~☐ which changes the title~~, unfavorable as to (the original bill) ~~(Committee Substitute Bill #)~~, ~~(and recommendation that the committee substitute bill #)~~ be re-referred to the Committee on Appropriations.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 243

Short Title:	Reclassify Statutory Rape/Sex Offense.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO RECLASSIFY STATUTORY RAPE OR SEXUAL OFFENSE OF A PERSON WHO IS THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD BY A DEFENDANT WHO IS MORE THAN FOUR YEARS BUT LESS THAN SIX YEARS OLDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.7A(b) reads as rewritten:

"(b) A defendant is guilty of a Class ~~C~~ F 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."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 243:
Reclassify Statutory Rape/Sex Offense.-AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 8, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 243 reclassifies the statutory rape or sexual offense of a person who is 13, 14, or 15 years old by a person is who more than four years but less than 6 years older from a Class C felony to a Class F felony. The act would become effective December 1, 2003 and would apply to offenses committed on or after that date.

CURRENT LAW: There are two "degrees" of statutory rape in North Carolina. A person who engages in vaginal intercourse or other sexual act with a child who is 13, 14, or 15 years old and who is at least six years older than the child is guilty of a Class B1 felony. A person who engages in the same type of act with a child who is 13, 14, or 15 years old, and who is more than four but less than six years older is guilty of a Class C felony. House Bill 243 deals only with the latter type of statutory rape. In fiscal year 2001-2002, there were six convictions for the Class C type of statutory rape.

The presumptive minimum sentence for a defendant with no prior convictions who is convicted of a Class C felony is 58 months active (4.8 years).[1] The maximum that a defendant could serve for this offense is 261 months (21.8 years). This maximum would apply to a defendant with the highest level of prior convictions and where there are aggravating circumstances involved in the offense.

BILL ANALYSIS: House Bill 243 reclassifies the statutory rape or sexual offense of a 13, 14, or 15 years old by a person who is more than four but less than six years older from a Class C to a Class F felony. The presumptive minimum punishment for a Class F felony is 13 months, which may involve either an active or an intermediate punishment.[2] The maximum punishment for a Class F felony is 59 months (4.9 years). This maximum would apply to a defendant with the highest level of prior convictions and where there are aggravating circumstances involved in the offense.

BACKGROUND: In January 2001, the Sentencing Commission, in conjunction with the Department of Correction's Research and Planning Office submitted prison population projections to the General Assembly, which showed that there would be a shortage of prison beds as of June 30, 2002, and that 7,600 additional prison beds would be needed by Fiscal Year 2010. During the 2001 Session, the General Assembly approved the building of three prisons. The 2001 General Assembly also directed the North Carolina Sentencing and Policy Advisory Commission to study and review the State's sentencing laws in view of the projected growth in the prison population by 2010. Areas of review included the classification of offenses and offenders, the relationship of the sentence length to the offense, and the sentence dispositions available to judges. The Sentencing Commission responded by forming two subcommittees to study these issues. Final reports of the subcommittees' work were submitted to the full

[1] Under structured sentencing, a judge selects a minimum sentence from within a minimum sentence range, after taking into consideration any mitigating or aggravating factors. The minimum sentence will then have a corresponding maximum sentence. The 58-month minimum sentence reflects the shortest possible sentence from within the minimum sentence presumptive range. The corresponding maximum for the 58-month minimum is 79 months (6.6 years).

[2] The corresponding maximum punishment for a defendant who is sentenced to 13 months minimum is 16 months.

Commission and the Commission adopted its final report in March 15, 2002. House Bill 243 is one of several recommendations contained in the Commission's final report.

During its study, the Commission identified the classification of the offense of statutory rape or sexual offense of a person who is 13, 14, or 15 years old as one warranting review. Class C felonies are those which reasonably tend to result in or do result in serious long-term personal injury or serious long-term or widespread societal injury, such as second degree rape or sexual offense, assault with a deadly weapon with intent to kill, first-degree kidnapping, and child abuse inflicting serious injury. Several members of the Commission stated that in their experience the defendant and the victim were usually both teenagers and the relationship was consensual; their age is the element that triggers the offense. The Commission decided that this offense would be more appropriately classified as a Class F felony where offenses reasonably tend to result or do result in significant personal injury or serious societal injury.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 784

Short Title:	Judgment Bonding Legislation.	(Public)
Sponsors:	Senators Hartsell, Garrou, Berger, Hagan, Horton; and Rand.	
Referred to:	Judiciary II.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT CONCERNING BONDING OF CERTAIN JUDGMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-289 reads as rewritten:

"**§ 1-289. Undertaking to stay execution on money judgment.**

(a) If the appeal is from a judgment directing the payment of money, under any legal theory, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the ~~appeal.~~appeal, except that the total bond or undertaking that is required of all appellants shall not exceed twenty-five million dollars ($25,000,000) regardless of the value of the judgment. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from;

except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

~~(b) If the appellee in a civil action obtains a judgment that includes an award of noncompensatory damages of twenty-five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking for noncompensatory damages that the appellant is required to execute to stay execution of the judgment during the period of the appeal shall be twenty-five million dollars ($25,000,000). For the purposes of this subsection, the term "noncompensatory damages" means that portion of money damages other than compensatory damages or in excess of compensatory damages. Except as expressly provided in this subsection, this subsection shall not affect or limit the amount of the undertaking otherwise required by subsection (a) of this section.~~

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under subsection ~~(b)~~(a) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitation in subsection ~~(b)~~(a) of this section shall not apply and the appellant shall be required to make an undertaking in the full ~~amount otherwise required by this section.~~amount."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 784:
Judgment Bonding Legislation

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Hartsell
Date:	April 7, 2003	**Summary by:**	Kory J. Goldsmith Committee Counsel
Version:	Proposed Comm. Substitute S784-CSRC-14[v.1]		

SUMMARY: ***SB 784 allows the unsuccessful party ("judgment debtor") in an out-of-State civil action to post a bond in North Carolina to stay (i.e., postpone) the execution of a judgment for money damages. The act limits to $25 million the maximum amount of a bond needed to stay execution of an out-of-State or in-State judgment.***

CURRENT LAW: Currently, judgment debtors are not allowed to post a bond in North Carolina to stay enforcement of a foreign judgment (i.e., one that originates in a court of another state or in a federal court) for money damages, except for that portion of the judgment that involves punitive (non-compensatory) damages. If the judgment is for punitive damages of $25 million or more, then the judgment debtor may post a bond of $25 million to stay execution.

North Carolina Judgments: A judgment debtor has 30 days from the entry of a civil judgment in North Carolina to file an appeal from that judgment. The trial court may issue a stay of the enforcement of a judgment pending appeal provided that a bond in an amount equal to the amount of judgment is posted, unless the damage award is for punitive damages. Bonds to stay enforcement of the punitive damages portion of a North Carolina judgment are limited to a maximum amount of $25 million. The limitation of the bond for punitive damages is not applicable if the judgment creditor proves by the preponderance of the evidence that the judgment debtor, for the purpose of evading the judgment, is dissipating assets, secreting assets, or diverting assets other than in the ordinary course of business outside the jurisdiction of North Carolina courts or the federal courts.

When a stay is not otherwise allowable by the trial court, the appellate court may grant a writ of supersedeas to allow a stay pending appeal without the required bond when "extraordinary circumstances make it impracticable to obtain a stay by deposit of security."

Foreign Judgments: North Carolina has adopted a modified version of the Uniform Enforcement of Foreign Judgments Act ("Uniform Act"), which provides that a final, unsatisfied foreign judgment is treated as any other judgment entered in this State (i.e., it constitutes a judgment lien). However, the enforcement or execution of the foreign judgment is stayed without bond for at least 30 days after notice of the filing is served on the judgment debtor in order to allow the debtor to raise defenses against the enforcement of the judgment in North Carolina. These defenses include (i) the judgment debtor has appealed from the foreign judgment; (ii) the foreign court that rendered the judgment has stayed enforcement of the foreign judgment; or (iii) other grounds exist, including that the issues in the underlying case were not fully and fairly litigated, for which relief from the judgment would be allowed in North Carolina. The judgment creditor (i.e., the successful party in the underlying civil action) has the burden of proving that the foreign judgment is entitled to full faith and credit. Except for the $25 million cap on the bond for punitive damage awards, North Carolina does not require the posting of a bond in the foreign state or in this state to stay the execution of a foreign judgment in North Carolina pending an appeal in the other state. Nevertheless, there is caselaw that requires the posting of a bond to stay enforcement of a foreign judgment pending an appeal in the foreign court.

In 2000, the General Assembly adopted Article 17A as an exception to the Uniform Act. Article 17A directs courts to stay enforcement of the foreign judgments for non-compensatory damages in North Carolina until all available appeals in the foreign state are concluded or the time for taking all appeals has expired, upon the posting of a bond as required under G.S. 1-289.

As an alternative to enforcing a judgment under the Uniform Act, the judgment creditor also has a common law right to bring a civil action in North Carolina to enforce the foreign judgment here. Presumably, the decision of

the North Carolina court in this process may be appealed and a supersedeas bond posted to stay execution pending the appeal of the North Carolina court's decision to enforce the judgment.

BILL ANALYSIS:

Section 1 repeals Article 17A of Chapter 1C of the General Statutes (see Page 3 for copy of Article 17A). This is the exception to the Uniform Act adopted in 2000 and only applied to that portion of a foreign judgment that involved punitive (non-compensatory) damages. It required that the court stay enforcement of the appeal upon the posting of a bond by the judgment debtor under G.S. 1-289.

Section 2 amends G.S. 1C-1705 of the Uniform Act. It provides that the North Carolina court shall stay enforcement of the foreign judgment if:

- The judgment has been stayed by the court that rendered it; or
- The appeal is pending or the time for appeal has not expired and the judgment debtor posted a bond in the amount required under G.S. 1-289.

Section 3 amends G.S. 1-289 to provide if a party may stay execution of a judgment of any sort that is in excess of $25 million dollars (including a foreign judgment) by posting a bond in an amount not to exceed $25 million.

CONSTITUTIONAL ISSUES:

Full Faith and Credit: Query whether a maximum amount on the bond that is posted to stay execution of a money damages foreign judgment would violate the Full Faith and Credit clause of the U.S. Constitution. Article IV, Section 1, of the U.S. Constitution provides that "Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The U.S. Supreme Court has said this clause demands that a final judgment in one state, if rendered by a court that had both jurisdiction and competence, is preclusive on all substantive claims and issues in all other states. However, the enforcement of a foreign judgment depends upon the procedural laws[1] of the state in which the judgment is being enforced. The act establishes procedural rules, applicable to all litigants, for the enforcement of judgments in this State. Those rules provide for the enforcement of judgments to assure that litigants' due process rights are protected while the enforcement actions are being pursued in North Carolina. The act does not deny recognition to the substantive effect of the final judgment from the foreign state.

Equal Protection: Query whether the act unconstitutionally treats wealthy litigants and large enterprises differently than smaller ones. The 14th Amendment of the U.S. Constitution prohibits a state from denying any person within its jurisdiction the equal protection of the laws. To determine when discrimination violates the Equal Protection clause, the U.S. Supreme Court has set up a two-tiered system of scrutiny for alleged discrimination. It will employ *strict scrutiny* where the alleged discrimination involves either a "suspect class" [2] or a "fundamental right". [3] If strict scrutiny applies, the discrimination can be justified only if it is narrowly tailored to satisfy a compelling State interest. Discrimination not involving a suspect class or a fundamental right will be given ordinary scrutiny and can be justified if it has a rational relation to a public purpose. The U.S. Supreme Court has rejected the idea that wealth or lack thereof is a suspect class. In the case of this act, there does not appear to be a suspect class or fundamental right, so the rational relation test would apply. It could be argued that a good public policy reason for the $25 million limitation on money judgments bonds is that businesses large enough to be protected by the limitation are likely to have a large impact on the workforce and economy of the State.

EFFECTIVE DATE: The act is effective when it becames law. It applies to judgments filed or entered in North Carolina on or after that date, without regard to the date on which a foreign judgment is rendered in the foreign state.

S784-SMRC-001 *This summary was substantially contributed to by former and current Research Division attorneys including Erika Churchill, Bill Gilkeson, Wendy Graf, Trina Griffin, and Barbara Riley.*

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[1] *In the 1998 case of Baker v. General Motors, 522 U.S. 222, (1998), Justice Ginsburg cited an earlier decision by saying, "Full faith and credit does not require that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments."*

[2] *Those involving race and national origin. Gender is treated as almost a suspect class, perhaps subject to a middle level of scrutiny.*

[3] *Fundamental rights include the rights to vote, to interstate travel, and to be free of wealth distinction in the criminal process.*

ARTICLE 17A.

Enforcement of Foreign Judgments for Noncompensatory Damages.

§ 1C-1750. Definitions.

As used in this Article:

(1) "Action" means (i) an action under Article 17 of this Chapter or (ii) any civil action in this State to enforce a foreign judgment in this State.

(2) "Foreign judgment" means any judgment, decree, or order of a court of the United States or any other state.

§§ 1C-1751 through 1C-1759. Reserved for future codification purposes.

§ 1C-1760. Enforcement of foreign judgments for noncompensatory damages.

In any action in this State to enforce a foreign judgment directing the payment of money damages other than compensatory damages, or in excess of the compensatory damages, if the judgment debtor shows the court that an appeal from the foreign judgment is pending or that the time for taking an appeal has not expired, the court shall stay enforcement of the foreign judgment until all available appeals are concluded or the time for taking all appeals has expired, upon requiring the same undertaking by the judgment debtor as would be required in the case of a judgment entered by a court of this State, subject to G.S. 1-289.

§§ 1C-1761 through 1C-1799. Reserved for future codification purposes.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
S.B. 784 A BILL TO BE ENTITLED AN ACT CONCERNING BONDING OF CERTAIN JUDGMENTS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

April 15, 2003

The House Committee on Judiciary IV met on April 15, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Bowie, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Representative Justus was called to explain HB 880 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A BLOOD ANALYSIS REPORT SENT DIRECTLY TO THE CLERK OF SUPERIOR COURT MAY BE USED AS THE BASIS FOR THE CIVIL REVOCATION OF A DRIVERS LICENSE. The original bill was amended and a PCS was introduced and received a favorable report, unfavorable as to the original bill.

Representative Glazier was called on to explain HB 689 A BILL TO BE ENTITLED AN ACT CONFORMING RULE 103 OF THE NORTH CAROLINA RULES OF EVIDENCE TO THE CORRESPONDING FEDERAL RULE. This bill received a favorable report.

Representative Haire was called upon to explain HB 243 A BILL TO BE ENTITLED AN ACT TO RECLASSIFY STATUTORY RAPE OR SEXUAL OFFENSE OF A PERSON WHO IS THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD BY A DEFENDANT WHO IS MORE THAN FOUR YEARS BUT LESS THAN SIX YEARS OLDER. This bill received a favorable report.

Representative Haire was again called upon to explain HB 242 A BILL TO BE ENTITLED AN ACT TO PUNISH HABITUAL FELONS THREE CLASSES HIGHER THAN THE OFFENSE CLASSIFICATION FOR THE PRINCIPAL OFFENSE, BUT IN NO CASE HIGHER THAN CLASS C, AND REQUIRE AN ACTIVE SENTENCE, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION. Locke Clifford and Sherwood Lapping were both recognized and allowed to speak on this bill. Both gave the bill a favorable review. This discussion will be continued at the meeting to be held on Tuesday, April 22nd.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary IV — Name of Committee

4.15.03 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	NC Sentencing Commission
Ginny Hevener	" " "
S. Katzenelson	"
LOCKE CLIFFORD	" "
SHERWOOD WAPPING	ATTY at LAW CARTHAGE
[illegible]	FAMM
Bill Wilson	NC Academy of Trial Lawyers
Becky Ebron	NC Sentencing Commission
Debbie Daniels	NC Sentencing Commission
Karen Jones	" "
Stacy Little	NC DOC
Eddie Caldwell	NC Dept of Correction NC Law Enforcement Assn
Jim Keon	DA - 21st Dist
David Hall	" "
Erin Saunders	ABA " "
[illegible]	WSJ
Mary Ann Talley	Atty - Fayetteville
Julie Allen	NC Statewatch
Chris Mears	Rep. Joe Kiser
[illegible]	AOC
Dina D'Amato	NCPA
Joanne Stevens	NCCHS
Jo McCants	AOC
Chuck Carleton	NCDOC
Karen Brown	Correction Enterprises
Mildred Spearman	DOC
Scott Mayhew	AP

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

April 15, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

~~HB 241~~	~~Amend Drug Trafficking Law~~	~~Rep. Haire~~
HB 242	Amend Habitual Felon Law	Rep. Haire
HB 243	Reclassify Statutory Rape/Sex Offense	Rep. Haire
HB 689	Conform Evidence Rule 103	Rep. Glazier
HB 880	DWI Blood Test Result – Directly to Clerk	Rep. Justus

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 242

Short Title:	Amend Habitual Felon Law.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PUNISH HABITUAL FELONS THREE CLASSES HIGHER THAN THE OFFENSE CLASSIFICATION FOR THE PRINCIPAL OFFENSE, BUT IN NO CASE HIGHER THAN CLASS C, AND REQUIRE AN ACTIVE SENTENCE, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-7.6 reads as rewritten:

"**§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced as a felon three classes higher than the principal felony, but in no case higher than a Class C felon. Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, the felon shall be sentenced to an active punishment. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HB 242:
Amend Habitual Felon Law

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 8, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: HB 242 amends G.S. 14-7.6 to require habitual felons to be sentenced three classes higher than the felony that made them eligible to be sentenced as a habitual felon, not exceeding sentencing as a Class C felon. Any sentence must be active, meaning the person must be imprisoned.

CURRENT LAW: **Currently, a person sentenced as a habitual felon, generally upon conviction of the fourth felony, is sentenced for that felony as a Class C felon, unless the crime would have required a higher sentence. Presumptive sentences for Class C convictions range from 58-73 months to 135-168 months, depending on prior convictions.**

BACKGROUND: The NC Sentencing and Policy Advisory Commission recommended this bill. The effect would be to lower prison time for some fourth felony convictions, and thus lower prison population.

The act is effective December 1, 2003, and applies to offenses committed on or after that date.

Most Serious Crime Associated with Habitual Felon Convictions by Offense Class and Offense FY 2001/02 Felonies

Offense Class	Offense	Total
Class A	First Degree Murder	1
	Subtotal	1
Class B1	1st Degree Sex Offense Child	1
	Subtotal	1
Class B2	Attempted Murder	1
	Attempted 1st Degree Rape	1
	Subtotal	2
Class C	1st Degree Kidnapping	1
	2nd Degree Rape	1
	2nd Degree Sex Offense	1
	Other Robbery Offense	1
	AWDWIKISI	3
	Other Assault Offense	1
	Other Drug Offense	3
	Habitual Felon*	15
	Other Property Offense	1
	Subtotal	27
Class D	Voluntary Manslaughter	3
	Attempted 2nd Degree Rape	1
	Att. Robbery - Dangerous Weapon	4
	Robbery - Dangerous Weapon	30
	1st Degree Arson	1
	1st Degree Burglary	4
	Subtotal	43

Offense Class	Offense	Total
Class E	2nd Degree Kidnapping	5
	AWDW Serious Injury	7
	Assault LEO/PO/Other w/ Firearm	1
	Attempted 1st Degree Burglary	2
	Possess C.S.w/in 300 FT of School	1
	Other Assault Offense	1
	Other Impaired Driving Offense	1
	Subtotal	18
Class F	Involuntary Manslaughter	2
	Indecent Liberties with Child	6
	Fail to Register as Sex Offender	3
	AWDW - Government Official	7
	Trafficking in Cocaine	3
	Habitual Impaired Driving	8
	Subtotal	28
Class G	Common Law Robbery	26
	2nd Degree Burglary	7
	Other Property Offense	1
	Sell Cocaine	35
	Sell Schedule I C.S.	1
	Sell Schedule II C.S.	5
	Conspire Sell Cocaine	2
	Trafficking in Cocaine	4
	Other Drug Offense	24

SOURCE: NC Sentencing Commission, Fiscal Year 2001/02 Statistical Report

Most Serious Crime Associated with Habitual Felon Convictions by Offense Class and Offense (continued) FY 2001/02 Felonies

Offense Class	Offense	Total
Class G (cont.)	Possession of Firearm by Felon	20
	Subtotal	125
Class H	Attempted Common Law Robbery	2
	Habitual Misdemeanor Assault	3
	Breaking and/or Entering	130
	Felony Larceny	21
	Larceny of a Firearm	2
	Larceny by Anti-Inventory Device	1
	Larceny from the Person	4
	Possession of Stolen Goods	23
	Larceny after Break/Enter	4
	Larceny of Motor Vehicle	1
	Obtain Property by False Pretenses	28
	Financial Identity Fraud	2
	Other Fraud Offense	3
	Embezzlement	1
	Possess C.S. Prison/Jail Premises	2
	Sell Marijuana	2
	Sell Schedule III C.S.	1
	Deliver Cocaine	1
	Conspire Deliver Cocaine	1
	PWIMSD Schedule I Contr. Subst.	1
	PWIMSD Schedule II C. S.	4
	Trafficking in Marijuana	1
	Manufacture Cocaine	1
	PWISD Cocaine	31
	PWIMSD Cocaine	6

Offense Class	Offense	Tota
Class H (cont.)	PWIMSD Heroin	1
	Escape from State Prison	2
	Possess Stolen Motor Vehicle	5
	Hit/Run Personal Injury	1
	Flee/Elude Arrest W/ Motor Veh.	14
	Subtotal	299
Class I	Possession of Burglary Tools	2
	Break/Enter Motor Vehicle	16
	Other Larceny Offense	1
	Forgery of Instrument	7
	Uttering Forged Instrument	7
	Uttering Forged Endorsement	1
	Financial Card Theft	3
	Financial Card Fraud	1
	Obtain Contr. Subst. by Fraud	2
	Sell or Deliver Counterfeit C.S.	3
	Possess Schedule I C.S.	1
	Possess Schedule II C.S.	10
	Manufacture Marijuana	1
	PWISD Marijuana	12
	PWIMSD Marijuana	2
	Felony Possession of Cocaine	22
	Possess Heroin	1
	Other Drug Offense	2
	Subtotal	94
TOTAL		638

* Of the 638 habitual felon convictions, the most serious associated conviction could not be determined for 15 convictions. These 15 convictions are represented in the table as Class C habitual felon convictions.

SOURCE: NC Sentencing Commission, Fiscal Year 2001/02 Statistical Report

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 243

Short Title:	Reclassify Statutory Rape/Sex Offense.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO RECLASSIFY STATUTORY RAPE OR SEXUAL OFFENSE OF A PERSON WHO IS THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD BY A DEFENDANT WHO IS MORE THAN FOUR YEARS BUT LESS THAN SIX YEARS OLDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.7A(b) reads as rewritten:

"(b) A defendant is guilty of a Class ~~C~~ F 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."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 243:
Reclassify Statutory Rape/Sex Offense.-AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 8, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 243 reclassifies the statutory rape or sexual offense of a person who is 13, 14, or 15 years old by a person is who more than four years but less than 6 years older from a Class C felony to a Class F felony. The act would become effective December 1, 2003 and would apply to offenses committed on or after that date.

CURRENT LAW: There are two "degrees" of statutory rape in North Carolina. A person who engages in vaginal intercourse or other sexual act with a child who is 13, 14, or 15 years old and who is at least six years older than the child is guilty of a Class B1 felony. A person who engages in the same type of act with a child who is 13, 14, or 15 years old, and who is more than four but less than six years older is guilty of a Class C felony. House Bill 243 deals only with the latter type of statutory rape. In fiscal year 2001-2002, there were six convictions for the Class C type of statutory rape.

The presumptive minimum sentence for a defendant with no prior convictions who is convicted of a Class C felony is 58 months active (4.8 years).[1] The maximum that a defendant could serve for this offense is 261 months (21.8 years). This maximum would apply to a defendant with the highest level of prior convictions and where there are aggravating circumstances involved in the offense.

BILL ANALYSIS: House Bill 243 reclassifies the statutory rape or sexual offense of a 13, 14, or 15 years old by a person who is more than four but less than six years older from a Class C to a Class F felony. The presumptive minimum punishment for a Class F felony is 13 months, which may involve either an active or an intermediate punishment.[2] The maximum punishment for a Class F felony is 59 months (4.9 years). This maximum would apply to a defendant with the highest level of prior convictions and where there are aggravating circumstances involved in the offense.

BACKGROUND: In January 2001, the Sentencing Commission, in conjunction with the Department of Correction's Research and Planning Office submitted prison population projections to the General Assembly, which showed that there would be a shortage of prison beds as of June 30, 2002, and that 7,600 additional prison beds would be needed by Fiscal Year 2010. During the 2001 Session, the General Assembly approved the building of three prisons. The 2001 General Assembly also directed the North Carolina Sentencing and Policy Advisory Commission to study and review the State's sentencing laws in view of the projected growth in the prison population by 2010. Areas of review included the classification of offenses and offenders, the relationship of the sentence length to the offense, and the sentence dispositions available to judges. The Sentencing Commission responded by forming two subcommittees to study these issues. Final reports of the subcommittees' work were submitted to the full

[1] Under structured sentencing, a judge selects a minimum sentence from within a minimum sentence range, after taking into consideration any mitigating or aggravating factors. The minimum sentence will then have a corresponding maximum sentence. The 58-month minimum sentence reflects the shortest possible sentence from within the minimum sentence presumptive range. The corresponding maximum for the 58-month minimum is 79 months (6.6 years).

[2] The corresponding maximum punishment for a defendant who is sentenced to 13 months minimum is 16 months.

Commission and the Commission adopted its final report in March 15, 2002. House Bill 243 is one of several recommendations contained in the Commission's final report.

During its study, the Commission identified the classification of the offense of statutory rape or sexual offense of a person who is 13, 14, or 15 years old as one warranting review. Class C felonies are those which reasonably tend to result in or do result in serious long-term personal injury or serious long-term or widespread societal injury, such as second degree rape or sexual offense, assault with a deadly weapon with intent to kill, first-degree kidnapping, and child abuse inflicting serious injury. Several members of the Commission stated that in their experience the defendant and the victim were usually both teenagers and the relationship was consensual; their age is the element that triggers the offense. The Commission decided that this offense would be more appropriately classified as a Class F felony where offenses reasonably tend to result or do result in significant personal injury or serious societal injury.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute fort
H.B. 243 A BILL TO BE ENTITLED AN ACT TO RECLASSIFY STATUTORY RAPE OR SEXUAL OFFENSE OF A PERSON WHO IS THIRTEEN, FOURTEEN, OR FIFTEEN YEARS OLD BY A DEFENDANT WHO IS MORE HAN FOUR YEARS BUT LESS THAN SIX YEARS OLDER.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill)(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

H 1

HOUSE BILL 689

Short Title:	Conform Evidence Rule 103.	(Public)
Sponsors:	Representatives Glazier, Goodwin (Primary Sponsors); and Munford.	
Referred to:	Judiciary IV.	

March 26, 2003

A BILL TO BE ENTITLED

AN ACT CONFORMING RULE 103 OF THE NORTH CAROLINA RULES OF EVIDENCE TO THE CORRESPONDING FEDERAL RULE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8C-1, Rule 103(a), reads as rewritten:

"(a) Effect of erroneous ruling. – Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. – In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record. No particular form is required in order to preserve the right to assert the alleged error upon appeal if the motion or objection clearly presented the alleged error to the trial court;

(2) Offer of proof. – In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal."

SECTION 2. This act becomes effective October 1, 2003, and applies to rulings on evidence made on or after that date.

HOUSE BILL 689:
Conform Evidence Rule 103

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Glazier and Goodwin
Date:	April 15, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 689 conforms Rule 103 of the North Carolina Rules of Evidence to the corresponding federal rule by providing that once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer proof to preserve a claim of error for appeal.***

CURRENT LAW & BACKGROUND: When a judge sustains an objection excluding evidence at trial, the proponent of the evidence must normally make an "offer of proof" if he wishes to be able to contend on appeal that the exclusion was reversible error. The offer of proof normally consists of two parts: (1) a description of the evidence being proposed; and (2) an explanation of how that evidence relates to the case, if its relevance is not clear from context. The main rationale for the rule is that only by an offer of proof can the appellate court be completely informed of what the offered evidence would have been and how it would have been significant to the trial. Rule 103 of the Federal Rules of Evidence codifies this requirement. Specifically, FRE 103(a)(2) provides that an appellate court will be permitted to consider a ruling excluding evidence only if the substance of the evidence was made known to the court by offer or was apparent from the context within which the questions were asked.

Prior to 2000, North Carolina's Rule of Evidence 103 was substantially similar to FRE 103. In 2000 Congress amended Rule 103(a)(2) of the Federal Rules of Evidence. The amendment was intended to resolve the conflict in the cases and the confusion in practice about whether an objection or offer of proof must be renewed at trial if there has been an *in limine* ruling on the point. The amended rule provides that when a court makes a definitive ruling on an objection prior to or at trial, a party does not need to renew that objection at trial in order to preserve a claim of error on appeal. To date, at least five states have conformed to the amended rule: Colorado, Kentucky, Pennsylvania, Utah, and West Virginia.

BILL ANALYSIS: House Bill 689 conforms Rule 103 of the North Carolina Rules of Evidence to the recently revised corresponding federal rule by providing that once a court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

The act would become effective October 1, 2003, and would apply to rulings on evidence made on or after that date.

H689-SMSV-001

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
H.B. 689 A BILL TO BE ENTITLED AN ACT CONFORMING RULE 103 OF THE NORTH CAROLINA RULES OF EVIDENCE TO THE CORRESPONDING FEDERAL RULE.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 880

Short Title:	DWI Blood Test Result-Directly to Clerk.	(Public)
Sponsors:	Representative Justus.	
Referred to:	Judiciary IV.	

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BLOOD ANALYSIS REPORT SENT DIRECTLY TO THE CLERK OF SUPERIOR COURT MAY BE USED AS THE BASIS FOR THE CIVIL REVOCATION OF A DRIVERS LICENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. – When a clerk receives a properly executed report under subdivision (d) (3) and the person named in the revocation report is not present before the clerk, the clerk shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. For purposes of this subsection, a properly executed report under subdivision (d)(3) may include a sworn statement by the charging officer along with an affidavit received directly by the Clerk from the chemical analyst. If he determines that there is such probable cause, he shall mail to the person a revocation order by first-class mail. The order shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. If the person has no pending

offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

(1) Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Forty-five days from the time:

a. The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation for the current offense be less than the applicable period of revocation in subdivision (1), (2), or (3) of this subsection. When a pick-up order is issued, it shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order shall deposit it with the clerk within three days of the surrender."

SECTION 2. G.S. 20-139.1(c) reads as rewritten:

"(c) Withdrawal of Blood for Chemical Analysis. – When a blood test is specified as the type of chemical analysis by the charging officer, only a physician, registered nurse, or other qualified person may withdraw the blood sample. If the person withdrawing the blood requests written confirmation of the charging officer's request for the withdrawal of blood, the officer shall furnish it before blood is withdrawn. When blood is withdrawn pursuant to a charging officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

The chemical analyst who analyzes the blood shall complete an affidavit on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending."

SECTION 3. This act is effective when it becomes law.

HB 880:
DWI Blood Test Result-Directly To Clerk

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Justus
Date:	April 15, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: HB 880 provides that a drivers license revocation report sent to a clerk of court may combine a report from the arresting officer with a separate affidavit from the chemical analyst sent directly to the clerk, rather than having to have the chemical analyst's affidavit included in the report from the charging officer. It also provides that where a blood sample is taken, the person performing the analysis of the sample will submit an affidavit to the charging officer and the clerk of court.

BILL ANALYSIS: Under North Carolina law, a person charged with an impaired driving offense is required to submit to a chemical analysis to determine the presence of the impairing substance. Refusal to take the necessary test, or the presence of .08 blood alcohol, or .04 blood alcohol for a commercial licensee, or any alcohol if the person is under 21, results in an automatic administrative revocation of the drivers license for 30 days. G.S. 20-16.2. Where the defendant is not before a judicial officer for an initial appearance or some other proceeding related to the charge, G.S. 20-16.5(d) (3) designates the clerk of court as the judicial officer to receive the report of refusal to submit to the test or of a test where the blood alcohol exceeds the legal limit. (This situation typically occurs where the defendant requests a blood test instead of a breathalyzer test, since the breathalyzer results are known immediately, while the blood test must be sent to the SBI lab for analysis.) That subdivision requires the report to contain a sworn statement from the charging officer and an affidavit from the chemical analyst justifying the immediate revocation of the license. Under G.S. 20-16.5(f), if the clerk determines that the proper conditions are met, a revocation order is issued.

SECTION 1 of the bill amends G.S. 20-16.5(f) to allow the chemical analyst's affidavit to come directly to the clerk, separate from the officer's sworn statement.

SECTION 2 of the bill makes a conforming change to G.S. 20-139.1(c), which regulates withdrawal of blood for chemical analysis, to require the person performing the analysis to submit an affidavit on a form developed by the Department of Health and Human Services to the charging officer and the clerk of superior court of the county in which the charges are pending.

The act is effective when it becomes law.

Effective for Offenses Committed on or after 12/1/95

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
A	Death or Life Without Parole					
B1	A *240-300* 192-240 *144-192*	A *288-360* 230-288 *173-230*	A *336-420* 269-336 *202-269*	A *384-480* 307-384 *230-307*	A *Life Without Parole* 346-433 *260-346*	A *Life Without Parole* 384-480 *288-384*
B2	A *157 - 196* 125 - 157 *94 - 125*	A *189 - 237* 151 - 189 *114 - 151*	A *220 - 276* 176 - 220 *132 - 176*	A *251 - 313* 201 - 251 *151 - 201*	A *282 - 353* 225 - 282 *169 - 225*	A *313 - 392* 251 - 313 *188 - 251*
C	A *73 - 92* 58 - 73 *44 - 58*	A *100 - 125* 80 - 100 *60 - 80*	A *116 - 145* 93 - 116 *70 - 93*	A *133 - 167* 107-133 *80 - 107*	A *151 - 188* 121 - 151 *90 - 121*	A *168 - 210* 135 - 168 *101-135*
D	A *64 - 80* 51 - 64 *38 - 51*	A *77 - 95* 61 - 77 *46 - 61*	A *103 - 129* 82 - 103 *61 - 82*	A *117 - 146* 94 - 117 *71 - 94*	A *133 - 167* 107 - 133 *80 - 107*	A *146 - 183* 117 - 146 *88 - 117*
E	I/A *25 - 31* 20 - 25 *15 - 20*	I/A *29 - 36* 23 - 29 *17 - 23*	A *34 - 42* 27 - 34 *20 - 27*	A *46 - 58* 37 - 46 *28 - 37*	A *53 - 66* 42 - 53 *32 - 42*	A *59 - 74* 47 - 59 *35 - 47*
F	I/A *16 - 20* 13 - 16 *10 - 13*	I/A *19 - 24* 15 - 19 *11 - 15*	I/A *21 - 26* 17 - 21 *13 - 17*	A *25 - 31* 20 - 25 *15 - 20*	A *34 - 42* 27 - 34 *20 - 27*	A *39 - 49* 31 - 39 *23 - 31*
G	I/A *13 - 16* 10 - 13 *8 - 10*	I/A *15 - 19* 12 - 15 *9 - 12*	I/A *16 - 20* 13 - 16 *10 - 13*	I/A *20 - 25* 16 - 20 *12 - 16*	A *21 - 26* 17 - 21 *13 - 17*	A *29 - 36* 23 -29 *17 - 23*
H	C/I/A *6 - 8* 5 - 6 *4 - 5*	I/A *8 - 10* 6 - 8 *4 - 6*	I/A *10 - 12* 8 - 10 *6 - 8*	I/A *11 - 14* 9 - 11 *7 - 9*	I/A *15 - 19* 12 - 15 *9 - 12*	A *20 - 25* 16 - 20 *12 - 16*
I	C *6 - 8* 4 - 6 *3 - 4*	C/I *6 - 8* 4 - 6 *3 - 4*	I *6 - 8* 5 - 6 *4 - 5*	I/A *8 - 10* 6 - 8 *4 - 6*	I/A *9 - 11* 7 - 9 *5 - 7*	I/A *10 - 12* 8 -10 *6 - 8*

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment
*Numbers shown are in months and represent the range of minimum sentences.

Revised: 08-04-95

FIGURE B: MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

Possessing Stolen Goods Worth More than $1,000 (14-71.1)	Sale of a Schedule III, IV, V, or VI Controlled Substance (90-95(a)(1))
Larceny of Property Worth More than $1,000 (14-72)	Possession W/I/M/S/D Cocaine (90-95(a)(1))
Embezzlement (amount involved less than $100,000) (14-90)	Escaping From State Prison System (felon) (148-45(b))
CLASS I FELONIES	**Maximum Punishment of 15 Months**
Breaking or Entering Motor Vehicles (14-56)	Possession W/I/M/S/D Marijuana (90-95(a)(1))
Financial Transaction Card Theft (14-113.9)	Possess Cocaine (90-95(a)(3))
Forgery of Notes, Checks, Securities (14-119)	Maintain Dwelling or Motor Vehicle for Keeping or Selling a Controlled Substance (90-108(a)(7),(b))
Uttering Forged Paper or Instrument (14-120)	Obtain a Controlled Substance by Fraud (90-108(a)(10),(b))
CLASS A1 MISDEMEANORS	**Maximum Punishment of 150 Days**
Assault Inflicting Serious Injury or Using a Deadly Weapon (14-33(c)(1))	Assault on a State Officer or Employee (14-33(c)(4))
Assault On a Female (14-33(c)(2))	Assault by pointing a gun (14-34)
Assault on a Child Under 12 Years of Age (14-33(c)(3))	Violation of a valid protective order (50B-4.1)
CLASS 1 MISDEMEANORS	**Maximum Punishment of 120 Days**
Breaking or Entering Buildings (14-54(b))	Willful Injury to Real Property (14-127)
Larceny of Property Worth $1,000 or Less (14-72)	Communicating Threats (14-277.1)
Unauthorized Use of a Motor Vehicle (14-72.2)	Possession of Drug Paraphernalia (90-113.22)
Worthless Check/Closed Account (14-107(4))	Misrepresentation to Obtain Employment Security Benefits (96-18)
CLASS 2 MISDEMEANORS	**Maximum Punishment of 60 Days**
Simple Assault/Assault and Battery (14-33(a))	Failure to Return Rental Property (14-167)
Obtaining Property in Return for Worthless Check (14-106)	Using Profane, Indecent or Threatening Language to Any Person Over Telephone (14-196)
Worthless Check/$2,000 or Less (14-107(1))	Resisting Officers (14-223)
Trespass, First Degree (14-159.12)	Carrying Concealed Weapons (14-269)
Willful Injury to Personal Property (14-160(a))	Disorderly Conduct (14-288.4)
CLASS 3 MISDEMEANORS	**Maximum Punishment of 20 Days**
Concealment of merchandise in mercantile establishments (first conviction) (14-72.1)	Operate Motorboat Without Lifesaving Device (75A-6)
Trespass, Second Degree (14-159.13)	Hunting Without a License (113-270.2)
Intoxicated and Disruptive in Public (14-444)	Fishing Without a License (113-271)
Unsealed Wine/Liquor in Passenger Area (18B-401)	Possess Marijuana (½ ounce or less) (90-95(a)(3))

CONSPIRACY to commit an offense is classified as one class lower than the offense the person conspired to commit. (14-2.4)

ATTEMPT to commit an offense is classified as one class lower than the offense the person attempted to commit. (14-2.5)

SOLICITATION to commit an offense is classified as two classes lower than the offense the person solicited the other person to commit. (14-2.6)

ACCESSORY BEFORE THE FACT punishable as the principal felon. (14-5.2)

ACCESSORY AFTER THE FACT punishable as two classes lower than the felony the principal felon committed. (14-7)

SAMPLE OFFENSES
AS OF 12/1/02

CLASS A FELONIES	Maximum Punishment of Death or Life Without Parole
Murder, First Degree (14-17)	
CLASS B1 FELONIES	**Maximum Punishment of Life Without Parole**
Rape, First Degree (14-27.2)	Sexual Offense, First Degree (14-27.4)
CLASS B2 FELONIES	**Maximum Punishment of 479 Months**
Murder, Second Degree (14-17)	
CLASS C FELONIES	**Maximum Punishment of 261 Months**
Habitual Felon (14-7.6)	Assault W/D/W/I/K/I/S/I (14-32(a))
Rape, Second Degree (14-27.3)	Kidnapping, First Degree (14-39)
Sexual Offense, Second Degree (14-27.5)	Embezzlement (amount involved $100,000 or more) (14-90)
CLASS D FELONIES	**Maximum Punishment of 229 Months**
Voluntary Manslaughter (14-18)	Arson, First Degree (14-58)
Malicious Use of Explosive or Incendiary (14-49(a))	Armed Robbery (14-87)
Burglary, First Degree (14-51)	Sell or Deliver a Controlled Substance to a Person Under 16 But More Than 13 Years of Age (90-95(e)(5))
CLASS E FELONIES	**Maximum Punishment of 98 Months**
Intercourse and Sexual Offenses with Certain Victims (Substitute Parent/Custodian) (14-27.7)	Assault with a Firearm on a Law Enforcement Officer (14-34.5)
Assault W/D/W/I/S/I (14-32(b))	Kidnapping, Second Degree (14-39)
Assault W/D/W/I/K (14-32(c))	Child Abuse I/S/I (14-318.4)
Discharging Weapon Into Occupied Property (14-34.1)	Sell or Deliver a Controlled Substance Within 300 Feet of a School (90-95(e)(8))
CLASS F FELONIES	**Maximum Punishment of 59 Months**
Involuntary Manslaughter (14-18)	Burning of Certain Other Buildings (14-62)
Assault Inflicting Serious Bodily Injury (14-32.4)	Incest Between Certain Near Relatives (14-178)
Assault W/D/W on a Governmental Officer or Employee (14-34.2)	Indecent Liberties with Children (14-202.1)
Assault on a Law Enforcement Officer (14-34.7)	Possess Weapon of Mass Destruction (14-288.8)
Felonious Restraint (14-43.3)	Habitual Impaired Driving (20-138.5)
CLASS G FELONIES	**Maximum Punishment of 44 Months**
Burglary, Second Degree (14-51)	Possession of Firearms, etc., by Felon (14-415.1)
Arson, Second Degree (14-58)	Death by Vehicle (20-141.4)
Common Law Robbery (14-87.1)	Sale of a Schedule I or II Controlled Substance (90-95(a)(1))
CLASS H FELONIES	**Maximum Punishment of 30 Months**
Habitual Misdemeanor Assault (14-33.2)	Obtaining Property by False Pretenses (amount involved less than $100,000) (14-100)
Breaking or Entering Buildings (14-54(a))	Intimidating/Interfering with Witnesses (14-226)
Fraudulently Setting Fire to Dwelling House (14-65)	Hit and Run Involving Personal Injury/Death (20-166(a))

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

REVISED POPULATION PROJECTIONS
FISCAL YEAR 2002/2003 to FISCAL YEAR 2011/2012

Prepared in Conjunction with the
Department of Correction=s Office of Research and Planning

RELEASED: JANUARY 2003

INTRODUCTION:

The attached table shows ten-year prison population projections by fiscal year. The prison population projections were completed in two parts. The Sentencing Commission prepared prison population projections for all offenders sentenced on or after July 1, 2002 (new population). The Department of Correction prepared projections for all offenders in prison as of June 30, 2002 (resident prison population). The final combined projections take into account the decline of the resident prison population (structured sentencing releases, parole releases, and Amax-outs@) and the buildup of the new inmate population (new sentences, probation revocations, parole revocations, and post-release supervision revocations). Added to these figures is the estimated number of Asafekeepers@ and DWI offenders held in the state prison system.

ASSUMPTIONS:

- All Fair Sentencing Act (FSA) and pre-FSA prisoners will serve the same percentage of their Active sentence as the percentage served by prisoners paroled in FY 2001/02.

- On average, all Structured Sentencing Act (SSA) felons will serve 109 percent of their minimum Active sentences and all SSA misdemeanants will serve 95 percent of their Active sentences (the actual percentages served by SSA offenders released from prison during FY 2001/02).

- Rates of Active sentences will match rates during FY 2001/02 for all SSA offenders. Overall, 35 percent of felons received an Active sentence, with an average estimated time served of 42 months. These rates assume no changes in judicial or prosecutorial behavior regarding convictions.

- Probation revocation rates will match rates during FY 2001/02.

CHANGES FROM PREVIOUS PROJECTIONS:

The 2003 revised population projections are higher than the previous year=s projections. In addition to an anticipated increase in growth in general, the projected increase in the prison population can be attributed to changes in two of the primary determining factors of the prison population: 1) an

increase in the number of new convictions, which directly impacts the number of prison admissions resulting from the commission of new crimes; and 2) FSA and pre-FSA inmates are serving longer sentences than previously projected.

< While the Sentencing Commission=s *Forecasting Advisory Group* found no reason to adjust the projected growth rate for misdemeanor convictions, the group adjusted the projected growth rate for felony convictions upward for the first year of the projection period.[1]

	Felony		Misdemeanor	
Time Period	Previous Growth Rate	Revised Growth Rate	Previous Growth Rate	Revised Growth Rate
FY 2002/03	1%	2%	1%	1%
FY 2003/04	2%	2%	1%	1%
FY 2004/05	2%	2%	1%	1%
FY 2005/06	2%	2%	1%	1%
FY 2006/07	2%	2%	1%	1%

< An overall increase in felony convictions accounts for a large part of the higher population projections. This increase in felony convictions includes an increase in convictions for serious felonies (Classes A-D), with increases in convictions for certain specific offenses (such as murder, robbery, and drug trafficking).

< Prison population projections are and will continue to be affected by parole practices, due to a still-sizeable inmate population of FSA and pre-FSA offenders. On November 30, 2002, there were 6,314 FSA and pre-FSA offenders in prison (including 2,852 with life sentences and 107 with death sentences), representing about 19 percent of the state=s inmates. The percent of sentence served by FSA and pre-FSA prison releases (excluding those with life or death sentences) has been increasing (from 32% in FY 1997/98 to 39% in FY 2001/02), as has their average time served (from an average of 43 months in FY 1997/98 to 99 months in FY 2001/02).

< This projection includes impact from several legislative changes to criminal penalties from the 2002 Session of the General Assembly, including increasing punishments for financial identity fraud, incest, stalking, and several misdemeanor offenses.

< This projection does not include any increases in the prison population resulting from legislative changes that either created new offenses for which there are no historical data or amended penalties for existing offenses with elements that could not be modeled.

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[1] The *Forecasting Advisory Group* convenes annually and consists of representatives from the Sentencing Commission, Administrative Office of the Courts, Department of Correction, Department of Juvenile Justice and Delinquency Prevention, State Bureau of Investigation, Governor=s Crime Commission, and Office of State Budget and Management. The group forecasts growth rates after reviewing recent crime trends, arrest trends, court filing trends, state demographic trends, and prison admission trends.

< This projection does not include any potential decreases in the prison population resulting from legislative changes that will permit the transfer of convicted offenders to the country of which they are citizens or nationals pursuant to international treaties.

PROJECTED PRISON POPULATION:

Projected Prison Population and Capacity

The population projected by the Commission=s simulation model for June 30, 2002 was **33,188**. The actual average population for June 2002 was **33,111**, a difference of **77** prison beds (or less than one half of a percent). The first table and the following chart present the projected prison population and capacity for FY 2002/03 through FY 2011/12.

Updated prison capacity projections were provided by the Department of Correction=s Division of Prisons in December 2002. These projections include both the Expanded Operating Capacity (EOC) and the Standard Operating Capacity (SOC) of all prison facilities. Based on these figures, the projected prison population will exceed both standard and expanded operating prison capacity for all ten years of the projection.

Projected Prison Population by Offense Class

The Sentencing Commission also provides data on the distribution of the projected prison population of felons by offense class, as shown in the second table. This distribution might serve as an indication of changing custody level needs.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

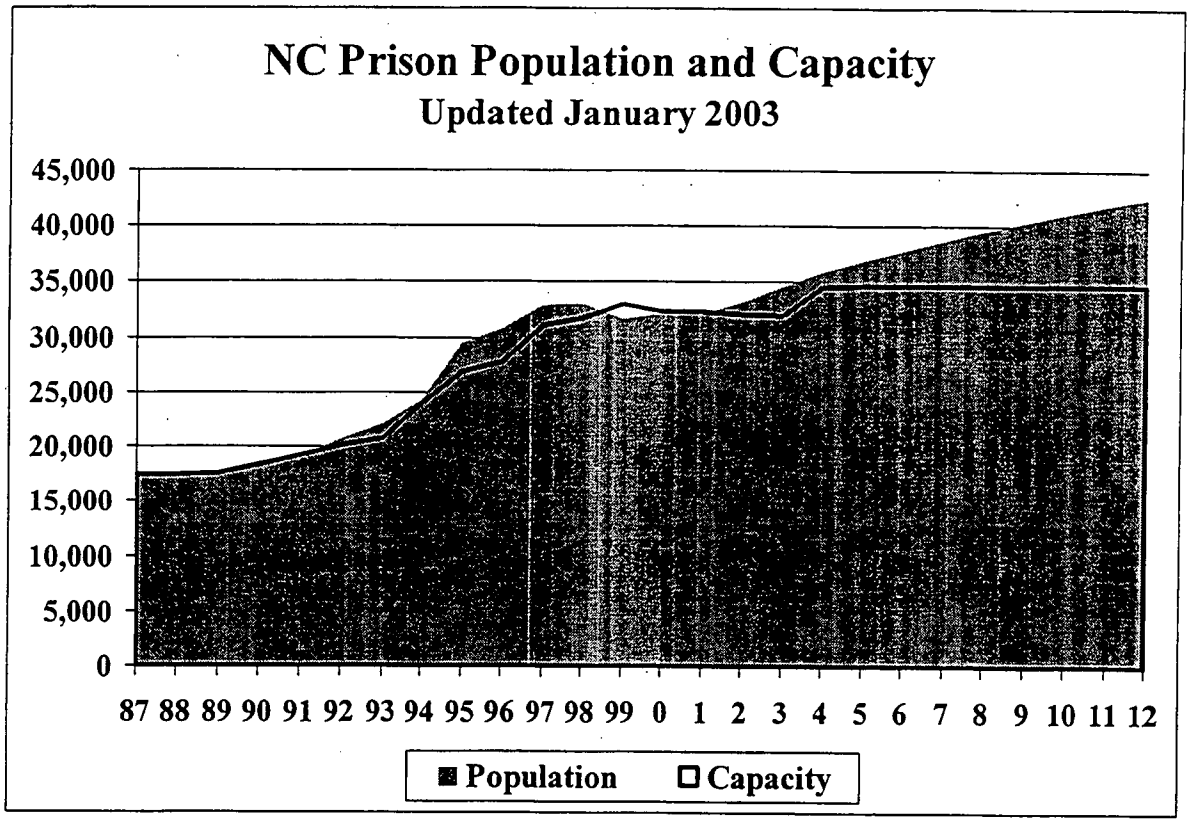
PRISON POPULATION PROJECTIONS:
UPDATED JANUARY 2003

PREPARED IN CONJUNCTION WITH THE DEPARTMENT OF CORRECTION'S OFFICE OF RESEARCH AND PLANNING

FISCAL YEAR	PREVIOUS PROJECTION as of June 30	**REVISED PROJECTION as of June 30**	*ESTIMATE OF EXPANDED OPERATING PRISON CAPACITY*[1]	*ESTIMATE OF STANDARD OPERATING PRISON CAPACITY*[2]
2003	34,129	**34,570**	31,969	28,501
2004	34,840	**35,851**	34,561	31,093
2005	35,647	**36,787**	34,729	31,261
2006	36,485	**37,739**	34,729	31,261
2007	37,405	**38,687**	34,729	31,261
2008	38,306	**39,557**	34,729	31,261
2009	39,203	**40,345**	34,729	31,261
2010	40,077	**41,068**	34,729	31,261
2011	41,052	**41,768**	34,729	31,261
2012	N/A	**42,413**	34,729	31,261

[1] Expanded Operating Capacity (EOC) is the bed space count yielded by calculating the number of general population single cells with one inmate per cell, the number of cells that house two inmates, and the number of inmates in dormitories operating at varying percentages beyond their Standard Operating Capacity (SOC) which is rounded up to the closest double bunk configuration.

[2] Standard Operating Capacity (SOC) is the bed space count yielded by calculating the number of general population single cells with one inmate per cell plus the number of inmates who can be housed in dormitories by dividing the gross square feet of each dormitory by 50 square feet and rounding to the closest double bunk configuration.



Note: Prison capacity figures reflect Expanded Operating Capacity.

SOURCE: NC Sentencing and Policy Advisory Commission and NC Department of Correction

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

PRISON POPULATION PROJECTIONS:
UPDATED JANUARY 2003

PREPARED IN CONJUNCTION WITH THE DEPARTMENT OF CORRECTION=S OFFICE OF RESEARCH AND PLANNING

DISTRIBUTION OF THE PROJECTED PRISON POPULATION BY OFFENSE CLASS FELONIES ONLY

Offense Class	Average Estimated Time Served in Months[2]	Percent by Fiscal Year		
		2003	2007	2012
A	600	4.0	4.7	5.8
3 Strikes	600	0.0	0.0	0.1
B1	291	4.9	5.5	6.4
B2	193	6.2	7.6	8.9
C	102	21.1	22.6	22.4
D	76	16.1	15.9	15.2
A-D SUBTOTAL	134	52.3	56.3	58.8
E	34	5.8	6.1	5.8
F	24	7.9	7.6	7.1
G	19	11.1	10.3	9.8
E-G SUBTOTAL	23	24.8	24.0	22.7
H	11	16.6	13.8	13.0
I	7	4.2	3.9	3.8
H-I SUBTOTAL	10	20.8	17.7	16.8
Unknown	N/A	2.2	1.9	1.6
TOTAL	42	100.0	100.0	100.0

NOTE: Percentages may not add to 100% due to rounding.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2001/2002 Structured Sentencing Simulation Model

[2] For analysis purposes, the sentence length imposed for convictions resulting in life or death sentences was estimated at 600 months.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

THE OFFENSE CLASSIFICATION CRITERIA

The Sentencing Commission was required by G.S. 164-41 to ".... classify criminal offenses into felony and misdemeanor categories on the basis of their severity." The Commission developed a classification criteria to guide the classification process and to ensure that there was a systematic and rational basis for the classifications. The Commission decided that the severity of an offense should be directly related to the harm to the victim that normally results or tends to result from the criminal conduct.

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria.

The purpose of establishing the classification criteria was to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.

Under the classification criteria, the most serious offense classes (A through F) primarily involve personal injury, the risk of personal injury, serious societal injury or widespread societal injury. The lower offense levels (G through I) primarily involve property loss or less serious societal injury. The degree of harm is divided into three levels; injury to person, property or society; significant injury to person, property or society; and serious injury to person, property or society.

The Commission also assigned misdemeanor offenses to three classes: class 1, class 2 or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	! Reserved for First Degree Murder
	[Reasonably tends to result or does result in]:
B	! Serious debilitating long-term personal injury
C	! Serious long-term personal injury ! Serious long-term or widespread societal injury
D	! Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	! Serious personal injury
F	! Significant personal injury ! Serious societal injury
G	! Serious property loss: Loss from the person or from the person's dwelling
H	! Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal ! Personal injury ! Significant societal injury
I	! Serious property loss: All other felonious property loss ! Societal injury
M	! All other misdemeanors

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* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 880 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A BLOOD ANALYSIS REPORT SENT DIRECTLY TO THE CLERK OF SUPERIOR COURT MAY BE USED AS THE BASIS FOR THE CIVIL REVOCATION OF A DRIVERS LICENSE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill (#), ~~☐ which changes the title~~, unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on Appropriations.)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

April 22, 2003

The House Committee on Judiciary IV met on April 22, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Bowie, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

HB 242 A BILL TO BE ENTITLED AN ACT TO PUNISH HABITUAL FELONS THREE CLASSES HIGHER THAN THE OFFENSE CLASSIFICATION FOR THE PRINCIPAL OFFENSE, BUT IN NO CASE HIGHER THAN CLASS C, AND REQUIRE AN ACTIVE SENTENCE, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION. Eddie Caldwell with the North Carolina Sheriff's Association and Tom Keith, an ADA from Forsyth County spoke against the bill. Birdie Frank with Justice for Citizens spoke against of the bill. Due to the controversial nature of this legislation, Chairman Munford appointed a Sub-Committee that will be headed by Representative Haire, and Representatives Kiser and Stiller will assist. The subcommittee will report back at a later date.

Representative Culpepper was asked to explain HB 754 A BILL TO BE ENTITLED AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES. An amendment was adopted to change the number of years from 12 to 8. A PCS was voted on and received a favorable report, unfavorable as to the original bill. This bill will be reported out of committee on 4/23.

Representative Culpepper was again called upon and asked explain HB 807 A BILL TO BE ENTITLED AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE LAW ESTABLISHING THE ELECTIVE SHARE OF A DECEDENT'S SURVIVING SPOUSE AND TO REPEAL THE RIGHT OF A SURVIVING SPOUSE TO ELECT A LIFE INTEREST IN LIEU OF AN INTESTATE SHARE. A PCS was introduced and adopted. Liz Aviaz, an attorney with Womble Carlyle, was asked to explain the bill in depth. The PCS was voted on and received a favorable report, unfavorable as to the original bill. This bill will be reported out of committee on 4/23.

Representative Haire was asked to explain HB 241 A BILL TO BE ENTITLED AN ACT TO AMEND THE DRUG TRAFFICKING LAW, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION. Ron Moore, a DA from Buncombe County, Colon Willoughby, a DA from Wake County, and Frank Palombo with the New Bern Police Department spoke in opposition of this legislation. Laura Sager with Families Against Mandatory Minimums spoke in support of this bill.

At the request of Representative Glazier, this bill was tabled until a representative from the Superior Court Judge's can be contacted regarding their position on this bill.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JD IV — 04/22/03

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cola Willoughby	DA 10th Dist
Josh Thaxton	Wake Co. Sheriff's Office
Larry Wood	" " " "
John Maxwell	" " " "
Larry Dix	DJTDP
Julie Allen	NC Statewatch
Jim Drennan	Inst. of Govt
Douglas Attis	NC News Network
[illegible]	Fraternal Order of Police
Peter Gilchrist	ACLU
Spencer Hamison	Rep. Glazier
Joe McCants	ADC
James Bek	Forsyth County citizen/Crime Survivor
Virginia Bek	1004 Megan Cross Ln - Kernersville NC 27284
Chet Hodgin	Victims of Violence
Carolyn Llewellyn	Greensboro NC Crime Survivor
James Harwood	Madison Co Sheriff's Dept
C. John Lefford	Sheriff of Madison County
Donna Maynard	NC Sheriffs' Assoc
Debbie Daniels	NC Sentencing Commission
Becky Ebron	" " "
Ginny Hevener	" " "
Randy Tysinger	High Point Police
Harlon Costner	Guilford County Sheriff's Office
Charles S. Hawley	Vance County Sheriff's Office
R. Thomas Breedlove	Sheriff — Vance County, 156 Church St. Henderson 27536
Steve Easterling	NC Bar Assn
Michelle Frazier	NC Bar Assn

VISITOR REGISTRATION SHEET

JDIV — 04/22/03

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ron Moore	Dist Atty - Buncombe County
Tom Lock	Dist. Atty Johnston Co.
Sharon Blapping	Atty Cartaret
Bruce Cunningham	Atty Fourth Pines, NC.
Laura Sagee	NCFAMM Durham
Frank Palombo	Newborn Police Dept.
S. Katzenelson	Sentencing Comm.
Thomas D. Ross	2-Smith Reynolds Found - Former Judge, Sec. Law, Rec
Tracy Little	NCDOC
Sandy Pearce	NCDOC
G. Dewey Hudson	District Attorney 4th
Marshall Evans	Clinton Chief of Police (Sampson)
Carolyn Llewellyn	
John Madler	NC Sentencing Commission
Blake Wallace	Sheriff Duplin Co.
Ken Honeycutt	Dist Atty. 20?

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

April 22, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 242	**Amend Habitual Felon Law**	**Rep. Haire**
HB 754	**Qualifications for Magistrates**	**Rep. Culpepper**
HB 807	**Elective Share Amendments**	**Rep. Culpepper**
HB 241	**Amend Drug Trafficking Laws**	**Rep. Haire**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 242

Short Title:	Amend Habitual Felon Law.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PUNISH HABITUAL FELONS THREE CLASSES HIGHER THAN THE OFFENSE CLASSIFICATION FOR THE PRINCIPAL OFFENSE, BUT IN NO CASE HIGHER THAN CLASS C, AND REQUIRE AN ACTIVE SENTENCE, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-7.6 reads as rewritten:

"**§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced as a felon three classes higher than the principal felony, but in no case higher than a Class C felon. Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, the felon shall be sentenced to an active punishment. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HB 242:
Amend Habitual Felon Law

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 8, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: HB 242 amends G.S. 14-7.6 to require habitual felons to be sentenced three classes higher than the felony that made them eligible to be sentenced as a habitual felon, not exceeding sentencing as a Class C felon. Any sentence must be active, meaning the person must be imprisoned.

CURRENT LAW: **Currently, a person sentenced as a habitual felon, generally upon conviction of the fourth felony, is sentenced for that felony as a Class C felon, unless the crime would have required a higher sentence. Presumptive sentences for Class C convictions range from 58-73 months to 135-168 months, depending on prior convictions.**

BACKGROUND: The NC Sentencing and Policy Advisory Commission recommended this bill. The effect would be to lower prison time for some fourth felony convictions, and thus lower prison population.

The act is effective December 1, 2003, and applies to offenses committed on or after that date.

Eddie Caldwell -

HOUSE BILL 242, Amend Habitual Felon Law

The following groups **oppose** House Bill 242, Amend Habitual Felon Law, because it will reduce punishment for certain habitual felons:

North Carolina Conference of District Attorneys

North Carolina Victim Assistance Network (NCVAN)

North Carolina Sheriffs' Association

North Carolina Association of Chiefs of Police

North Carolina Police Executives Association

North Carolina Law Enforcement Officers Association

Beauty is in the eye of the beholder ....

What is a "minor" felony is in the eye of the victim ....

A large number of the Class G, H, and I felonies involve robbery, breaking and entering and stealing, as well as possession of cocaine and possession with intent to sell and deliver cocaine.

To the victims who have been robbed or had their property broken into, or have had cocaine sold to their children, these offenses are not "minor" felonies.

MOST SERIOUS CRIME ASSOCIATED WITH HABITUAL FELON CONVICTIONS

Fiscal Year 2001 - 2002 Felonies

From the North Carolina Sentencing Commission Report

Total number of Class G, H, and I felonies:	638	
Robbery/B&E/Stealing	293	46%
Felony Drug Offenses	179	28%
Other Felonies	66	26%

Reasons why we should not reduce the penalty for certain habitual felons in North Carolina:

- A person can only be convicted of being a habitual felon if they have been **convicted** of four felonies. Law enforcement knows that a person who has been convicted of four felonies has **committed an untold number of other felonies** for which the defendant has not been convicted.

- Whether or not to charge a defendant as an habitual felon is in the discretion of the district attorney. District attorneys often use the potential of an habitual felon charge to assist them in plea bargain negotiations with career criminals.

- Arguments that district attorneys should not have this tool to fight crime are unfounded. In any district where the citizens feel that the district attorney has not used this tool correctly, the citizens can replace the district attorney at the next election.

- Sheriffs report that a big problem in rural areas of their counties are criminals who engage in repeated breaking and entering. This is a difficult crime to prevent and a difficult crime to solve. Defendants who engage in common law robbery, breaking and entering and possession of stolen goods are a threat to the citizens, and when convicted of a fourth felony, should be sent to prison and removed from the county for a long time.

- We all are concerned about the cost of prison beds. However, it is more important that we be concerned about the **cost to our citizens** and our society when cocaine distributors and breaking and entering career criminals are returned to our communities to prey on our citizens.

- Costs that cannot be ignored in evaluating this legislation:
  — Tremendous emotional cost to victims
  — Financial cost in property stolen
  — Financial cost in lives destroyed by cocaine
  — Law enforcement and prosecutor resources necessary to investigate and prosecute career criminals

- Law enforcement, prosecutors and victims are united against House Bill 242 because it reduces penalties for career criminals. We urge you to **oppose** House Bill 242, Amend Habitual Felon Law.

PETER S. GILCHRIST, III
DISTRICT ATTORNEY

State of North Carolina
General Court of Justice
Twenty-sixth Prosecutorial District
MECKLENBURG COUNTY



MECKLENBURG COUNTY COURTHOUSE
700 EAST TRADE STREET, 2ND FLOOR
CHARLOTTE, NC 28202-3016
TELEPHONE: (704) 347-7891
FAX: (704) 333-5246

January 9, 2003

Ms. Susan Katzenelson, Executive Director
North Carolina Sentencing and Policy Advisory Commission
P.O. Box 2472
Raleigh, NC 27602

Dear Susan:

Lyle Yurko has asked my opinion of a proposal of a sub-committee of the Sentencing Commission to move the offenses of drug trafficking into the structured sentencing grid from the current law, which excludes it.

Several members of our staff have reviewed this proposal and it certainly seems consistent both with the overall scheme of structured sentencing as well as providing the opportunity for the facts of particular cases to result in sentences being enhanced or mitigated as the circumstances might indicate.

Drug trafficking offenses are serious offenses and judges and district attorneys should have the flexibility to deal with individual cases as the facts of those cases demand. I endorse the proposal.

Sincerely,

Peter S. Gilchrist, III
District Attorney

PSG/ebj
cc: Jeff Hunt
Lyle J. Yurko
Via fax (919) 733-2991

YURKO'S COMPREHENSIVE STRUCTURED SENTENCING TABLE
EFFECTIVE FOR OFFENSES BEGINNING 12-1-97

(Rev. 2-26-98)

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
9 Pts	B_1	1° Rape 1° Sex Offense Statutory rape or sex offense, age 13, 14, or 15 (Def. 6 yrs. older)	DISPOS Agg. *Presumpt.* Mit.	A 300 *192-240* 144	A 360 *230-288* 173	A 420 *269-336* 202	A 480 *307-384* 230	A Life *346-433* 260	A Life *384-480* 288
		Trafficking Heroin (28 gr.+)*	[279-225]						
6 Pts	B_2	2° Murder	DISPOS Agg. *Presumpt.* Mit.	A 196 *125-157* 94	A 237 *151-189* 114	A 276 *176-220* 132	A 313 *201-251* 151	A 353 *225-282* 169	A 392 *251-313* 188
		Trafficking Marijuana (5,000 +)*	[219-175]						
		Trafficking Methaqualone or Amphetamine (10,000 +)*	[219-175]						
		Trafficking Cocaine or Methamphetamine (400 +)*	[219-175]						
		Trafficking LSD (1,000 +)*	[219-175]						

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
6 Pts	C	2° Rape	DISPOS	A	A	A	A	A	A
		2° Sex Offense	Agg.	92	125	145	167	188	210
		Maiming							
		ADWIKSI	*Presumpt.*	*58-73*	*80-100*	*93-116*	*107-133*	*121-151*	*135-168*
		1° Kidnapping							
		Statutory rape or sex offense, age 13, 14, or 15 (Def. 4 yrs. older)	Mit.	44	60	70	80	90	101
		Embezzelment of $100,000							
		Trafficking Heroin (14-28)*	120-90						

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
6 Pts	D	1° Burglary 1° Arson RWDW Voluntary Manslaughter	DISPOS Agg.	A 80	A 95	A 129	A 146	A 167	A 183
			Presumpt.	*51-64*	*61-77*	*82-103*	*94-117*	*107-133*	*117-146*
			Mit.	38	46	61	71	80	88
		Trafficking Marijuana (500-5,000)*	84-70						
		Trafficking in Methaqualone or Amphetamines (5,000-10,000)*	84-70						
		Trafficking Cocaine or Methamphetamines (200-400)*	84-70						
		Trafficking in LSD (500-1,000)*	84-70						
		Trafficking in Opiates (4-14)*	84-70						

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
4 Pts	E	ADWSI ADWIK 2° Kidnapping Felony Abuse Sale of Drugs (School or Minor) Assault with a firearm on a law officer Trafficking in Marijuana (50-500)* Trafficking in Methaqualone or Amphetamines (1,000-5,000)* Trafficking in Cocaine or Methamphetamines (28-200)* Trafficking in LSD (100-500)*	DISPOS Agg. *Presumpt.* Mit. 42-35 42-35 42-35 42-35	I/A 31 *20-25* 15	I/A 36 *23-29* 17	A 42 *27-34* 20	A 58 *37-46* 28	A 66 *42-53* 32	A 74 *47-59* 35

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
4 Pts	F	Involuntary Manslaughter Incest Indecent Liberties Perjury Possession of weapon of mass destruction Assault on emergency personnel with firearm Trafficking in Marijuana (5-50)*	DISPOS Agg. *Presumpt.* Mit. [30-25]	I/A 20 *13-16* 10	I/A 24 *15-19* 11	I/A 26 *17-21* 13	A 31 *20-25* 15	A 42 *27-34* 20	A 49 *31-39* 23
4 Pts	G	2° Burglary 2° Arson Common Law Robbery Death by Vehicle DWI (4th) Possession of Firearm by Felon Sale of Schedule I & II	DISPOS Agg. *Presumpt.* Mit.	I/A 16 *10-13* 8	I/A 19 *12-15* 9	I/A 20 *13-16* 10	I/A 25 *16-20* 12	A 26 *17-21* 13	A 36 *23-29* 17

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
2 Pts	H	Obtaining by False Pretenses Larceny Receiving Possession of Stolen Goods Breaking or Entering Intimidating Witness Schedule I and II P/W/I Sale of Schedule III - VI False insurance statement Habitual misdemeanor assault Interception of wire Continuing criminal enterprise Escape	DISPOS Agg. *Presumpt.* Mit.	C/I/A 8 *5-6* 4	I/A 10 *6-8* 4	I/A 12 *8-10* 6	I/A 14 *9-11* 7	I/A 19 *12-15* 9	A 25 *16-20* 12
2 Pts	I	Safecracking Worthless Check (More than $2,000) Forgery Uttering Tax Fraud Possession of Cocaine Possession with intent (all substances except I and II) Possession of more than 1.5 oz. of Marijuana Possession of 100 tablets of Schedule II, III, IV Injuring law animal	DISPOS Agg. *Presumpt.* Mit.	C 8 *4-6* 3	C/I 8 *4-6* 3	I 8 *5-6* 4	I/A 10 *6-8* 4	I/A 11 *7-9* 5	I/A 12 *8-10* 6

OFFICE OF GUILFORD COUNTY SHERIFF

400 W. WASHINGTON STREET
P.O. BOX 3427
GREENSBORO, NC 27401

336-641-3694 GSO
336-845-3694 HP
336-641-6729 FAX

HB 242

4/21/03

To Whom It May Concern,

As Sheriff of Guilford County I would like to go on record as being in support of leaving the Habitual Felon Law as is. This law has been and I believe will continue to be an asset in deterring crime and keeping habitual lawbreakers off the street.

Sheriff BJ Barnes
Guilford County Sheriff's Office

JIM FEALY
Chief of Police

PHONE (336) 887-7970
FAX (336) 887-7972
TDD (336) 883-8517

High Point Police Department

April 17, 2003

Mr. Stuart Albright - District Attorney
19th Judicial District - General Courts of Justice
PO Box 10769
Greensboro, NC 27404

Dear Mr. Albright,

As a new member of the law enforcement community in North Carolina I want to make known my high level of concern over any proposed legislation that would dilute prison terms for habitual felons.

Having spent 26 years in law enforcement in Texas before coming to North Carolina, I have seen the results achieved from weakening habitual felon laws. I have also, in the most recent times, seen the positive results derived by solid and strong habitual felon legislation and sentencing. Texas became a much safer and well-ordered state largely because of such strong legislation.

You and I have seen that not only are the resources of our law enforcement and prosecutorial agencies squandered by dealing with the same lawless people over and over again; but more importantly, by not taking these repeat offenders out of our society, we have also seen the repeated victimization of the very citizens we are sworn to protect. Several times in my career I have consoled the families of murder victims and tried to explain why the person who murdered their loved one was loose in society when we all knew well in advance of that person's criminal nature and arrest history. In the past, I have had no other answer, than as a state, we were not effectively protecting our citizens by repeatedly overlooking the fact that these habitual felons need to be removed from society for as long as possible.

Until such time as we identify truly effective means of rehabilitating these predators, I recommend strongly that we do everything in our power to keep them separated from our citizens. I strongly support the most aggressive and strict habitual felon legislation and sentencing. Our failure as a state to build adequate facilities to house these criminals is no excuse to provide the victims of their crimes.

Sincerely,

Jim Fealy
Chief of Police
High Point Police Department

Greensboro Police Department
North Carolina

April 17, 2003

R. Stuart Albright
District Attorney
18th Prosecutorial District
P.O. Box 10769

Dear Mr. Albright:

The Greensboro Police Department is aware of the discussion of proposed House Bill # 242, which would be an amendment to the Habitual Felon Law. Our Department joins the District Attorney's Association, the Sheriff's Association, the Law Enforcement Officer's Association and other legitimate organizations in the opposition of this bill.

Our information is that if this bill is passed, it will reduce the penalty for some habitual offenders and will result in prisoners being released early. Habitual felon by its definition, states an individual's established pattern of committing serious offenses. Utilizing an individual's felony convictions, as criteria categorizing them as a habitual felon is not a punishment in itself. It is merely a tool, which enables serious offenders to be recognized and dealt with accordingly. Therefore, it is actually rewarding the offender when convictions utilized to identify them as a habitual felon are not utilized when determining the prior record level for sentencing.

The passing of proposed House Bill # 242 would be an injustice to both the community and law enforcement in the State of North Carolina. The Greensboro Police Department stands united with other organizations state wide, in opposition of this proposed bill.

If there is any assistance that our Department can provide in reference to opposition of proposed House Bill #242, please contact me.

Sincerely,

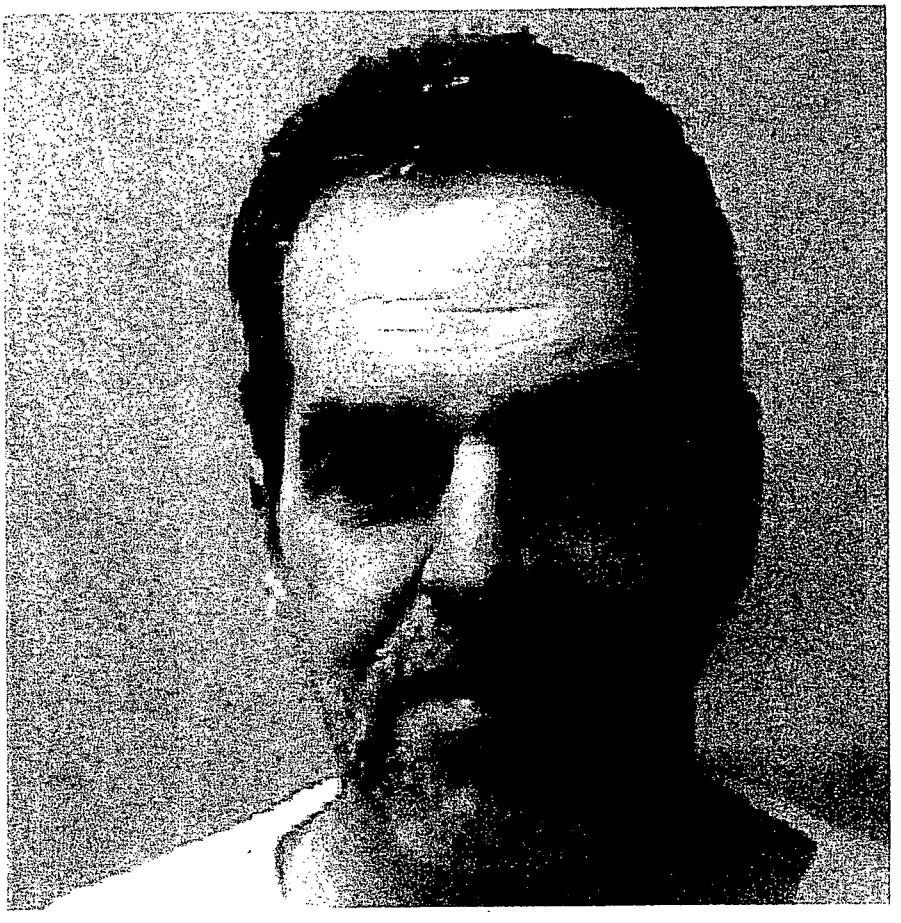
Anthony Scales

Anthony Scales
Chief of Police
Greensboro Police Department

STATE OF NORTH CAROLINA VS. ROBERT R. ALLRED

GENDER: MALE
AGE: 41

RACE: WHITE
DOB: 6/23/1961



III. PRIOR CONVICTION

NOTE: *Federal law precludes making computer printout of DCI-CCH (rap sheet) part of permanent public court record.*

OFFENSE DATE	Offenses	FELONY (F) / MISDEMEANOR (M)	File No.	Date Of Conviction	County (Name of State if not NC)	Class
	AGGRAVATED BATTERY	(F)	80-8893CF	5/4/1981	FLORIDA	I
	GRAND THEFT	(F)	81-6476CF	9/28/1981	FLORIDA	I
1/16/85	BREAKING & ENTERING	(F)	85CRS25455	5/9/1985	GUILFORD	H
"	LARCENY	(F)	"	"	"	H
1/3/85	BREAKING & ENTERING	(F)	85CRS25057	"	"	H
"	LARCENY	(F)	"	"	"	H
1/13/85	BREAKING & ENTERING	(F)	85CRS24131	"	"	H
"	LARCENY	(F)	"	"	"	H
1/10/85	BREAKING & ENTERING	(F)	85CRS24130	"	"	H
"	LARCENY	(F)	"	"	"	H
9/22/90	LARCENY	(M)	90CR15260	10/9/1990	"	1
6/20/91	DWI / LEVEL 4	(M)	91CR49286	1/8/1992	"	1
"	NO OPERATORS LICENSE	(M)	91CR49288	"	"	2
"	POSSESS/DISPLAY FICTITIOUS LICENSE	(M)	91CR49286	"	"	2
[illegible]/1/91	RECKLESS DRIVING	(M)	91CR32256	1/28/1992	GUILFORD	2
3/31/91	SPEEDING 70/55 (INFRACTION)		91CR36380	"	"	—
11/5/91	LARCENY	(M)	91CR69505	2/3/1992	"	1
9/17/91	ASSAULT ON LAW ENFORCEMENT OFFICER	(M)	91CR11457	6/11/1992	RANDOLPH	A1
10/12/91	LARCENY	(F)	91CRS69503	6/29/1992	GUILFORD	H
10/15/91	LARCENY	(F)	91CRS69504	"	"	H
4/21/92	SAFECRACKING	(F)	92CRS39066	"	"	I
"	BREAKING & ENTERING	(F)	92CRS39067	"	"	H
"	LARCENY	(F)	"	"	"	H
10/12/91	LARCENY	(F)	91CRS66410	"	"	H
—	HABITUAL FELON	(F)	92CRS20492	"	"	C
5/19/91	WORTHLESS CHECK (26 COUNTS)	(M)				
1/15/91	3/17/91 4/5/91 4/3/91		91CR53884 — 53900	7/1/1992	"	2
4/13/91	4/4/91 3/31/91 3/30/91		91CR49289 — 49292	"	"	2
[illegible]/91	4/2/91 3/29/91 3/23/91		91CR68364 — 68366	"	"	2
3/29/91	4/8/91 3/28/91 3/16/91		91CR54774 & 91CR68337	"	"	2

Source Code: 1 - DCI 2 - NCIC 3 - AOC/Local 4 - AOC/Statewide 5 - ID Bureau 6 - Other

Date Prepared: _____

Prepared By: _____

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III. PRIOR CONVICTION

NOTE: *Federal law precludes making computer printout of DCI-CCH (rap sheet) part of permanent public court record.*

OFFENSE DATE	Offenses	FELONY (F) / MISDEMEANOR (M)	File No.	Date Of Conviction	County (Name of State if not NC)	Class
12/91	SPEEDING 53/35	(M)	91CR21657	10/24/1996	GUILFORD	2
2/19/97	DWI / LEVEL 2	(M)	97CR85313	9/29/1998	"	1
9/16/98	COMMUNICATING THREATS	(M)	98CR13502	10/8/1998	RANDOLPH	1
"	RESISTING PUBLIC OFFICER	(M)	98CR13503	"	"	2
6/10/00	ASSAULT WITH DEADLY WEAPON - SERIOUS INJURY	(F)	00CRS92172	11/6/2000	GUILFORD	E
"	ASSAULT WITH DEADLY WEAPON - SERIOUS INJURY -	(F)	00CRS92173	"	"	E
"	HABITUAL MISDEMEANOR ASSAULT	(F)	00CRS92174	"	"	H
6/3/00	RESISTING PUBLIC OFFICER	(M)	00CR94639	"	"	2
11/24/98	ASSAULT ON FEMALE	(M)	98CR101623	2/25/2002	"	A1
2/23/01	BREAKING & ENTERING	*(F)	01CRS90133	5/23/2002	"	H
"	LARCENY	*(F)	"	"	"	H
—	HABITUAL FELON	*(F)	01CRS23768	"	"	C
5/1/01	BREAKING & ENTERING	*(F)	01CRS105495	"	"	H
5/10/01	BREAKING & ENTERING	*(F)	01CRS105494	"	"	H
5/8/01	BREAKING & ENTERING	*(F)	01CRS105493	"	"	H
5/12/01	COMMON LAW ROBBERY	*(F)	01CRS85403	"	"	G
—	HABITUAL FELON	*(F)	01CRS23769	"	"	C
5/15/01	COMMON LAW ROBBERY	*(F)	01CRS85163	"	"	G
"	ATTEMPTED COMMON LAW ROBBERY	*(F)	01CRS85511	"	"	H
—	HABITUAL FELON	*(F)	01CRS23767	"	"	C
5/26/01	ASSAULT WITH DEADLY WEAPON ON GOVERNMENT OFFICIAL	(F)	01CRS179	9/30/2002	RANDOLPH	F
"	ASSAULT WITH DEADLY WEAPON ON GOVERNMENT OFFICIAL	(F)	01CRS52578	"	"	F
7/19/91	DRIVING WHILE LICENSE REVOKED	(M)	91CR1774	1/22/1992	CASWELL	1
"	FICTITIOUS INFORMATION TO OFFICER	(M)	91CR1775	"	"	2
"	RESISTING PUBLIC OFFICER	(M)	91CR1776	"	"	2

*DEFENDANT IS CURRENTLY SERVING AN ACTIVE PRISON SENTENCE OF 202-262 MONTHS FOR THESE OFFENSES.

STATE OF NORTH CAROLINA VS ROBERT R. ALLRED

On May 23, 2002, Mr. Allred pled guilty to the following crimes:

1) Breaking & entering while being an habitual felon;
2) Larceny while being an habitual felon;
3) Breaking & entering;
4) Breaking & entering;
5) Breaking & entering;
6) Common law robbery while being an habitual felon;
7) Common law robbery while being an habitual felon; and
8) Attempted common law robbery while being an habitual felon.

The maximum punishment that Mr. Allred could have received was **1,395 months** in prison.

After hearing arguments from both the State and the Defense, the Court ordered Mr. Allred to serve a prison sentence of 202 months minimum to 262 months maximum.

From 1981 to 2002, Mr. Allred has been convicted of approximately **29** felonies and **42** misdemeanors (**71** total convictions), including a previous felony conviction while being an habitual felon.

Mr. Allred's offense dates for these convictions, along with his previous active prison sentences, are set out below.

Offense dates	Active prison sentences
1) 5/4/1981 (this is conviction date because offense date for this Florida crime not available)	Sentenced to 2 years confinement—uncertain when released

2)	9/28/1981 (this is conviction date because offense date for this Florida crime not available)	Sentenced to 4 years confinement—uncertain when released
3)	1/3/1985	
4)	1/10/1985	
5)	1/13/1985	
6)	1/16/1985	5/31/1985 to 5/6/1988
7)	9/22/1990	
8)	**1/2/1991**	
9)	**1/15/1991**	
10)	**3/16/1991**	
11)	**3/17/1991**	
12)	**3/21/1991**	
13)	**3/23/1991**	
14)	**3/28/1991**	
15)	**3/29/1991**	
16)	**3/30/1991**	
17)	**3/31/1991**	
18)	**4/2/1991**	
19)	**4/3/1991**	
20)	**4/4/1991**	
21)	**4/5/1991**	
22)	**4/8/1991**	
23)	**4/9/1991**	
24)	**4/13/1991**	
25)	**5/19/1991**	
26)	**6/20/1991**	
27)	**7/19/1991**	
28)	**9/17/1991**	
29)	**10/12/1991**	
30)	**10/15/1991**	

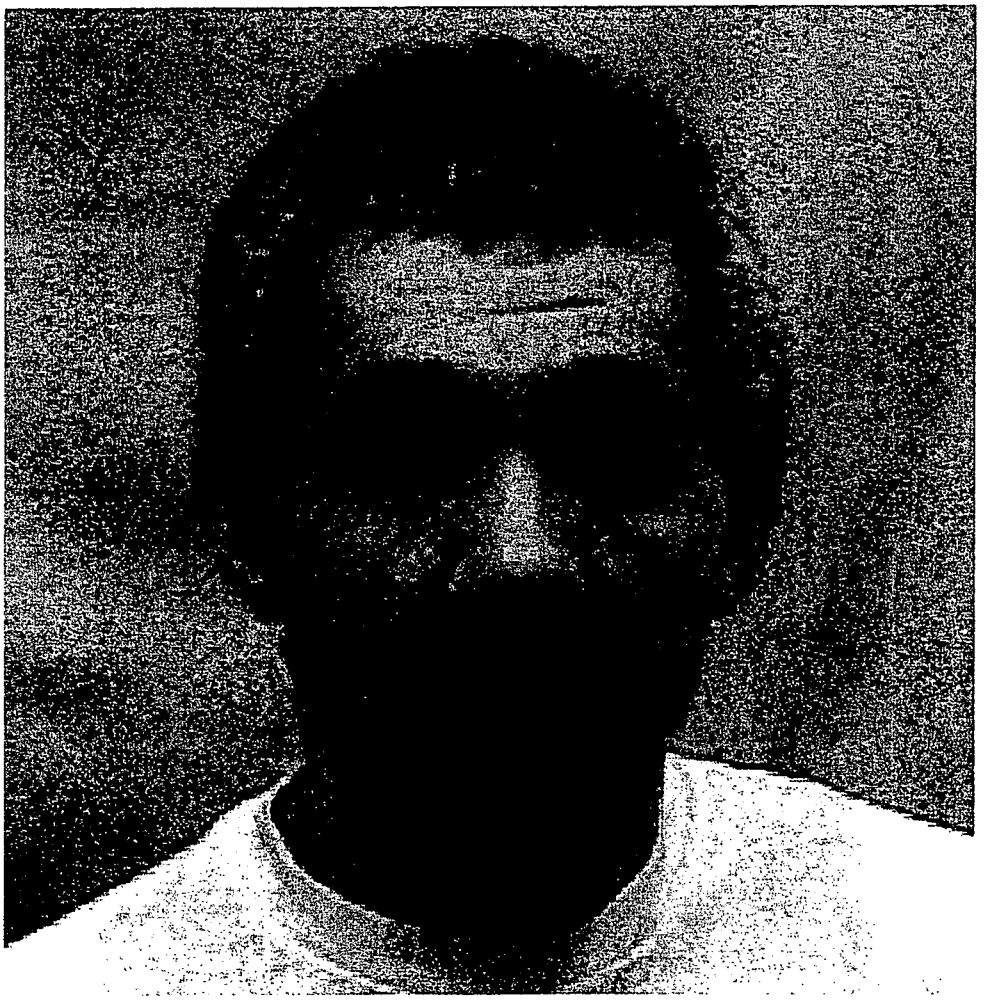
31)	**11/5/1991**	
		1/23/1992 to 2/6/1992
32)	**4/21/1992**	
		6/11/1992 to 9/17/1996 **(habitual felon sentence)**
33)	12/19/1997	
34)	9/16/1998	
35)	**11/24/1998**	
		12/15/1998 to 3/24/1999
36)	**6/3/2000**	
37)	**6/10/2000**	
38)	**2/23/2001**	
39)	**5/1/2001**	
40)	**5/8/2001**	
41)	**5/10/2001**	
42)	**5/12/2001**	
43)	**5/15/2001**	
44)	**5/26/2001**	

{note: Offenses in bold type and underlined denote said offense was committed while on probation, parole and/or pretrial release.}

STATE OF NORTH CAROLINA VS TIMMY R. LOCKLEAR

GENDER: MALE
AGE: 41

RACE: INDIAN
DOB: 9/19/1961



[redacted]

III. PRIOR CONVICTION

NOTE: *Federal law precludes making computer printout of DCI-CCH (rap sheet) part of permanent public court record.*

OFFENSE DATE	Offenses	FELONY (F) / MISDEMEANOR (M)	File No.	Date Of Conviction	County (Name of State if not NC)	Class
[redacted]/80	BREAKING & ENTERING MOTOR VEHICLE	(F)	80 CRS 17840	6/9/1980	GUILFORD	I
[redacted]/80	BREAKING & ENTERING	(F)	80 CRS 19460	"	"	H
5/6/84	RESISTING PUBLIC OFFICER	(M)	84 CR 40014	5/22/1984	"	2
11/24/87	UTTERING	(F)	87 CRS 56469	5/17/1988	"	I
12/1/87	UTTERING	(F)	87 CRS 57075	"	"	I
12/17/87	BREAKING & ENTERING	(F)	87 CRS 59546	"	"	H
12/7/87	BREAKING & ENTERING	(F)	88 CRS 21167	"	"	H
11/19/87	BREAKING & ENTERING	(F)	88 CRS 21168	"	"	H
12/15/87	BREAKING & ENTERING	(F)	88 CRS 21169	"	"	H
12/15/87	LARCENY	(F)	"	"	"	H
11/20/87	BREAKING & ENTERING	(F)	88 CRS 21170	"	"	H
11/20/87	LARCENY	(F)	"	"	"	H
12/15/87	BREAKING & ENTERING	(F)	88 CRS 21171	"	"	H
12/15/87	LARCENY	(F)	"	"	"	H
11/18/87	BREAKING & ENTERING	(F)	88 CRS 21172	"	"	H
11/18/87	LARCENY	(F)	"	"	"	H
12/17/87	BREAKING & ENTERING	(F)	88 CRS 21173	"	"	H
[redacted]/87	LARCENY	(F)	"	"	"	H
11/21/87	BREAKING & ENTERING	(F)	88 CRS 21174	"	"	H
11/21/87	LARCENY	(F)	"	"	"	H
12/16/87	BREAKING & ENTERING	(F)	88 CRS 21175	"	"	H
12/16/87	LARCENY	(F)	"	"	"	H
4/30/88	LARCENY	(M)	88 CR 6045	7/12/1988	ROBESON	1
5/1/88	WORTHLESS CHECK	(M)	88 CR 6046	"	"	2
4/6/89	SHOPLIFTING	(M)	89 CR 35687	6/5/1989	GUILFORD	3
9/7/89	POSSESSION BURGLARY TOOLS	(F)	89 CRS 58187	1/3/1990	"	I
9/7/89	ATTEMPTED SECOND DEGREE BURGLARY	(F)	89 CRS 58188	"	"	H
2/19/1994	SECOND DEGREE BURGLARY	(F)	94 CRS 30831	7/11/1994	"	G
2/19/1994	LARCENY	(F)	"	"	"	H
5/24/93	FORGERY	(F)	94 CRS 26521	"	"	I
5/24/93	UTTERING	(F)	"	"	"	I
[redacted]	HABITUAL FELON	(F)	94 CRS 20381	"	"	C

Source Code: 1 - DCI 2 - NCIC 3 - AOC/Local 4 - AOC/Statewide 5 - ID Bureau 6 - Other

Date Prepared: _____

Prepared By: _____

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III. PRIOR CONVICTION

NOTE: *Federal law precludes making computer printout of DCI-CCH (rap sheet) part of permanent public court record.*

OFFENSE DATE	Offenses	FELONY (F) / MISDEMEANOR (M)	File No.	Date Of Conviction	County (Name of State if not NC)	Class
[redacted]/93	FORGERY	(F)	93CRS5073	2/23/1995	SCOTLAND	I
6/15/93	UTTERING	(F)	"	"	"	I
9/24/02	BREAKING & ENTERING MOTOR VEHICLE	*(F)	02CRS98289	4/2/2003	GUILFORD	I
—	HABITUAL FELON	*(F)	03CRS24089	"	"	C
1/6/03	BREAKING & ENTERING	*(F)	03CRS70658	"	"	H
1/6/03	LARCENY	*(F)	"	"	"	H
—	HABITUAL FELON	*(F)	03CRS24172	"	"	C
1/7/03	ATTEMPTED BREAKING & ENTERING	*(F)	03CRS70661	"	"	I
1/7/03	POSSESSION OF BURGLARY TOOLS	*(F)	03CRS70663	"	"	I
—	HABITUAL FELON	*(F)	03CRS24173	"	"	C
1/7/03	POSSESSION DRUG PARAPHERNALIA	*(M)	03CRS70660	"	"	1
1/7/03	ATTEMPTED BREAKING & ENTERING	*(M)	03CRS70662	"	"	2

* DEFENDANT IS CURRENTLY SERVING AN ACTIVE PRISON SENTENCE OF 302-382 MONTHS FOR THESE OFFENSES.

Source Code: 1 - DCI 2 - NCIC 3 - AOC/Local 4 - AOC/Statewide 5 - ID Bureau 6 - Other

Date Prepared: _____

Prepared By: _____

2001 Administrative Office of the Courts

STATE OF NORTH CAROLINA VS TIMMY R. LOCKLEAR

On April 2, 2003, Mr. Locklear pled guilty to the following crimes:

1) Breaking & entering motor vehicle while being an habitual felon;
2) Breaking & entering while being an habitual felon;
3) Larceny while being an habitual felon;
4) Attempted breaking & entering while being an habitual felon;
5) Possession of burglary tools while being an habitual felon;
6) Possession of drug paraphernalia; and
7) Attempted breaking & entering.

The maximum punishment that Mr. Locklear could have received was **1,175 months, 180 days** in prison.

After hearing arguments from both the State and the Defense, the Court ordered Mr. Locklear to serve a prison sentence of 302 months minimum to 382 months maximum.

From 1980 to 2003, Mr. Locklear has been convicted of approximately **34** felonies and **6** misdemeanors (**40** total convictions), including a previous felony conviction while being an habitual felon.

Mr. Locklear's offense dates for these convictions, along with his previous active prison sentences, are set out below.

Offense dates	Active prison sentences
1) 1/16/1980	
2) 2/11/1980	
3) 5/6/1984	
4) 11/18/1987	
5) 11/19/1987	
6) 11/20/1987	
7) 11/21/1987	
8) 11/24/1987	
9) 12/1/1987	

10) 12/7/1987
11) 12/15/1987
12) 12/16/1987
13) 12/17/1987
14) 4/30/1988
15) 5/1/1988

5/26/1988 to
3/1/1989

16) 4/6/1989
17) 9/7/1989

1/10/1990 to
4/26/1991

18) 5/24/1993
19) 6/15/1993
20) 2/19/1994

8/19/1994 to
7/5/2002
(habitual felon sentence)

21) 9/24/2002
22) 1/6/2003
23) 1/7/2003

{note: Offenses in bold type and underlined denote said offense was committed while on probation, parole and/or pretrial release.}

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 754

Short Title:	Qualifications for Magistrates.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary IV.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have <u>at least 12 years' experience as a clerk of superior court in this State, or shall have</u> a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 754:
Qualifications for Magistrates

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Culpepper
Date:	April 17, 2003	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 754 would amend the qualifications for persons nominated as magistrates. The act would become effective when it becomes law.***

CURRENT LAW:

Magistrates

Magistrates are appointed officers of the district court. Every even-numbered year, the clerk of superior court submits the names of persons qualified for the position of magistrate to the senior regular resident superior court judge. In order to be eligible to be nominated as a magistrate, a person must either have a four-year degree from an accredited college or university, or have a two-year associate's degree and four years of work experience in a related field, including teaching, social service, law enforcement, arbitration or mediation, the court system, or counseling. From these nominations, the senior resident superior court judge appoints the requisite number of magistrates. Magistrates are appointed for two-year terms.

Magistrates preside over and decide civil small claims actions. In criminal actions and infractions, magistrates can issue arrest warrants and search warrants, grant bail for any noncapital offense, and conduct initial appearances. Also, in certain traffic, alcohol and other minor offenses that are waivable[1], magistrates can accept guilty pleas, enter judgment, and collect the fines or penalties and costs in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges.

Clerks of Superior Court

Clerks of superior court are elected officials who serve terms of four years. Persons who are qualified voters aged 21 and over and who are not convicted felons are eligible to be elected as clerks of superior court. Clerks of superior court appoint assistant clerks.

Clerks of superior court are authorized to perform a number of legal tasks, including issuing summonses and subpoenas, administering oaths, certifying records, entering default judgments, granting and revoking letters testamentary, letters of administration, and letters of trusteeship in estate matters, appointing and removing guardians and trustees (G.S. 7A-103), issuing arrest and search warrants (G.S. 7A-180), and entering orders of possession in sales of property under power of sale (G.S. 45-21.29). Assistant clerks are authorized to perform all the duties and functions of the office of clerk of superior court.

BILL ANALYSIS: The bill would amend current law to permit a person to be nominated to serve as a magistrate if that person has at least 12 years' experience as a Clerk of Superior Court in this State.

H754-SMSW-001

[1] *A waivable offense is one where the person charged with the offense may waive his or her appearance and enter a plea of guilty or responsible.*

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 754 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Kiser
Sen.)

1 moves to amend the bill on page 1, line 7

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "12" and substituting "eight".

4

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SIGNED Joe Kiser

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 754 A BILL TO BE ENTITLED AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#), ☐ which changes the title~~, unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on Appropriations.)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 807

Short Title: Elective Share Amendments. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE LAW ESTABLISHING THE ELECTIVE SHARE OF A DECEDENT'S SURVIVING SPOUSE AND TO REPEAL THE RIGHT OF A SURVIVING SPOUSE TO ELECT A LIFE INTEREST IN LIEU OF AN INTESTATE SHARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-3.1 reads as rewritten:

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in ~~G.S. 30-3.2(c),~~G.S. 30-3.2(4), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. – Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that ~~such taxes are increased because~~the assets received by the surviving spouse do not qualify for the federal estate

tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions."

SECTION 2. G.S. 30-3.2 reads as rewritten:

"**§ 30-3.2. Definitions.**

The following definitions apply in this Article:

(1) "Code" means the Internal Revenue Code in effect at the time of the decedent's death.

(2) "Death taxes" means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(3) "Nonadverse trustee" ~~means a trustee who would be deemed nonadverse under section 672 of the Code.~~ means:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(4) "Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and administration expenses, the sum of the following:

a. All property to which the decedent had legal and equitable title immediately prior to death;

b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

c. One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.

f. Any ~~donative transfers~~gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:

1. Any gifts within the annual exclusion provisions of section 2503 of the Code;
2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and
3. Any gifts made prior to marriage;

g. Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."

SECTION 3. G.S. 30-3.3(a) reads as rewritten:

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. – For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:

(1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of

decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;

(7) ~~The~~ Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, ~~where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse; and~~if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;

b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;

c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and

In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and

(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent."

SECTION 4. G.S. 30-3.4 reads as rewritten:

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of

the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. ~~To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;~~An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. – The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. – The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. – The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. – If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so,

the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. – Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division."

SECTION 5. G.S. 30-3.6 is amended by adding a new subsection to read:

"(c) A written waiver executed prior to January 1, 2001, that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes, is effective to waive that spouse's right of elective share under this Article for estates of decedent's dying on or after January 1, 2001."

SECTION 6. G.S. 29-30 is repealed.

SECTION 7. This act becomes effective January 1, 2004, and applies to estates of decedents dying on or after that date.

HB 807:
Elective Share Amendments

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Culpepper
Date:	April 17, 2003	**Summary by:**	Steven Rose
Version:	H807-CSRL-13 [v.1]		Committee Counsel

SUMMARY: ***HB 807 makes changes to Article 1A of Chapter 30 of the General Statutes, which governs the right of a surviving spouse to dissent from the deceased spouse's will and take an elective share instead. It also repeals G.S. 29-30, which permits a surviving spouse to elect a life estate in one third in value of real estate of the deceased spouse.***

BILL ANALYSIS:

SECTION 1: Amends G.S. 30-3.1(a) to correct an incorrect citation. It also amends subsection (c) of that statute to clarify the method of determining the effect of death taxes on the calculation of Total Net Assets available for the elective share. This is not intended to change the results of the calculation.

SECTION 2: Amends G.S. 30-3.2(3), the definition of "nonadverse trustee," by eliminating the reference to an Internal Revenue Code section for the definition, and instead spelling out the definition. This clarifies that a corporate trustee qualifies, as well as an individual who does not possess a beneficial interest, or who serves at the pleasure of the surviving spouse. It also amends subdivision (4) f. of that statute. Subdivision 4 is the definition of "total net assets," which is the amount upon which the elective share is calculated. The amendment substitutes "gifts" for the phrase "donative transfers" to clarify that charitable donations are not included as part of total net assets.

SECTION 3: Amends G.S. 30-3.3(a)(7), part of the definition of "property passing to surviving spouse," to clarify that the entire value of certain trusts is includable in the definition, and thus includable in the calculation of net asset value.

SECTION 4: Amends G.S. 30-3.4(b) and (e). Subsection (b) is the six months statute of limitations for making the election. The amendment provides that the six months runs from the filing of each will. Thus, the spouse who does not elect because he or she thought the will was adequate will not be taken by surprise if a later will is discovered after the six months has run. Subsection (e) contains a clarifying amendment as to the spousal trusts to be included as passing to the surviving spouse, for purposes of G.S. 30-3.3(a)(7). (See Section 3 above.)

SECTION 5: Amends G.S. 30-3.6 by adding a new subsection (c). G.S. 30-3.6 specifies when a surviving spouse waives her right to an elective share. The amendment makes it clear that a written waiver executed prior to January 1, 2001, when the predecessor to Article 1A was in force, is still valid. A written waiver is typically a prenuptial agreement.

SECTION 6: Repeals G.S.29-30 which permits a surviving spouse to elect a life estate in one third in value of the real estate owned by the deceased spouse.

SECTION 7: Section 5 of the act is effective when it becomes law. The remainder of the act is effective January 1, 2004, and applies to estates of persons dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 807
PROPOSED COMMITTEE SUBSTITUTE H807-CSRL-13 [v.1]

4/16/2003 4:54:05 PM

Short Title: Elective Share Amendments. (Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE LAW ESTABLISHING THE ELECTIVE SHARE OF A DECEDENT'S SURVIVING SPOUSE AND TO REPEAL THE RIGHT OF A SURVIVING SPOUSE TO ELECT A LIFE INTEREST IN LIEU OF AN INTESTATE SHARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-3.1 reads as rewritten:

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in ~~G.S. 30-3.2(c),~~G.S. 30-3.2(4), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. – Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that ~~such taxes are increased~~

~~because~~the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions."

SECTION 2. G.S. 30-3.2 reads as rewritten:

"**§ 30-3.2. Definitions.**

The following definitions apply in this Article:

(1) "Code" means the Internal Revenue Code in effect at the time of the decedent's death.

(2) "Death taxes" means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(3) "Nonadverse trustee" ~~means a trustee who would be deemed nonadverse under section 672 of the Code.~~ means:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(4) "Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and administration expenses, the sum of the following:

a. All property to which the decedent had legal and equitable title immediately prior to death;

b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

c. One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint

tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.

f. Any ~~donative transfers~~gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:

1. Any gifts within the annual exclusion provisions of section 2503 of the Code;
2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and
3. Any gifts made prior to marriage;

g. Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."

SECTION 3. G.S. 30-3.3(a) reads as rewritten:

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. – For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:

(1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;

(7) ~~The~~ Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, ~~where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse; and~~if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;

b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;

c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and

In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and

(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent."

SECTION 4. G.S. 30-3.4 reads as rewritten:

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in

connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. ~~To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;~~An interest described in G.S. 30-3.3(a)(7) that shall be valued as if

the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. – The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. – The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. – The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. – If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. – Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division."

SECTION 5. G.S. 30-3.6 is amended by adding a new subsection to read:

"(c) A written waiver executed prior to January 1, 2001, that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes, is effective to waive that spouse's right of elective share under this Article for estates of decedent's dying on or after January 1, 2001."

SECTION 6. G.S. 29-30 is repealed.

SECTION 7. Section 5 of this act is effective when it becomes law. The remainder of this act becomes effective January 1, 2004, and applies to estates of decedents dying on or after that date.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
H.B. 807 A BILL TO BE ENTITLED AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE LAW ESTABLISHING THE ELECTIVE SHARE OF A DECEDENT'S SURVIVING SPOUSE AND TO REPEAL THE RIGHT OF A SURVIVING SPOUSE TO ELECT A LIFE INTEREST IN LIEU OF AN INTESTATE SHARE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#), ☐ which changes the title~~, unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on Appropriations.)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

HOUSE BILL 241

Short Title:	Amend Drug Trafficking Laws.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DRUG TRAFFICKING LAWS, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h) reads as rewritten:

"(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article. Sentences imposed pursuant to this subsection may not be suspended and must include a minimum and maximum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender, as specified in G.S. 15A-1340.17.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of ~~10~~5 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of ~~10~~5 pounds, but less than 50 pounds, such person shall be punished as a Class ~~H~~ F felon ~~and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than ~~2,000~~ 500 pounds, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is ~~2,000~~ 500 pounds or more, but less than ~~10,000~~ 5,000 pounds, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

d. Is ~~10,000~~ 5,000 pounds or more, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or

identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Repealed by Session Laws 1999-370, s. 1.

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine or amphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class ~~E~~ C felon ~~and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class ~~C~~ B1 felon ~~and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months~~ and, in addition to

an active punishment in the State's ~~prison and~~ prison, shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class ~~E~~ C felon ~~and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class ~~C~~ B1 felon ~~and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84~~

~~months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in MDA/MDMA." If the quantity of the substance or mixture involved:

a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred fifty thousand dollars ($250,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge,

provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

SECTION 2. G.S. 90-95(i) reads as rewritten:

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy or attempt to commit any of the offenses described in subsection (h) of this section.

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 241:
Amend Drug Trafficking Laws-AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 15, 2003	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

*SUMMARY: **House Bill 241 is a recommendation of the North Carolina Sentencing and Policy Advisory Commission. The bill would reclassify drug trafficking offenses two classes higher than their current classification, require active punishments for persons convicted of drug trafficking offenses, lower the threshold amounts for trafficking in marijuana, and require active punishment for attempted trafficking offenses. The act would become effective December 1, 2003 and apply to offenses committed on or after that date.***

CURRENT LAW: Selling, manufacturing, delivering, transporting or possessing a statutorily prescribed amount of certain controlled substances is considered "drug trafficking". Drug trafficking offenses are currently classified as Class C, D, E, F, G and H felonies, depending on the controlled substance and the amount, and convictions carry an active sentence. However, the classifications do not relate to the punishments available for these felony classifications under structured sentencing because these offenses are subject to predetermined mandatory sentences that do not allow a judge to take into account the offender's prior record and any aggravating or mitigating factors.

For trafficking in marijuana, the threshold amounts and corresponding class offenses are as follows:

- 10 to less than 50 pounds – Class H
- 50 to less than 2,000 pounds – Class G
- 500 to less than 10,000 pounds – Class F
- 10,000 pounds or more – Class D

Conspiracy to drug traffic carries the same mandatory sentence as drug trafficking. On the other hand, persons convicted of attempted drug trafficking are sentenced according to the structured sentencing felony punishment chart.

BILL ANALYSIS: House Bill 241 would reclassify the drug trafficking offenses two classes higher and put the offenses under structured sentencing. See the chart attached. This would make the sentences available in the first prior record level approximately the same as the current mandatory sentence for each of these offenses and would permit the judge to take into account the offender's prior record and any aggravating or mitigating factors in the case. According to the North Carolina Sentencing and Policy Advisory Commission, more drug trafficking offenders will be eligible for the firearm enhancement and for violent habitual felon status, and almost all offenders convicted of drug trafficking offenses will receive post-release supervision as a result of this reclassification.

All drug trafficking offenses currently receive an active punishment. Incorporating the offenses into structured sentencing would result in some offenses being eligible for an intermediate punishment (depending on prior record level). The bill would continue the requirement for an active punishment.

The bill would lower the threshold amounts for trafficking in marijuana as follows:

Current threshold	Offense Class	House Bill 241	Offense Class
10 to less than 50	H	5 to less than 50	F
50 to less than 2,000	G	50 to less than 500	E
2,000 to less than 10,000	F	500 to less than 5,000	D
10,000 or more	D	5,000 or more	B2

Finally, the bill would require an active sentence for attempting trafficking.

BACKGROUND: In the studies bill for the 2001 Session of the 2001 General Assembly (S.L. 2001-491), the North Carolina Sentencing and Policy Advisory Commission was authorized to study the laws regarding drug offenses and the current sentencing guidelines for those offenses. The Sentencing Commission responded by forming a subcommittee to study the issue and make recommendations. After study and deliberation, the subcommittee recommended to the full Commission, and the Commission recommended, legislation contained in House Bill 241.

Substantial portions of this summary were derived from the North Carolina Sentencing and Policy Advisory Commission's "Report on Study of the Laws Regarding Drug Offenses Pursuant to Session Law 2001-491, Section 21.4."

H241-SMSW-001

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

April 24, 2003

The House Committee on Judiciary IV met on April 24, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Bowie, Earle, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Representative Luebke was called upon to explain HB 925 A BILL TO BE ENTITLED AN ACT TO ALLOW COUNTY APPEAL IN JUVENILE "PAY ORDER" CASES. Chuck Kitchen, a attorney from Durham County spoke in favor of the bill. This bill received a favorable report and will be reported out of committee on Monday, April 28th.

Representative Haire was asked to explain HB 785 A BILL TO BE ENTITLED AN ACT TO REWRITE RULE 45 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE. Bonnie Weyher, Litigation Counsel for the North Carolina Bar Association assisted with questions regarding this bill. Rex Gore, a District Attorney from District 13 spoke in opposition to this legislation as it would include subpoenas issued in criminal cases and not just civil cases as intended by the bill sponsors. A PCS including three amendments was offered and received a favorable report, unfavorable as to the original bill and will be reported out of committee on Monday, April 28th.

Representative Glazier was called upon to explain HB 1033 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PROCEDURE TO RESOLVE THE ISSUE OF CONFLICTING CHILD CUSTODY ORDERS; TO CLARIFY THE EFFECT OF TERMINATING JURISDICTION IN CERTAIN JUVENILE CASES; TO GIVE THE COURT AUTHORITY TO CONVERT A JUVENILE COURT CUSTODY ORDER INTO A PERMANENT CUSTODY ORDER UNDER CHAPTER 50 OF THE GENERAL STATUES; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAW. Judge Beth Keever with the North Carolina Courts spoke in support of this legislation. A PCS will be drafted and presented at the next meeting to be held on April 28th.

HB 241 A BILL TO BE ENTITLED AND ACT TO AMEND THE DRUG TRAFFICKING LAWS, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION. Lyle Yurko with the North Carolina Sentencing Commission spoke in support of this bill. All parties involved in this legislation requested more time to hopefully come to an agreement on this bill. The bill will be taken up at the next meeting on April 28th.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Dobson	NC State Watch
Randy Monchick	Consultant
Sue Ann Coe	NC FAMM
Laura Sager	NC FAMM
Patrice Rouse	NCACC
H.C. Rebelle	Duncan Cos.
Lyle Yurko	APTY - NCSC
S. Katzenelson	Sentencing Com.
Tara Madler	"
Judge Beth Keever	Court System
Dina DiMaio	NCBA
Bonnie Weyher	Lit. Council NCBA
Mildred Spearman	NCDOC
Jo McCants	AOC
Marcos Arellano	Intern for Rep. Luebke
Jeff Hunt	Com of DA's
Kris Bone	NCDA13
Jon Hunt	DA - 21st Dist
Peg Dair	Conference of DAs
Ron Moss	DA - 28th
Jane Smith	NCDSS
Joan Dunn	NCDSS
Paul Pulley	Pulley Watson
Lou Rubbart	CJPC

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

April 24, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 241	**Amend Drug Trafficking Law**	**Rep. Haire**
HB 785	**Rules of Civil Procedure/Rule 45 Rewrite**	**Rep. Haire**
HB 925	**County Appeals of Certain Juvenile Orders**	**Rep. Luebke-Fav Rp**
HB 1033	**Child Custody/Guardianship Jurisdiction**	**Rep. Glazier & Munford**

H 1

HOUSE BILL 925

Short Title: County Appeals of Certain Juvenile Orders. (Public)

Sponsors: Representative Luebke.

Referred to: Judiciary IV.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW COUNTY APPEAL IN JUVENILE "PAY ORDER" CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2604 reads as rewritten:

"**§ 7B-2604. Proper parties for appeal.**

(a) An appeal may be taken by the juvenile, the juvenile's parent, guardian, or custodian, a county, or the State.

(b) The State's appeal is limited to the following orders in delinquency or undisciplined cases:

(1) An order finding a State statute to be unconstitutional; and

(2) Any order which terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.

(c) A county's appeal is limited to orders in which the county has been ordered to pay for medical, surgical, psychiatric, psychological, or other evaluation or treatment of a juvenile pursuant to G.S. 7B-2502, or other medical, psychiatric, psychological, or other evaluation or treatment of a parent pursuant to G.S. 7B-2702."

SECTION 2. This act becomes effective October 1, 2003, and applies to petitions for appeal filed on or after that date.

HOUSE BILL 925:
County Appeals of Certain Juvenile Orders

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Luebke
Date:	April 22, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 925 authorizes counties to bring an appeal in cases in which the county has been ordered to pay for medical, surgical, psychiatric, psychological, or other evaluation or treatment of a juvenile or of a parent as part of a dispositional order entered by juvenile court.***

The bill would become effective October 1, 2003, and applies to petitions for appeal filed on or after that date.

CURRENT LAW: In any juvenile case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile. Upon completion of the examination, the court is required to conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other evaluation or treatment and who should pay the cost of the evaluation or treatment. The county manager, or his designee, shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of treatment, the court may order the parent or legal guardian to make arrangements for treatment and pay for the cost of the care. The court may also order the parent or guardian to participate directly in the evaluation or treatment if it finds that the participation would be in the best interests of the juvenile. If the court finds the parent is unable to pay for the cost of evaluation or treatment of the juvenile or the parent, the court shall order the county to arrange and pay for the evaluation or treatment.

G.S. 7B-2604 authorizes the following parties to bring an appeal of a dispositional order entered by juvenile court:

- The juvenile
- The juvenile's parent, guardian, or custodian
- The State

However, the State may only appeal orders that find a State statute to be unconstitutional or that terminate the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.

This statute does not provide counties the right to appeal dispositional orders in juvenile cases. The North Carolina Supreme Court has also held that this statute does not provide counties with the right to appeal despite the fact that counties are entitled to notice and an opportunity to be heard at certain juvenile hearings.

BILL ANALYSIS: House Bill 925 adds counties to the list of proper parties that may appeal dispositional orders entered in juvenile court. The appeal is limited to orders in which the county is ordered to pay for medical, surgical, psychiatric, psychological, or other evaluation or treatment of a juvenile or of a parent.

BACKGROUND: Prior to 1998, county *agencies* did have authority to bring an appeal under this statute. However, the North Carolina Supreme Court has held that the term "county agency" does not include the county itself for purposes of bringing an appeal. Moreover, when the Juvenile Code was rewritten and recodified in 1998, "county agency" was specifically deleted from this statute. Thus, a county has never had the statutory right to appeal in a juvenile proceeding in this state. It was not until 1996 that counties were provided with the right to be notified and an opportunity to be heard at hearings to determine whether a juvenile is in need of evaluation and treatment.

Some counties have expressed concern over instances where juvenile courts are ordering treatment for juveniles and the payment of costs by the county without notifying the county manager or providing the county with an opportunity to be heard as required by statute. While this bill would give counties the right to appeal regardless of whether a county representative was present at the hearing, the impetus for this bill is the fact that, according to some county officials, pay orders are being entered outside the presence of the county manager or his designee, as required by statute, and counties would like the opportunity to challenge these orders if necessary.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
H.B. 925 A BILL TO BE ENTITLED AN ACT TO ALLOW COUNTY APPEAL IN JUVENILE "PAY ORDER" CASES.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

H 1

HOUSE BILL 785

Short Title:	Rules of Civil Proc/Rewrite Rule 45.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO REWRITE RULE 45 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 45, reads as rewritten:

"**Rule 45. Subpoena.**

(a) ~~For attendance of witnesses; issuances; form.~~ Form. – A subpoena to produce evidence may be joined with a command to appear at a trial or a hearing or to appear at a deposition, or any subpoena may be issued separately. Every subpoena ~~for the purpose of obtaining the testimony of a witness in a pending cause shall, except as hereinafter provided, be issued at the request of any party by the clerk of superior court for the county in which the hearing or trial is to be held. A subpoena shall be directed to the witness, shall state the name of the court and the~~ shall state all of the following:

(1) The title of the action, the name of the ~~party at whose instance the witness is summoned, and shall command the~~court in which the action is pending, and the number of the civil action.

(2) A command to each person to whom it is directed to attend and give testimony ~~at a time and place~~ or to produce and permit inspection and copying of designated records, books, papers, documents, or tangible things in the possession, custody, or control of that person therein specified.

(3) The protections of persons subject to subpoenas under subsection (d1) of this section.

(4) The requirements for responses to subpoenas under subsection (d2) of this section.

(a1) Issuance. – A subpoena shall issue from the court in which the action is pending. The clerk of court in which the action is pending shall issue a subpoena, ~~or a subpoena for the production of documentary evidence,~~ signed but otherwise ~~in~~ blank, to a party requesting it, who shall ~~fill~~ complete it ~~in~~ before service. ~~A subpoena for a~~

~~witness or witnesses need not be signed by the clerk, and is sufficient if signed by the party or his attorney. A subpoena for the production of documentary evidence need not be signed by the clerk, and is sufficient if signed by the attorney requesting the same.~~An attorney, as an officer of the court, may also issue and sign a subpoena.

~~(b) Issuance by a judge. Such subpoena may also be issued by any judge of the superior court, judge of the district court, or magistrate.~~

~~(c) For production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the records, books, papers, documents, or tangible things designated therein. Where the subpoena commands any custodian of public records to appear for the sole purpose of producing certain records in his custody, the custodian subpoenaed may, in lieu of a personal appearance, tender to the court by registered mail certified copies of the records requested, together with an affidavit by the custodian as to the authentication of the record tendered or, if no such records are in his custody, an affidavit to that effect. Any original or certified copy or affidavit delivered under the provisions of this rule, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication.~~

(d1) Protection of Persons Subject to Subpoenas. –

(1) Avoid Undue Burden or Expense. – A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable measures to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or the attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For Production of Public Records or Hospital Medical Records. – Where the subpoena commands any custodian of public records or any custodian of hospital medical ~~records (as defined in G.S. 8-44.1)~~records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in ~~his~~ the custodian's custody, the custodian subpoenaed may, in lieu of a personal appearance, tender to the ~~presiding judge or designee~~court in which the action is pending by registered or certified mail or by personal ~~delivery at no cost~~delivery, on or before the time specified in the subpoena, certified copies of the records requested, ~~on or before the time specified in the subpoena,~~ together with a copy of the subpoena and an affidavit by the custodian testifying ~~to the identity and authenticity of the records,~~ that ~~they~~ the copies are true and correct ~~copies, and as appropriate,~~copies and that the records were made and kept in the regular course of ~~business at or near the time of the acts, conditions, or events recorded, and that they were made by persons having knowledge of the information set forth;~~ business, or if no such records are in ~~his~~ the custodian's custody, an affidavit to that effect. When the copies of ~~medical~~ records are personally ~~delivered,~~delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or

certified copy of ~~medical records, or affidavit,~~records or an affidavit delivered according to the provisions of this ~~rule shall not be held inadmissible~~subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding ~~on the grounds that it lacks certification, identification,~~without further certification or ~~authentication, and it shall be received as evidence if otherwise admissible. The copies~~authentication. Copies of the hospital medical records ~~so~~ tendered under this subdivision shall not be open to inspection or ~~copy~~ copying by any ~~persons,~~person, except to the parties to the case or proceeding and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communications under law to be disclosed. ~~The judge, upon motion to quash or modify made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may~~

~~(1) Quash or modify the subpoena if it is unreasonable and oppressive and in such case may order the party in whose behalf the subpoena is issued to pay the person to whom the subpoena is directed part or all of his reasonable expenses including attorneys' fees or~~

~~(2) Grant the motion unless the party in whose behalf the subpoena is issued advances the reasonable cost of producing the records, books, papers, documents, or tangible things.~~

~~(d) Subpoena for taking depositions.~~

~~(1) Proof of service of a notice to take a deposition as provided in Rules 30(a) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of the superior court for the county in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce designated records, books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of section (c) of Rule 26 and section (c) of this rule.~~

~~The person to whom the subpoena is directed~~

(3) Written Objection to Subpoenas. – Subject to subsection (d2) of this rule, a person commanded to appear at a deposition or commanded to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things may, within 10 days after the service ~~thereof or on~~ of the subpoena or before the time specified ~~in the subpoena~~ for compliance if such time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to ~~inspection or copying of any or all of the designated materials.~~the subpoena, setting forth the specific grounds

for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following is sufficient grounds for objecting to a subpoena:

(1) The subpoena fails to allow reasonable time for compliance.

(2) The subpoena requires disclosure of privileged or other protected matter, and no exception or waiver applies to the privilege or protection.

(3) The subpoena subjects a person to an undue burden.

(4) The subpoena is otherwise unreasonable or oppressive.

(5) The subpoena is procedurally defective.

(4) Order of Court Required to Override Objection. – If objection is ~~made,~~ made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy the materials to which an objection has been made except pursuant to an order of the ~~court from which the subpoena was issued. The~~ court. If objection is made, the party serving the subpoena may, ~~if objection has been made, move~~ upon notice to the ~~deponent~~ subpoenaed person, move at any time for an order ~~at any time before or during the taking of the deposition.~~ to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to Quash or Modify Subpoena. – A person commanded to appear at a trial, hearing, or deposition, or commanded to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if such time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the specific grounds for objection under subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to Compel; Expenses to Comply With Subpoena. – When a court enters an order compelling a deposition or the production of records, books, papers, documents, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order the party on whose behalf the subpoena is issued to advance the reasonable cost of producing the records, books, papers, documents, or tangible things specified in the subpoena.

(7) Trade Secrets; Confidential Information. – When a subpoena requires disclosure of a trade secret or other confidential research,

development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to Quash; Expenses. – When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay part or all of the subpoenaed person's reasonable expenses, including attorneys' fees.

(d2) Responses to subpoenas; requirements. –

(1) Form of Response. – A person responding to a subpoena to produce documents shall produce the documents as they are kept in the usual course of business or shall organize and label the documents to correspond with the categories in the request.

(2) Specificity of Objection. – When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, or other tangible things not produced, sufficient for the requesting party to contest the objection.

(e) Service. –

(1) Manner. – ~~All subpoenas~~ Any subpoena may be served by the sheriff, by ~~his~~ the sheriff's deputy, by a ~~coroner~~ coroner, or by any ~~other~~ person who is not a party and not less than 18 years of ~~age, who is not a party.~~age. Service of a subpoena ~~for the production of documentary evidence may~~ upon a person named therein shall be made ~~only~~ by ~~the delivery of a copy to the person named therein or~~delivering a copy thereof to that person by registered or certified mail, return receipt requested. Service of a subpoena for the attendance of a witness only may also be made by telephone communication with the person named therein only by ~~an authorized server who shall be~~ a sheriff, ~~his~~ the sheriff's designee who is not less than 18 years of age and not a party, or ~~coroner, or by delivery of a copy to the person named therein or by registered or certified mail, return receipt requested, by any person authorized by this section to serve subpoenas. Personal service shall be proved by return of a sheriff, his deputy, or a coroner making service and by return under oath of any other person making service. Service by telephone communication shall be proved by return of the authorized process server, noting the method of service. Service by registered or certified mail shall be proved by filing the return receipt with the return.~~a coroner.

(2) Service of Copy. – A copy of the subpoena served under subdivision (1) of this subsection on the person named therein shall also be served upon each party in the manner prescribed by Rule 5(b).

(f) Punishment for failure to obey. – Failure by any person without adequate ~~cause~~ objection under subdivision (3) of subsection (d1) of this section to obey a subpoena served upon ~~him may be deemed a~~ the person is contempt of the court from which the subpoena issued. Failure by ~~a~~ any party without adequate cause to obey a subpoena served upon ~~him~~ the party shall also subject ~~such~~ the party to the sanctions provided in Rule 37(d)."

SECTION 2. This act is effective when it becomes law and applies to actions pending or filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 785 DATE 4/24/03

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H785-CSSV-7

(Rep.) Haire
Sen.)

1 moves to amend the bill on page 4, line 9

2 ( ) WHICH CHANGES THE TITLE

3 by adding after the period and before the word

4 "An" the following:

5 "Any judge of the superior court, judge of the

6 district court, magistrate, or an" ~~[illegible]~~.

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SIGNED [signature]

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 785 DATE 4/24/03

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H785-CSSV-7 (v.4)

(Rep.) Hair
Sen.)

moves to amend the bill on page 4, line 23

( ) WHICH CHANGES THE TITLE

by adding after the period the following:

"This subdivision does not apply to subpoenas issued under G.S. 15A-801 or G.S. 15A-802.";

and on page 6, lines 42-43, by inserting 2 new sections to read:

"SECTION 2. G.S. 15A-801 ~~reads as rewritten~~ is amended by adding the following phrase before the period:

'except that subsection (b)(2) of the rule does not apply to subpoenas issued under this section.'"

"SECTION 3. G.S. 15A-802 is amended by adding the following phrase before the period:

'except that subsection (b)(2) of the rule does not apply to subpoenas issued under this section.'".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 785 A BILL TO BE ENTITLED AN ACT TO REWRITE RULE 45 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#), ☐ which changes the title,~~ unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on Appropriations.)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1033

Short Title:	Child Custody/Guardianship Jurisdiction.	(Public)
Sponsors:	Representatives Glazier, Munford (Primary Sponsors); Bowie, Gibson, and Hackney.	
Referred to:	Judiciary IV.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE TO RESOLVE THE ISSUE OF CONFLICTING CHILD CUSTODY ORDERS; TO CLARIFY THE EFFECT OF TERMINATING JURISDICTION IN CERTAIN JUVENILE CASES; TO GIVE THE COURT AUTHORITY TO CONVERT A JUVENILE COURT CUSTODY ORDER INTO A PERMANENT CUSTODY ORDER UNDER CHAPTER 50 OF THE GENERAL STATUTES; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200 is amended by adding the following new subsections to read:

"(c) When the court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected, or dependent:

(1) Any other civil action in this State in which the custody of the juvenile is an issue is automatically stayed as to that issue, unless the juvenile proceeding and the civil custody action or claim are consolidated pursuant to subsection (d) of this section or the judge in the juvenile proceeding enters an order dissolving the stay.

(2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to exercise jurisdiction in the juvenile proceeding.

(d) Notwithstanding G.S. 50-13.5(f), the judge assigned to a juvenile proceeding may order that any civil action or claim for custody filed in the district be consolidated with the juvenile proceeding. If a civil action or claim for custody of the juvenile is filed in another district, the judge assigned to the juvenile proceeding, for good cause and after consulting with the judge in the other district, may (i) order that the civil action or claim for custody be transferred to the county in which the juvenile proceeding is filed;

(ii) order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the district in which the civil action or claim is filed; (iii) proceed in the juvenile proceeding while the civil action or claim remains stayed; or (iv) dissolve the stay of the civil action or claim and stay the juvenile proceeding pending a resolution of the civil action or claim."

SECTION 2. G.S. 7B-201 reads as rewritten:

"**§ 7B-201. Retention and termination of jurisdiction.**

(a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first.

(b) When the court's jurisdiction terminates, whether automatically or by court-order, the court thereafter shall not modify or enforce any order previously entered in the case, including any juvenile court order relating to the custody, placement, or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed, unless applicable law or a valid court order in another civil action provides otherwise. Termination of the court's jurisdiction in an abuse, neglect, or dependency proceeding, however, shall not affect any of the following:

(1) A civil custody order entered pursuant to G.S. 7B-911.

(2) A final order terminating parental rights.

(3) A pending action to terminate parental rights, unless the court orders otherwise.

(4) Any proceeding in which the juvenile is alleged to be or has been adjudicated undisciplined or delinquent.

(5) The court's jurisdiction in relation to any new abuse, neglect, or dependency petition that is filed."

SECTION 3. G.S. 7B-402 reads as rewritten:

"**§ 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~~ custodian, and ~~shall allege the facts which~~ allegations of facts sufficient to 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.

(b) The petition, or an affidavit attached to the petition, shall contain the information required by G.S. 50A-209.

(c) Sufficient copies of the petition shall be prepared so that copies will be available for each parent if living separate and apart, the guardian, custodian, or caretaker, the guardian ad litem, the social worker, and any person determined by the court to be a necessary party."

SECTION 4. G.S. 7B-600(a) reads as rewritten:

"(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall

require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority. The court shall retain jurisdiction in the case until the guardianship is terminated, unless the court's jurisdiction terminates earlier as a matter of law."

SECTION 5. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-911. Civil child-custody order.**

(a) After making proper findings at a dispositional hearing or any subsequent hearing, the court on its own motion or the motion of a party may award custody of the juvenile to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7, as provided herein, and terminate the court's jurisdiction in the juvenile proceeding.

(b) When the juvenile court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.

If the order is filed in an existing civil action and the person to whom the court is awarding custody is not a party to that action, the court shall order that the person be joined as a party and that the caption of the case be changed accordingly. The order shall resolve any pending claim for custody and shall constitute a modification of any custody order previously entered in the action.

If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The court may order one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. The Administrative Office of the Courts may adopt rules and shall develop and make available appropriate forms for establishing a civil file to implement this section.

(c) The court may enter a civil custody order under this section and terminate the court's jurisdiction in the juvenile proceeding only if :

(1) In the civil custody order the court makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7; and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:

a. That the juvenile's status and the issues in the case are in the nature of a private custody agreement or dispute and that there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and

b. That at least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed."

SECTION 6. G.S. 50-13.1 is amended by adding a new subsection to read:

"(i) If the child whose custody is the subject of an action under this Chapter also is the subject of a juvenile abuse, neglect, or dependency proceeding pursuant to Subchapter 1 of Chapter 7B of the General Statutes, then the custody action under this Chapter is stayed as provided in G.S. 7B-200."

SECTION 7. This act becomes effective October 1, 2003, and applies to petitions and actions filed on or after that date.

PETER S. GILCHRIST, III
DISTRICT ATTORNEY

State of North Carolina
General Court of Justice
Twenty-sixth Prosecutorial District
MECKLENBURG COUNTY

MECKLENBURG COUNTY COURTHOUSE
700 EAST TRADE STREET, 2ND FLOOR
CHARLOTTE, NC 28202-3016
TELEPHONE: (704) 347-7891
FAX: (704) 333-5246

January 9, 2003

Ms. Susan Katzenelson, Executive Director
North Carolina Sentencing and Policy Advisory Commission
P.O. Box 2472
Raleigh, NC 27602

Dear Susan:

Lyle Yurko has asked my opinion of a proposal of a sub-committee of the Sentencing Commission to move the offenses of drug trafficking into the structured sentencing grid from the current law, which excludes it.

Several members of our staff have reviewed this proposal and it certainly seems consistent both with the overall scheme of structured sentencing as well as providing the opportunity for the facts of particular cases to result in sentences being enhanced or mitigated as the circumstances might indicate.

Drug trafficking offenses are serious offenses and judges and district attorneys should have the flexibility to deal with individual cases as the facts of those cases demand. I endorse the proposal.

Sincerely,

Peter S. Gilchrist, III
District Attorney

PSG/ebj
cc: Jeff Hunt
Lyle J. Yurko
Via fax (919) 733-2991

YURKO'S COMPREHENSIVE STRUCTURED SENTENCING TABLE
EFFECTIVE FOR OFFENSES BEGINNING 12-1-97

(Rev. 2-26-98)

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
9 Pts	B_1	1º Rape 1º Sex Offense Statutory rape or sex offense, age 13, 14, or 15 (Def. 6 yrs. older)	DISPOS Agg. *Presumpt.* Mit.	A 300 *192-240* 144	A 360 *230-288* 173	A 420 *269-336* 202	A 480 *307-384* 230	A Life *346-433* 260	A Life *384-480* 288
		Trafficking Heroin (28 gr.+)*	279-225						
6 Pts	B_2	2º Murder	DISPOS Agg. *Presumpt.* Mit.	A 196 *125-157* 94	A 237 *151-189* 114	A 276 *176-220* 132	A 313 *201-251* 151	A 353 *225-282* 169	A 392 *251-313* 188
		Trafficking Marijuana (5,000 +)*	219-175						
		Trafficking Methaqualone or Amphetamine (10,000 +)*	219-175						
		Trafficking Cocaine or Methamphetamine (400 +)*	219-175						
		Trafficking LSD (1,000 +)*	219-175						

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
6 Pts	C	2° Rape	DISPOS	A	A	A	A	A	A
		2° Sex Offense	Agg.	92	125	145	167	188	210
		Maiming							
		ADWIKSI	*Presumpt.*	*58-73*	*80-100*	*93-116*	*107-133*	*121-151*	*135-168*
		1° Kidnapping							
		Statutory rape or sex offense, age 13, 14, or 15 (Def. 4 yrs. older)	Mit.	44	60	70	80	90	101
		Embezzelment of $100,000							
		Trafficking Heroin (14-28)*	120-90						

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
6 Pts	D	1º Burglary 1º Arson RWDW Voluntary Manslaughter	DISPOS Agg.	A 80	A 95	A 129	A 146	A 167	A 183
			Presumpt.	*51-64*	*61-77*	*82-103*	*94-117*	*107-133*	*117-146*
			Mit.	38	46	61	71	80	88
		Trafficking Marijuana (500-5,000)*	84-70						
		Trafficking in Methaqualone or Amphetamines (5,000-10,000)*	84-70						
		Trafficking Cocaine or Methamphetamines (200-400)*	84-70						
		Trafficking in LSD (500-1,000)*	84-70						
		Trafficking in Opiates (4-14)*	84-70						

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
4 Pts	E	ADWSI ADWIK 2º Kidnapping Felony Abuse Sale of Drugs (School or Minor) Assault with a firearm on a law officer Trafficking in Marijuana (50-500)* Trafficking in Methaqualone or Amphetamines (1,000-5,000)* Trafficking in Cocaine or Methamphetamines (28-200)* Trafficking in LSD (100-500)*	DISPOS Agg. *Presumpt.* Mit. ⌊42-35⌋ ⌊42-35⌋ ⌊42-35⌋ ⌊42-35⌋	I/A 31 *20-25* 15	I/A 36 *23-29* 17	A 42 *27-34* 20	A 58 *37-46* 28	A 66 *42-53* 32	A 74 *47-59* 35

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
4 Pts	F	Involuntary Manslaughter Incest Indecent Liberties Perjury Possession of weapon of mass destruction Assault on emergency personnel with firearm Trafficking in Marijuana (5-50)*	DISPOS Agg. *Presumpt.* Mit. [30-25]	I/A 20 *13-16* 10	I/A 24 *15-19* 11	I/A 26 *17-21* 13	A 31 *20-25* 15	A 42 *27-34* 20	A 49 *31-39* 23
4 Pts	G	2º Burglary 2º Arson Common Law Robbery Death by Vehicle DWI (4th) Possession of Firearm by Felon Sale of Schedule I & II	DISPOS Agg. *Presumpt.* Mit.	I/A 16 *10-13* 8	I/A 19 *12-15* 9	I/A 20 *13-16* 10	I/A 25 *16-20* 12	A 26 *17-21* 13	A 36 *23-29* 17

PRIOR	CLASS	CRIME		I 0 PTS	II 1-4 PTS	III 5-8 PTS	IV 9-14 PTS	V 15-18 PTS	VI 19 + PTS
2 Pts	H	Obtaining by False Pretenses Larceny Receiving Possession of Stolen Goods Breaking or Entering Intimidating Witness Schedule I and II P/W/I Sale of Schedule III - VI False insurance statement Habitual misdemeanor assault Interception of wire Continuing criminal enterprise Escape	DISPOS Agg. *Presumpt.* Mit.	C/I/A 8 *5-6* 4	I/A 10 *6-8* 4	I/A 12 *8-10* 6	I/A 14 *9-11* 7	I/A 19 *12-15* 9	A 25 *16-20* 12
2 Pts	I	Safecracking Worthless Check (More than $2,000) Forgery Uttering Tax Fraud Possession of Cocaine Possession with intent (all substances except I and II) Possession of more than 1.5 oz. of Marijuana Possession of 100 tablets of Schedule II, III, IV Injuring law animal	DISPOS Agg. *Presumpt.* Mit.	C 8 *4-6* 3	C/I 8 *4-6* 3	I 8 *5-6* 4	I/A 10 *6-8* 4	I/A 11 *7-9* 5	I/A 12 *8-10* 6

H

HOUSE BILL 241

Short Title:	Amend Drug Trafficking Laws.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DRUG TRAFFICKING LAWS, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h) reads as rewritten:

"(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article. Sentences imposed pursuant to this subsection may not be suspended and must include a minimum and maximum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender, as specified in G.S. 15A-1340.17.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of ~~10~~5 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of ~~10~~5 pounds, but less than 50 pounds, such person shall be punished as a Class ~~H~~ F felon ~~and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than ~~2,000~~ 500 pounds, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is ~~2,000~~ 500 pounds or more, but less than ~~10,000~~ 5,000 pounds, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

d. Is ~~10,000~~ 5,000 pounds or more, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or

identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Repealed by Session Laws 1999-370, s. 1.

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine or amphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class ~~E~~ C felon ~~and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class ~~C~~ B1 felon ~~and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months~~ and, in addition to

an active punishment in the State's ~~prison and~~ prison, shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class ~~E~~ C felon ~~and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class ~~C~~ B1 felon ~~and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84~~

~~months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in MDA/MDMA." If the quantity of the substance or mixture involved:

a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred fifty thousand dollars ($250,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge,

provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

SECTION 2. G.S. 90-95(i) reads as rewritten:

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy or attempt to commit any of the offenses described in subsection (h) of this section.

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 241:
Amend Drug Trafficking Laws-AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 15, 2003	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 241 is a recommendation of the North Carolina Sentencing and Policy Advisory Commission. The bill would reclassify drug trafficking offenses two classes higher than their current classification, require active punishments for persons convicted of drug trafficking offenses, lower the threshold amounts for trafficking in marijuana, and require active punishment for attempted trafficking offenses. The act would become effective December 1, 2003 and apply to offenses committed on or after that date.

CURRENT LAW: Selling, manufacturing, delivering, transporting or possessing a statutorily prescribed amount of certain controlled substances is considered "drug trafficking". Drug trafficking offenses are currently classified as Class C, D, E, F, G and H felonies, depending on the controlled substance and the amount, and convictions carry an active sentence. However, the classifications do not relate to the punishments available for these felony classifications under structured sentencing because these offenses are subject to predetermined mandatory sentences that do not allow a judge to take into account the offender's prior record and any aggravating or mitigating factors.

For trafficking in marijuana, the threshold amounts and corresponding class offenses are as follows:

- 10 to less than 50 pounds – Class H
- 50 to less than 2,000 pounds – Class G
- 500 to less than 10,000 pounds – Class F
- 10,000 pounds or more – Class D

Conspiracy to drug traffic carries the same mandatory sentence as drug trafficking. On the other hand, persons convicted of attempted drug trafficking are sentenced according to the structured sentencing felony punishment chart.

BILL ANALYSIS: House Bill 241 would reclassify the drug trafficking offenses two classes higher and put the offenses under structured sentencing. See the chart attached. This would make the sentences available in the first prior record level approximately the same as the current mandatory sentence for each of these offenses and would permit the judge to take into account the offender's prior record and any aggravating or mitigating factors in the case. According to the North Carolina Sentencing and Policy Advisory Commission, more drug trafficking offenders will be eligible for the firearm enhancement and for violent habitual felon status, and almost all offenders convicted of drug trafficking offenses will receive post-release supervision as a result of this reclassification.

All drug trafficking offenses currently receive an active punishment. Incorporating the offenses into structured sentencing would result in some offenses being eligible for an intermediate punishment (depending on prior record level). The bill would continue the requirement for an active punishment.

The bill would lower the threshold amounts for trafficking in marijuana as follows:

Current threshold	Offense Class	House Bill 241	Offense Class
10 to less than 50	H	5 to less than 50	F
50 to less than 2,000	G	50 to less than 500	E
2,000 to less than 10,000	F	500 to less than 5,000	D
10,000 or more	D	5,000 or more	B2

Finally, the bill would require an active sentence for attempting trafficking.

BACKGROUND: In the studies bill for the 2001 Session of the 2001 General Assembly (S.L. 2001-491), the North Carolina Sentencing and Policy Advisory Commission was authorized to study the laws regarding drug offenses and the current sentencing guidelines for those offenses. The Sentencing Commission responded by forming a subcommittee to study the issue and make recommendations. After study and deliberation, the subcommittee recommended to the full Commission, and the Commission recommended, legislation contained in House Bill 241.

Substantial portions of this summary were derived from the North Carolina Sentencing and Policy Advisory Commission's "Report on Study of the Laws Regarding Drug Offenses Pursuant to Session Law 2001-491, Section 21.4."

H241-SMSW-001

Appendix B

PROPOSAL: PLACE DRUG TRAFFICKING OFFENSES INTO THE STRUCTURED SENTENCING ACT

CURRENT CLASS	PROPOSED CLASS	OFFENSE	G.S. SECTION
C	B1	Trafficking in methamphetamine or amphetamine (400 grams or more).	90-95(h)(3b)c
C	B1	Trafficking in opium or heroin (28 grams or more).	90-95(h)(4)c
D	B2	Trafficking in marijuana (*5,000* pounds or more).	90-95(h)(1)d
D	B2	Trafficking in methaqualone (10,000 or more dosage units).	90-95(h)(2)c
D	B2	Trafficking in cocaine (400 grams or more).	90-95(h)(3)c
D	B2	Trafficking in Lysergic Acid Diethylamide (1,000 or more dosage units).	90-95(h)(4a)c
D	B2	Trafficking in MDA/MDMA (1,000 or more dosage units/400 grams or more).	90-95(h)(4b)c
E	C	Trafficking in methamphetamine or amphetamine (200 grams or more, less than 400 grams).	90-95(h)(3b)b
E	C	Trafficking in opium or heroin (14 grams or more, less than 28 grams).	90-95(h)(4)b
F	D	Trafficking in marijuana (*500* pounds or more, less than *5,000* pounds).	90-95(h)(1)c
F	D	Trafficking in methaqualone (5,000 or more dosage units, less than 10,000).	90-95(h)(2)b
F	D	Trafficking in cocaine (200 grams or more, less than 400 grams).	90-95(h)(3)b
F	D	Trafficking in methamphetamine or amphetamine (28 grams or more, less than 200 grams).	90-95(h)(3b)a
F	D	Trafficking in opium or heroin (4 grams or more, less than 14 grams).	90-95(h)(4)a
F	D	Trafficking in Lysergic Acid Diethylamide (500 or more dosage units, less than 1,000 dosage units).	90-95(h)(4a)b

Source: NC Sentencing and Policy Advisory Commission, "Report on Study of the Laws Regarding Drug Offenses Pursuant to Session Law 2001-491, Section 21.4", Feb. 2003.

F	**D**	Trafficking in MDA/MDMA (500 or more dosage units, but less than 1,000 dosage units/200 grams or more, less than 400 grams).	90-95(h)(4b)b
G	**E**	Trafficking in marijuana (50 pounds or more, less than *500* pounds).	90-95(h)(1)b
G	**E**	Trafficking in methaqualone (1,000 or more dosage units, less than 5,000).	90-95(h)(2)a
G	**E**	Trafficking in cocaine (28 grams or more, less than 200 grams).	90-95(h)(3)a
G	**E**	Trafficking in Lysergic Acid Diethylamide (100 or more dosage units, less than 500 dosage units).	90-95(h)(4a)a
G	**E**	Trafficking in MDA/MDMA (100 or more dosage units, but less than 500 dosage units/28 grams or more, less than 200 grams).	90-95(h)(4b)a
H	**F**	Trafficking in marijuana (more than *5* pounds, less than 50 pounds).	90-95(h)(1)a
CONSPIRACY to commit a trafficking offense is classified as the same class as the trafficking offense the person conspired to commit.			90-95(i)
ATTEMPT to commit a controlled substance offense is classified as the same class as the offense the person attempted to commit.			(90-98) 90-95(i)
SOLICITATION to commit an offense is classified as two classes lower than the offense the person solicited the other person to commit.			14-2.6

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

April 29, 2003

The House Committee on Judiciary IV met on April 29, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Bowie, Earle, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Representative Haire was asked to explain HB 241 A BILL TO BE ENTITLED AND ACT TO AMEND THE DRUG TRAFFICKING LAWS, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION and HB 242 A BILL TO BE ENTITLED AN ACT TO PUNISH HABITUAL FELONS THREE CLASSES HIGHER THAN THE OFFENSE CLASSIFICATION FOR THE PRINCIPAL OFFENSE, BUT IN NO CASE HIGHER THAN CLASS C, AND REQUIRE AN ACTIVE SENTENCE, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION. Both bills have been discussed in previous committee meetings, and due to the difficult issues, Chairman Munford tabled these bills.

Representative Haire was asked to explain HB 956 A BILL TO BE ENTITLED AN ACT TO DETER JUVENILES FOR ESCAPING OR ATTEMPTING TO ESCAPE FROM THE CUSTODY OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO ESTABLISH CRIMINAL PENALTIES FOR AIDING OR ASSISTING JUVENILES IN ESCAPING OR ATTEMPTING TO ESCAPE FORM THE CUSTODY OF THE DEPARTMENT. A PCS was introduced and adopted. The PCS changes the title of the bill to HB 956 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE LEGISLATIVE RESEARCH COMMISSION OT STUDY THE ISSUE OF PERSONS WHO ESCAPE FROM THE CUSTODY OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION. This PCS received a favorable report, unfavorable to the original bill. This bill will be re-referred to the Rules Committee.

Representative Insko was asked to explain HB 883 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE SECRETARY OF HEALTH AND HUMAN SERVICES TO TEMPORARILY WAIVE CERTAIN REQUIREMENTS OF THE MENTAL HEALTH COMMITMENT STATUTES TO FURTHER MENTAL HEALTH REFORM. The Department of Health and Human Services, the Council of Community Programs, and the North Carolina Association of Social Workers all support this legislation. A PCS was introduced and received a favorable report, unfavorable as to the original bill.

Representative Luebke was asked to explain HB 1187 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT FELONY MURDER IS PUNISHABLE BY LIFE IMPRISONMENT WITHOUT PAROLE ONLY. Jim Maxwell, a District Attorney from Durham and Mary Ann Tally with the North Carolina Academy of Trial Lawyers spoke in favor of the bill, as well as George Brown with NC Citizens for Felony Murder Rule Change. Mr. and Mrs. Llewellyn and Mr. and Mrs. Beck spoke out against this legislation from a victim's view point. Tom Keith, a District Attorney from Forsythe County, and Ron Moore, a District Attorney from Bumcombe County, spoke in opposition to this bill. Because this bill needed some discussion, Chairman Munford tabled it.

Representative Glazier was called upon to explain HB 1055 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE SUPREME COURT IN CONDUCTING THE PROPORTIONALITY REVIEW REQUIRED BY LAW SHALL CONSIDER NOT ONLY THOSE CAPITAL CASES IN WHICH THE DEATH PENALTY WAS IMPOSED BUT ALSO FACTUALLY SIMILAR CASES IN WHICH THE SENTENCE OF LIFE IMPRISONMENT WAS IMPOSED. Because this bill needed some discussion, Chairman Munford tabled it.

Judiciary IV will not meet on Thursday May 1 due to crossover.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

J-4 — Name of Committee

4.29.03 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Jeno Edwards	Public
Josh Thacking	WCSO
Carolyn Llewellyn	Public
Robin MAXFIELD	WCSO
Seth Edwards	DA
Jim Llewellyn	Public
[illegible]	[illegible]
John Medler	NC Sentencing Commission
Gordon Price	
T.A. Wood	Kernersville Police Dept.
NEAL Stockton	Kernersville Police Dept
JAMES SHORES	KERNERSVILLE POLICE Dept.
BRANDON Holland	Forsyth Co. SEF Office
[illegible]	DA - 21
[illegible]	DA - 28
FRANK PALOMBO	Police Chief New Bern
KEN HONEYCUTT	DA - 20th
Tom Lock	DA - 11th Dist.
TOM MOSS	GARNER POLICE CHIEF
GARY LAFONE	Chief - Conover Police
RICHARD ROBERTS	Buncombe Co Sheriff Dept.
JAMES FLORWOOD	Madison Co Sheriff's Dept
J.R. Sheeton	madison Co Sheriff Dept.
Kathy Dudley	Dept. of Juv. Justice - Del. Prevention
[illegible]	NJTOP
[illegible]	WSJournal

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
KB Tyler	Asheville Citizen-Times
BLAKE WALLACE	DURHAN CO. SHERIFF'S OFFICE
Sid Causey	New Hanover Co. Sheriff
Jim Pendergraph	Mecklenburg County Sheriff
Earl Butler	Cumberland Co Sheriff
JOHN J. KEARNEY	DAVIDSON POLICE DEPT. CHIEF
LAURA SAGER	NC FAMM
LaFonda Jones	NC FAMM
Pat Bazemore	CARY P.D.
W.J. Hunter, Chief	CARY Police Dept.
James Bek	Citizen 1004 Megan Cross Ln Kernersville NC 27284
Virginia Bek	" 1004 Megan Cross Ln Kernersville NC 27284
Donna Liggett	NCUAW
Peg Dorer	Conference of D.A.s
Charles Wilkins	NC Chiefs of Police
GEORGE BROWN	NC CITIZENS FOR FELONY MURDER RULE CHANGE
Martha Knight	" " " " " " "
Edwin Caldwell	NC Sheriffs Assn / NC Law Enf Officers Assn
Teena Faison	DMV/DMV/SHS
Greg McLeod	Atty Generals Off
DS Overman	Raleigh PD
Brad Kennon	Raleigh PD
Steve Lail	Catawba County S.O.
Coy Reid	Catawba Co. S.O.
JIM MAXWELL	ATTORNEY
Mary Ann Talley	Attorney
Dale T. Den Ouden	Buncombe County Sheriff Office
LEE FARNSWORTH	BUNCOMBE COUNTY SHERIFF OFFICE

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BILL STAFFORD	JOHNSTON COUNTY SHERIFF'S OFFICE
CHRIS HAGWOOD	GARNER POLICE DEPT
WAYNE MOORE	GARNER POLICE DEPT
ERIC COPELAND	GARNER POLICE DEPT.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

April 29, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 241	Amend Drug Trafficking Law	Rep. Haire
HB 242	Amend Habitual Felon Law	Rep. Haire
HB 956	Deter Juvenile Escapes	Rep. Haire
HB 1055	Proportionality Review/All Capital Cases	Reps. Glazier Ross, Weiss & Harrell
[redacted]	[redacted]	[redacted]
HB 1187	Felony Murder/ No Death Penalty	Rep. Luebke

883 MN

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 241

Short Title: Amend Drug Trafficking Laws.-AB (Public)

Sponsors: Representative Haire.

Referred to: Judiciary IV.

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DRUG TRAFFICKING LAWS, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h) reads as rewritten:

"(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article. Sentences imposed pursuant to this subsection may not be suspended and must include a minimum and maximum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender, as specified in G.S. 15A-1340.17.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of ~~10~~5 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of ~~10~~5 pounds, but less than 50 pounds, such person shall be punished as a Class ~~H~~ F felon ~~and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than ~~2,000~~ 500 pounds, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is ~~2,000~~ 500 pounds or more, but less than ~~10,000~~ 5,000 pounds, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

d. Is ~~10,000~~ 5,000 pounds or more, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or

identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Repealed by Session Laws 1999-370, s. 1.

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine or amphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class ~~E~~ C felon ~~and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class ~~C~~ B1 felon ~~and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months~~ and, in addition to

an active punishment in the State's ~~prison and~~ prison, shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class ~~E~~ C felon ~~and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class ~~C~~ B1 felon ~~and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84~~

~~months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in MDA/MDMA." If the quantity of the substance or mixture involved:

a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class ~~G~~ E felon ~~and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the person shall be punished as a Class ~~F~~ D felon ~~and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class ~~D~~ B2 felon ~~and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months~~ and, in addition to an active punishment in the State's ~~prison and~~ prison, shall be fined not less than two hundred fifty thousand dollars ($250,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge,

provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

SECTION 2. G.S. 90-95(i) reads as rewritten:

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy or attempt to commit any of the offenses described in subsection (h) of this section.

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 241:
Amend Drug Trafficking Laws-AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 15, 2003	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 241 is a recommendation of the North Carolina Sentencing and Policy Advisory Commission. The bill would reclassify drug trafficking offenses two classes higher than their current classification, require active punishments for persons convicted of drug trafficking offenses, lower the threshold amounts for trafficking in marijuana, and require active punishment for attempted trafficking offenses. The act would become effective December 1, 2003 and apply to offenses committed on or after that date.***

CURRENT LAW: Selling, manufacturing, delivering, transporting or possessing a statutorily prescribed amount of certain controlled substances is considered "drug trafficking". Drug trafficking offenses are currently classified as Class C, D, E, F, G and H felonies, depending on the controlled substance and the amount, and convictions carry an active sentence. However, the classifications do not relate to the punishments available for these felony classifications under structured sentencing because these offenses are subject to predetermined mandatory sentences that do not allow a judge to take into account the offender's prior record and any aggravating or mitigating factors.

For trafficking in marijuana, the threshold amounts and corresponding class offenses are as follows:

- 10 to less than 50 pounds – Class H
- 50 to less than 2,000 pounds – Class G
- 500 to less than 10,000 pounds – Class F
- 10,000 pounds or more – Class D

Conspiracy to drug traffic carries the same mandatory sentence as drug trafficking. On the other hand, persons convicted of attempted drug trafficking are sentenced according to the structured sentencing felony punishment chart.

BILL ANALYSIS: House Bill 241 would reclassify the drug trafficking offenses two classes higher and put the offenses under structured sentencing. See the chart attached. This would make the sentences available in the first prior record level approximately the same as the current mandatory sentence for each of these offenses and would permit the judge to take into account the offender's prior record and any aggravating or mitigating factors in the case. According to the North Carolina Sentencing and Policy Advisory Commission, more drug trafficking offenders will be eligible for the firearm enhancement and for violent habitual felon status, and almost all offenders convicted of drug trafficking offenses will receive post-release supervision as a result of this reclassification.

All drug trafficking offenses currently receive an active punishment. Incorporating the offenses into structured sentencing would result in some offenses being eligible for an intermediate punishment (depending on prior record level). The bill would continue the requirement for an active punishment.

The bill would lower the threshold amounts for trafficking in marijuana as follows:

Current threshold	Offense Class	House Bill 241	Offense Class
10 to less than 50	H	5 to less than 50	F
50 to less than 2,000	G	50 to less than 500	E
2,000 to less than 10,000	F	500 to less than 5,000	D
10,000 or more	D	5,000 or more	B2

Finally, the bill would require an active sentence for attempting trafficking.

BACKGROUND: In the studies bill for the 2001 Session of the 2001 General Assembly (S.L. 2001-491), the North Carolina Sentencing and Policy Advisory Commission was authorized to study the laws regarding drug offenses and the current sentencing guidelines for those offenses. The Sentencing Commission responded by forming a subcommittee to study the issue and make recommendations. After study and deliberation, the subcommittee recommended to the full Commission, and the Commission recommended, legislation contained in House Bill 241.

Substantial portions of this summary were derived from the North Carolina Sentencing and Policy Advisory Commission's "Report on Study of the Laws Regarding Drug Offenses Pursuant to Session Law 2001-491, Section 21.4."

H241-SMSW-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 242

Short Title:	Amend Habitual Felon Law.-AB	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PUNISH HABITUAL FELONS THREE CLASSES HIGHER THAN THE OFFENSE CLASSIFICATION FOR THE PRINCIPAL OFFENSE, BUT IN NO CASE HIGHER THAN CLASS C, AND REQUIRE AN ACTIVE SENTENCE, AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-7.6 reads as rewritten:

"**§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced as a felon three classes higher than the principal felony, but in no case higher than a Class C felon. Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, the felon shall be sentenced to an active punishment. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HB 242:
Amend Habitual Felon Law

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Haire
Date:	April 8, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: HB 242 amends G.S. 14-7.6 to require habitual felons to be sentenced three classes higher than the felony that made them eligible to be sentenced as a habitual felon, not exceeding sentencing as a Class C felon. Any sentence must be active, meaning the person must be imprisoned.

CURRENT LAW: Currently, a person sentenced as a habitual felon, generally upon conviction of the fourth felony, is sentenced for that felony as a Class C felon, unless the crime would have required a higher sentence. Presumptive sentences for Class C convictions range from 58-73 months to 135-168 months, depending on prior convictions.

BACKGROUND: The NC Sentencing and Policy Advisory Commission recommended this bill. The effect would be to lower prison time for some fourth felony convictions, and thus lower prison population.

The act is effective December 1, 2003, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 956

Short Title:	Deter Juvenile Escapes.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Judiciary IV.	

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO DETER JUVENILES FROM ESCAPING OR ATTEMPTING TO ESCAPE FROM THE CUSTODY OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO ESTABLISH CRIMINAL PENALTIES FOR AIDING OR ASSISTING JUVENILES IN ESCAPING OR ATTEMPTING TO ESCAPE FROM THE CUSTODY OF THE DEPARTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-2513.1. Escape from and failure to return to custody of the Department.**

(a) When a juvenile committed to the Department pursuant to this Article escapes or attempts to escape the custody of the Department or fails to return to the custody of the Department, the court, upon motion of the Department or upon the court's own motion, and after hearing, may extend the term of the juvenile's commitment. The juvenile:

(1) Shall have reasonable notice in writing of the nature and content of the allegations in the motion, including notice that the purpose of the hearing is to determine whether the juvenile has escaped or attempted to escape the custody of the Department or has failed to return to the custody of the Department pursuant to the terms of conditional release when the juvenile has been released on a conditional or temporary basis;

(2) Shall be represented by an attorney at the hearing;

(3) Shall have the right to confront and cross-examine witnesses; and

(4) May admit, deny, or explain the violation alleged and may present proof, including affidavits or other evidence, in support of the juvenile's contentions. A record of the proceeding shall be made and preserved in the juvenile's record.

(b) If the court determines by the greater weight of the evidence that the juvenile has escaped or attempted to escape the custody of the Department or has failed to return to the custody of the Department, the court may order the term of the juvenile's commitment to the Department be extended for a period of at least 90 days and no more than 180 days.

(c) Notwithstanding G.S. 7B-2516, pursuant to this section, the juvenile may remain committed to the Department up to 90 days past:

(1) The juvenile's nineteenth birthday if the juvenile has been committed to the Department for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a).

(2) The juvenile's eighteenth birthday if the juvenile has been committed to the Department for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(d) The Department shall modify the plan of care or treatment developed pursuant to G.S. 7B-2513(f) to incorporate the order of the court pursuant to this section and to state the specific course of treatment or care that will be implemented to rehabilitate the juvenile and ensure the safety and well-being of the public.

(e) This section applies to juveniles housed in county facilities or placed in county programs by the Department as well as to juveniles housed in State facilities or placed in State programs."

SECTION 2. Article 33 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-256.2. Escape from and failure to return to custody of the Department of Juvenile Justice and Delinquency Prevention.**

It is unlawful for any person to aid or assist any other person from escaping or attempting to escape from the custody of the Department of Juvenile Justice and Delinquency Prevention. Violation of this section is a Class 1 misdemeanor."

SECTION 3. This act becomes effective December 1, 2003, and applies to violations and offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 956
PROPOSED COMMITTEE SUBSTITUTE H956-CSSV-13 [v.1]

4/28/2003 8:50:17 PM

Short Title: Deter Juvenile Escapes Study. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUE OF PERSONS WHO ESCAPE FROM THE CUSTODY OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. The Legislative Research Commission shall study the issue of persons who escape from the custody of the Department of Juvenile Justice and Delinquency Prevention (Department) and shall develop appropriate sanctions for those persons. In studying the issue, the Commission shall consult with the Department, the Administrative Office of the Courts, and the North Carolina Sentencing and Policy Advisory Commission to develop a statutory scheme through which both juveniles and persons who are over the age of 16 years shall be punished for escaping from the custody of the Department.

SECTION 2. The Legislative Research Commission may make an interim report to the 2003 General Assembly, Regular Session 2004, and shall make a final report to the 2005 General Assembly upon its convening. The reports may include proposed legislation to carry out the recommendations of the study.

SECTION 3. This act is effective when it becomes law.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
H.B. 956 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUE OF PERSONS WHO ESCAPE FROM THE CUSTODY OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#———),~~ ☐ which changes the title, unfavorable as to (the original bill) ~~(Committee Substitute Bill #———),~~ (and recommendation that the committee substitute bill # (———) be re-referred to the Committee on Rules.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 883

Short Title:	MH Reform Waiver.	(Public)
Sponsors:	Representative Insko.	
Referred to:	Health.	

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF HEALTH AND HUMAN SERVICES TO TEMPORARILY WAIVE CERTAIN REQUIREMENTS OF THE MENTAL HEALTH COMMITMENT STATUTES TO FURTHER MENTAL HEALTH REFORM EFFORTS.

The General Assembly of North Carolina enacts:

SECTION 1. The Secretary of Health and Human Services may, upon request of a phase-one local management entity, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

(1) The Secretary has received a request from a phase-one local management entity to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addiction specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the local management entity shall be submitted as part of the entity's local business plan and shall specifically describe:

a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

b. How the waiver will enable the local management entity to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level

certified clinical addiction specialist under the waiver are within each of these professional's scope of practice.

d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

e. The method to be used to evaluate the effectiveness and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver.

(2) The Secretary shall review the request and may approve it upon finding that:

a. The request meets the requirements of this section.

b. The request furthers the purposes of State policy under G.S. 122C-2, and mental health, developmental disabilities, and substance abuse services reform.

c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addiction specialist are within the individual's scope of practice.

(3) The waiver granted by the Secretary under this section shall be in effect for a period not to exceed three years, or the period for which the requesting local management entity's business plan is approved, whichever is shorter.

(4) The Secretary may grant a waiver under this section only to those local management entities that have been designated as phase-one entities as of July 1, 2003.

(5) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addiction specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addiction specialist.

(6) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver.

(7) The local management entity shall assure that a psychiatrist is available at all times to provide back-up services.

SECTION 2. This act becomes effective July 1, 2003, and expires July 1, 2006.

HOUSE BILL 883:
MH Reform Waiver

BILL ANALYSIS

Committee:	House Health	**Introduced by:**	Rep. Insko
Date:	April 15, 2003	**Summary by:**	Dianna Jessup
Version:	Second Edition		Committee Counsel

SUMMARY: ***The second edition for House Bill 883 would authorize the Secretary of the Department of Health and Human Services (Secretary) to permit a phase one, mental health local management entity (LME) to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examination of individuals in involuntary commitment proceedings. Any waiver could only be in effect for a period not to exceed three years. The proposed bill would not expand the scope of practice for licensed clinical social workers, masters level psychiatric nurses, or masters level certified clinical addictions specialists. The act would become effective July 1, 2003 and expire July 1, 2006.***

Differences between the First Edition and the Second Edition

1. The second edition shifted the responsibility for an evaluation of the effectiveness, quality and efficiency of services under the waiver from the phase-one local management entity to the Secretary of Health and Human Services.

2. The Second Edition also changed the local management entities that the Secretary may grant a waiver to under the provisions of the bill. Originally, the Secretary could grant a waiver only to the local management entities that have been designated as phase-one entities by July 1, 2003. The second edition limits the number of waivers to only one local management entity located in the western part of the Sate that has been designated a phase-one entity as of July 1, 2003.

3. The second edition requires a physician to be available at all times to provide backup services. The physician shall provide telephone approval and must sign the chart with 72 hours after the initial examination is conducted. Originally, the local management entity was required to make a psychiatrist available at all times to provide backup services.

CURRENT LAW:

Mental Health Reform: As enacted by the 2001 General Assembly, S.L. 2001-437 (HB 381), amended the mental health statutes to provide counties an alternative to establishing area authorities to ensure the provision of public mental health, developmentally disabled and substance abuse (MH/DD/SA) services to consumers. Counties were authorized to withdraw from existing area authorities and to ensure the delivery of public MH/DD/SA services through a single county program or jointly with one or more counties through a joint agency established pursuant to the terms of an interlocal agreement. (County programs and area authorities are known as LMEs). By October 1, 2002, each county was to have sent a letter of intent to the Secretary indicating the intent of the county or counties to provide services through an existing area authority or through a county program. The bill provided for phased-in implementation of reform, requiring the Secretary to certify the business plans of one-third of the area authorities and county programs by July 1, 2003; two-thirds of the area authorities and county programs by January 1, 2004; and complete certification of all area authorities and county programs by July 1, 2004.

Under the new governance scheme, LMEs are required to develop "business plans" to guide the management and delivery of services. These business plans are required to be submitted to the Secretary for review and certification. The business plans must provide a description of how core administrative functions will be carried out, including planning to ensure the provision of services, ensuring available, qualified providers to deliver services, service management, financial management, service monitoring, evaluation, and collaboration with other local service systems. Business plans are effective for three State fiscal years.

Involuntary Commitment: Anyone who has knowledge that a person who is mentally ill or is a substance abuser and who is dangerous to self or dangerous to others may petition the court for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. If the clerk finds reasonable grounds to believe that the facts in the petition are true and the respondent is dangerous to self or others, the clerk may order the respondent to be taken into custody for an initial examination by a physician or eligible psychologist. If the physician or eligible psychologist recommends inpatient commitment, then a *physician* is required to perform an examination of the respondent within 24 hours after the respondent is admitted into a facility. This examination would determine whether the respondent is mentally ill or a substance abuser and is dangerous to self or dangerous to others, and the results of this examination are considered by the court at the hearing to determine whether the respondent should be involuntarily committed.

Licensed Clinical Social Workers (LCSW): Social workers are licensed under Chapter 90B of the General Statutes. G.S. 90B-3 defines a LCSW to mean a person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice. According to the North Carolina Social Work Board website, the requirements for becoming a LCSW include the following:

- A Masters in Social Work (MSW), a Doctorate in Social Work (DSW), or a Doctorate in Philosophy (PhD) from a Council on Social Work Education (CSWE) accredited program.
- 3,000 hours of paid employment accumulated in no less than two years nor more than six years. (No more than 1500 hours accumulated in one year.)
- 100 hours of clinical supervision from a LCSW with a graduate degree in Social Work and two years of supervised clinical experience. Of these 100 hours at least 75 hours must have been individual supervision.
- Take and pass the American Association of Social Work Boards "Clinical level" examination.

Psychiatric Nurses: 10-3C.5202 of the NC Administrative Code defines a psychiatric nurse to mean an individual who is licensed to practice as a registered nurse in the State by the NC Board of Nursing; and has the following:

- A graduate degree from an accredited master's level program in psychiatric mental health nursing with two years of experience; or
- A master's degree in behavioral science with two years of supervised clinical experience in psychiatric mental health nursing; or
- A baccalaureate degree in behavioral science with four years of supervised clinical experience in psychiatric mental health nursing.

According to the NC Board of Nursing, a masters level psychiatric nurse is an advanced practice registered nurse generally referred to as a psychiatric-mental health clinical nurse specialist. A masters level psychiatric nurse would be eligible for direct reimbursement of services.

Certified Clinical Addictions Specialists: G.S. 90-113.31 defines a certified clinical addictions specialist to be a person certified by the NC Substance Abuse Professional Certification Board to practice as a clinical addictions specialist in accordance with the provisions of Article 5C of the General Statutes. G.S. 90-113.40 requires the Board to issue a certificate certifying an applicant as a certified clinical addictions specialist if it meets certain requirements for a certified substance abuse counselor or a certified substance abuse prevention consultant and meets one of four sets of criteria specified in statute.

BILL ANALYSIS: The second edition for House Bill 883 would authorize the Secretary, upon request of a phase-one LME in the western part of the State, to waive temporarily the requirements of the involuntary commitment statutes regarding who can conduct the initial examination to permit LCSWs, masters level psychiatric nurses, or masters level certified clinical addictions specialists to conduct the examination. In order to obtain this waiver, the LME must, as part of its business plan, describe how the purpose of the statutory requirement would be better served by waiving the requirement, how the waiver will enable the LME to improve the delivery or management of services, how the services to be provided by the LCSWs, masters level psychiatric nurses, and masters level certified clinical addictions specialists are within the scope of practice for those professions, and how the health, safety, and welfare of persons will be protected. In order to approve the LME's request for the waiver, the Secretary must find that: (1) the request meets the requirements of the bill, (2) the request furthers the purposes of State policy, and MH/DD/SA services reform, (3) the request improves the delivery of MH/DD/SA services in the counties affected by the waiver and protects the health, safety, and welfare of individuals receiving these services, and (4) the duties and responsibilities performed by the LCSWs, masters level psychiatric nurses, or the masters level certified clinical addictions specialists are within the scope of practice for these professions. The Secretary shall evaluate the services and the protection of health, safety, and welfare under the waiver. A waiver could be in effect for a period not to exceed three years or the period, for which the business plan is approved, whichever is shorter. The LME would have to ensure that a physician is available at all times to provide back-up services and shall provide telephonic approval and sign the chart within 72 hours after the initial examination.

The act would become effective July 1, 2003 and expire July 1, 2006.

Amy Compeau, Research Assistant, contributed to this summary.

H883-SMSW-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 883
Committee Substitute Favorable 4/28/03

Short Title: MH Reform Waiver. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF HEALTH AND HUMAN SERVICES TO TEMPORARILY WAIVE CERTAIN REQUIREMENTS OF THE MENTAL HEALTH COMMITMENT STATUTES TO FURTHER MENTAL HEALTH REFORM EFFORTS.

The General Assembly of North Carolina enacts:

SECTION 1. The Secretary of Health and Human Services may, upon request of a phase-one local management entity, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

(1) The Secretary has received a request from a phase-one local management entity to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the local management entity shall be submitted as part of the entity's local business plan and shall specifically describe:

a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.

b. How the waiver will enable the local management entity to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.

c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level

certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.

d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.

(2) The Secretary shall review the request and may approve it upon finding that:

a. The request meets the requirements of this section.

b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.

c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.

d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.

(3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver.

(4) The waiver granted by the Secretary under this section shall be in effect for a period not to exceed three years, or the period for which the requesting local management entity's business plan is approved, whichever is shorter.

(5) The Secretary may grant a waiver under this section only to one local management entity located in the western part of the State that has been designated a phase-one entity as of July 1, 2003.

(6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.

(7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver.

(8) The local management entity shall assure that a physician is available at all times to provide backup services, and that a physician shall provide telephonic approval and sign the chart within 72 hours after the initial examination is conducted.

SECTION 2. This act becomes effective July 1, 2003, and expires July 1, 2006.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
H.B. 883 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE SECRETARY OF HEALTH AND HUMAN SERVICES TO TEMPORARILY WAIVE CERTAIN REQUIREMENTS OF THE MENTAL HEALTH COMMITMENT STATUTES TO FURTHER MENTAL HEALTH REFORM EFFORTS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#), ☐ which changes the title,~~ unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1187

Short Title:	Felony Murder/No Death Penalty.	(Public)
Sponsors:	Representative Luebke.	
Referred to:	Judiciary IV.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT FELONY MURDER IS PUNISHABLE BY LIFE IMPRISONMENT WITHOUT PAROLE ONLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated ~~killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon~~ killing shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1) d., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 2. Article 6 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-17.2. Felony murder defined; punishment.

(a) A murder that is committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon is felony murder. Felony murder is deemed to be murder in the first degree, a Class A felony, punishable only as provided in subsection (b) of this section.

(b) Notwithstanding G.S. 15A-1340.17, felony murder is punishable by life imprisonment without parole and is not punishable by death. If a defendant is convicted of felony murder, the judge shall impose a sentence of life imprisonment without parole."

SECTION 3. This act is effective when it becomes law.

HB 1187:
Felony Murder/No Death Penalty

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Luebke
Date:	April 29, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: HB 1187 removes the death penalty as a possible punishment for murder committed in the course of committing a felony, leaving life imprisonment without parole as the specified punishment.

CURRENT LAW: G.S. 14-17 provides that murder committed in the perpetration or attempted perpetration of arson, rape, sex offense, robbery, kidnapping, burglary, and any felony where a deadly weapon is used, is murder in the first degree, a Class A felony. The penalty is death or life without parole.

BILL ANALYSIS: H.B. 1187 retains the existing elements of murder in connection with committing a felony (felony murder), but specifies that the only sentence is life imprisonment without parole, eliminating possible imposition of the death penalty.

The act is effective when it becomes law. It would apply in any case where the defendant has not yet been sentenced.

H1187-RL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1055
Corrected Copy 4/14/03

Short Title:	Proportionality Review/All Capital Cases.	(Public)
Sponsors:	Representatives Glazier, Ross, Weiss, Harrell (Primary Sponsors); Insko, and Michaux.	
Referred to:	Judiciary IV.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE SUPREME COURT IN CONDUCTING THE PROPORTIONALITY REVIEW REQUIRED BY LAW SHALL CONSIDER NOT ONLY THOSE CAPITAL CASES IN WHICH THE DEATH PENALTY WAS IMPOSED BUT ALSO FACTUALLY SIMILAR CASES IN WHICH THE SENTENCE OF LIFE IMPRISONMENT WAS IMPOSED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-2000(d) is amended by adding a new subdivision to read:

"(2a) In determining whether a sentence of death imposed under this section is disproportionate, the Supreme Court shall consider and compare factually similar capital cases that have been reviewed on appeal by the Supreme Court or the Court of Appeals. The reported cases compared by the Supreme Court shall include both those in which the jury recommended life imprisonment, with or without parole, and those in which the jury recommended the death penalty."

SECTION 2. This act is effective when it becomes law and applies to all capital cases not yet decided by the Supreme Court on direct appeal.

HOUSE BILL 1055:
Proportionality Review/All Capital Cases

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Glazier, Ross, Weiss, Harrell
Date:	April 29, 2003		
Version:	First Edition	**Summary by:**	Dianna Jessup Committee Counsel

SUMMARY: ***House Bill 1055 would specify in statute what cases must be considered by the North Carolina Supreme Court in conducting proportionality review in death penalty cases and would broaden the pool of cases the North Carolina Supreme Court currently considers when undertaking proportionality review. The act would become effective when it becomes law and apply to all capital cases not yet decided by the Supreme Court on direct appeal.***

CURRENT LAW: Whenever a person is convicted of a capital offense in this State in which the State has given notice of its intent to seek the death penalty, the court conducts a separate sentencing hearing to determine whether the defendant should be punished by death or life imprisonment. The hearing is held before the trial jury. During the hearing, evidence may be presented concerning the statutory aggravating and mitigating circumstances. After hearing the evidence, argument of counsel, and instructions of the court, the jury determines: 1) whether any sufficient aggravating circumstances exist; 2) whether any sufficient mitigating circumstances exist; and 3) based on these considerations, whether the defendant should be sentenced to death or life imprisonment. In order to support a sentence of death, the jury must find that the aggravating circumstances are sufficient to support a death sentence and that the mitigating circumstances are insufficient to outweigh the aggravating circumstances.

Appeals of cases in which a sentence of death is imposed are directly to the Supreme Court. Appeals of life sentences are to the Court of Appeals. In all death penalty cases, the Supreme Court is required to undertake a proportionality review and overturn a death sentence if the court finds that the death sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. In comparing similar cases, the Supreme Court currently reviews the cases in which it has found the death sentence to be disproportionate and the cases in which the court found the death sentence to be proportionate.

BILL ANALYSIS: House Bill 1055 would specify, by statute, which cases the Supreme Court must consider in undertaking proportionality review, and would broaden the pool of cases the Supreme Court currently considers when undertaking proportionality review to include "factually similar" capital cases that have been reviewed on appeal by the Court of Appeals or the Supreme Court. The cases to be considered would include both those in which the jury recommended life imprisonment, with or without parole, and those in which the jury recommended the death penalty. The bill would affect cases currently on direct appeal to Supreme Court but not yet decided and all new cases after the bill becomes law.

H1055-SMSW-001

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

May 13, 2003

The House Committee on Judiciary IV met on May 13, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Bowie, , Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

Chairman Munford was in a Senate Committee to run one of his bills. Representative Glazier presided as Chair for the beginning of this meeting.

Senator Hartsell was asked to explain SB 323 A BILL TO BE ENTITLED AN ACT TO PROTECT THE IDENTITY OF A COMPLAINING PARTY AGAINST A LICENSEE OR AN UNLICENSED GENERAL CONTRACTOR BY THE LICENSING BOARD FOR GENERAL CONTRACTORS AND TO CLARIFY WHEN THE BOARD MAY SEEK INJUNCTIVE RELIEF. Paul Wilms, Director of Homeowner Affairs with the North Carolina Homebuilders Association spoke out in support of this legislation. The bill was voted on and passed committee with a favorable report.

Senator Hartsell was again called upon to explain SB 468 AN ACT TO CLARIFY THE LAW GOVERNING THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS. The North Carolina Bar Association supports this bill. A vote was taken and the bill passed committee with a favorable report.

At this time Chairman Munford returned from his conflicting meeting and resumed the duties of Chair.

Senator Hartsell was asked to explain SB 470 A BILL TO BE ENTITLED AN ACT TO MODERNIZE THE LAW AFFECTING THE COMPENSATION OF TRUSTEES AND OTHER FIDUCIARIES. Mike Godwin, an attorney with Schell, Bray, Aycock, Abel & Livingston, was asked to clarify various aspects of this bill and was available to answer several questions asked by the committee. The North Carolina Bar Association representative was in attendance to support this legislation. Due to the number of questions, Chairman Munford postponed a vote. The bill was tabled until further notice.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JIV — 5-13-03

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
BILL HALE	JORDAN PRICE
Beth Froelich	NCCMSV
Michelle Frazier	NC Bar Ass'n
Michael Godwin	Schell Bray Aycock Abel & Livingston
Camille Stell	KCLH
Ron OTTAVIO	Wachovia
CARSON CAMPBELL	Bailey & Dixon, LLP
Mark Seppi	NC Licensing Boards/SEN CONTRACTORS
R. Paul Wilson	NCHBA
Alex Hastings	Smith Patterson Bic
Betty Turner	Bank of America
[illegible]	AARP

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

May 13, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 323	General Contractors/Protect Info./Clarify Injunctive Relief	Sen. Hartsell
SB 468	Clarify Irrevocable Trust Law	Sen. Hartsell
SB 470	Compensation of Trustees/Other Fiduciaries	Sen. Hartsell
[redacted]		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 3

SENATE BILL 323

Judiciary II Committee Substitute Adopted 4/16/03
Third Edition Engrossed 4/22/03

Short Title: Gen. Contrs/Protect Info/Clarify Inj. Relief. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE IDENTITY OF A COMPLAINING PARTY AGAINST A LICENSEE OR AN UNLICENSED GENERAL CONTRACTOR BY THE LICENSING BOARD FOR GENERAL CONTRACTORS AND TO CLARIFY WHEN THE BOARD MAY SEEK INJUNCTIVE RELIEF.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 87 of the General Statutes is amended by adding the following new section to read:

"**§ 87-15.3. Identity of complaining party confidential.**

Once a complaint has been filed with the Board against a licensee or an unlicensed general contractor, the Board may, in its discretion, keep the identity of a complaining party confidential and not a public record within the meaning of Chapter 132 of the General Statutes until a time no later than the receipt of the complaint by the full Board for a disciplinary hearing or injunctive action."

SECTION 2. G.S. 87-13.1 reads as rewritten:

"**§ 87-13.1. Board may seek injunctive relief.**

Whenever ~~it appears to~~ the Board determines that any person, firm or corporation has violated or is violating any of the provisions of this Article or ~~of the~~ rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 323:
Gen. Contrs./Protect Info/Clarify Inj. Relief

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Hartsell
Date:	May 13, 2003	**Summary by:**	Dianna Jessup
Version:	Third Edition		Committee Counsel

SUMMARY: Senate Bill 323 would amend the law governing persons engaged in the business of general contracting. The bill would exempt from the definition of "public record" under Chapter 132 of the General Statute, at the Board's discretion, the identity of a complaining party until the receipt of the complaint by the full Board for a disciplinary hearing or injunctive action.

The bill would also amend the provision that provides the Board with the authority to seek injunctive relief against a licensed or unlicensed person, firm or corporation by changing the Board's standing threshold from "an appearance" of a violation to a "determination" of a violation; and by giving the Board the authority to seek injunctive relief for a past violation of Article 1 of Chapter 87 or rules adopted by the Board. The act would become effective when it becomes law.

CURRENT LAW:

Jurisdiction of NC Licensing Board for General Contractors: In 1925 the North Carolina General Assembly established the North Carolina Licensing Board for General Contractors and specified its regulatory authority over general contractors in Article 1 of Chapter 87. The purpose of the Board is to "safeguard life, health and property and to promote public welfare by prescribe certain standards for persons, firms and corporations who enter into contracts for construction work in this state." G.S. 87-1 defines general contractors as persons, firms or corporations who enter into construction projects costing $30,000 or more.

Investigation of complaints: Any person may file a complaint against a general contractor. All complaints received by the Board office are reviewed and assigned to a field investigator for an investigation. Once a complaint is received, written notice of the complaint and the charges are then forwarded to the licensee or general contractor for a response. Following a preliminary review of the complaint, the investigator may gather additional evidence by making an inspection of the construction project or the work in question. Field investigators also may interview the contractor, witnesses or other individuals who are familiar with the case. When an investigation is completed, the case is forwarded to a review committee, which then determines whether probable cause exists to recommend that the case be presented to the full Board for a disciplinary hearing. The Board may impose discipline by revoking or suspending the license of the general contractor based on a finding of fraud or deceit in obtaining license, or gross negligence, incompetence, misconduct, or willful violations of the licensing laws.

If the general contractor is not licensed to practice general contracting, the Board may seek a permanent injunction against the contractor in Superior Court.

Record keeping: The Board is required to keep detailed records regarding complaints against each licensee, including the date and nature of each complaint, investigatory actions, findings and the disposition of the matter. These records are available to the public under North Carolina public record laws.

Public records law: Pursuant to G.S. 132-1, public records and public information compiled by governmental agencies, including occupational licensing boards, are the "property of the people", and it is the policy of this State that the people may obtain copies of such information free or at minimal cost *unless otherwise specifically provided by law*. However, G.S. 132-1.2 provides that public records do not include "written communications made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental agency that concerns the prosecution, defense, settlement or litigation of any judicial action or any administration or other type of proceed to which the governmental agency is a party or by which it is or may be directly affected" –but for only for three years from the date of the communication, at which time the exclusion expires.

BILL ANALYSIS: **Section 1** would add a new provision to the general contracting statutes to provide that the Board *may*, in its discretion, keep the identity of a complaining party confidential and not a public record until a time no later than the receipt of the complaint by the full Board for a disciplinary hearing or injunctive action.

Section 2 would amend G.S. 87-13.1 to provide the Board with standing to seek an injunction or an order to restrain a violation when the Board *determines* that any person, firm or corporation, (licensed or unlicensed), is presently violating, or *has violated,* a provision of the licensing laws or rules adopted by the Board. Under current law, the Board must show that it *appears* that a person, firm, or corporation is *violating*, to seek injunctive remedies.

BACKGROUND:

Other licensure acts include specific provisions protecting records regarding complaints and investigation from public access. These include: NC State Board of Refrigeration Examiners, NC Medical Board, Medical Review Committee, NC State Board of Dental Examiners, NC Psychology Board and the NC State Board of Examiners of Fee-Based Practicing Pastoral Counselors.

S323-SMSW-001

Linda Attarian, former staff attorney, substantially contributed to this summary.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☒ Committee Substitute for
S.B. 323 A BILL TO BE ENTITLED AN ACT TO PROTECT THE IDENTITY OF A COMPLAINING PARTY AGAINST A LICENSEE OR AN UNLICENSED GENERAL CONTRACTOR BY THE LICENSING BOARD FOR GENERAL CONTRACTORS AND TO CLARIFY WHEN THE BOARD MAY SEEK INJUNCTIVE RELIEF.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 468

Short Title:	Clarify Irrevocable Trust Law.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36A-125.4(b) reads as rewritten:

"(b) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust ~~or modify it in a manner that affects its continuance according to its terms,~~ and ~~if~~ the continuance of the trust is necessary to carry out a material purpose of the trust, or where the beneficiaries seek to compel a modification of the trust in a manner that is inconsistent with its material purpose, the trust cannot be modified or terminated unless the court in its discretion determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust."

SECTION 2. G.S. 36A-125.11 reads as rewritten:

"**§ 36A-125.11. Procedure.**

(a) A proceeding under this Article may be brought under the Uniform Declaratory Judgment Act, Article 26 of Chapter 1 of the General Statutes, the provisions of which shall apply to that proceeding to the extent not inconsistent with this Article.

(b) A proceeding under this Article to approve or disapprove a proposed modification or termination under the provisions of G.S. 36A-125.3, 36A-125.4, 36A-125.6(a), and 36A-125.7 may be commenced by a trustee or beneficiary. The trustee shall be a necessary party to all proceedings under this Article commenced by a beneficiary."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 468:
Clarify Irrevocable Trust Law

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Hartsell
Date:	May 13, 2003	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 468 makes clear that an irrevocable trust may not be modified in a manner that is inconsistent with the trust's material purpose unless the court determines the circumstances substantially outweigh the interest in accomplishing the purpose of the trust. It also specifies when a beneficiary or a trustee must be a party to an action to terminate or modify an irrevocable trust.***

CURRENT LAW: Generally, an irrevocable trust may not be revoked or its terms materially modified after its creation. However, Article 11A of Chapter 36A specifies the circumstances and procedures that apply to a modification or termination of an irrevocable trust.

G.S. 36A-125.4 allows the beneficiaries of a trust to all agree to modify or terminate a trust in an action before a court. However, if the modification is inconsistent with the material purpose of the trust, the court cannot order the modification unless it finds that the circumstances in favor of the modification substantially outweigh the interest in continuing to accomplish the material purpose of the trust.

G.S. 36A-125.11 provides that an action to modify or terminate an irrevocable trust may be brought under the Uniform Declaratory Judgment Act, but it does not specify who may commence an action or who are necessary parties to the action. (Necessary parties are those persons who must be made part of a legal action because any action by the court regarding the issue at trial would impact that party's interests.)

BILL ANALYSIS:

Section 1 clarifies an ambiguity in the language of G.S. 36A-125.4(b). The current language is subject to the construction that a modification may be made if it does not affect the continuance of the trust even though it may be inconsistent with the material purpose of the trust.

Section 2 specifies that either a beneficiary or a trustee may commence a termination or modification action where:

- The settlor (creator of the trust) and the beneficiaries agree (G.S. 36A-125.3).
- The beneficiaries agree (G.S. 36A-125.4).
- The trust is a small trust (G.S. 36A-125.6).
- There are changed circumstances (G.S. 36A-125.7).

It also specifies that the trustee must be made a party to any proceeding under this Article.

BACKGROUND: This bill is a request of the North Carolina Bar Association.

The act is effective when it becomes law.

S468-SMSV-001

Kory Goldsmith, counsel to Senate Judiciary II, substantially contributed to this summary.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
S.B. 468 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW GOVERNING THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 470

Judiciary II Committee Substitute Adopted 4/14/03

Short Title: Compensation of Trustees/Other Fiduciaries. (Public)

Sponsors:

Referred to:

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE LAW AFFECTING THE COMPENSATION OF TRUSTEES AND OTHER FIDUCIARIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 32 of the General Statutes is repealed.

SECTION 2. Chapter 32 of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"Compensation of Trustees and Other Fiduciaries.

"**§ 32-53. Definitions.**

As used in this Article:

(1) "Interested person" includes (i) the grantor of the trust, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income or principal of the trust; (iii) all living persons who would be entitled to income and/or principal of the trust (without regard to the exercise of any power of appointment) if the trust terminated on that date; and (iv) any special trustee, trust protector, or advisor named in the trust instrument who is entitled to receive similar notices pursuant to the terms of the trust.

(2) "Trust" has the same meaning as contained in G.S. 36A-22.1(5).

"**§ 32-54. Compensation of trustees.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee is entitled to receive compensation that is reasonable under the circumstances and shall be empowered to pay such compensation from the assets of the trust without prior approval of the clerk of superior court.

(b) Factors to be considered in determining reasonableness of compensation:

(1) The degree of difficulty and novelty of the tasks required of the trustee;

(2) The responsibilities and risks involved;

(3) The amount and character of the trust assets;
(4) The skill, experience, expertise, and facilities of the trustee;
(5) The quality of the trustee's performance;
(6) Comparable charges for similar services;
(7) Time devoted to administering the trust;
(8) Time constraints imposed upon the trustee in administering the trust;
(9) Nature and costs of services delegated to others by the trustee;
(10) Where more than one trustee is serving, the reasonableness of the total fees paid to all trustees; and
(11) Other factors which the trustee or the clerk of superior court deems to be relevant.

"**§ 32-55. Reimbursement for expenses incurred.**

In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled to reimbursement out of the assets of the trust for expenses properly incurred in the administration of the trust.

"**§ 32-56. Notice of compensation and other payments.**

Within a reasonable period of time after the end of each fiscal year of the trust, regardless of whether an accounting is otherwise required by law or by the trust instrument, the trustee shall give written notice to all interested persons of any compensation, expense reimbursement, professional fee, counsel fees allowed under G.S. 32-60, distribution, or payment of any kind made to the trustee in such fiscal year from the assets of the trust. If any interested person is then under a legal disability, such notice shall be given to such person's guardian or agent under a durable power of attorney or to a parent of such person if such person is then a minor; and such notice shall have the same effect as if given directly to the interested person while not under a legal disability so long as the person receiving the notice is not also the trustee. An annual accounting provided by the trustee to all interested persons who are not then under a legal disability and to the guardian, agent, or parent of any interested person who is then under a legal disability within a reasonable time after the end of the fiscal year of the trust shall be deemed sufficient notice under this section provided that it sets forth and clearly identifies all compensation, expense reimbursements, professional fees, counsel fees allowed under G.S. 32-60, distributions, and other payments of any kind to the trustee during such fiscal year from the assets of the trust.

"**§ 32-57. Judicial review of compensation and other payments to trustee.**

(a) Unless specifically prohibited by the trust instrument, any interested person, or the guardian, agent, or parent of any interested person who is then under a legal disability, may initiate a proceeding under Article 3 of Chapter 36A of the General Statutes for the review of the reasonableness of any compensation or expense reimbursement paid under this Article. The provisions of Article 3 of Chapter 36A shall govern that proceeding and any appeal from that proceeding, except that:

(1) The definition of "interested person" contained in G.S. 32-53(1) shall control in all matters relating to such review, including the determination of who may initiate a proceeding under G.S 36A-23.1

and the determination of when an interested person may be represented by others under G.S. 36A-26.3(2).

(2) For purposes of G.S. 36A-26.1, it shall be necessary that all interested persons not joined as petitioners be joined as respondents, but it shall not be necessary that all known beneficiaries be joined as respondents unless they are interested persons.

(3) In addition to other powers of the clerk of superior court acting under Article 3 of Chapter 36A of the General Statutes if the clerk of superior court determines upon review that a trustee has received excessive compensation or expense reimbursement, the clerk may order such trustee to make appropriate refunds.

(b) Notwithstanding the foregoing, if a proceeding for review of the reasonableness of compensation or expense reimbursement paid to a trustee is not initiated within one year from the date when notice of such payment is given pursuant to G.S. 32-56, then it shall be presumed that such compensation or expense reimbursement was reasonable.

"**§ 32-58. Compensation of other fiduciaries.**

In the case of a fiduciary other than a trustee under a trust, where the instrument creating the fiduciary relationship does not contain a provision relating to compensation and where there is no provision in the General Statutes providing for compensation for such fiduciary, such fiduciary shall be entitled to reasonable compensation determined in writing by the clerk of superior court in its discretion and to reimbursement of expenses properly incurred in the administration of the fiduciary relationship. Upon written request by the fiduciary, the clerk of superior court may allow the reimbursement of such expenses and such reasonable compensation after taking into account the factors set forth in G.S. 32-54(b).

"**§ 32-59. Effect of provisions in instrument.**

In those instances where the instrument creating the trust or other fiduciary relationship provides that the compensation of the fiduciary shall be the amount "provided by law", the "maximum amount provided by law", or other similar language, or references former G.S. 32-50, such language shall be construed as an intention that the trustee or other fiduciary shall receive reasonable compensation as allowed under this Article. In those instances where the instrument creating the trust or other fiduciary relationship provides that the trustee or other fiduciary shall serve without compensation, such language shall be construed as being a provision relating to compensation, and the trustee or other fiduciary shall not be entitled to receive reasonable compensation as allowed under this Article.

"**§ 32-60. Counsel fees allowable to attorneys serving as fiduciaries.**

The clerk of superior court may exercise discretion to allow counsel fees to an attorney serving as a fiduciary or trustee (in addition to the compensation allowed to the attorney as a fiduciary or trustee) where such attorney, on behalf of the trust or fiduciary relationship, renders professional services as an attorney that are different from the services normally performed by a fiduciary or trustee and of a type which would

reasonably justify the retention of legal counsel by any fiduciary or trustee who is not licensed to practice law.

"**§ 32-61. Applicability.**

The provisions of this Article shall apply to all payments made to a fiduciary after the enactment of this Article, including fiduciary compensation earned or paid after the enactment of this Article, with respect to trusts and fiduciary relationships created on or after January 1, 2004, and with respect to all trusts and fiduciary relationships existing on January 1, 2004."

SECTION 3. G.S. 32A-11(c) reads as rewritten:

"(c) In the event that any power of attorney executed pursuant to the provisions of this Article does not contain the amount of ~~commissions~~ compensation that the attorney-in-fact is entitled to receive or the way such ~~commissions are~~ compensation is to be determined, and the principal should thereafter become incapacitated or mentally incompetent, ~~the commissions such attorney-in-fact shall receive subsequent to the principal's incapacity or mental incompetence shall be fixed in the discretion of the clerk of superior court pursuant to the provisions of G.S. 32-50(c).~~ then, subsequent to the principal's incapacity or mental incompetence, the attorney-in-fact shall be entitled to receive such reasonable compensation as determined by the clerk of superior court after considering the factors set forth in G.S. 32-54(b)."

SECTION 4. G.S. 36A-23.1(a) reads as rewritten:

"(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this subsection, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this subsection are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(2) To review trustees' fees ~~pursuant to G.S. 32-50~~ and expenses pursuant to Article 5A of Chapter 32 of the General Statutes and to review and settle interim or final accounts; and

(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by a superior court judge."

SECTION 5. G.S. 36A-63(d) reads as rewritten:

"(d) In addition to any other compensation to which it may be entitled under G.S. 28A-23-3, ~~32-50,~~ 34-12, 35A-1269, or under any other authority, a corporation acting in a fiduciary capacity shall be allowed to charge a fee for the temporary investment of

funds held awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby. The fee authorized by this subsection shall not exceed twelve percent (12%) of the income produced by such investment. A corporation acting in a fiduciary capacity has complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the corporation's periodic statements set forth the method of computing such fees."

SECTION 6. This act becomes effective January 1, 2004, and applies to payments made to a fiduciary on or after that date.

clerk of court is not required; however, there are enumerated factors that must be considered in determining "reasonableness". The clerk of court must consider these factors if an interested party challenges the reasonableness of the compensation.

- G.S. 32-55 would authorize the reimbursement of expenses.
- G.S. 32-56 would require a trustee to give annual written notice to all interested persons that identifies all compensation, expense reimbursement, professional fee, counsel fees, distribution or payment of any kind. This notice must be given within a reasonable period of time after the end of each fiscal year of the trust. This section provides for notice when an interested person is under a legal disability.
- G.S. 32-57 would authorize an interested person or guardian, parent, or agent of an interested person to initiate a proceeding for the clerk of court to review the reasonableness of any compensation or expense reimbursement. The terms of the trust document may specifically prohibit this. The proceeding must be initiated within one year from the date the written notice was given to the interested parties or it is presumed that the compensation and expense reimbursement was reasonable. The clerk, upon review, may order the trustee to make appropriate refunds.
- G.S. 32-58 would authorize the clerk of court, upon written request by a fiduciary other than the trustee, to determine reasonable compensation for that fiduciary, unless prohibited by the trust or where there is a statute that authorizes compensation for that fiduciary.
- G.S. 32-59 would specify that when the instrument that created the trust uses certain phrases to define the compensation to which the fiduciary is entitled, the language is to be construed as an intention that the fiduciary receive reasonable compensation under this act. However, the instrument may provide that the fiduciary is not entitled to any compensation.
- G.S. 32-60 would authorize clerks of courts to allow attorney fees to a fiduciary who is an attorney where the attorney has rendered professional services as an attorney that are beyond routine trustee services and would justify the retention of legal counsel if the trustee were not an attorney.
- G.S. 32-61 would make the new Article apply to payments made to a fiduciary after January 1, 2004, with respect to all trusts and fiduciary relationships existing on that date or created on or after that date.

Section 3 would amend G.S. 32A-11(c) to allow an attorney-in-fact under a power of attorney to seek reasonable compensation, to be determined by the clerk of court. Currently, the attorney-in-fact is subject to the minimum fee schedule used for trustee compensation.

Section 4 would amend G.S. 36A-23.1(a) to grant clerks of court original jurisdiction over proceedings to review trustees' fees and expenses under the new Article.

Section 5 would provide that the act would be effective January 1, 2004, and would apply to payments made to a fiduciary on or after that date.

S470-SMSV-002

Robin Johnson, counsel for Senate Judiciary II, substantially contributed to this summary.

SENATE BILL 470:
Compensation of Trustees/Other Fiduciaries

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Hartsell
Date:	May 13, 2003	**Summary by:**	Trina Griffin
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 470 rewrites the law dealing with the compensation of trustees and other fiduciaries when the terms of certain trusts do not specify the compensation. The bill would eliminate the minimum fee schedule and prior approval by the clerk of superior court. Instead, trustees and fiduciaries would be entitled to compensation that is reasonable under the circumstances. They would be required to provide annual written notice to all interested parties of all compensation, expense reimbursement, professional fees, counsel fees, and distributions or payments. Interested parties would be allowed to initiate a proceeding by the clerk of court for a review of the reasonableness of the compensation or expense reimbursement. The bill also would allow an attorney-in-fact under a power of attorney that does not contain the amount of compensation to be entitled to reasonable compensation. The act would be effective January 1, 2004, and apply to payments made to a fiduciary on or after that date.***

CURRENT LAW: Currently, trustees of certain trusts receive annual compensation for serving as trustees based on a minimum fee schedule set out in G.S. 32-50. The trusts must be silent as to the amount of compensation. In addition to the minimum compensation, the clerk of superior court at the written request of the trustee may in the clerk's discretion allow additional compensation (subject to a cap) when the trustee has rendered services beyond the routine services expected of a trustee. The clerk of court may also authorize compensation for fiduciaries other than the trustee and for counsel fees for attorneys who serve as a fiduciary or trustee where the attorney renders professional services, as an attorney, that are beyond the ordinary routine of management and that would reasonably justify the retention of legal counsel.

SECTION-BY-SECTION ANALYSIS:

Section 1 would repeal Article 5 of Chapter 32 of the General Statutes, which governs compensation of trustees and fiduciaries (see attached).

Section 2 would create a new Article 5A of Chapter 32 of the General Statutes to be entitled, "Compensation of Trustees and Other Fiduciaries."

- G.S. 32-53 would define "interested person" as (i) the grantor, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income or principal; (iii) all living persons entitled to trust income or principal, or both, upon the trust's termination; and (iv) any special trustee, trust protector or advisor named in the trust who is entitled to receive notices under the terms of the trust. This term does not include all persons who may have a future interest in the trust.
- G.S. 32-53 also would define "trust" to have the same meaning as it has in Article 3 of Chapter 36A of the General Statutes.
- G.S. 32-54 would specify that, if the trust does not specify the compensation, then the trustee is entitled to receive compensation that is reasonable under the circumstances. Prior approval of the

Article 5.

Compensation.

§ 32-50. Compensation.

(a) Express Trust in Writing. – Unless otherwise provided in the instrument creating the trust relationship, a trustee under an express trust in writing, either inter vivos or testamentary, shall receive compensation for serving as a trustee as follows:

(1) Income Compensation. – An annual charge on gross income of:
   a. Five percent (5%) on the first five thousand dollars ($5,000) of income;
   b. Four percent (4%) on the next seven thousand five hundred dollars ($7,500) of income;
   c. Three percent (3%) on the next twelve thousand five hundred dollars ($12,500) of income;
   d. Two and one-half percent (2 1/2%) on the next twenty-five thousand dollars ($25,000) of income;
   e. Two percent (2%) on all income over fifty thousand dollars ($50,000).

(2) Compensation on Principal Consisting of Personal Property. – An annual charge on the current value of that portion of the principal consisting of personal property, of:
   a. Four-tenths (4/10) of one percent (1%) on the first twenty- five thousand dollars ($25,000) of principal;
   b. Three-tenths (3/10) of one percent (1%) on the next twenty- five thousand dollars ($25,000) of principal;
   c. Two-tenths (2/10) of one percent (1%) on the next fifty thousand dollars ($50,000) of principal;
   d. One-tenth (1/10) of one percent (1%) on the next one hundred thousand dollars ($100,000) of principal;
   e. One-twentieth (1/20) of one percent (1%) on all principal over two hundred thousand dollars ($200,000).

(3) Maximum Compensation. – In addition to the minimum compensation set out in (1) and (2) above, the clerk of superior court at the written request of the trustee may in his discretion allow additional compensation in those cases where the trustee has rendered services beyond the routine services expected by a trustee but in no event shall the total annual aggregate compensation exceed five percent (5%) upon the gross income and the expenditures made in accordance with law, and five-tenths (5/10) of one percent (1%) upon the current value of principal, both real and personal property, held as assets of the trust. In determining the amount of such additional compensation, if any, the clerk of superior court shall consider the time, responsibility, and skill involved in the management activities of the trustee.

For purposes of determining the annual compensation on principal, the current value of the principal shall be determined as of the date of the first annual accounting and each year thereafter on the anniversary of that date by an appraisal of the trustee and certified to the clerk of superior court.

When computing the current value of real property for purposes of subdivision (3) of this subsection (a) the value of a usual dwelling house occupied by a beneficiary and lands reasonably necessary to the use and enjoyment thereof shall not be included.

This section is not applicable to trustees under bond issues, trustees of corporate trusts, employee benefit trusts, deeds of trusts of real property used for purposes of securing loans, or trusts for similar purposes.

(b) Effect of Provisions in the Instrument. – Nothing in the provisions of this section shall be interpreted to prevent a corporate trustee from applying its regularly adopted schedule of compensation in effect and applicable at the time of performance of such services where the settlor or testator in the instrument creating the trust has so stipulated. In those instances where the compensation provision in the instrument creating the trust relationship provides that the compensation shall not exceed the maximum allowed by law this shall be construed as an expression of intention that the compensation shall not exceed the maximum compensation as provided in G.S. 32-50(a)(3), above.

(c) Other Fiduciary Relationships. – Unless otherwise provided, fiduciaries other than trustees under express trusts shall be entitled to compensation fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal and real property when received, and upon the expenditures made in accordance with law. In determining the amount of such compensation, both upon the property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of such property. The clerk of superior court may allow compensation from time to time during the course of the management but the total amount allowed shall be determined on final settlement and shall not exceed the limit fixed in this subsection.

(d) Opening Charge. – Unless otherwise provided in the instrument, a successor trustee or a trustee of a testamentary trust who did not serve as a personal representative for the estate, may make a written request to the clerk of superior court for an allowance of an opening charge for his services as a trustee. The clerk of superior court may in his discretion allow such opening charge not to exceed one percent (1%) of the value of the principal, both real and personal, received. In determining the amount of such charge, if any, the clerk of superior court shall consider the time, responsibility, and skill involved in the opening of the trust or other fiduciary relationship.

(e) Closing Charge. – Unless otherwise provided in the instrument, a trustee of an express trust or other fiduciary may make a written request to the clerk of superior court for the allowance of a closing charge. If the clerk of superior court makes a written finding of fact that there are unusual circumstances supporting such a request he may in his discretion allow a closing charge not to exceed one percent (1%) of the principal, both real and personal. In determining the amount of such charge, if any, the clerk of superior court shall consider the time, responsibility, and skill involved in the closing of the trust or other fiduciary relationship.

(f) Oral Trust Agreements. – Unless otherwise provided in the oral trust agreement, a trustee under a valid oral trust agreement shall receive compensation in accordance with subsection (a).

(g) Principal Less than Ten Thousand Dollars ($10,000). – Notwithstanding subsections (a), (b) and (c) above, when the gross value of the principal is ten thousand dollars ($10,000) or less, the clerk of superior court is authorized and empowered to fix the compensation to be received by the trustee or fiduciary in an amount as the clerk in his discretion, deems just and adequate.

(h) Compensation Considered Costs of Management. – All compensation, whether allocated to income or principal shall be charged as part of the costs of management and, upon allowance, may be retained out of the assets against creditors and all other persons claiming an interest.

(i) Charges for Management; Appeals. – Nothing in this section shall be construed:

(1) To prevent the clerk of superior court from allowing reasonable sums for necessary charges and disbursements incurred in the management of the principal; or

(2) To abridge the right of any interested party to appeal an order of the clerk.

(j) Default or Misconduct. – No fiduciary or trustee who has been guilty of default or misconduct in the due execution of his office resulting in the revocation of his appointment shall be entitled to any compensation under the provisions of this Article.

(k) Income Tax Withholding. – For the purpose of computing the compensation whenever any portion of the dividends, interest, rents or other amounts payable to a fiduciary or trustee is required by any law of the United States or other governmental unit to be withheld for income tax purposes by the person, corporation, organization or governmental unit paying the same, the amount so withheld shall be deemed to be income. (1977, c. 814, s. 1.)

§ 32-51. Counsel fees allowable to attorneys serving as fiduciaries.

The clerk of superior court, in his discretion, is authorized and empowered to allow counsel fees to an attorney serving as a fiduciary or trustee (in addition to the compensation allowed him as a fiduciary or trustee) where such attorney in behalf of the trust or fiduciary relationship renders professional services, as an attorney, which are beyond the ordinary routine of management and of a type which would reasonably justify the retention of legal counsel by any fiduciary or trustee not himself licensed to practice law. (1977, c. 814, s. 1.)

§ 32-52. Applicability.

The provisions of this Article shall apply to all trusts and fiduciary relationships created on or after January 1, 1978, and to all express trusts in writing existing on January 1, 1978 if the instrument does not contain any provision relating to compensation. (1977, c. 814, s. 1.)

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

May 15, 2003

The House Committee on Judiciary IV met on May 15, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Bowie, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

Senator Thomas was called upon to explain SB 293 AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS. Joe Cook with the Manufacturers Association spoke in support of this legislation. A PCS is being drafted and will be presented at a future meeting.

Senator Thomas was asked to explain SB 693 AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION AND TO MAKE CONFORMING CHANGES. John Madler with the North Carolina Sentencing Commission was in attendance to answer questions and support this bill. A PCS was introduced and a vote was taken. The PCS passed out of committee with a favorable report, unfavorable as to the original bill. This bill will be reported out of committee on May 16th.

SB 421 AN ACT TO CLARIFY AND MAKE TECHNICAL CORRECTIONS TO THE CHILD WELFARE LAW AND TO ENHANCE THE STATE'S ABILITY TO PROTECT CHILDREN was not discussed at this meeting due to time limitations. This bill will be calendared for a future meeting.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Chris Means	Rep Joe Kiser
Mildred Spearman	NCDOC
MP Dehny	NCGA
Jack Cozort	Parker Poe
John Madler	NC Sentencing Commission
Joseph F Cook	Easton Technologies
[illegible]	DJJDP
[illegible]	Smith Anderson
Michelle Frazier	NC Bar Ass'n
"Sir" Don McConnaughay	SAS
[illegible]	NCFPC
Ann Polson	NC Statewatch
Bill Sloggin	KCCH
Mark Prak	Brooks firm
Chris Sinha	NCAOC/State Div Soc Svcs
[illegible]	NCDHHS
Rob Lucas	NCDHHS

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

May 15, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 293	Sales Representatives Commissions Revisions	Sen. Thomas
SB 693	Amend Enhanced Sentences Laws	Sen. Thomas

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 3

SENATE BILL 293

Judiciary II Committee Substitute Adopted 4/2/03
House Committee Substitute Favorable 6/2/03

Short Title: Sales Representative Commissions Revisions. (Public)

Sponsors:

Referred to:

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27 of Chapter 66 of the General Statutes reads as rewritten:

"Article 27.

"Sales Representative Commissions.

"§ 66-190. Definitions.

The following definitions apply in this Article:

(1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of ~~orders or sales~~ orders, sales, or profits or as a specified amount per order or per sale.

(2) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, estate, ~~or trust.~~ trust, or other entity.

(3) "Principal" means a person ~~who does not have a permanent or fixed place of business in this State and~~ who:

a. Manufactures, produces, imports, or distributes a ~~tangible~~ product ~~for sale at wholesale;~~ or service;

b. Contracts with a sales representative to solicit orders for the ~~product;~~ product or service; and

c. Compensates the sales representative, in whole or in part, by commission.

(4) "Sales representative" means a person who:

a. Contracts with a principal to solicit ~~wholesale orders;~~ orders for products or services;

b. Is compensated, in whole or in part, by commission;
c. ~~Does not place orders or purchase for his own account or for resale;~~ Is not a seller who complies with:
1. G.S. 25A-39 and G.S. 25A-40; or
2. Part 429 of 16 Code of Federal Regulations (January 1, 2003);
~~d. Does not sell or take orders for the sale of products at retail; and~~
e. Is not an employee of the ~~principal.~~ principal; and
f. Does not sell or take orders for the sale of advertising services.

(5) "Terminate" and "termination" mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party.

"**§ 66-190.1. Written contracts.**

The agreement or contract between a sales representative and a principal shall be in writing. The absence of a written agreement or contract shall not bar a cause of action by, or any remedy available to, a sales representative pursuant to this Article.

"**§ 66-191. Payment of ~~commissions.~~ commissions; termination.**

When a contract between a sales representative and a principal is terminated for any reason other than malfeasance on the part of the sales representative, the principal shall pay the sales representative all commissions ~~accrued under the contract to the sales representative within 45 days after the effective date of the termination.~~ due under the contract within 30 days after the effective date of the termination and all commissions that become due after the effective date of termination within 14 days after they become due. If the principal does not make payment as required by this section, the sales representative shall make a written demand upon the principal, sent by certified mail, for the commissions then due. The principal shall respond in writing to the demand within 15 days after the principal receives the written demand.

"**§ 66-192. Civil liability.**

(a) A principal who fails to comply with the provisions of ~~G.S. 66-191~~ G.S. 66-191 or is shown to have wrongfully revoked an offer of commission under G.S. 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed three times the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs.

(b) Where the court determines that an action brought by a sales representative against a principal under this Article is frivolous, the sales representative is liable to the principal for court costs and for attorney's fees actually and reasonably incurred by the principal in defending the action.

(c) A principal who is not a resident of this State who contracts with a sales representative to solicit orders in this State shall be subject to personal jurisdiction as provided in G.S. 1-75.4.

(d) Nothing in this Article shall invalidate or restrict any other or additional right or remedy available to a sales representative or preclude a sales representative from seeking to recover in one action on all claims against a principal.

"**§ 66-192.1. Revocable offers of commission; entitlement.**

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the commission agreed upon if:

(1) The principal revokes the offer of commission;

(2) The sales representative establishes that the revocation was for the purpose of avoiding payment of the commission;

(3) The revocation occurs after the principal has obtained a written order for the principal's product or service because of the efforts of the sales representative; and

(4) The principal's product or service that is the subject of the order is provided to and paid for by a customer.

"**§ 66-193. Contracts void.**

A provision in any contract between a sales representative and a principal purporting to waive any provision of this Article, whether by expressed waiver or by a contract subject to the laws of another state, is void."

SECTION 2. This act becomes effective October 1, 2003, and applies to causes of action accruing on or after that date.

SENATE BILL 293:
Sales Representative Commissions Revisions

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Thomas
Date:	May 15, 2003	**Summary by:**	Steven Rose
Version:	2		Committee Counsel

SUMMARY: ***SB 293 amends Article 27 of Chapter 66 of the General Statutes to expand its coverage to in-state principals and to principals who contract for the sale of services as well as products. It shortens the time frame for commission payments where the business relationship between a sales representative and a principal has been terminated. It increases the amount of punitive damages a sales representative may receive where a principal has refused to pay commissions that are due or for wrongful revocation of a commission offer. It also creates a cause of action by a sales representative where the principal has revoked a revocable offer of commission for the purpose of avoiding payment of the commission.***

CURRENT LAW: Article 27 of Chapter 66 is loosely modeled after the Model Commission Protection Act (drafted by the Manufacturers' Agents National Association). It currently only applies to principals who do not have a permanent or fixed place of business within North Carolina. A principal is a person or business entity that manufactures, produces, imports, or distributes a tangible product; contracts with a sales representative to solicit orders for the product, and compensates the sales representative by a commission. A sales representative is not an employee of the principal, but does contract to solicit orders for a principal's products and is compensated by commission. A sales representative does not include a person who takes orders for sale of a product at retail, such as a door-to-door sales person.

Within 45 days of the termination of a commission contract (for any reason other than malfeasance by the sales representative) the principal is supposed to pay any commissions due. If the principal refuses to pay the commissions, the sales representative my recover the amount due plus punitive damages not to exceed the amount of commissions owed. If the sales representative brings a frivolous action to recover sales commissions, the court may charge the sales representative with court costs and attorney fees. The provisions of Article 27 may not be waived.

BILL ANALYSIS:

G.S. 66-190. Definitions is amended to:

- Expand the coverage of the act to principals with offices inside North Carolina. Previously, the law only applied to out-of-state principals.
- Expand the definition of "principal" to include a business that sells services.
- Modify the definition of "sales representative" too more closely conform to the Model Commission Protection Act. It would not apply to door-to-door sales representatives who must provide consumers with a 3 day right to terminate a sales contract.
- Define "termination" and "terminate" to mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party.

G.S. 66-109.1 - Written Contracts is added. It provides that contracts between sales representatives and principals shall be in writing. However, the lack of a written contract would not be a bar to a cause of action or remedy to a sales representative.

G.S. 66-191 is amended to shorten the timeframe for payment of commissions where a contract for compensation has been terminated between a sales representative and a principal. Currently, the principal has 45 days to pay the commissions. Under the bill, the principal would have 30 days from the date of termination to pay commissions that were due as of the termination date. The principal would have to pay all commissions that come due after the termination date within 14 days after they become due. The act would also require that if the sales representative sends a written demand for payment to a principal by certified mail, the principal must respond in writing within 30 days of receipt of the demand.

G.S. 66-192 is the civil liability section. It is amended to allow up to three times the amount of commissions due the sales representative as punitive damages. It also provides that if the principal has failed to respond in writing to the sales representative's written demand for payment, the principal shall be presumed to have acted willfully and in bad faith. Given this presumption, a court would have to award punitive damages unless the principal rebutted the presumption.

G.S. 66-192.1 – Revocable offers of commission; entitlement is added as a new section. It creates a cause of action on behalf of the sales representative where a principal makes a revocable offer of commission and revokes the offer for the purpose of avoiding payment of the commission. In order to prevail, the sales representative would have to show:

- That the principal revoked the offer of commission;
- That the revocation was for the purpose of avoiding the payment of the commission;
- That the revocation occurred after the principal obtained a written order for the principal's product or service because of the efforts of the sales representative; and
- The principal's product or service is provided to and paid for by the customer.

The act becomes effective October 1, 2003 and applies to causes of action accruing on or after that date.

Kory Goldsmith, Committee Counsel to the Senate Judiciary II Committee, contributed substantially to this summary.

S293-SMRL-001

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☒ Committee Substitute for
S.B. 293 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill ~~(#),~~ ☐ ~~which changes the title,~~ unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 693

Judiciary II Committee Substitute Adopted 4/23/03

Short Title: Amend Enhanced Sentences Laws. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.2 is repealed.

SECTION 2. G.S. 15A-1340.16A reads as rewritten:

"**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.**

~~(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.~~

~~(b) Subsection (a) of this section does not apply in any of the following circumstances:~~

~~(1) The person is not sentenced to an active term of imprisonment.~~

~~(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.~~

~~(3) The person did not actually possess a firearm about his or her person.~~

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm and (ii) the person actually possessed the firearm about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60

months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1).

(b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm and the defendant actually possessed the firearm about the defendant's person. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(d) Subsection (a) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 3. G.S. 15A-1340.16B reads as rewritten:

"**§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 ~~felony.~~felony if the victim was 13 years of age or younger and there are no mitigating factors.**

(a) ~~Notwithstanding the sentencing dispositions in G.S. 15A-1340.17,~~If a person is convicted of a Class B1 felony ~~shall be sentenced to life imprisonment without parole if:~~ and it is found as provided in this section that: (i)

~~(1)~~ ~~The offense was committed~~ the person committed the felony against a victim who was 13 years of age or younger at the time of the ~~offense;~~ offense and

~~(2)~~ ~~The~~(ii) the person has one or more prior convictions of a Class B1 ~~felony; and~~

~~(3)~~ ~~The court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).~~felony, then the person shall be sentenced to life imprisonment without parole.

~~(b) If the sentencing court finds that there are mitigating circumstances, then the court shall sentence the person in accordance with G.S. 15A-1340.17.~~

~~(c) A prior conviction of a Class B1 felony shall be proved in accordance with G.S. 15A-1340.14.~~

(b) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony against a victim who was 13 years of age or younger at the time of the felony and that the defendant had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the

felony unless the defendant pleads guilty or no contest to the issues. The issues shall be presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(d) Subsection (a) of this section does not apply if there are mitigating factors present under G.S. 15A-1340.16(e)."

SECTION 4. G.S. 15A-1340.16C reads as rewritten:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bullet-proof vest during the commission of the felony.**

(a) If a person is convicted of a felony and ~~the court finds that~~ it is found as provided in this section that the person ~~was wearing~~wore or had in his or her immediate possession a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted. This section does not apply to law enforcement officers.

~~(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted. This section does not apply to law enforcement officers.~~

(b) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried at a single trial.

(c) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(d) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony."

SECTION 5. This act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable before this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 693
Judiciary II Committee Substitute Adopted 4/23/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S693-CSSV-19 [v.2]

5/15/2003 9:08:13 AM

Short Title: Amend Enhanced Sentences Laws. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.2 is repealed.

SECTION 2. G.S. 15A-1340.16A reads as rewritten:

"**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.**

~~(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.~~

~~(b) Subsection (a) of this section does not apply in any of the following circumstances:~~

~~(1) The person is not sentenced to an active term of imprisonment.~~

~~(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.~~

~~(3) The person did not actually possess a firearm about his or her person.~~

(c) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm and (ii) the person actually

possessed the firearm about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1).

(d) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information the facts set out in subsection (c) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm and the defendant actually possessed the firearm about the defendant's person. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (c) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (c) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (c) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment."

SECTION 3. G.S. 15A-1340.16B reads as rewritten:

"**§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 ~~felony.~~felony if the victim was 13 years of age or younger and there are no mitigating factors.**

(a) ~~Notwithstanding the sentencing dispositions in G.S. 15A-1340.17,~~If a person is convicted of a Class B1 felony ~~shall be sentenced to life imprisonment without parole if:~~ and it is found as provided in this section that: (i)

~~(1)~~ ~~The offense was committed~~ the person committed the felony against a victim who was 13 years of age or younger at the time of the ~~offense;~~ offense and

~~(2)~~ ~~The~~(ii) the person has one or more prior convictions of a Class B1 ~~felony; and~~

~~(3)~~ ~~The court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).~~felony, then the person shall be sentenced to life imprisonment without parole.

~~(b) If the sentencing court finds that there are mitigating circumstances, then the court shall sentence the person in accordance with G.S. 15A-1340.17.~~

~~(c) A prior conviction of a Class B1 felony shall be proved in accordance with G.S. 15A-1340.14.~~

(d) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony against a victim who was 13 years of age or younger at the time of the felony and that the defendant had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. The issues shall be presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (a) of this section does not apply if there are mitigating factors present under G.S. 15A-1340.16(e)."

SECTION 4. G.S. 15A-1340.16C reads as rewritten:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bullet-proof vest during the commission of the felony.**

(a) If a person is convicted of a felony and ~~the court finds that~~ it is found as provided in this section that the person ~~was wearing~~wore or had in his or her immediate possession a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted. This section does not apply to law enforcement officers.

~~(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted. This section does not apply to law enforcement officers.~~

(c) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried at a single trial.

(d) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(e) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony."

SECTION 5. G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of G.S. ~~14-2.2,~~ 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge

that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(4a) By ordering the weapon, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

SECTION 6. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or confidence to commit the offense.

(16) The offense involved the sale or delivery of a controlled substance to a minor.

(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

(18) The defendant does not support the defendant's family.

(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(19) The serious injury inflicted upon the victim is permanent and debilitating.

(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. ~~14-2.2~~ 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

SECTION 7. This act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable before this act remain applicable to those prosecutions.

SENATE BILL 693:
Amend Enhanced Sentences Law.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Thomas
Date:	May 15, 2003	**Summary by:**	Trina Griffin*
Version:	PCS for 2nd Edition S693-CSSV-19		Committee Counsel

SUMMARY: ***Senate Bill 693 would amend the enhanced sentencing laws to conform to a recent United States Supreme Court case and a North Carolina Court of Appeals case by requiring that (1) the facts supporting an enhanced sentence be alleged in the indictment, and (2) a jury determine the enhancement issues beyond a reasonable doubt.***

This bill is a recommendation of the Sentencing Commission. It was also recommended and introduced last Session. It was amended several times and passed the Senate, but the House failed to pass it.

The act would become effective when it becomes law and would apply to offenses committed on or after that date. The current statutes would be applicable to prosecutions for offenses occurring before the act becomes effective.

The Proposed Committee Substitute makes technical and conforming changes.

BACKGROUND: Currently, there are three North Carolina statutes that require a sentencing judge, upon finding certain facts by a preponderance of the evidence, to increase a defendant's sentence beyond the ranges authorized by structured sentencing: These statutes are (i) firearm enhancement; (ii) enhancement for Class B1 felonies involving young victims; and (iii) bulletproof vest enhancement.

A recent United States Supreme Court decision, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), called into question the constitutionality of these sentencing enhancements. The Court held that **any fact, other than a prior conviction, that increases the punishment for a crime beyond the statutory maximum for that crime must be submitted to the jury and proven beyond a reasonable doubt.**

Following *Apprendi*, the NC Court of Appeals initially ruled that the State's firearm enhancement statute is unconstitutional as violative of procedural due process under the 14th Amendment of the United States Constitution. The NC Supreme Court then addressed this particular statute and held that "in every instance where the State seeks an enhanced sentence [under the firearm enhancement statute], it must allege the statutory factors supporting the enhancement in an indictment, which may be the same indictment that charges the underlying offense, and submit those factors to the jury. If the jury returns a guilty verdict that includes these factors, the trial judge shall make the finding set out in the statute and impose an enhanced sentence." After that decision, the Court of Appeals withdrew its finding that the firearm enhancement statute is facially unconstitutional.

BILL ANALYSIS: The bill would modify the three enhanced sentencing statutes to conform with the recent *Apprendi* and *Guice* decisions by requiring that a jury determine beyond a reasonable doubt the facts supporting an enhanced sentence.

I. Firearm Enhancement (Sec. 2)

Under current law, G.S. 15A-1340.16A requires that an additional 60 months be added to a defendant's sentence ***if the judge finds*** that the defendant (1) used, displayed, or threatened to use or display a firearm

during the commission of a Class A through E felony and (2) actually possessed a firearm about his or her person.

Under the bill, a defendant will be subject a 60-month enhancement ***if a jury finds beyond a reasonable doubt*** that the defendant (i) used, displayed, or threatened to use or display a firearm during the commission of a Class A through E felony and (ii) actually possessed a firearm about his or her person.

Under current law and under the bill, the enhancement will not apply if evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying felony or if the person is not sentenced to an active term of imprisonment.

II. Enhancement for Class B1 Felonies Involving Young Victims (Sec. 3)

Currently, G.S. 15A-1340.16B requires that a defendant who is convicted of a Class B1 felony be sentenced to life imprisonment without parole ***if the judge finds*** that (1) the victim was 13 years of age or younger at the time of the offense, (2) the defendant has one or more prior convictions of a Class B1 felony, and (3) there are no mitigating factors present.

B1 felonies are: 1st degree rape, 1st degree sexual offense, and statutory rape or a sexual offense of a person who is 13, 14, or 15 years old and the defendant is at least 6 years older than the victim.

Under the bill, a defendant who is convicted of a Class B1 felony shall be sentenced to life imprisonment without parole ***if a jury determines beyond a reasonable doubt*** (1) the victim was 13 years of age or younger at the time of the offense, and (2) the defendant has one or more prior convictions of a Class B1 felony. The enhanced sentence will not apply if there are mitigating factors present.

III. Bulletproof Vest Enhancement (Sec. 4)

Under current law, G.S. 15A-1340.16C requires that a defendant who is convicted of a felony ***where the judge finds*** that the person wore or had in the person's immediate possession a bulletproof vest at the time of the felony be guilty of a felony that is one class higher than the underlying felony for which the person was convicted. This enhancement does not apply to law enforcement officers.

Under the bill, a defendant who is convicted of a felony ***where the jury determines beyond a reasonable doubt*** that the person wore or had in his immediate possession a bulletproof vest at the time of the felony shall be guilty of a felony that is one class higher than the underlying felony for which the person was convicted. The exception for law enforcement officers is removed under the bill.

Under current law and under the bill, the enhanced sentence will not apply if evidence that the person wore or had in his immediate possession a bulletproof vest is needed to prove an element of the felony.

For all enhancements, the bill would require indictments to allege the facts necessary to support an enhanced sentence.

Section 1 of the bill repeals G.S. 14-2.2 (see attached) and Sections 5 and 6 are conforming changes.

Change that is not necessarily required by *Apprendi*:

Currently, prior convictions are proven by a preponderance of the evidence. Sec. 3 would require that the indictment allege prior convictions and that this be proven beyond a reasonable doubt.

S693-SMSV-003:

**Robin Johnson, counsel for Senate Judiciary II, contributed significantly to this summary.*

G.S. § 14-2.2. Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E felony who used, displayed, or threatened to use or display a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A.

The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) The person is not sentenced to an active term of imprisonment.

(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B, B1, B2, C, D, or E felony.

(3) The person did not actually possess a firearm about his or her person.

(c) When a person is found to have personally used a firearm in the commission or attempted commission of a felony and the firearm is owned by that person, or the serial number on the firearm has been defaced such that ownership is not traceable, the court shall order that the firearm be confiscated and disposed of in any of the ways provided by G.S. 14-269.1 that the court in its discretion deems appropriate.

(d) Repealed by Session Laws 1994, Extra Session, c. 22, s. 19(b). (1979, c. 760, s. 2; 1979, 2nd Sess., c. 1316, ss. 34, 47, 48; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 538, s. 4; 1994, Ex. Sess., c. 22, ss. 18, 19(a), (b).)

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☒ Committee Substitute for
S.B. 693 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS RECOMMENDED BY THE SENTENCING COMMISSION AND TO MAKE CONFORMING CHANGES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill (#), ☐ ~~which changes the title,~~ unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

May 20, 2003

The House Committee on Judiciary IV met on May 20, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Bonner Stiller, Bowie, Earle, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

Representative Sexton was asked to explain HB 1026 A BILL TO BE ENTITLED AN ACT TO MAKE THE PROGRAM FOR THE COLLECTION OF WORTHLESS CHECKS AVAILABLE STATEWIDE. Greg Stall with the Administrative Office of the Court was in attendance and in support of this bill. A PCS of this bill was introduced and received a favorable report, unfavorable as to the original bill with a re-refer to finance. The bill will be reported out of committee on May 21st.

Senator Hagan was asked to explain SB 549 A BILL TO BE ENTITLED AN ACT TO ADOPT THE REVISED UNIFORM PRINCIPAL AND INCOME ACT. Bill McPherson with the Durham County Bar and North Carolina Bar Association was available to further explain the bill and show support for this legislation. Betty Turner with Bank of America was also present in support of this bill. Due to technical changes needed prior to a vote, this bill will be tabled and a vote will be taken at the May 22nd meeting.

Senator Gulley was asked to explain SB 93 A BILL TO BE ENTITLED AN ACT TO AMEND THE DEFINITION OF SPECIAL PROBATION TO REMOVE THE SIX-MONTH LIMITATION ON THE PERIOD OF IMPRISONMENT. John Madler with the North Carolina Sentencing Commission was in attendance and in support of this legislation. This bill passed committee with a favorable report and will be reported out of committee on May 21st.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary IV — 5/20/03

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Carrie Stall	Rep. Crisp
Tom Sri	NCBMA
Peg Dorer	Conference of DAs
John Madler	NC Sentencing Commission
MAURICE SMITH	LOCAL GOVERNMENT CREDIT UNION
Michelle Frazier	NC Bar Ass'n
Bill McPherson	NC Bar Ass'n - Estate Planning Section
Julia Cummings	Intern - Senator Hagan
Abby Youngken	Intern - Sen. Hagan
Patty Turner	Bank of America
KON OTTAVIO	WACHOVIA
Elisa Wolper	AOC
Andy Ellen	NCBMA

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

May 20, 2002
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 1026	Worthless Check Program	Rep. Sexton
SB 93	Amend Special Probation Definition	Sen. Gulley
SB 549	Uniform Principal and Income Act	Sen. Hagan

H 1

HOUSE BILL 1026

Short Title:	Worthless Check Program/Extend Statewide.	(Public)
Sponsors:	Representatives Sexton; Moore and Pate.	
Referred to:	Judiciary IV.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PROGRAM FOR THE COLLECTION OF WORTHLESS CHECKS AVAILABLE STATEWIDE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-107.2(e) is repealed.

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1026
PROPOSED COMMITTEE SUBSTITUTE H1026-CSSVf-16 [v.4]

5/12/2003 3:33:14 PM

Short Title: Worthless Check Program/Extend Statewide. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PROGRAM FOR THE COLLECTION OF WORTHLESS CHECKS AVAILABLE STATEWIDE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-107.2 is amended by adding a new subsection to read:

"(a1) The Administrative Office of the Courts may authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible. The Administrative Office of the Courts may consider the following factors when making a feasibility determination:

(1) The population of the district.

(2) The number of worthless check prosecutions in the district.

(3) The availability of personnel and equipment in the district."

SECTION 2. G.S. 14-107.2(b) reads as rewritten:

"(b) Upon authorization by the Administrative Office of the Courts, a~~A~~ district attorney may establish a program for the collection of worthless checks in cases that may be prosecuted under G.S. 14-107. The district attorney may establish a program for the collection of worthless checks in cases that would be punishable as misdemeanors, in cases that would be punishable as felonies, or both. The district attorney shall establish criteria for the types of worthless check cases that will be eligible under the program."

SECTION 3. G.S. 14-107.2(e) is repealed.

SECTION 4. G.S. 7A-346.2(b) reads as rewritten:

"(b) The Administrative Office of the Courts shall report by April 1 of each odd-numbered year to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the ~~implementation~~economic viability of the worthless check collection programs established by district attorneys pursuant to ~~G.S. 14-107.2, including their effectiveness in assisting the recipients of worthless checks in obtaining~~

~~restitution and the amount of time saved from not prosecuting worthless check cases.~~G.S. 14-107.2, including an assessment of whether any adjustments need to be made to ensure that the programs, on a statewide basis, are self-supporting."

SECTION 4. As soon as practicable, the Administrative Office of the Courts shall determine the economic feasibility of establishing a worthless check collection program in Prosecutorial Districts 1, 3A, 18, 25, 28, and 29. The Administrative Office of the Courts shall authorize the establishment of a worthless check collection program in any or all of the prosecutorial districts identified in this section that are determined to be economically feasible before it authorizes a worthless check collection program in any other prosecutorial district.

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 1026:
Worthless Check Program/Extend Statewide.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Sexton
Date:	May 20, 2003	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition H1026-CSSVf-16		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1026 would authorize the Administrative Office of the Courts to authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible. The act would become effective when it becomes law.***

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1026 does three things:

- It authorizes the Administrative Office of the Courts to authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible. The AOC may consider the following factors when making a feasibility determination:
  - The population of the district.
  - The number of worthless check prosecutions in the district.
  - The availability of personnel and equipment in the district.

- It modifies the reporting requirement for the AOC by requiring that it report every other year on the economic viability of the worthless check collection programs, including an assessment of whether any adjustments need to be made to ensure that the programs, on a statewide basis, are self-supporting.

- It requires the AOC to determine the economic feasibility of establishing a worthless check collection program in the following prosecutorial districts and then to authorize programs in those districts where economically feasible before it authorizes a program in any other district:
  - 1 Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans (HB 602 – Reps. Owens /Culpepper)
  - 3A Pitt County (HB 18 – Rep. McLawhorn)
  - 18 Guilford County (HB 380 – Rep. Jeffus)
  - 25 Burke, Caldwell, Catawba (HB 25 – Rep. Gillespie)
  - 28 Buncombe (HB 83 – Rep. Goforth)
  - 29 McDowell, Rutherford, Polk, Henderson, Transylvania (HB 25 – Rep. Gillespie)

CURRENT LAW:

I. <u>Worthless Check Offense</u>

A person is guilty of making or uttering a worthless check if he or she (1) makes and delivers (2) a check or draft (3) without having sufficient funds or credit with the bank for the check or draft to be paid, and (4) knows that there are insufficient funds or credit available for the payment. There are three possible sentencing classifications for this offense:

- The violation is punishable as a **Class I felony** if the amount of the worthless check is more than $2,000. The range of punishment for a Class I felony is a minimum of community punishment with a 3-month suspended sentence to 15 months active, depending on various mitigating and aggravating factors.
- The violation is punishable as a **Class 1 misdemeanor** if the amount of the worthless check is $2,000 or less and any of the following apply:
  - The check is drawn upon a nonexistent account.
  - The check is drawn upon an account the drawer knows to be closed.
  - The conviction is the person's fourth or subsequent conviction for this offense. Additionally, the sentencing judge must order, as a part of probation for the repeat offender on his fourth offense, that the offender refrain from maintaining a checking account or making or uttering a check for three years.

  The range of punishment for a Class 1 misdemeanor is from 1-120 days, with the possibility of an active sentence depending on the number of prior convictions.
- In other cases where the amount of the worthless check is $2,000 or less, the violation is punishable as a **Class 2 misdemeanor**. The range of punishment for a Class 2 misdemeanor is 1-60 days.

II. Worthless Check Collection Program

G.S. 14-107.2 authorizes district attorneys in certain counties to establish a program for the collection of worthless checks in cases that would be otherwise punishable as misdemeanors, felonies, or both. Under the program, a district attorney may not prosecute a worthless check case if the check passer pays a $60 fee to the Collection of Worthless Checks Fund and provides restitution to the check taker for: (1) the amount of the worthless check, (2) any service charge imposed on the check taker by a bank for processing the dishonored check, and (3) a processing fee imposed by the check taker of up to $25.

While the district attorney has some discretion to establish the criteria for the operation of the program in his or her district, the program typically follows this basic procedure:

1) The check taker first attempts to collect on his own.
2) If unsuccessful, the check taker refers the check and documentation of the collection effort to the Worthless Check office of the District Attorney.
3) The Worthless Check office sends the worthless check writer a letter informing the writer of his participation in the program. A payment form is included with the letter.
4) The worthless check writer who participates brings the full restitution amount and the program fee to the office of the Clerk of Superior Court within thirty days. The check writer must also bring the payment form sent by the Worthless Check office.
5) The clerk validates the form as paid and forwards the form to the Worthless Check office.
6) The Clerk's office forwards the restitution amount to the check taker and forwards the program fee to the Worthless Check fund.
7) If the worthless check writer does not comply with the requirements of the program, the Office of the District Attorney either requests the issuance of a warrant or criminal summons or authorizes the check taker to do so.

Currently, the district attorneys of Bladen, Brunswick, Columbus, Cumberland, Durham, Edgecombe, Nash, New Hanover, Onslow, Pender, Rockingham, Wake, and Wilson Counties have authority to establish a worthless check collection program.

III. The Collection of Worthless Checks Fund

The proceeds from the $60 fee are remitted to the State by the clerk of court in the county in which the program is established and are credited to the Collection of Worthless Checks Fund. The revenue in the Fund does not revert at the end of the fiscal year and may be used solely for the expenses of the programs established for the collection of worthless checks.

IV. Reporting Requirement

The Administrative Office of the Courts (AOC) is required to report annually to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the implementation of the worthless check collection programs, including their effectiveness in obtaining restitution and the amount of time saved from not prosecuting worthless check cases.

BACKGROUND: The worthless check collection program statute had its origin as an uncodified pilot program enacted in the 1997 Budget Bill. At that time, Columbus, Durham and Rockingham were the only counties authorized to establish a program. In 1998, Wake County was added to the list of authorized counties. In 1999, Brunswick, Bladen, New Hanover, and Pender counties were added. In 2000, Cumberland, Edgecombe, Nash, Onslow, and Wilson counties were added to the program.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 1026 A BILL TO BE ENTITLED AN ACT TO MAKE THE PROGRAM FOR THE COLLECTION OF WORTHLESS CHECKS AVAILABLE STATEWIDE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#),~~ ☐ ~~which changes the title,~~ unfavorable as to (the original bill~~) (Committee Substitute Bill #),~~ (and recommendation that the committee substitute bill #) be re-referred to the Committee on FINANCE.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 549

Judiciary II Committee Substitute Adopted 4/22/03

Short Title: Uniform Principal and Income Act. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE REVISED UNIFORM PRINCIPAL AND INCOME ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 37A.**

"**Uniform Principal and Income Act.**

"Article 1.

"Definitions and Fiduciary Duties; Conversion to Unitrust; Judicial Control of Discretionary Power.

"Part 1. Definitions.

"**§ 37A-1-101. Short title.**

This Chapter may be cited as the Uniform Principal and Income Act.

"**§ 37A-1-102. Definitions.**

The following definitions apply in this Chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts

from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 of this Chapter.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this Chapter to or from income during the period.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

"**§ 37A-1-103. Fiduciary duties; general principles.**

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 and 3 of this Chapter, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this Chapter;

(3) Shall administer a trust or estate in accordance with this Chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this Chapter do not provide a rule for

allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under G.S. 37A-1-104(a) or a discretionary power of administration regarding a matter within the scope of this Chapter, whether granted by the terms of a trust, a will, or this Chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this Chapter is presumed to be fair and reasonable to all of the beneficiaries.

"**§ 37A-1-104. Trustee's power to adjust.**

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in G.S. 37A-1-103(a), that the trustee is unable to comply with G.S. 37A-1-103(b). In lieu of exercising the power to adjust, the trustee may convert the trust to a unitrust as permitted under Part 2 of this Article, in which case the unitrust amount shall become the net income of the trust.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the grantor or settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under the other sections of this Chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) If the trustee is a beneficiary of the trust;

(8) If the trustee is not a beneficiary but the adjustment would benefit the trustee directly or indirectly; or

(9) If the trust has been converted to, and is then operating as, a unitrust under Part 2 of this Article.

(d) If subdivision (5), (6), (7), or (8) of subsection (c) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivisions (1) through (6) or subdivision (8) of subsection (c) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is

clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a) of this section.

"Part 2. Conversion to Unitrust.

"**§ 37A-1-104.1. Definitions.**

For purposes of this Part:

(1) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor thereto; reference to a specific section of the Code in this Part shall be deemed a reference also to any successor provision dealing with the subject matter of that section of the Code.

(2) "Competent beneficiary" includes:

a. A beneficiary who has attained his or her majority and is not otherwise under a legal disability;

b. A court-appointed guardian of an incompetent beneficiary;

c. An attorney-in-fact or agent under a durable power of attorney for an incompetent beneficiary;

d. A court-appointed guardian of a minor beneficiary's estate; and

e. In the case of a minor beneficiary for whom no guardian has been appointed, a parent of the minor beneficiary, but only if the parent does not have an interest in the estate or trust that conflicts with the interest of the minor beneficiary.

(3) "Grantor" means an individual who created an inter vivos trust.

(4) "Disinterested person" means a person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the grantor of the trust and any interested trustee.

(5) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. Notwithstanding the foregoing, no trust that may be subject to taxation under section 2001 or section 2501 of the Code shall be an income trust for purposes of this Part, until the expiration of the period for filing the return therefor, including all extensions for the filing.

(6) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

(7) "Interested trustee" means (i) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed, (ii) any trustee who may be removed and replaced by an interested distributee, or (iii) an individual trustee whose legal obligation to

support a beneficiary may be satisfied by distributions of income and principal of the trust.

(8) "Related or subordinate party" means a related or subordinate party as defined in section 672(c) of the Code.

(9) "Total return unitrust" means an income trust which has been converted under and meets the provisions of this Part.

(10) "Trustee" means any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

(11) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

"**§ 37A-1-104.2. Conversion in trustee's discretion without court approval.**

(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee"), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(2) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this Part, to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice (without regard to the exercise of any power of appointment), and (iv) all persons acting as advisor or protector of the trust.

(3) There is at least one competent beneficiary who is currently receiving or eligible to receive distributions of income of the trust and there is at least one competent beneficiary who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice.

(4) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to such action within 60 days of receipt of such notice by written instrument delivered to the trustee.

(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust amount.

(3) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this Part, and the determinations of the disinterested person to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice (without regard to the exercise of any power of appointment), and (iv) all persons acting as advisor or protector of the trust.

(4) There is at least one competent beneficiary who is currently receiving or eligible to receive distributions of income of the trust and there is at least one competent beneficiary who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice.

(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to such action or to the determination of the disinterested person within 60 days of receipt of such notice by written instrument delivered to the trustee; in such case, the trustee may take such action without court approval.

"**§ 37A-1-104.3. Conversion with court approval.**

(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market

value of the trust but does not have the ability to or elects not to do it under G.S. 36A-1-104.2, the trustee may petition the court for such order as the trustee deems appropriate. In the event, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations under this Part.

(b) A competent beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the competent beneficiary may petition the court to order the trustee to take such action.

(c) All proceedings under this section shall be conducted as provided in Article 3 of Chapter 36A of the General Statutes.

"**§ 37A-1-104.4. Determination of unitrust amount.**

(a) The fair market value of the trust shall be determined at least annually, using such valuation date as selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of such average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate by the trustee. Such assets may be excluded from valuation, provided all income received with respect to such assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(c) In the case of a trust (i) for which a marital deduction has been taken for federal tax purposes under section 2056 or section 2523 of the Code (during the lifetime of the spouse for whom the trust was created) or (ii) a trust to which the generation-skipping transfer tax due under section 2601 of the Code does not apply by reason of any effective date or transition rule, the unitrust amount in any taxable year shall not be less than the net income of the trust, determined without regard to subsection (d) of this section.

(d) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust; and

(2) May allocate to trust income for each taxable year of the trust (or portion thereof) (i) net short-term capital gain described in section 1222(5) of the Code for that year or portion of that year, but only to the extent that the amount so allocated together with all other amounts allocated to trust income for that year or portion of that year does not exceed the unitrust amount for that year or portion of that year; and (ii) net long-term capital gain described in section 1222(7) of the Code for that year or portion of that year, but only to the extent that the amount so allocated together with all other amounts, including amounts described in clause (i) above, allocated to trust income for that year or portion of that year does not exceed the unitrust amount for that year or portion of that year.

"**§ 37A-1-104.5. Matters in trustee's discretion.**

In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Any other administrative issues as may be necessary or appropriate to carry out the purposes of this Part.

"**§ 37A-1-104.6. No effect on principal distributions.**

Conversion to a total return unitrust under this Part shall not affect any other provision of the governing instrument, if any, regarding distributions of principal. For purposes of this Part, the distribution of a unitrust amount is considered a distribution of income and not of principal.

"**§ 37A-1-104.7. Marital deduction trusts.**

In the case of any trust for which a marital deduction has been taken, in whole or in part, for federal tax purposes under section 2056 or section 2523 of the Code, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel for his or her lifetime (i) the conversion of the trust from an income trust to a total return unitrust or (ii) the reconversion of the trust from a total return unitrust to an income trust, notwithstanding anything in this Part to the contrary.

"**§ 37A-1-104.8. No liability on part of trustee or disinterested person acting in good faith.**

No trustee or disinterested person who in good faith takes or fails to take any action under this Part shall be liable to any person affected by the action or inaction, regardless of whether the person received written notice as provided in this Part and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The exclusive remedy for any person affected by an action or inaction shall be to obtain an order of the court directing the trustee (i) to convert an income trust to a total return unitrust, (ii) to reconvert from a total return unitrust to an income trust, or (iii) to change the percentage used to calculate the unitrust amount.

"**§ 37A-1-104.9. Applicability.**

This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the grantor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code, (iii) one or more persons to whom the trustee could distribute income has a power of withdrawal over the trust that is not subject to an ascertainable standard under section 2041 or section 2514 of the Code, or the power of withdrawal can be exercised to discharge a duty of support the person possesses, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to the Part.

"Part 3. Judicial Control of Discretionary Power.

"**§ 37A-1-105. Judicial control of discretionary power.**

(a) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this Chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) of this section applies include:

(1) A decision under G.S. 37A-1-104(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors in deciding whether and to what extent to exercise the discretionary power conferred by G.S. 37A-1-104(a).

(c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying subdivisions (1) and (2) of this subsection, to place the beneficiaries, the trust, or both in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(d) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this Chapter will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

"Article 2.

"Decedent's Estate or Terminating Income Interest.

"**§ 37A-2-201. Determination and distribution of net income.**

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 through 5 of this Chapter that apply to trustees and the rules in subdivision (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 of this Chapter that apply to trustees and by:

a. Including in net income all income from property used to discharge liabilities;

b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an

estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

c. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) Unless the will or trust instrument otherwise provides, or the court otherwise directs, a fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright interest, computed as provided in G.S. 24-1 from the date that is one year following the date of death of the person whose death gives rise to the payment of the pecuniary bequest or the happening of the contingency which causes the income interest to end, from net income determined under subdivision (2) of this section or from principal to the extent that net income is insufficient. However, this subdivision shall not apply to a pecuniary bequest:

a. To or for the benefit of a decedent's surviving spouse that is, or can be, qualified for the federal estate tax marital deduction; or

b. To or for the benefit of charitable organizations that are qualified for the federal estate tax charitable deduction, including a charitable remainder trust.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) of this section in the manner described in G.S. 37A-2-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) of this section because of a payment described in G.S. 37A-5-501 or G.S. 37A-5-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or

terminating income interest may become obligated to pay after the property is distributed.

"**§ 37A-2-202. Distribution to residuary and remainder beneficiaries.**

(a) Each beneficiary described in G.S. 37A-2-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

"Article 3.

"Apportionment at Beginning and End of Income Interest.

"**§ 37A-3-301. When right to income begins and ends.**

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

"**§ 37A-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.**

(a) A trustee shall allocate an income receipt or disbursement, other than one to which G.S. 37A-2-201(1) applies to principal, if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal, and the balance shall be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this Chapter. Distributions to shareholders or other owners from an entity to which G.S. 37A-4-401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

"**§ 37A-3-303. Apportionment when income interest ends.**

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust

immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

"Article 4.

"Allocation of Receipts During Administration of Trust.

"Part 1. Receipts From Entities.

"**§ 37A-4-401. Character of receipts.**

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which G.S. 37A-4-402 applies, a business or activity to which G.S. 37A-4-403 applies, or an asset-backed security to which G.S. 37A-4-415 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subdivision (2) of subsection (d) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

"**§ 37A-4-402. Distribution from trust or estate.**

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest

and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, G.S. 37A-4-401 or G.S. 37A-4-415 applies to a receipt from the trust.

"**§ 37A-4-403. Business and other activities conducted by trustee.**

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service, and other traditional business activities;
(2) Farming;
(3) Raising and selling livestock and other animals;
(4) Management of rental properties;
(5) Extraction of minerals and other natural resources;
(6) Timber operations; and
(7) Activities to which G.S. 37A-4-414 applies.

"Part 2. Receipts Not Normally Apportioned.

"**§ 37A-4-404. Principal receipts.**

A trustee shall allocate to principal:

(1) To the extent not allocated to income under this Chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;
(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this Article;
(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in G.S. 37A-5-502(a)(7) or for other reasons to the extent not based on the loss of income;
(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period

during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income; and

(6) Other receipts as provided in Part 3 of this Article.

"**§ 37A-4-405. Rental property.**

To the extent that a trustee accounts for receipts from rental property under this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

"**§ 37A-4-406. Obligation to pay money.**

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(c) This section does not apply to an obligation to which G.S. 37A-4-409, 37A-4-410, 37A-4-411, 37A-4-412, 37A-4-414, or 37A-4-415 applies.

"**§ 37A-4-407. Insurance policies and similar contracts.**

(a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to G.S. 37A-4-403, loss of profits from a business.

(c) This section does not apply to a contract to which G.S. 37A-4-409 applies.

"Part 3. Receipts Normally Apportioned.

"**§ 37A-4-408. Insubstantial allocations not required.**

If a trustee determines that an allocation between principal and income required by G.S. 37A-4-409, 37A-4-410, 37A-4-411, 37A-4-412, or 37A-4-415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances

described in G.S. 37A-1-104(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in G.S. 37A-1-104(d) and may be released for the reasons and in the manner described in G.S. 37A-1-104(e). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

"**§ 37A-4-409. Deferred compensation, annuities, and similar payments.**

(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which G.S. 37A-4-410 applies.

"**§ 37A-4-410. Liquidating asset.**

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to G.S. 37A-4-409, resources subject to G.S. 37A-4-411, timber subject to G.S. 37A-4-412, an activity subject to G.S. 37A-4-414, an asset subject to

G.S. 37A-4-415, or any asset for which the trustee establishes a reserve for depreciation under G.S. 37A-5-503.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

"**§ 37A-4-411. Minerals, water, and other natural resources.**

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources under this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) shall be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in subdivision (1), (2), or (3) of this subsection, ninety percent (90%) of the net amount received shall be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety percent (90%) of the amount shall be allocated to principal and the balance to income.

(c) This Chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2004, the trustee may allocate receipts from the interest as provided in this Chapter or in the manner used by the trustee before January 1, 2004. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2004, the trustee shall allocate receipts from the interest as provided in this Chapter.

"**§ 37A-4-412. Timber.**

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land

under the lease or contract and applying the rules in subdivision (1) and (2) of this subsection; or

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision (1), (2), or (3) of this subsection.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This Chapter applies whether or not a decedent or transferor was harvesting timber from the property before it becomes subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2004, the trustee may allocate net receipts from the sale of timber and related products as provided in this Chapter or in the manner used by the trustee before January 1, 2004. If the trust acquires an interest in timberland after January 1, 2004, the trustee shall allocate net receipts from the sale of timber and related products as provided in this Chapter.

"**§ 37A-4-413. Property not productive of income.**

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under G.S. 37A-1-104 and distributes to the spouse from principal under the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by G.S. 37A-1-104(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

"**§ 37A-4-414. Derivatives and options.**

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under G.S. 37A-4-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an

option granted to a settlor of the trust for services rendered, shall be allocated to principal.

"**§ 37A-4-415. Asset-backed securities.**

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which G.S. 37A-4-401 or G.S. 37A-4-409 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.

"Article 5.

"Allocation of Disbursements During Administration of Trust.

"**§ 37A-5-501. Disbursements from income.**

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which G.S. 37A-2-201(2)b. or G.S. 37A-2-201(2)c. applies:

(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

"**§ 37A-5-502. Disbursements from principal.**

(a) A trustee shall make the following disbursements from principal:

(1) The remaining one-half of the disbursements described in G.S. 37A-5-501(1) and G.S. 37A-5-501(2);

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;
(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
(5) Premiums paid on a policy of insurance not described in G.S. 37A-5-501(4) of which the trust is the owner and beneficiary;
(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and
(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common-law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

"**§ 37A-5-503. Transfers from income to principal for depreciation.**

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
(2) During the administration of a decedent's estate; or
(3) Under this section if the trustee is accounting under G.S. 37A-4-403 for the business or activity in which the asset is used.

(c) An amount transferred to principal under this section need not be held as a separate fund.

"**§ 37A-5-504. Transfers from income to reimburse principal.**

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;
(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;
(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;
(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and
(5) Disbursements described in G.S. 37A-5-502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

"**§ 37A-5-505. Income taxes.**

(a) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately:

(1) From income to the extent that receipts from the entity are allocated to income; and
(2) From principal to the extent that:
a. Receipts from the entity are allocated to principal; and
b. The trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and sub-subdivision (2)a. of this subsection.

(d) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

"**§ 37A-5-506. Adjustments between principal and income because of taxes.**

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

(1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;
(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

"Article 6.

"Miscellaneous Provisions.

"**§ 37A-6-601. Uniformity of application and construction.**

In applying and construing this Chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 37A-6-602. Severability clause.**

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable."

SECTION 2. Chapter 37 of the General Statutes is repealed.

SECTION 3. G.S. 160A-234(a) reads as rewritten:

"(a) Assessments upon real property in the possession or enjoyment of a tenant for life, or a tenant for a term of years, shall be paid ~~in accordance with G.S. 37-36(b).~~by the holder of the remainder or reversion, as the case may be."

SECTION 4. This act becomes effective January 1, 2004, and applies to every trust or decedent's estate existing on that date, except as otherwise expressly provided in the will or terms of the trust or in the provisions of Chapter 37A, as enacted in this act.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

May 22, 2003

The House Committee on Judiciary IV met on May 22, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Bonner Stiller, Bowie, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

Chairman Munford gave a brief explanation of SB 549 A BILL TO BE ENTITLED AND ACT TO ADOPT THE REVISED UNIFORM PRINCIPAL AND INCOME ACT. This bill was discussed at a previous meeting and re-calendared once a PCS was drafted to cover issues various committee concerns. The PCS was introduced and received a favorable report, unfavorable as to the original bill. This will be reported out of committee next week due to the long holiday weekend.

Chairman Munford gave a brief explanation of SB 293 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS. This bill was discussed at a previous meeting and re-calendared once a PCS was drafted to cover issues various committee concerns. The PCS was introduced and received a favorable report, unfavorable as to the original bill. This will be reported out of committee next week due to the long holiday weekend.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

J-4 — Name of Committee

5.22.03 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Gov Ottavio	Wachovia
Andrew Payne	NC State Student
BRIAN SHANK	ASTRA ZENECA PHARMA
Steve Mitchell	NPC
Joseph F. Cook	Eastern Technologies, Inc
Bill Scoggin	ECA
Amy Dobson	NC Statewatch
PAUL STOCK	NC BANKERS ASSN.
MARK PRAK	BROOKS FIRM
Cam Cover	BPMH
John Bourdash	AstraZeneca
Michelle Frazier	NC Bar Ass'n

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

May 22, 2002
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 293	Sales Representative Commissions Revisions	Sen. Thomas
~~SB 421~~	~~Amend Child Welfare Laws~~	~~Rep. Culpepper~~
SB 549	Uniform Principal and Income Act	Sen. Hagan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 293

Judiciary II Committee Substitute Adopted 4/2/03

Short Title: Sales Representative Commissions Revisions. (Public)

Sponsors:

Referred to:

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27 of Chapter 66 of the General Statutes reads as rewritten:

"Article 27.

"Sales Representative Commissions.

"**§ 66-190. Definitions.**

The following definitions apply in this Article:

(1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of ~~orders or sales~~ orders, sales, or profits or as a specified amount per order or per sale.

(2) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, estate, ~~or trust.~~ trust, or other entity.

(3) "Principal" means a person ~~who does not have a permanent or fixed place of business in this State and~~ who:

a. Manufactures, produces, imports, or distributes a ~~tangible~~ product ~~for sale at wholesale;~~ or service;

b. Contracts with a sales representative to solicit orders for the ~~product;~~ product or service; and

c. Compensates the sales representative, in whole or in part, by commission.

(4) "Sales representative" means a person who:

a. Contracts with a principal to solicit ~~wholesale orders;~~ orders for products or services;

b. Is compensated, in whole or in part, by commission;

c. ~~Does not place orders or purchase for his own account or for resale;~~ Is not a seller who complies with:
1. G.S. 25A-39 and G.S. 25A-40; or
2. 16 C.F.R. § 429; and

~~d. Does not sell or take orders for the sale of products at retail; and~~

e. Is not an employee of the principal.

(5) "Terminate" and "termination" mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party.

"**§ 66-190.1. Written contracts.**

The agreement or contract between a sales representative and a principal shall be in writing. The absence of a written agreement or contract shall not bar a cause of action by, or any remedy available to, a sales representative pursuant to this Article.

"**§ 66-191. Payment of ~~commissions.~~ commissions; termination.**

When a contract between a sales representative and a principal is terminated for any reason other than malfeasance on the part of the sales representative, the principal shall pay the sales representative all commissions ~~accrued under the contract to the sales representative within 45 days after the effective date of the termination.~~ due under the contract within 30 days after the effective date of the termination and all commissions that become due after the effective date of termination within 14 days after they become due. When a sales representative sends a written demand for payment of commissions to a principal by certified mail, the principal shall respond in writing to the demand within 30 days after the principal receives the written demand.

"**§ 66-192. Civil liability.**

(a) A principal who fails to comply with the provisions of ~~G.S. 66-191~~ G.S. 66-191, or is shown to have wrongfully revoked an offer of commission under G.S. 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed three times the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs.

(a1) A principal who fails to respond to a sales representative in writing within 30 days after the principal receives a written demand pursuant to G.S. 66-191 shall be presumed to have acted willfully and in bad faith.

(b) Where the court determines that an action brought by a sales representative against a principal under this Article is frivolous, the sales representative is liable to the principal for court costs and for attorney's fees actually and reasonably incurred by the principal in defending the action.

(c) A principal who is not a resident of this State who contracts with a sales representative to solicit orders in this State shall be subject to personal jurisdiction as provided in G.S. 1-75.4.

(d) Nothing in this Article shall invalidate or restrict any other or additional right or remedy available to a sales representative or preclude a sales representative from seeking to recover in one action on all claims against a principal.

"§ 66-192.1. Revocable offers of commission; entitlement.

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the commission agreed upon if:

(1) The principal revokes the offer of commission;

(2) The sales representative establishes that the revocation was for the purpose of avoiding payment of the commission;

(3) The revocation occurs after the principal has obtained a written order for the principal's product or service because of the efforts of the sales representative; and

(4) The principal's product or service that is the subject of the order is provided to and paid for by a customer.

"§ 66-193. Contracts void.

A provision in any contract between a sales representative and a principal purporting to waive any provision of this Article, whether by expressed waiver or by a contract subject to the laws of another state, is void."

SECTION 2. This act becomes effective October 1, 2003, and applies to causes of action accruing on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 3

SENATE BILL 293

Judiciary II Committee Substitute Adopted 4/2/03
House Committee Substitute Favorable 6/2/03

Short Title: Sales Representative Commissions Revisions. (Public)

Sponsors:

Referred to:

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27 of Chapter 66 of the General Statutes reads as rewritten:

"Article 27.

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"§ 66-190. Definitions.

The following definitions apply in this Article:

(1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of ~~orders or sales~~ orders, sales, or profits or as a specified amount per order or per sale.

(2) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, estate, ~~or trust.~~ trust, or other entity.

(3) "Principal" means a person ~~who does not have a permanent or fixed place of business in this State and~~ who:

a. Manufactures, produces, imports, or distributes a ~~tangible~~ product ~~for sale at wholesale;~~ or service;

b. Contracts with a sales representative to solicit orders for the ~~product;~~ product or service; and

c. Compensates the sales representative, in whole or in part, by commission.

(4) "Sales representative" means a person who:

a. Contracts with a principal to solicit ~~wholesale orders;~~ orders for products or services;

b. Is compensated, in whole or in part, by commission;
c. ~~Does not place orders or purchase for his own account or for resale;~~ Is not a seller who complies with:
1. G.S. 25A-39 and G.S. 25A-40; or
2. Part 429 of 16 Code of Federal Regulations (January 1, 2003);
~~d. Does not sell or take orders for the sale of products at retail; and~~
e. Is not an employee of the ~~principal.~~ principal; and
f. Does not sell or take orders for the sale of advertising services.

(5) "Terminate" and "termination" mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party.

"§ 66-190.1. Written contracts.

The agreement or contract between a sales representative and a principal shall be in writing. The absence of a written agreement or contract shall not bar a cause of action by, or any remedy available to, a sales representative pursuant to this Article.

"§ 66-191. Payment of ~~commissions.~~ commissions; termination.

When a contract between a sales representative and a principal is terminated for any reason other than malfeasance on the part of the sales representative, the principal shall pay the sales representative all commissions ~~accrued under the contract to the sales representative within 45 days after the effective date of the termination.~~ due under the contract within 30 days after the effective date of the termination and all commissions that become due after the effective date of termination within 14 days after they become due. If the principal does not make payment as required by this section, the sales representative shall make a written demand upon the principal, sent by certified mail, for the commissions then due. The principal shall respond in writing to the demand within 15 days after the principal receives the written demand.

"§ 66-192. Civil liability.

(a) A principal who fails to comply with the provisions of ~~G.S. 66-191~~ G.S. 66-191 or is shown to have wrongfully revoked an offer of commission under G.S. 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed three times the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs.

(b) Where the court determines that an action brought by a sales representative against a principal under this Article is frivolous, the sales representative is liable to the principal for court costs and for attorney's fees actually and reasonably incurred by the principal in defending the action.

(c) A principal who is not a resident of this State who contracts with a sales representative to solicit orders in this State shall be subject to personal jurisdiction as provided in G.S. 1-75.4.

(d) Nothing in this Article shall invalidate or restrict any other or additional right or remedy available to a sales representative or preclude a sales representative from seeking to recover in one action on all claims against a principal.

"**§ 66-192.1. Revocable offers of commission; entitlement.**

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the commission agreed upon if:

(1) The principal revokes the offer of commission;

(2) The sales representative establishes that the revocation was for the purpose of avoiding payment of the commission;

(3) The revocation occurs after the principal has obtained a written order for the principal's product or service because of the efforts of the sales representative; and

(4) The principal's product or service that is the subject of the order is provided to and paid for by a customer.

"**§ 66-193. Contracts void.**

A provision in any contract between a sales representative and a principal purporting to waive any provision of this Article, whether by expressed waiver or by a contract subject to the laws of another state, is void."

SECTION 2. This act becomes effective October 1, 2003, and applies to causes of action accruing on or after that date.

SENATE BILL 293:
Sales Representative Commissions Revisions

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Thomas
Date:	May 15, 2003	**Summary by:**	Steven Rose
Version:	2		Committee Counsel

SUMMARY: ***SB 293 amends Article 27 of Chapter 66 of the General Statutes to expand its coverage to in-state principals and to principals who contract for the sale of services as well as products. It shortens the time frame for commission payments where the business relationship between a sales representative and a principal has been terminated. It increases the amount of punitive damages a sales representative may receive where a principal has refused to pay commissions that are due or for wrongful revocation of a commission offer. It also creates a cause of action by a sales representative where the principal has revoked a revocable offer of commission for the purpose of avoiding payment of the commission.***

CURRENT LAW: Article 27 of Chapter 66 is loosely modeled after the Model Commission Protection Act (drafted by the Manufacturers' Agents National Association). It currently only applies to principals who do not have a permanent or fixed place of business within North Carolina. A principal is a person or business entity that manufactures, produces, imports, or distributes a tangible product; contracts with a sales representative to solicit orders for the product, and compensates the sales representative by a commission. A sales representative is not an employee of the principal, but does contract to solicit orders for a principal's products and is compensated by commission. A sales representative does not include a person who takes orders for sale of a product at retail, such as a door-to-door sales person.

Within 45 days of the termination of a commission contract (for any reason other than malfeasance by the sales representative) the principal is supposed to pay any commissions due. If the principal refuses to pay the commissions, the sales representative my recover the amount due plus punitive damages not to exceed the amount of commissions owed. If the sales representative brings a frivolous action to recover sales commissions, the court may charge the sales representative with court costs and attorney fees. The provisions of Article 27 may not be waived.

BILL ANALYSIS:

G.S. 66-190. Definitions is amended to:

- Expand the coverage of the act to principals with offices inside North Carolina. Previously, the law only applied to out-of-state principals.
- Expand the definition of "principal" to include a business that sells services.
- Modify the definition of "sales representative" too more closely conform to the Model Commission Protection Act. It would not apply to door-to-door sales representatives who must provide consumers with a 3 day right to terminate a sales contract.
- Define "termination" and "terminate" to mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party.

G.S. 66-109.1 - Written Contracts is added. It provides that contracts between sales representatives and principals shall be in writing. However, the lack of a written contract would not be a bar to a cause of action or remedy to a sales representative.

G.S. 66-191 is amended to shorten the timeframe for payment of commissions where a contract for compensation has been terminated between a sales representative and a principal. Currently, the principal has 45 days to pay the commissions. Under the bill, the principal would have 30 days from the date of termination to pay commissions that were due as of the termination date. The principal would have to pay all commissions that come due after the termination date within 14 days after they become due. The act would also require that if the sales representative sends a written demand for payment to a principal by certified mail, the principal must respond in writing within 30 days of receipt of the demand.

G.S. 66-192 is the civil liability section. It is amended to allow up to three times the amount of commissions due the sales representative as punitive damages. It also provides that if the principal has failed to respond in writing to the sales representative's written demand for payment, the principal shall be presumed to have acted willfully and in bad faith. Given this presumption, a court would have to award punitive damages unless the principal rebutted the presumption.

G.S. 66-192.1 – Revocable offers of commission; entitlement is added as a new section. It creates a cause of action on behalf of the sales representative where a principal makes a revocable offer of commission and revokes the offer for the purpose of avoiding payment of the commission. In order to prevail, the sales representative would have to show:

- That the principal revoked the offer of commission;
- That the revocation was for the purpose of avoiding the payment of the commission;
- That the revocation occurred after the principal obtained a written order for the principal's product or service because of the efforts of the sales representative; and
- The principal's product or service is provided to and paid for by the customer.

The act becomes effective October 1, 2003 and applies to causes of action accruing on or after that date.

Kory Goldsmith, Committee Counsel to the Senate Judiciary II Committee, contributed substantially to this summary.

S293-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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SENATE BILL 293

Judiciary II Committee Substitute Adopted 4/2/03
House Committee Substitute Favorable 6/2/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S293-PCS35315-RL-42

Short Title: Sales Representative Commissions Revisions. (Public)

Sponsors:

Referred to:

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27 of Chapter 66 of the General Statutes reads as rewritten:

"Article 27.

"Sales Representative Commissions.

"§ 66-190. Definitions.

The following definitions apply in this Article:

(1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of ~~orders or sales~~ orders, sales, or profits or as a specified amount per order or per sale.

(2) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, estate, ~~or trust.~~ trust, or other entity.

(3) "Principal" means a person ~~who does not have a permanent or fixed place of business in this State and~~ who:

a. Manufactures, produces, imports, or distributes a ~~tangible~~ product ~~for sale at wholesale;~~ or service;

b. Contracts with a sales representative to solicit orders for the ~~product;~~ product or service; and

c. Compensates the sales representative, in whole or in part, by commission.

(4) "Sales representative" means a person who:

a. Contracts with a principal to solicit ~~wholesale orders;~~ orders for products or services;
b. Is compensated, in whole or in part, by commission;
c. ~~Does not place orders or purchase for his own account or for resale;~~ Is not a seller who complies with:
1. G.S. 25A-39 and G.S. 25A-40; or
2. Part 429 of 16 Code of Federal Regulations (January 1, 2003);
~~d. Does not sell or take orders for the sale of products at retail; and~~
e. Is not an employee of the ~~principal.~~ principal;
f. Does not sell or take orders for the sale of advertising services; and
g. Is not a person requiring a real estate broker's or sales agent's license under Chapter 93A of the General Statutes.

(5) "Terminate" and "termination" mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party.

"**§ 66-190.1. Written contracts.**

The agreement or contract between a sales representative and a principal shall be in writing. The absence of a written agreement or contract shall not bar a cause of action by, or any remedy available to, a sales representative pursuant to this Article.

"**§ 66-191. Payment of ~~commissions.~~ commissions; termination.**

When a contract between a sales representative and a principal is terminated for any reason other than malfeasance on the part of the sales representative, the principal shall pay the sales representative all commissions ~~accrued under the contract to the sales representative within 45 days after the effective date of the termination.~~ due under the contract within 30 days after the effective date of the termination and all commissions that become due after the effective date of termination within 15 days after they become due. If the principal does not make payment as required by this section, the sales representative shall make a written demand upon the principal, sent by certified mail, for the commissions then due. The principal shall respond in writing to the demand within 15 days after the principal receives the written demand.

"**§ 66-192. Civil liability.**

(a) A principal who fails to comply with the provisions of ~~G.S. 66-191~~ G.S. 66-191 or is shown to have wrongfully revoked an offer of commission under G.S. 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed two times the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs.

(b) Where the court determines that an action brought by a sales representative against a principal under this Article is frivolous, the sales representative is liable to the principal for court costs and for attorney's fees actually and reasonably incurred by the principal in defending the action.

(c) A principal who is not a resident of this State who contracts with a sales representative to solicit orders in this State shall be subject to personal jurisdiction as provided in G.S. 1-75.4.

(d) Nothing in this Article shall invalidate or restrict any other or additional right or remedy available to a sales representative or preclude a sales representative from seeking to recover in one action on all claims against a principal.

"**§ 66-192.1. Revocable offers of commission; entitlement.**

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the commission agreed upon if:

(1) The principal revokes the offer of commission;

(2) The sales representative establishes that the revocation was for the purpose of avoiding payment of the commission;

(3) The revocation occurs after the principal has obtained a written order for the principal's product or service because of the efforts of the sales representative; and

(4) The principal's product or service that is the subject of the order is provided to and paid for by a customer.

"**§ 66-193. Contracts void.**

A provision in any contract between a sales representative and a principal purporting to waive any provision of this Article, whether by expressed waiver or by a contract subject to the laws of another state, is void."

SECTION 2. This act becomes effective October 1, 2003, and applies to causes of action accruing on or after that date.

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. _____ DATE _____

S. B. No. 293 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 4
2 ( ) WHICH CHANGES THE TITLE
3 by by deleting "and".
4 on pg 2, line 6 by striking through
5 "principal." and adding "principal, and".
7 and on pg 2, between lines 6 and 7
8 by inserting the following:
9
10 "f. Does not sell or take orders
11 for the sale of advertising services."
12
13
14
15
16
17
18

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☒ Committee Substitute for
S.B. 293 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill ~~(#),~~ ☐ ~~which changes the title,~~ unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

SENATE BILL 549
Judiciary II Committee Substitute Adopted 4/22/03

Short Title: Uniform Principal and Income Act. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE REVISED UNIFORM PRINCIPAL AND INCOME ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 37A.**

"**Uniform Principal and Income Act.**

"Article 1.

"Definitions and Fiduciary Duties; Conversion to Unitrust; Judicial Control of Discretionary Power.

"Part 1. Definitions.

"**§ 37A-1-101. Short title.**

This Chapter may be cited as the Uniform Principal and Income Act.

"**§ 37A-1-102. Definitions.**

The following definitions apply in this Chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts

from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 of this Chapter.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this Chapter to or from income during the period.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

"**§ 37A-1-103. Fiduciary duties; general principles.**

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 and 3 of this Chapter, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this Chapter;

(3) Shall administer a trust or estate in accordance with this Chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this Chapter do not provide a rule for

allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under G.S. 37A-1-104(a) or a discretionary power of administration regarding a matter within the scope of this Chapter, whether granted by the terms of a trust, a will, or this Chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this Chapter is presumed to be fair and reasonable to all of the beneficiaries.

"**§ 37A-1-104. Trustee's power to adjust.**

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in G.S. 37A-1-103(a), that the trustee is unable to comply with G.S. 37A-1-103(b). In lieu of exercising the power to adjust, the trustee may convert the trust to a unitrust as permitted under Part 2 of this Article, in which case the unitrust amount shall become the net income of the trust.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the grantor or settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under the other sections of this Chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) If the trustee is a beneficiary of the trust;

(8) If the trustee is not a beneficiary but the adjustment would benefit the trustee directly or indirectly; or

(9) If the trust has been converted to, and is then operating as, a unitrust under Part 2 of this Article.

(d) If subdivision (5), (6), (7), or (8) of subsection (c) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivisions (1) through (6) or subdivision (8) of subsection (c) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is

clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a) of this section.

"Part 2. Conversion to Unitrust.

"**§ 37A-1-104.1. Definitions.**

For purposes of this Part:

(1) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor thereto; reference to a specific section of the Code in this Part shall be deemed a reference also to any successor provision dealing with the subject matter of that section of the Code.

(2) "Competent beneficiary" includes:

a. A beneficiary who has attained his or her majority and is not otherwise under a legal disability;

b. A court-appointed guardian of an incompetent beneficiary;

c. An attorney-in-fact or agent under a durable power of attorney for an incompetent beneficiary;

d. A court-appointed guardian of a minor beneficiary's estate; and

e. In the case of a minor beneficiary for whom no guardian has been appointed, a parent of the minor beneficiary, but only if the parent does not have an interest in the estate or trust that conflicts with the interest of the minor beneficiary.

(3) "Grantor" means an individual who created an inter vivos trust.

(4) "Disinterested person" means a person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the grantor of the trust and any interested trustee.

(5) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. Notwithstanding the foregoing, no trust that may be subject to taxation under section 2001 or section 2501 of the Code shall be an income trust for purposes of this Part, until the expiration of the period for filing the return therefor, including all extensions for the filing.

(6) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

(7) "Interested trustee" means (i) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed, (ii) any trustee who may be removed and replaced by an interested distributee, or (iii) an individual trustee whose legal obligation to

support a beneficiary may be satisfied by distributions of income and principal of the trust.

(8) "Related or subordinate party" means a related or subordinate party as defined in section 672(c) of the Code.

(9) "Total return unitrust" means an income trust which has been converted under and meets the provisions of this Part.

(10) "Trustee" means any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

(11) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

"**§ 37A-1-104.2. Conversion in trustee's discretion without court approval.**

(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee"), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(2) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this Part, to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice (without regard to the exercise of any power of appointment), and (iv) all persons acting as advisor or protector of the trust.

(3) There is at least one competent beneficiary who is currently receiving or eligible to receive distributions of income of the trust and there is at least one competent beneficiary who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice.

(4) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to such action within 60 days of receipt of such notice by written instrument delivered to the trustee.

(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust amount.

(3) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this Part, and the determinations of the disinterested person to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice (without regard to the exercise of any power of appointment), and (iv) all persons acting as advisor or protector of the trust.

(4) There is at least one competent beneficiary who is currently receiving or eligible to receive distributions of income of the trust and there is at least one competent beneficiary who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice.

(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to such action or to the determination of the disinterested person within 60 days of receipt of such notice by written instrument delivered to the trustee; in such case, the trustee may take such action without court approval.

"**§ 37A-1-104.3. Conversion with court approval.**

(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market

value of the trust but does not have the ability to or elects not to do it under G.S. 36A-1-104.2, the trustee may petition the court for such order as the trustee deems appropriate. In the event, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations under this Part.

(b) A competent beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the competent beneficiary may petition the court to order the trustee to take such action.

(c) All proceedings under this section shall be conducted as provided in Article 3 of Chapter 36A of the General Statutes.

"**§ 37A-1-104.4. Determination of unitrust amount.**

(a) The fair market value of the trust shall be determined at least annually, using such valuation date as selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of such average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate by the trustee. Such assets may be excluded from valuation, provided all income received with respect to such assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(c) In the case of a trust (i) for which a marital deduction has been taken for federal tax purposes under section 2056 or section 2523 of the Code (during the lifetime of the spouse for whom the trust was created) or (ii) a trust to which the generation-skipping transfer tax due under section 2601 of the Code does not apply by reason of any effective date or transition rule, the unitrust amount in any taxable year shall not be less than the net income of the trust, determined without regard to subsection (d) of this section.

(d) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust; and

(2) May allocate to trust income for each taxable year of the trust (or portion thereof) (i) net short-term capital gain described in section 1222(5) of the Code for that year or portion of that year, but only to the extent that the amount so allocated together with all other amounts allocated to trust income for that year or portion of that year does not exceed the unitrust amount for that year or portion of that year; and (ii) net long-term capital gain described in section 1222(7) of the Code for that year or portion of that year, but only to the extent that the amount so allocated together with all other amounts, including amounts described in clause (i) above, allocated to trust income for that year or portion of that year does not exceed the unitrust amount for that year or portion of that year.

"**§ 37A-1-104.5. Matters in trustee's discretion.**

In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Any other administrative issues as may be necessary or appropriate to carry out the purposes of this Part.

"**§ 37A-1-104.6. No effect on principal distributions.**

Conversion to a total return unitrust under this Part shall not affect any other provision of the governing instrument, if any, regarding distributions of principal. For purposes of this Part, the distribution of a unitrust amount is considered a distribution of income and not of principal.

"**§ 37A-1-104.7. Marital deduction trusts.**

In the case of any trust for which a marital deduction has been taken, in whole or in part, for federal tax purposes under section 2056 or section 2523 of the Code, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel for his or her lifetime (i) the conversion of the trust from an income trust to a total return unitrust or (ii) the reconversion of the trust from a total return unitrust to an income trust, notwithstanding anything in this Part to the contrary.

"**§ 37A-1-104.8. No liability on part of trustee or disinterested person acting in good faith.**

No trustee or disinterested person who in good faith takes or fails to take any action under this Part shall be liable to any person affected by the action or inaction, regardless of whether the person received written notice as provided in this Part and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The exclusive remedy for any person affected by an action or inaction shall be to obtain an order of the court directing the trustee (i) to convert an income trust to a total return unitrust, (ii) to reconvert from a total return unitrust to an income trust, or (iii) to change the percentage used to calculate the unitrust amount.

"**§ 37A-1-104.9. Applicability.**

This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the grantor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code, (iii) one or more persons to whom the trustee could distribute income has a power of withdrawal over the trust that is not subject to an ascertainable standard under section 2041 or section 2514 of the Code, or the power of withdrawal can be exercised to discharge a duty of support the person possesses, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to the Part.

"Part 3. Judicial Control of Discretionary Power.

"**§ 37A-1-105. Judicial control of discretionary power.**

(a) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this Chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) of this section applies include:

(1) A decision under G.S. 37A-1-104(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors in deciding whether and to what extent to exercise the discretionary power conferred by G.S. 37A-1-104(a).

(c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying subdivisions (1) and (2) of this subsection, to place the beneficiaries, the trust, or both in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(d) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this Chapter will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

"Article 2.

"Decedent's Estate or Terminating Income Interest.

"**§ 37A-2-201. Determination and distribution of net income.**

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 through 5 of this Chapter that apply to trustees and the rules in subdivision (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 of this Chapter that apply to trustees and by:

a. Including in net income all income from property used to discharge liabilities;

b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an

estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

c. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) Unless the will or trust instrument otherwise provides, or the court otherwise directs, a fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright interest, computed as provided in G.S. 24-1 from the date that is one year following the date of death of the person whose death gives rise to the payment of the pecuniary bequest or the happening of the contingency which causes the income interest to end, from net income determined under subdivision (2) of this section or from principal to the extent that net income is insufficient. However, this subdivision shall not apply to a pecuniary bequest:

a. To or for the benefit of a decedent's surviving spouse that is, or can be, qualified for the federal estate tax marital deduction; or

b. To or for the benefit of charitable organizations that are qualified for the federal estate tax charitable deduction, including a charitable remainder trust.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) of this section in the manner described in G.S. 37A-2-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) of this section because of a payment described in G.S. 37A-5-501 or G.S. 37A-5-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or

terminating income interest may become obligated to pay after the property is distributed.

"**§ 37A-2-202. Distribution to residuary and remainder beneficiaries.**

(a) Each beneficiary described in G.S. 37A-2-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

"Article 3.

"Apportionment at Beginning and End of Income Interest.

"**§ 37A-3-301. When right to income begins and ends.**

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

"**§ 37A-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.**

(a) A trustee shall allocate an income receipt or disbursement, other than one to which G.S. 37A-2-201(1) applies to principal, if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal, and the balance shall be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this Chapter. Distributions to shareholders or other owners from an entity to which G.S. 37A-4-401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

"**§ 37A-3-303. Apportionment when income interest ends.**

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust

immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

"Article 4.

"Allocation of Receipts During Administration of Trust.

"Part 1. Receipts From Entities.

"**§ 37A-4-401. Character of receipts.**

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which G.S. 37A-4-402 applies, a business or activity to which G.S. 37A-4-403 applies, or an asset-backed security to which G.S. 37A-4-415 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subdivision (2) of subsection (d) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

"**§ 37A-4-402. Distribution from trust or estate.**

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest

and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, G.S. 37A-4-401 or G.S. 37A-4-415 applies to a receipt from the trust.

"**§ 37A-4-403. Business and other activities conducted by trustee.**

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service, and other traditional business activities;
(2) Farming;
(3) Raising and selling livestock and other animals;
(4) Management of rental properties;
(5) Extraction of minerals and other natural resources;
(6) Timber operations; and
(7) Activities to which G.S. 37A-4-414 applies.

"Part 2. Receipts Not Normally Apportioned.

"**§ 37A-4-404. Principal receipts.**

A trustee shall allocate to principal:

(1) To the extent not allocated to income under this Chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;
(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this Article;
(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in G.S. 37A-5-502(a)(7) or for other reasons to the extent not based on the loss of income;
(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period

during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income; and

(6) Other receipts as provided in Part 3 of this Article.

"**§ 37A-4-405. Rental property.**

To the extent that a trustee accounts for receipts from rental property under this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

"**§ 37A-4-406. Obligation to pay money.**

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(c) This section does not apply to an obligation to which G.S. 37A-4-409, 37A-4-410, 37A-4-411, 37A-4-412, 37A-4-414, or 37A-4-415 applies.

"**§ 37A-4-407. Insurance policies and similar contracts.**

(a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to G.S. 37A-4-403, loss of profits from a business.

(c) This section does not apply to a contract to which G.S. 37A-4-409 applies.

"Part 3. Receipts Normally Apportioned.

"**§ 37A-4-408. Insubstantial allocations not required.**

If a trustee determines that an allocation between principal and income required by G.S. 37A-4-409, 37A-4-410, 37A-4-411, 37A-4-412, or 37A-4-415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances

described in G.S. 37A-1-104(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in G.S. 37A-1-104(d) and may be released for the reasons and in the manner described in G.S. 37A-1-104(e). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

"**§ 37A-4-409. Deferred compensation, annuities, and similar payments.**

(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which G.S. 37A-4-410 applies.

"**§ 37A-4-410. Liquidating asset.**

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to G.S. 37A-4-409, resources subject to G.S. 37A-4-411, timber subject to G.S. 37A-4-412, an activity subject to G.S. 37A-4-414, an asset subject to

G.S. 37A-4-415, or any asset for which the trustee establishes a reserve for depreciation under G.S. 37A-5-503.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

"**§ 37A-4-411. Minerals, water, and other natural resources.**

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources under this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) shall be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in subdivision (1), (2), or (3) of this subsection, ninety percent (90%) of the net amount received shall be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety percent (90%) of the amount shall be allocated to principal and the balance to income.

(c) This Chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2004, the trustee may allocate receipts from the interest as provided in this Chapter or in the manner used by the trustee before January 1, 2004. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2004, the trustee shall allocate receipts from the interest as provided in this Chapter.

"**§ 37A-4-412. Timber.**

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land

under the lease or contract and applying the rules in subdivision (1) and (2) of this subsection; or

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision (1), (2), or (3) of this subsection.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This Chapter applies whether or not a decedent or transferor was harvesting timber from the property before it becomes subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2004, the trustee may allocate net receipts from the sale of timber and related products as provided in this Chapter or in the manner used by the trustee before January 1, 2004. If the trust acquires an interest in timberland after January 1, 2004, the trustee shall allocate net receipts from the sale of timber and related products as provided in this Chapter.

"**§ 37A-4-413. Property not productive of income.**

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under G.S. 37A-1-104 and distributes to the spouse from principal under the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by G.S. 37A-1-104(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

"**§ 37A-4-414. Derivatives and options.**

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under G.S. 37A-4-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an

option granted to a settlor of the trust for services rendered, shall be allocated to principal.

"**§ 37A-4-415. Asset-backed securities.**

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which G.S. 37A-4-401 or G.S. 37A-4-409 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.

"Article 5.

"Allocation of Disbursements During Administration of Trust.

"**§ 37A-5-501. Disbursements from income.**

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which G.S. 37A-2-201(2)b. or G.S. 37A-2-201(2)c. applies:

(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

"**§ 37A-5-502. Disbursements from principal.**

(a) A trustee shall make the following disbursements from principal:

(1) The remaining one-half of the disbursements described in G.S. 37A-5-501(1) and G.S. 37A-5-501(2);

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;
(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
(5) Premiums paid on a policy of insurance not described in G.S. 37A-5-501(4) of which the trust is the owner and beneficiary;
(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and
(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common-law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

"**§ 37A-5-503. Transfers from income to principal for depreciation.**

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
(2) During the administration of a decedent's estate; or
(3) Under this section if the trustee is accounting under G.S. 37A-4-403 for the business or activity in which the asset is used.

(c) An amount transferred to principal under this section need not be held as a separate fund.

"**§ 37A-5-504. Transfers from income to reimburse principal.**

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;
(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;
(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;
(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and
(5) Disbursements described in G.S. 37A-5-502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

"**§ 37A-5-505. Income taxes.**

(a) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately:

(1) From income to the extent that receipts from the entity are allocated to income; and
(2) From principal to the extent that:
a. Receipts from the entity are allocated to principal; and
b. The trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and sub-subdivision (2)a. of this subsection.

(d) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

"**§ 37A-5-506. Adjustments between principal and income because of taxes.**

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

(1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;
(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

"Article 6.

"Miscellaneous Provisions.

"**§ 37A-6-601. Uniformity of application and construction.**

In applying and construing this Chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 37A-6-602. Severability clause.**

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable."

SECTION 2. Chapter 37 of the General Statutes is repealed.

SECTION 3. G.S. 160A-234(a) reads as rewritten:

"(a) Assessments upon real property in the possession or enjoyment of a tenant for life, or a tenant for a term of years, shall be paid ~~in accordance with G.S. 37-36(b).~~ by the holder of the remainder or reversion, as the case may be."

SECTION 4. This act becomes effective January 1, 2004, and applies to every trust or decedent's estate existing on that date, except as otherwise expressly provided in the will or terms of the trust or in the provisions of Chapter 37A, as enacted in this act.

SENATE BILL 549:
Uniform Principal and Income Act

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Hagan
Date:	May 20, 2003	**Summary by:**	Dianna Jessup
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 549 would repeal Chapter 37 of the General Statutes, entitled "Allocation of Principal and Income," and would create a new Chapter 37A to be entitled "Uniform Principal and Income Act." The act would become effective January 1, 2004, and apply to trusts and decedents' estates existing on that date, unless the instrument provides otherwise.***

CURRENT LAW: Chapter 37, enacted in 1973, is based on the Uniform Principal and Income Act of 1962. It provides procedures for trustees (administering trusts) and personal administrators (of a decedent's estate) in allocating property as principal and income. Generally, property that is considered principal is distributed to the persons who are entitled to receive the principal when the income interest ends. Assets considered income meet the requirements of income beneficiaries during the life of a trust or of beneficiaries who are paid out of the income derived during an estate's administration.

BILL ANALYSIS: The bill would create a new Chapter 37A, which is based on the Uniform Principal and Income Act of 1997. The National Conference of Commissioners on Uniform State Laws approved and recommended this new act for enactment by the states. To date it has been adopted in 30 states. According to the prefatory notes of the 1997 act, it has two primary purposes:

- To take into account the use of the revocable living trust, to alter rules that experience has been shown to need change and to establish new rules to cover situations not covered by the previous acts, such as financial instruments that did not exist in 1962.
- To provide a transition to the "investment regime" based on the principles embodied in the Prudent Investor Rule and the Uniform Prudent Investor Act.

Attached to this summary are supporting documents prepared by the Uniform Law Commissioners.

S549-SMSW-001

Robin Johnson, staff attorney, substantially contributed to this summary.

>A Few Facts About The...

UNIFORM PRINCIPAL AND INCOME ACT

PURPOSE:

This act revises the Uniform Principal and Income Act of 1931 and 1962, which has been adopted in 41 states. The purpose of the new act, like its predecessors, is to provide procedures for trustees administering an estate in separating principal from income, and to ensure that the intention of the trust creator is the guiding principle for trustees. A revision is necessary so that principal and income allocation rules can function with modern trust investment practices.

ORIGIN:

Completed by the Uniform Law Commissioners in 1997.

APPROVED BY:

American Bar Association

STATE ADOPTIONS:

Alabama	Missouri
Arizona	Nebraska
Arkansas	New Jersey
California	New Mexico
Colorado	New York

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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SENATE BILL 549

Judiciary II Committee Substitute Adopted 4/22/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S549-CSSW-41 [v.5]

5/21/2003 10:45:01 AM

Short Title: Uniform Principal and Income Act. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE REVISED UNIFORM PRINCIPAL AND INCOME ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 37 of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 37A.**

"**Uniform Principal and Income Act.**

"Article 1.

"Definitions and Fiduciary Duties; Conversion to Unitrust; Judicial Control of Discretionary Power.

"Part 1. Definitions.

"**§ 37A-1-101. Short title.**

This Chapter may be cited as the Uniform Principal and Income Act.

"**§ 37A-1-102. Definitions.**

The following definitions apply in this Chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 of this Chapter.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this Chapter to or from income during the period.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

"**§ 37A-1-103. Fiduciary duties; general principles.**

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 and 3 of this Chapter, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this Chapter;

(3) Shall administer a trust or estate in accordance with this Chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this Chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under G.S. 37A-1-104(a), any discretionary power in connection with the conversion or administration of a unitrust under Part 2 of this Article, or a discretionary power of administration regarding a matter within the scope of this Chapter, whether granted by the terms of a trust, a will, or this Chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this Chapter is presumed to be fair and reasonable to all of the beneficiaries.

(c) The exercise of powers of allocation of receipts and expenditures contained or incorporated by reference to G.S. 32-27(29) in wills dated prior to January 1, 2004 shall continue to be valid.

"**§ 37A-1-104. Trustee's power to adjust.**

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in G.S. 37A-1-103(a), that the trustee is unable to comply with G.S. 37A-1-103(b). In lieu of exercising the power to adjust, the trustee may convert the trust to a unitrust as permitted under Part 2 of this Article, in which case the unitrust amount shall become the net income of the trust.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the grantor or settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under the other sections of this Chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee

from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

(c) A trustee shall not make an adjustment:

(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) If the trustee is a beneficiary of the trust;

(8) If the trustee is not a beneficiary but the adjustment would benefit the trustee directly or indirectly; or

(9) If the trust has been converted to, and is then operating as, a unitrust under Part 2 of this Article.

(d) If subdivision (5), (6), (7), or (8) of subsection (c) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may renounce the entire power conferred by subsection (a) of this section or may renounce only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivisions (1) through (6) or subdivision (8) of subsection (c) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or

impose a tax burden not described in subsection (c) of this section. The renunciation may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a) of this section.

"Part 2. Conversion to Unitrust.

"**§ 37A-1-104.1. Definitions.**

For purposes of this Part:

(1) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the Code in this Part shall be considered a reference also to any successor provision dealing with the subject matter of that section of the Code.

(2) "Competent beneficiary" includes:

a. A beneficiary who has attained the age of 18 and is not otherwise under a legal disability;

b. A court-appointed guardian of an incompetent beneficiary;

c. An attorney-in-fact or agent under a durable power of attorney for an incompetent beneficiary;

d. A court-appointed guardian of a minor beneficiary's estate; and

e. In the case of a minor beneficiary for whom no guardian has been appointed, a parent of the minor beneficiary, but only if the parent does not have an interest in the estate or trust that conflicts with the interest of the minor beneficiary.

(3) "Grantor" means an individual who created an inter vivos trust.

(4) "Disinterested person" means a person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the grantor of the trust and any interested trustee.

(5) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. Notwithstanding the foregoing, no trust that may be subject to taxation under section 2001 or section 2501 of the Code shall be an income trust for purposes of this Part, until the expiration of the period for filing the return therefor, including all extensions for the filing.

(6) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

(7) "Interested trustee" means (i) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed, (ii) any trustee who may be removed and replaced by an interested distributee, or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(8) "Related or subordinate party" means a related or subordinate party as defined in section 672(c) of the Code.

(9) "Total return unitrust" means an income trust that has been converted under and meets the provisions of this Part.

(10) "Trustee" means any person acting as trustee of the trust, except as otherwise expressly provided in this Part, whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

(11) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

"**§ 37A-1-104.2. Conversion in trustee's discretion without court approval.**

(a) Any trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee"), may, in the trustee's sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(2) The trustee sends written notice of its intention to take the action, along with copies of the written policy and this Part, to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice (without regard to the exercise of any power of appointment), and (iv) all persons acting as advisor or protector of the trust;

(3) There is at least one competent beneficiary who is currently receiving or eligible to receive distributions of income of the trust and there is at least one competent beneficiary who would receive principal of the

trust if the trust were to terminate at the time of the giving of the notice; and

(4) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action within 60 days of receipt of the notice by written instrument delivered to the trustee.

(b) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval, (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined under this Chapter, (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined under this Chapter rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i) the percentage to be used to calculate the unitrust amount, (ii) the method to be used in determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded in determining the unitrust amount;

(3) The trustee sends written notice of its intention to take the action, along with copies of the written policy and this Part, and the determinations of the disinterested person to (i) the grantor of the trust, if living, (ii) all the competent beneficiaries who are currently receiving or eligible to receive distributions of income of the trust, (iii) all the competent beneficiaries who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice (without regard to the exercise of any power of appointment), and (iv) all persons acting as advisor or protector of the trust;

(4) There is at least one competent beneficiary who is currently receiving or eligible to receive distributions of income of the trust and there is at least one competent beneficiary who would receive principal of the trust if the trust were to terminate at the time of the giving of the notice; and

(5) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within 60 days of receipt of the notice by written instrument delivered to the trustee.

"§ 37A-1-104.3. Conversion with court approval.

(a) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under G.S. 36A-1-104.2, the trustee may petition the court for an order as the trustee considers appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as shall be necessary to enable the court to make its determinations under this Part.

(b) A competent beneficiary may request the trustee to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the competent beneficiary may petition the court to order the trustee to take the action.

(c) All proceedings under this section shall be conducted as provided in Article 3 of Chapter 36A of the General Statutes.

"§ 37A-1-104.4. Determination of unitrust amount.

(a) The fair market value of the trust shall be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are considered reasonable and appropriate by the trustee. These assets may be excluded from valuation, provided all income received with respect to these assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

(b) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(c) In the case of a trust (i) for which a marital deduction has been taken for federal tax purposes under section 2056 or section 2523 of the Code (during the lifetime of the spouse for whom the trust was created) or (ii) a trust to which the generation-skipping transfer tax due under section 2601 of the Code does not apply by reason of any effective date or transition rule, the unitrust amount in any taxable year shall not be less than the net income of the trust, determined without regard to subsection (d) of this section.

(d) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust; and

(2) May allocate to trust income for each taxable year of the trust (or portion of that year) (i) net short-term capital gain described in section 1222(5) of the Code for that year or portion of that year, but only to the extent that the amount allocated together with all other amounts allocated to trust income for that year or portion of that year does not exceed the unitrust amount for that year or portion of that year; and (ii) net long-term capital gain described in section 1222(7) of the Code for that year or portion of that year, but only to the extent that the amount allocated together with all other amounts, including amounts described in clause (i) above, allocated to trust income for that year or portion of that year does not exceed the unitrust amount for that year or portion of that year.

"**§ 37A-1-104.5. Matters in trustee's discretion.**

In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of the reconversion; and

(5) Any other administrative issues as may be necessary or appropriate to carry out the purposes of this Part.

"**§ 37A-1-104.6. No effect on principal distributions.**

Conversion to a total return unitrust under this Part shall not affect any other provision of the governing instrument, if any, regarding distributions of principal. For purposes of this Part, the distribution of a unitrust amount is considered a distribution of income and not of principal.

"**§ 37A-1-104.7. Marital deduction trusts.**

Notwithstanding anything in this Part to the contrary, in the case of any trust for which a marital deduction has been taken, in whole or in part, for federal tax purposes under section 2056 or section 2523 of the Code, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel for the spouse's lifetime (i) the conversion of the trust from an income trust to a total return unitrust or (ii) the reconversion of the trust from a total return unitrust to an income trust.

"**§ 37A-1-104.8. No liability on part of trustee or disinterested person acting in good faith.**

No trustee or disinterested person who in good faith takes or fails to take any action under this Part shall be liable to any person affected by the action or inaction, regardless of whether the person received written notice as provided in this Part and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The exclusive remedy for any person affected by an action or inaction shall be to obtain an order of the court directing the trustee (i) to convert an income trust to a total return unitrust, (ii) to reconvert from a total return unitrust to an income trust, or (iii) to change the percentage used to calculate the unitrust amount.

"**§ 37A-1-104.9. Applicability.**

This Part shall apply to all trusts in existence on, or created after January 1, 2004, unless (i) the governing instrument contains a provision clearly expressing the grantor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust, (ii) the trust is a trust described in section 170(f)(2)(B), section 664(d), section 2702(a)(3), or section 2702(b) of the Code, (iii) one or more persons to whom the trustee could distribute income has a power of withdrawal over the trust that is not subject to an ascertainable standard under section 2041 or section 2514 of the Code, or the power of withdrawal can be exercised to discharge a duty of support the person possesses, or (iv) the governing instrument expressly prohibits use of this Part by specific reference to this Part.

"Part 3. Judicial Control of Discretionary Power.

"**§ 37A-1-105. Judicial control of discretionary power.**

(a) The court shall not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this Chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) of this section applies include:

(1) A decision under G.S. 37A-1-104(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors in deciding whether and to what extent to exercise the discretionary power conferred by G.S. 37A-1-104(a).

(c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an

amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying subdivisions (1) and (2) of this subsection, to place the beneficiaries, the trust, or both in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(d) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this Chapter will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

"Article 2.

"Decedent's Estate or Terminating Income Interest.

"**§ 37A-2-201. Determination and distribution of net income.**

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 through 5 of this Chapter that apply to trustees and the rules in subdivision (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 of this Chapter that apply to trustees and by:

a. Including in net income all income from property used to discharge liabilities;

b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes,

but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

c. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) Unless the will or trust instrument otherwise provides, or the court otherwise directs, a fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright interest, computed as provided in G.S. 24-1 from the date that is one year following the date of death of the person whose death gives rise to the payment of the pecuniary bequest or the happening of the contingency that causes the income interest to end, from net income determined under subdivision (2) of this section or from principal to the extent that net income is insufficient. However, this subdivision shall not apply to a pecuniary bequest:

a. To or for the benefit of a decedent's surviving spouse that is, or can be, qualified for the federal estate tax marital deduction; or

b. To or for the benefit of charitable organizations that are qualified for the federal estate tax charitable deduction, including a charitable remainder trust.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) of this section in the manner described in G.S. 37A-2-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary shall not reduce principal or income receipts from property described in subdivision (1) of this section because of a payment described in G.S. 37A-5-501 or G.S. 37A-5-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable

provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

"**§ 37A-2-202. Distribution to residuary and remainder beneficiaries.**

(a) Each beneficiary described in G.S. 37A-2-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

"Article 3.

"Apportionment at Beginning and End of Income Interest.

"**§ 37A-3-301. When right to income begins and ends.**

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

"**§ 37A-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.**

(a) A trustee shall allocate an income receipt or disbursement, other than one to which G.S. 37A-2-201(1) applies to principal, if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal, and the balance shall be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this Chapter. Distributions to shareholders or other owners from an entity to which G.S. 37A-4-401 applies are considered to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

"**§ 37A-3-303. Apportionment when income interest ends.**

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the

undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

"Article 4.

"Allocation of Receipts During Administration of Trust.

"Part 1. Receipts From Entities.

"**§ 37A-4-401. Character of receipts.**

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which G.S. 37A-4-402 applies, a business or activity to which G.S. 37A-4-403 applies, or an asset-backed security to which G.S. 37A-4-415 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subdivision (2) of subsection (d) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

"**§ 37A-4-402. Distribution from trust or estate.**

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest and shall allocate to principal an amount received as a distribution of principal from the trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in a trust to a trustee, G.S. 37A-4-401 or G.S. 37A-4-415 applies to a receipt from the trust.

"**§ 37A-4-403. Business and other activities conducted by trustee.**

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service, and other traditional business activities;
(2) Farming;
(3) Raising and selling livestock and other animals;
(4) Management of rental properties;
(5) Extraction of minerals and other natural resources;
(6) Timber operations; and
(7) Activities to which G.S. 37A-4-414 applies.

"Part 2. Receipts Not Normally Apportioned.

"**§ 37A-4-404. Principal receipts.**

A trustee shall allocate to principal:

(1) To the extent not allocated to income under this Chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;
(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this Article;
(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in G.S. 37A-5-502(a)(7) or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income; and

(6) Other receipts as provided in Part 3 of this Article.

"**§ 37A-4-405. Rental property.**

To the extent that a trustee accounts for receipts from rental property under this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

"**§ 37A-4-406. Obligation to pay money.**

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(c) This section does not apply to an obligation to which G.S. 37A-4-409, 37A-4-410, 37A-4-411, 37A-4-412, 37A-4-414, or 37A-4-415 applies.

"**§ 37A-4-407. Insurance policies and similar contracts.**

(a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to G.S. 37A-4-403, loss of profits from a business.

(c) This section does not apply to a contract to which G.S. 37A-4-409 applies.

"Part 3. Receipts Normally Apportioned.

"**§ 37A-4-408. Insubstantial allocations not required.**

If a trustee determines that an allocation between principal and income required by G.S. 37A-4-409, 37A-4-410, 37A-4-411, 37A-4-412, or 37A-4-415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in G.S. 37A-1-104(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in G.S. 37A-1-104(d) and may be released for the reasons and in the manner described in G.S. 37A-1-104(e). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

"**§ 37A-4-409. Deferred compensation, annuities, and similar payments.**

(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which G.S. 37A-4-410 applies.

"**§ 37A-4-410. Liquidating asset.**

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include

a payment subject to G.S. 37A-4-409, resources subject to G.S. 37A-4-411, timber subject to G.S. 37A-4-412, an activity subject to G.S. 37A-4-414, an asset subject to G.S. 37A-4-415, or any asset for which the trustee establishes a reserve for depreciation under G.S. 37A-5-503.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

"**§ 37A-4-411. Minerals, water, and other natural resources.**

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources under this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) shall be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in subdivision (1), (2), or (3) of this subsection, ninety percent (90%) of the net amount received shall be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety percent (90%) of the amount shall be allocated to principal and the balance to income.

(c) This Chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2004, the trustee may allocate receipts from the interest as provided in this Chapter or in the manner used by the trustee before January 1, 2004. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2004, the trustee shall allocate receipts from the interest as provided in this Chapter.

"**§ 37A-4-412. Timber.**

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivision (1) and (2) of this subsection; or

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision (1), (2), or (3) of this subsection.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This Chapter applies whether or not a decedent or transferor was harvesting timber from the property before it becomes subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2004, the trustee may allocate net receipts from the sale of timber and related products as provided in this Chapter or in the manner used by the trustee before January 1, 2004. If the trust acquires an interest in timberland after January 1, 2004, the trustee shall allocate net receipts from the sale of timber and related products as provided in this Chapter.

"**§ 37A-4-413. Property not productive of income.**

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under G.S. 37A-1-104 and distributes to the spouse from principal under the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by G.S. 37A-1-104(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

"**§ 37A-4-414. Derivatives and options.**

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under G.S. 37A-4-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset

is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

"**§ 37A-4-415. Asset-backed securities.**

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which G.S. 37A-4-401 or G.S. 37A-4-409 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.

"Article 5.

"Allocation of Disbursements During Administration of Trust.

"**§ 37A-5-501. Disbursements from income.**

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which G.S. 37A-2-201(2)b. or G.S. 37A-2-201(2)c. applies:

(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

"**§ 37A-5-502. Disbursements from principal.**

(a) A trustee shall make the following disbursements from principal:

(1) The remaining one-half of the disbursements described in G.S. 37A-5-501(1) and G.S. 37A-5-501(2);

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;
(3) Payments on the principal of a trust debt;
(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
(5) Premiums paid on a policy of insurance not described in G.S. 37A-5-501(4) of which the trust is the owner and beneficiary;
(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and
(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common-law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

"**§ 37A-5-503. Transfers from income to principal for depreciation.**

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:
(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
(2) During the administration of a decedent's estate; or
(3) Under this section if the trustee is accounting under G.S. 37A-4-403 for the business or activity in which the asset is used.

(c) An amount transferred to principal under this section need not be held as a separate fund.

"**§ 37A-5-504. Transfers from income to reimburse principal.**

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) Disbursements described in G.S. 37A-5-502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

"**§ 37A-5-505. Income taxes.**

(a) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately:

(1) From income to the extent that receipts from the entity are allocated to income; and

(2) From principal to the extent that:

a. Receipts from the entity are allocated to principal; and

b. The trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and sub-subdivision (2)a. of this subsection.

(d) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

"**§ 37A-5-506. Adjustments between principal and income because of taxes.**

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

(1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

"Article 6.

"Miscellaneous Provisions.

"**§ 37A-6-601. Uniformity of application and construction.**

In applying and construing this Chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 37A-6-602. Severability clause.**

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable."

SECTION 3. G.S. 32-37(29) reads as rewritten:

"**§ 32-27. Powers which may be incorporated by reference in trust instrument.**

The following powers may be incorporated by reference as provided in G.S. 32-26:

...

(29) Apportion and Allocate Receipts and Expenses. – Where not otherwise provided by the Uniform Principal and Income Act of ~~1973~~,2003 as contained in ~~Chapter 37~~ Chapter 37A of the General Statutes, to determine:

a. What is principal and what is income of any estate or trust and to allocate or apportion receipts and expenses as between principal and income in the exercise of the fiduciary's discretion, and, by way of illustration and not limitation of the fiduciary's discretion, to charge premiums on securities purchased at a premium against principal or income or partly against each;

b. Whether to apply stock dividends and other noncash dividends to income or principal or apportion them as the fiduciary shall deem advisable; and

c. What expenses, costs, taxes (other than estate, inheritance, and succession taxes and other governmental charges) shall be charged against principal or income or apportioned between principal and income and in what proportions."

SECTION 4. G.S. 32-34(b)(3) reads as rewritten:

"(3) Any power conferred upon the fiduciary in his capacity as a fiduciary to allocate receipts and expenses as between income and principal in his own favor must be exercised in accordance with the provisions of ~~Article 2 of Chapter 37~~ Chapter 37A of the General Statutes, the Uniform Principal and Income Act of ~~1973.~~2003."

SECTION 5. G.S. 36A-130(b) reads as rewritten:

"(b) If, but for the absence of a direction in the will or trust agreement that accrued income shall be paid to the estate of the spouse, a trust created under a will or trust agreement for the benefit of the spouse of the testator or the grantor of the trust would qualify for the federal estate tax marital deduction under section 2056(b)(7) of the Internal Revenue Code or the federal gift tax marital deduction under section 2523(f) of the Internal Revenue Code, then, unless the will or trust agreement specifically provides otherwise by reference to this section, upon the termination of the income interest all accrued or undistributed income of the trust at the death of spouse shall be paid to the personal representative of the spouse's estate in accordance with the Uniform Principal and Income Act of ~~1973, Article 2 of Chapter 37~~ 2003, Chapter 37A of the General Statutes."

SECTION 6. G.S. 160A-234(a) reads as rewritten:

"(a) Assessments upon real property in the possession or enjoyment of a tenant for life, or a tenant for a term of years, shall be paid ~~in accordance with G.S. 37-36(b).~~by the holder of the remainder or reversion, as the case may be."

SECTION 7. The Revisor of Statutes shall cause to be printed with this act all relevant portions of the official comments to the Uniform Principal and Income Act of 1997 and all explanatory comments of the drafters of this act, as the Revisor considers appropriate.

SECTION 8. This act becomes effective January 1, 2004, and applies to every trust or decedent's estate existing on that date or coming into existence after that date, except as otherwise expressly provided in the will or terms of the trust or in the provisions of Chapter 37A, as enacted in this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 93

Short Title: Amend Special Probation Definition. (Public)

Sponsors: Senator Gulley.

Referred to: Judiciary I.

February 19, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF SPECIAL PROBATION TO REMOVE THE SIX-MONTH LIMITATION ON THE PERIOD OF IMPRISONMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344(e) reads as rewritten:

"(e) Special Probation in Response to Violation. – When a defendant has violated a condition of probation, the court may modify his probation to place him on special probation as provided in this subsection. In placing him on special probation, the court may continue or modify the conditions of his probation and in addition require that he submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in either the custody of the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed ~~six months or one-fourth~~ one-fourth the maximum sentence of imprisonment imposed for the ~~offense, whichever is less.~~ offense. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. No confinement other than an activated suspended sentence may be required beyond the period of

probation or beyond two years of the time the special probation is imposed, whichever comes first."

SECTION 2. G.S. 15A-1351(a) reads as rewritten:

"(a) The judge may sentence to special probation a defendant convicted of a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant's prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Department of Correction or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Department of Correction governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. If imprisonment is for continuous periods, the confinement may be in the custody of either the Department of Correction or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. Except for probationary sentences of impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed ~~six months or one fourth~~ one-fourth the maximum sentence of imprisonment imposed for the offense, ~~whichever is less,~~ and no confinement other than an activated suspended sentence may be required beyond two years of conviction. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation. The original period of probation, including the period of imprisonment required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SENATE BILL 93:
Amend Special Probation Definition.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Gulley
Date:	May 20, 2003	**Summary by:**	Steven Rose
Version:	First Edition		Committee Counsel

SUMMARY: ***SB 93 would amend the statutes that provide for the maximum period of confinement that may be served as an incident of special probation, allowing increases for some sentences. The act would be effective December 1, 2003, and would apply to all offenses committed on or after that date.***

CURRENT LAW: A convicted offender may be given special probation, also known as a "split sentence," where intermediate punishment is permitted, or when a convicted offender violates a condition of probation. As part of the conditions of special probation, the court may order that the offender serve a period or periods of confinement. The periods may be continuous or non-continuous. The total for all periods of confinement may not exceed the lesser of six months, or one-fourth of the maximum sentence of imprisonment imposed for the offense.

BILL ANALYSIS:

Section 1: Would amend G.S. 15A-1344(e), the provision providing for special probation for violation of a condition of probation, by deleting the limitation of six months. The total for all periods of confinement could not exceed one-fourth of the maximum sentence of imprisonment imposed for the offense. Because the current maximum sentence eligible for an intermediate sentencing option (including a split sentence) is thirty-six months, the maximum amount of confinement that could be imposed under the amended statute would be nine months.

Section 2: Would amend G.S. 15A-1351(a), the statute providing for the court's authority to order confinement under a split sentence where intermediate punishment is authorized, to eliminate the limitation of six months, consistent with the redefinition of special probation in Section 1.

Section 3: The act would be effective December 1, 2003, and would apply to all offenses committed on or after that date.

BACKGROUND: This bill is one of the alternatives presented in the Report of the NC Sentencing and Policy Commission to the 2002 Session of the 2001 NC General Assembly (May 2002). Special Probation is an intermediate sanction. The Commission report states that by removing the six month limitation, judges might be more amenable to giving an offender special probation when an intermediate sentencing option was authorized. The Commission also considered that judges might, on a more

frequent basis and as a matter of extraordinary mitigation, impose special probation with a longer active sentence (than is currently authorized). According to the report, the impact of the measure is limited; it would only impact those grid cells on the structured sentencing chart where there is an intermediate sentencing option and the maximum sentence is greater than twenty-four months.

H. Alan Pell, Committee Counsel to Senate Judiciary I Committee, contributed to this summary.

S93-SMRL-001

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
S.B. 93 A BILL TO BE ENTITLED AN ACT TO AMEND THE DEFINITION OF SPECIAL PROBATION TO REMOVE THE SIX-MONTH LIMITATION ON THE PERIOD OF IMPRISONMENT. .

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

May 27, 2003

The House Committee on Judiciary IV met on May 27, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Bowie, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

SB 161 A BILL TO BE ENTITLED AN ACT TO REDISTRICT COURT-ORDERED NONBINDING ARBITRATION TO DISTRICT COURT ACTIONS sponsored by Senator Clodfelter was taken off today's agenda.

Senator Tony Rand was asked to explain SB 919 A BILL TO BE ENTITLED AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES. Sgt. John Guard with the Pitt County Sheriffs Department spoke in support of this bill. Henri McClees representing the NRA spoke against this bill in the original form indicating that the NRA could not support this legislation at this time without substantial changes. Ms. Helen Rogers from Johnston County spoke in support of this bill because her granddaughter was shot four times in Ms. Rogers' front yard, and in the presence of her 3 children, as a result of domestic violence. The victim in this case had gone to the magistrate for help one week prior to her death with no results. This bill will be taken up at a later date.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Charles K. Steward	Grass Roots NC
Paige Johnson	Planned Parenthood
Jo McCants	AOC
Jeff Ray	GRNC
Randy Lewis	GRNC
THOMAS G. BEATTIE	GRNC
Helen Rogers	
Janice Allen	Harbor, Inc.
Marilyn Simons	
Lori Christensen	Harbor, Inc.
Phyllis McElveen	Mother + Grandmother of Corda'e Lee + Kendall Dennis murdered 7/02
Robert Eckerson	GRNC
John E. Ward	Pitt Co. Sheriff's Office
Anne Winton	Arbor
Beth Froehling	NCCADV
Colleen Kochanek	Hafer Caldwell, P.A.
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Officers Assn
Sally Sowell	Family Service of the Piedmont (Guilford)
Deanna Pigott	NCDAV
Brandy Wagner	Domestic Violence Civil Legal Servicer
Molly Ryan	NCSBA
Barry Bryant	GCC
C L [illegible]	GRNC
ANTHONY ROMETTE	NRA
JOE MCCLEES	NRA
HENRY MCCLEES	NRA
Kit Gruelle	DV

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Audrey Galloway	Strategic Influences, Inc.
[signature]	[signature]
Julie Allen	NC Statewatch

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

May 27, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 919	**Homicide Prevention Act/Domestic Violence**	**Sen. Rand**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 919

Judiciary I Committee Substitute Adopted 4/28/03

Short Title: Homicide Prevention Act/Domestic Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Court Discretion. – If the court does not find any of the factors in subsection (a) of this section, the court, in its discretion, may order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. For purposes of this section, the term 'firearm' is as defined in G.S. 14-409.39(2).

(c) Ex parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying

information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(e) Surrender. – Upon service of the orders, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms shall also include the notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

(f) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court determines that the defendant should not be allowed to retrieve the weapons.

(g) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order and not later than 90 days after the expiration of the current order. Upon receipt of the motion, the court shall schedule a hearing and provide written

notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed;

(2) Whether the defendant is subject to any other protective orders; or

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal laws.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with sale, and in accordance with all applicable State and Federal law, shall be provided to the defendant.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court,

(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court, or

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. – This section shall not prohibit law enforcement and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only."

SECTION 2. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase of firearms by person subject to domestic violence order prohibited.**

(a) ~~It~~ In accordance with G.S. 50B-3.1, it is unlawful for any person to ~~purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in force and effect a domestic violence order issued pursuant to Chapter 50B of the General Statutes, prohibiting the person from purchasing a firearm.~~ own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a Class H felony."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 919:
Homicide Prevention Act/Domestic Violence.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Rand
Date:	June 5, 2003	**Summary by:**	Steven Rose
Version:	S919-CSRL-38 [v.5]		Committee Counsel

SUMMARY: ***This act specifically provides that where a court has issued an order to bring about a cessation of acts of domestic violence, the court shall order the defendant to surrender all firearms under the defendant's possession or control, if the court finds any one of several listed factors.***

CURRENT LAW: A court has the authority to prohibit a party from purchasing a firearm for a time fixed in the domestic violence order. G.S. 50B-3(a)(11). Courts are also authorized to enter orders deemed necessary to protect a party or a minor child.

BILL ANALYSIS: The bill adds a new G.S. 50B-3.1 and makes conforming changes to G.S. 14-269.8. The new provisions are as follows:

- Upon the issuance of a domestic violence restraining order, the court is required to order the defendant to surrender to the sheriff all firearms, permits to purchase firearms, and permits to carry concealed firearms that are in the defendant's care, custody, possession, ownership or control, if the court finds any of the following factors:

  (1) The use or threatened use of a deadly weapon by the defendant, or a pattern of prior conduct by defendant involving violence with a firearm against persons.

  (2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

  (3) Threats to commit suicide by the defendant.

  (4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

- The court is required to question the defendant as to the defendant's ownership or access to firearms, permits, and ammunition, as well as the identifying information of the same.
- The defendant is required to surrender to the sheriff all items listed in the order. The sheriff may charge a reasonable storage fee and is not liable for any damage due to storage or deterioration. The terms of the order must include a notice of the penalty for a violation and notice of the procedure for the defendant to request return of the firearms.
- By motion, the defendant may request the return of the items at the expiration of the order. The court is required to determine whether any State or federal law would preclude the return of the items. If a motion for return is not filed, or if the defendant is precluded by law from re-obtaining

- the items, or fails to remit fees to the sheriff for storage, then an order for disposition may be sought.
- A third party owner of the firearms may file a motion for return of the seized firearms.
- It is a Class H felony to (1) violate the court order, (2) fail to surrender the firearms, ammunition or permits, or (3) provide false information to the court.

The act is effective when it becomes law.

H. Alan Pell, Committee Counsel to the Senate Judiciary I Committee, contributed substantially to this summary.

S919-SMRL-002

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 919

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S919-ASW-30 [v.1]

Date _____,2003

Comm. Sub. [YES]
Amends Title [NO]
PCS S919-CSRL-38[v.6]

Representative _____

moves to amend the bill on page 3, line 28, by adding after "defendant" the phrase "or third party owner";

and on page 4, line 12, by adding after "enforcement" the word "officers";

and on page 4, line 31, by rewriting the line to read:

"**SECTION 3.** This act becomes effective September 1, 2003.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 919

Judiciary I Committee Substitute Adopted 4/28/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S919-CSRL-38 [v.5]

6/4/2003 5:16:32 PM

Short Title: Homicide Prevention Act/Domestic Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant

(b) Ex parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law.

(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order and not later than 90 days after the expiration of the current order.

Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed;

(2) Whether the defendant is subject to any other protective orders; or

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal laws.

(g) Motion for Return by Third Party Owner. – A third party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items by the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with sale, and in accordance with all applicable State and Federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing, and if ordered by the judge.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court.

(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court, or

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. – This section shall not prohibit law enforcement and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter."

SECTION 2. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase or possession of firearms by person subject to domestic violence order prohibited.**

(a) ~~It~~ In accordance with G.S. 50B-3.1, it is unlawful for any person to ~~purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in force and effect a domestic violence order issued pursuant to Chapter 50B of the General Statutes, prohibiting the person from purchasing a firearm.~~ own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a Class H felony."

SECTION 3. This act is effective when it becomes law.

GRNC

GRASS ROOTS NORTH CAROLINA / FORUM FOR FIREARMS EDUCATION
P.O. BOX 10684, RALEIGH, NC 27605 (919) 664-8565, www.grnc.org

What doesn't SB 919 include military & police?

Although SB 919: "Homicide Prevention Act/Domestic Violence" claims to combat a serious and growing problem of domestic violence, one part of the bill, proposed Section 50B-3.1(k), exempts what for North Carolina is a huge part of the population—namely members of military and law enforcement. While these people perform a laudable in our society, history proves they are not immune from the problem of domestic violence which besets the rest of the population.

'Angela's Law'

In July, 2002, **Angela Floyd was shot to death by her husband**. But under SB 919, even an exparte order, theoretically requiring a domestic partner to surrender firearms, wouldn't have helped her.

Why? Because her husband was **Sgt. First Class Brandon Floyd** of the U.S. Army Special Operations Command, and the murder occurred in Fort Bragg, right in Cumberland County—the home of SB 919 sponsor Senator Tony Rand. And under Sen. Rand's bill, members of law enforcement and the military are permitted access to firearms even after issuance of an ex parte order if their duties require them from "possessing or using firearms for official use only."

While some might argue that "official use" wouldn't give these people unlimited access to firearms, the fact is that if they are granted access—on or off duty—a domestic partner threatened with death or serious injury is further endangered.

Domestic Violence in the Military—Facts & Stats

1. Between 1990 and 1996, an average **23.2 per 1,000 spouses of military personnel** experienced violent victimization.[1]

2. The **rate of violent victimization of spouses in the U.S. military has steadily increased** from 18.6 to 25.6 per 1,000 during the same time period.[2]

3. **More than 8,000 active duty women were abused** by their spouses from 1990 to 1995. Half of the cases involved abusers who were also in the military.[3]

Sources:

1. FY90-96 Souse and Child Mistreatment, Department of Defense
2. Ibid.
3. Department of Defense, October 1996.

GRNC

Grass Roots North Carolina / Forum for Firearms Education
Post Office Box 10684, Raleigh, NC 27605, (919) 664-8565, www.grnc.org

HIDDEN THREAT IN SB 919

SB 919 attacks gun owners rights under guise of "domestic violence"

[Analysis] Without doubt, attempts to reduce domestic violence should be supported. No one wants to see a spouse or child injured. Unfortunately, however, like gun measures foisted on you in the name of "the children," some of what masquerades as "domestic violence" legislation has little to do with domestic violence.

Such is the case with SB 919: "Homicide Prevention Act/Domestic Violence", introduced by Sen. TONY RAND (D-Cumberland, GRNC 1-star). On its face, the bill would require people under domestic restraining orders to identify and turn over firearms and ammunition in their possession to their sheriff if the court finds that the defendant threatened use of a deadly weapon, commits or threatens to commit serious injury against a partner or child, or threatens to commit suicide.

However reasonable that may seem, however, check out the next paragraph:

"Court Discretion. – If the court DOES NOT FIND ANY OF THE FACTORS IN THIS SECTION, the court, IN ITS DISCRETION, may order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant." [Emphasis added]

Translated, gun owners could be forced to register and surrender their guns—without even a jury trial—without having threatened anybody, if a judge just happens to decide they don't need guns.

No one wants to see a partner or child injured by domestic violence. We all support efforts to combat such violence. Unfortunately, however, some politicians want to exploit the domestic violence problem to impose additional gun control on North Carolinians.

GRNC hopes you will support legitimate legislation to prevent domestic violence, while recognizing SB 919 for what it is: A ruse to further undermine the rights of North Carolina gun owners. Please oppose SB 919 by all means procedural and substantive.

GRNC

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P.O. BOX 10684, RALEIGH, NC 27605 (919) 664-8565, www.grnc.org

Talking Points:

SB 919: "Homicide Prevention Act/Domestic Violence"

As described below, SB 919 is a fundamentally flawed bill which registers a defendants firearms even before any determination is made by the court, fails to stipulate who is entitled to gun registration information once obtained, punishes only defendants, but not plaintiffs for lying about firearms during hearings, and fails to include law enforcement or military

GUN REGISTRATION PROBLEMS

Proposed Section 50B-3.1 (c) stipulates, "The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in that order."

- **SB 919 requires registration of a defendant's guns even before any determination is made by the court.**
- **A defendant would have his or her guns registered even for the most frivolous, unsubstantiated complaint by the plaintiff, and even if the complaint was summarily dismissed.**
- **After gun registration is accomplished, the bill fails to mention who may have access to that information. A sheriff could turn over serial numbers and other identifying information to the FBI or BATF, creating defacto gun registration.**

Supporting opinion: Says one attorney volunteering for GRNC, "The bill mandates that the subject of guns come up at every hearing -- before any order issues and if the complaint and plaintiff are completely silent as to any threat at all of gun violence. Even in a frivolous complaint (e.g. "He yelled at me"), before the court can dismiss it as utterly groundless and a waste of time, the judge must, by this law, **catalog all the defendant's guns and ammunition** [emphasis added]. If an ex parte order issues for some act completely unrelated to firearms (say, for spanking a child), another discussion of the defendant's guns is mandated again at the 10-day hearing."

UNEQUAL PROTECTION PROBLEMS

- Under proposed 50B-3.1 (i)(3), only the defendant, not the plaintiff or any third party, is punished for lying about possession of firearms during an Emergency Hearing or Ten Day Hearing. If a plaintiff falsely accuses the defendant of possessing firearms in violation of an ex parte order, shouldn't that plaintiff be subject to a penalty?
- Proposed 50B-3.1 (k) exempts law enforcement, military personnel, and others from possessing firearms for "official use." Given that law enforcement personnel have used firearms in domestic disputes (recently in Catawba County), why are they exempt? A string of recent domestic homicides by military personnel at Fort Bragg suggests that "official use" has no effect on domestic violence. If this bill truly concerns only domestic violence, no one should be exempt.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 3, 2003

The House Committee on Judiciary IV met on June 3, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Bowie, Earle, Haire, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

Senator Thomas was asked to explain SB 421 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND MAKE TECHNICAL CORRECTIONS TO THE CHILD WELFARE LAWS AND TO ENHANCE THE STATE'S ABILITY TO PROTECT CHILDREN. Chris Sinha with DHHS/AG's Office was available to explain the bill and answer questions. After discussion and debate a PSC was introduced to address concerns of the members of the committee. The PCS passed committee, unfavorable as to the original bill.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JDIV — Name of Committee

06/03/03 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
David Daughtry	DHHS-DSS- Child Support Enforcement
GERALD ROBBINS	DOJ
JoAnn Lomax	DHHS/DSS
Chris Sinha	DHHS/AG
Betty Turner	Bank of America
Michelle Frazier	NC Bar Ass'n
[illegible]	DHHS
M. P. Denton, Jr.	NCGA
[illegible]	NC Fiscal Policy Council
[illegible]	Fiscal Research Division
[illegible]	NC DHHS
Katrina Chapman	planned parenthood intern
Mary Leah Singletary	Intern- Rep. Jeffus
Rob Dorsablow	at Stokesdale INC

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

June 3, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 421	**Amend Child Welfare Laws –AB**	**Senator Thomas**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 421*
Judiciary II Committee Substitute Adopted 4/14/03

Short Title: Amend Child Welfare Laws.-AB (Public)

Sponsors:

Referred to:

March 17, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND MAKE TECHNICAL CORRECTIONS TO THE CHILD WELFARE LAWS AND TO ENHANCE THE STATE'S ABILITY TO PROTECT CHILDREN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-407 reads as rewritten:

"**§ 7B-407. Service of summons.**

The summons shall be ~~personally~~ served under G.S. 1A-1, Rule 4(j) upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court.

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

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

SECTION 2. G.S. 7B-1109(d) reads as rewritten:

"(d) The court may for good cause shown continue the hearing for ~~such time as is required for receiving~~ up to 90 days from the date of the initial petition in order to receive additional ~~evidence,~~ evidence including any reports or assessments ~~which~~ that the court has requested, to allow the parties to conduct expeditious discovery, or ~~any~~ to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice and the court shall issue a written order stating the grounds for granting the continuance."

SECTION 3. G.S. 110-132(a) reads as rewritten:

possible, to determine whether the parent, guardian, or custodian has received notification pursuant to this section and made a good faith effort to comply with the law. If the principal determines that the parent, guardian, or custodian has ~~not,~~ not made a good faith effort to comply with the law, ~~he~~ the principal shall notify the district ~~attorney~~ attorney and the director of social services of the county where the child resides. If ~~he~~ the principal determines that the parent, guardian, or custodian ~~has,~~ has made a good faith effort to comply with the law, ~~he~~ the principal may file a complaint with the juvenile court counselor pursuant to Chapter 7B of the General Statutes that the child is habitually absent from school without a valid excuse. Evidence that shows that the parents, guardian, or custodian were notified and that the child has accumulated 10 absences which cannot be justified under the established attendance policies of the local board shall establish a prima facie case that the child's parent, guardian, or custodian is responsible for the absences. Upon receiving notification by the principal, the director of social services shall determine whether to undertake an investigation under G.S. 7B-302."

SECTION 5. G.S. 131D-10.3A(b)reads as rewritten:

"(b) The Department shall ensure that all individuals who are required to be checked pursuant to subsection (a) of this section are checked ~~annually~~ upon relicensure for county and State criminal histories."

SECTION 6. Chapter 131D of the General Statutes is amended by adding a new section to read:

"**§ 131D-10.6C. Maintaining a register of applicants by the Division of Social Services.**

(a) The Division of Social Services shall keep a register of all family foster and therapeutic foster home applicants. The register shall contain the following information:

(1) The name, age, and address of each applicant.
(2) The date of the application.
(3) The applicant's supervising agency.
(4) Any mandated training completed by the applicant and the dates of training.
(5) Whether the applicant was licensed and the date of the initial licensure.
(6) The current licensing period.
(7) Any adverse licensing actions.
(8) Any other information deemed necessary by the Division of Social Services.

(b) The register shall be a public record under Chapter 132 of the General Statutes. Information not specified in subsection (a) of this section shall be considered confidential and not subject to disclosure."

SECTION 7. G.S. 143B-150.20(d) reads as rewritten:

"(d) The State Child Fatality Review Team shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this subsection, including police investigative data, medical examiner investigative data, health records, mental health records, and social services records. The State Child Fatality Review Team may receive

a copy of any reviewed materials necessary to the conduct of the fatality review. Any member of the State Child Fatality Review Team may share, only in an official meeting of the State Child Fatality Review Team, any information available to that member that the State Child Fatality Review Team needs to carry out its duties.

If the State Child Fatality Review Team does not receive information requested under this subsection within 30 days after making the request, the State Child Fatality Review Team may apply for an order compelling disclosure. The application shall state the factors supporting the need for an order compelling disclosure. The State Child Fatality Review Team shall file the application in the district court of the county where the investigation is being conducted and the court shall have jurisdiction to issue any orders compelling disclosure. Actions brought under this section shall be scheduled for immediate hearing, and subsequent proceedings in these actions shall be given priority by the appellate courts."

SECTION 8. G.S. 153A-257 is amended by adding a new subsection to read:

"(d) If two or more county departments of social services disagree regarding the legal residence of a minor in a child abuse, neglect, or dependency case, any one of the county departments of social services may refer the issue to the Department of Health and Human Services, Division of Social Services, for resolution. The Director of the Division of Social Services or the Director's designee shall review the pertinent background facts of the case and shall determine which county department of social services shall be responsible for providing protective services and financial support for the minor in question."

SECTION 9. This act is effective when it becomes law.

SENATE BILL 421:
Amend Child Welfare Laws - AB

BILL ANALYSIS

Committee: House Judiciary IV
Date: May 5, 2003
Version: 2nd Edition

Introduced by: Senator Thomas
Summary by: Steven Rose
Committee Counsel

SUMMARY: ***SB421 is an Agency Bill introduced at the request of the Department of Health and Human Services. The bill expands the permissible methods of service in an action for abuse, neglect or dependency; puts time limits on continuances in actions terminating parental rights; expands the purposes for which voluntary affidavits of paternity may be used; specifies when schools must notify county social services that a student has 10 accumulated unexcused absences; creates a register of applicants for family foster and therapeutic foster homes; creates a procedure by which a State Child Fatality Review Team may compel the disclosure of records; and creates a statutory mechanism for resolving disagreements between counties regarding the provision of social services to children.***

BILL ANALYSIS:

Section 1 amends G.S. 7B-407 regarding the methods by which a parent, guardian, custodian, or caretaker may be served with a summons in an action to establish abuse, neglect or dependency. Under current law, the only mechanism is personal service. Service by mail is allowed only if the person cannot be personally served. However, the mail service does not have to be by registered or certified mail. Under the proposed changes, service could be obtained by any method otherwise permitted for a civil action. These include service by registered and certified mail, or by organizations such as UPS or Federal Express.

Section 2 amends G.S. 7B-1109(d) to require a termination of parental rights hearing be conducted within 90 days unless the court finds that it is in the best interests of the juvenile or extraordinary circumstances necessary for the proper administration of justice exist. The change is intended to comply with the provisions of the Adoption and Safe Families Act P.L. 105-89. The ninety-day timeframe is not a specific requirement of the federal law. Federal law requires that the state plan provide for reasonable efforts to place the child in a "timely manner." A Federal Requirement Certification was previously prepared.

Section 3 amends G.S. 110-132(a) to provide that voluntary affidavits of paternity executed by a putative father and the mother of a dependent child constitute an admission of paternity and have the same legal effect as a judicial determination of paternity. This change would apply unless the affidavit itself limits its terms. Currently the statute states that these affidavits have the same legal effect as a judgment of paternity "for the purpose of establishing a child support obligation." The general practice has been to consider these affidavits as applicable to any matter that might involve issues of paternity, such as custody and visitation. However, according to the agency, a recent, unreported opinion by the North Carolina Court of Appeals has cast doubt upon that practice. [Rosero v. Blake, May 21, 2002]

Section 4 amends the compulsory attendance laws regarding when the department of social services should be notified that a student has 10 unexcused absences. Under current law, the school social worker is supposed to notify the student's parent, guardian or custodian when the student has three unexcused absences. Another notification is required when there are six unexcused absences. Finally, when a student has 10 unexcused absences, the principal must determine whether the parent, guardian or

custodian is making a good faith effort to comply with the compulsory attendance laws. If not, the principal must notify the district attorney. The proposed change would also require the principal to notify the director of social services in the county where the student resides and the director would then determine whether to initiate an investigation of neglect.

Section 5 amends G.S. 141D-10.3A(b) regarding the frequency with which the Department must obtain criminal history checks on foster parents. Previously, relicensure occurred annually. Currently, relicensure occurs every two years. The change would confirm the frequency of criminal history checks with the relicensure process.

Section 6 creates a register for applicants for family foster and therapeutic foster homes. The register would make public the same sort of information that is public for adoptive parents. The information on the register would be a public record, but any other information would be confidential.

Section 7 would amend G.S. 143B-150.20(d) to allow a State Child Fatality Review Team to compel the disclosure of records related to a child fatality review. Current law provides that the Team shall have access to all medical and hospital records, and other records maintained by a State or local agency. This proposed legislation would require that the information be provided within 30 days of the request and allows the Team to apply the District Court for an order compelling disclosure.

Section 8 codifies a current practice. The Department currently determines which county must provide services to a child where there is a dispute between counties on that matter.

The act is effective when it becomes law.

Kory Goldsmith, Counsel to the Senate Judiciary II Committee, substantially contributed to this summary.

S421-SMRL-002

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☒ Committee Substitute for
S.B. 421 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND MAKE TECHNICAL CORRECTIONS TO THE CHILD WELFARE LAWS AND TO ENHANCE THE STATE'S ABILITY TO PROTECT CHILDREEN.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill ~~(#)~~, ☐ ~~which changes the title,~~ unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 5, 2003

The House Committee on Judiciary IV met on June 5, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Bowie, Earle, Goforth, Jeffus, Justus, and Kiser. Staff Counsel Trina Griffin and Dianna Jessup. A Visitor Registration list is attached and made part of these minutes.

Senator Thomas was asked to explain SB 423, A BILL TO BE ENTITLED AN ACT TO CLARIFY AND ENHANCE CHILD SUPPORT ENFORCEMENT LAWS. David Daughtry with NC DHHS was available for questions and comments. A PCS was introduced and adopted. The PCS received a favorable report, unfavorable as to the original bill.

Senator Thomas was asked to explain SB 694, A BILL TO BE ENTITLED AN ACT TO PROVIDE IN THE SAME MANNER AS FEDERAL LAW THAT A CONTROLLED SUBSTANCE ANALOGUE SHALL, TO THE EXTENT INTENDED FOR HUMAN CONSUMPTION, BE TREATED AS A CONTROLLED SUBSTANCE IN SCHEDULE I OF THE NORTH CAROLINA CONTROLLED SUBSTANCE ACT. Colon Willoughby, the DA from Wake County was in attendance for questions and comments on this legislation. This bill received a favorable report.

Representative Glazier was asked to explain SB 753, A BILL TO BE ENTITLED AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES that was very similar to his HB 1033. Judge Beth Keever was available for comments in support of this legislation. A PCS was introduced and adopted. The PCS received a favorable report, unfavorable as to the original bill.

Representative Glazier was asked to explain HB 1030, A BILL TO BE ENTITLED AN ACT TO WAIVE THE CONCEALED HANDGUN PERMIT FEES FOR QUALIFIED FORMER SWORN LAW ENFORCEMENT OFFICERS. A PCS was introduced and received a favorable report with a re-refer to finance, unfavorable as to the original bill.

Chairman Munford continued discussion and debate on SB 919, A BILL TO BE ENTITLED AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES. This bill was discussed in committee last Thursday however, no vote was taken. Paul Valone with Grass Roots North Carolina offered comments in opposition of this bill. Anne Winner with the North Carolina Coalition Against Domestic Violence and Eddie Caldwell with the North Carolina Sheriff's Association spoke in favor of this legislation. After several amendments a new PCS was drafted and adopted. The PCS received a favorable report, unfavorable as to the original bill. Representative Phil Haire36 was the only member who voted against this legislation.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Name of Committee

Date 6/5/03

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Christopher Means	Rep. Joe Kiser
Dennis Allen	NC Rifle + Pistol Assoc
Joe + Jeni McClees	NRA
Julie Allen	NC Statewatch
Charles Stroud	GRNC
Anne Winnie	NCCADV
Gerald K. Robair	NCDOJ
Barry Miller	NCCSE / DHHS
Rob Hagwood	NCDHHS
David Hall	NC DHHS - DSS - CSE
Mamuah Bridgeforth	Intern - Rep Jeffus
Donald Hafner	NCGR
W. Dennis Jr	GRNC
Roger Eckenrod	GRNC
Paul Velong	Grass Roots North Carolina
Chris Sinha	NCDHHS - DSS - CW/AC
Jane Smith	NCDHHS - DSS
Jeff Rau	GRNC
Randy Lewis	GRNC
Karina Chapman	PPHS
Amy Darden	NC Bar Assn.
Mark Ezzell	GCC
Galen Braddy	Judge
Beth Keever	"
J. McCants	ACC
Colleen Kachmarek	Hafer & Caldwell, P.A.
Adrienne Allison	NCCADV

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Megan Glazier	family member of legislator
Greg Mikeal	NC AGO
Barry Smith	Freedom Newspapers
Phyllis McElveney	Victim
Michelle Frazier	NC Bar Assn
Eddie Caldwell	NC Sheriffs Assn/NC Law Enf Off. Assn.
W Pugh	NCAGO
Jennifer M. Sullivan	NCAGO NC

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

June 5, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 423	Amend Child Support Enforcement Laws-AB	Sen. Thomas
SB 694	Analogues/Schedule I Controlled Substance	Sen. Thomas
SB 919	Homicide Prevention Act/Domestic Violence	Sen. Rand
HB 1030	Handgun Permit Fee/Retired Police Officers	Rep. Glazier
HB 1033	Child Custody/ Guardianship Jurisdictions	Rep. Glazier

All - No Prof
293 - Sales Com. Bill

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 423*
Judiciary II Committee Substitute Adopted 4/7/03

Short Title: Amend Child Support Enforcement Laws.-AB (Public)

Sponsors:

Referred to:

March 17, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND ENHANCE CHILD SUPPORT ENFORCEMENT LAWS.

The General Assembly of North Carolina enacts:

PART 1. LIQUIDATION
PART 2. LICENSING BOARDS
PART 3. PAY RECORDS
PART 4. FINANCIAL INSTITUTIONS
PART 5. EFFECTIVE DATES

PART 1. LIQUIDATION

SECTION 1. G.S. 50-13.4(c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount

determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

If an arrearage for child support or fees due exists at the time that a child support obligation terminates, payments shall continue in the same total amount that was due under the terms of the previous court order or income withholding in effect at the time of the support obligation. The total amount of these payments is to be applied to the arrearage until all arrearages and fees are satisfied or until further order of the court."

SECTION 1.1. G.S. 110-135 reads as rewritten:

"**§ 110-135. Debt to State created.**

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section.

Upon the termination of a child support obligation due to the death of the obligor, the Department shall determine whether the obligor's estate contains sufficient assets to

satisfy any child support arrearages. If sufficient assets are available, the Department shall attempt to collect the arrearage."

PART 2. LICENSING BOARDS

SECTION 2. G.S. 93B-13(a) reads as rewritten:

"(a) Upon receipt of a court order, pursuant to G.S. ~~50-13.12,~~ 50-13.12 and G.S. 110-142.1, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its ~~records~~ records, report the action within 30 days to the Department of Health and Human Services, and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Department of Health and Human Services in an IV-D case, that the licensee is no longer delinquent in child support payments, or, as applicable, that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation."

PART 3. PAY RECORDS

SECTION 3.1. G.S. 110-139(b) reads as rewritten:

"(b) In order to carry out the responsibilities imposed under this Article, the Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. Except as otherwise stated in this subsection, all ~~All~~ nonjudicial records maintained by the Department pertaining to child-support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to these records. The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee. Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order."

SECTION 3.2. G.S. 50-13.11(a1) reads as rewritten:

"(a1) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. If health insurance is not presently available at a reasonable cost, the court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance becomes available at a reasonable cost. As used in this subsection, health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism. The court may require one or both parties to maintain dental insurance."

PART 4. FINANCIAL INSTITUTIONS

SECTION 4. G.S. 110-139.2 is amended by adding a new subsection to read:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that a person who maintains an account with the financial institution has a delinquent child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the delinquency. To qualify for levy, the child support obligation must have: (i) arrears in an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less; and (ii) an identified account with the financial institution.

Upon certification of the arrears amount in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor and the financial institution a notice as provided by this subsection. The notice may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure and shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied, the certified arrears amount, information for the obligor on how to remove the lien or contest the lien, and a copy of the applicable law, G.S. 110-139.2. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the attachment or that the account does not meet the requirement for attachment.

Within 10 days of service of the notice, the obligor must contest the lien in writing to the Child Support Agency, request a hearing before the district court in the county where the support order was entered, and give notice to the Child Support Agency of the basis for the contest upon which the request for the hearing is based. The lien may be contested only on the basis that the obligation is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), or the obligor is not the person subject to the court order of support. The district court may assess court costs against the losing party. If no response is received from the obligor within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the delinquent obligor.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State."

PART 5. EFFECTIVE DATES

SECTION 5. Part 3 of this act becomes effective July 1, 2003. The remainder of this act is effective when it becomes law, except for Part 4 which becomes effective 90 days after this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 423*

Judiciary II Committee Substitute Adopted 4/7/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S423-PCS55195-SW-33

Short Title: Amend Child Support Enforcement Laws.-AB	(Public)
Sponsors:	
Referred to:	

March 17, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND ENHANCE CHILD SUPPORT ENFORCEMENT LAWS.

The General Assembly of North Carolina enacts:

PART 1. LIQUIDATION

PART 2. LICENSING BOARDS

PART 3. PAY RECORDS

PART 4. FINANCIAL INSTITUTIONS

PART 5. EFFECTIVE DATES

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"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each

parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

If an arrearage for child support or fees due exists at the time that a child support obligation terminates, payments shall continue in the same total amount that was due under the terms of the previous court order or income withholding in effect at the time of the support obligation. The total amount of these payments is to be applied to the arrearage until all arrearages and fees are satisfied or until further order of the court."

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Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section.

Upon the termination of a child support obligation due to the death of the obligor, the Department shall determine whether the obligor's estate contains sufficient assets to satisfy any child support arrearages. If sufficient assets are available, the Department shall attempt to collect the arrearage."

PART 2. LICENSING BOARDS

SECTION 2. G.S. 93B-13(a) reads as rewritten:

"(a) Upon receipt of a court order, pursuant to G.S. ~~50-13.12~~, 50-13.12 and G.S. 110-142.1, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its ~~records~~ records, report the action within 30 days to the Department of Health and Human Services, and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Department of Health and Human Services in an IV-D case that the licensee is no longer delinquent in child support payments, or, as applicable, that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation."

PART 3. PAY RECORDS

SECTION 3.1. G.S. 110-139(b) reads as rewritten:

"(b) In order to carry out the responsibilities imposed under this Article, the Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. Except as otherwise stated in this subsection, all ~~All~~ nonjudicial records maintained by the Department pertaining to child-support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to these records. The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee. Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order."

SECTION 3.2. G.S. 50-13.11(a1) reads as rewritten:

"(a1) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. If health insurance is not presently available at a reasonable cost, the court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance becomes available at a reasonable cost. As used in this subsection, health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism. The court may require one or both parties to maintain dental insurance."

PART 4. FINANCIAL INSTITUTIONS

SECTION 4. G.S. 110-139.2 is amended by adding a new subsection to read:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a delinquent child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the delinquency. In order to be able to attach a lien on and levy an obligor's account, the obligor's child support obligation shall be in arrears in an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the arrears amount in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor and the financial institution a notice as provided by this subsection. The notice shall be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure and shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified arrears amount, information for the obligor on how to remove the lien or contest the lien in order to avoid the levy, and a copy of the applicable law, G.S. 110-139.2. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor to contest the lien, within 10 days after the obligor is served with the notice, the obligor shall send written notice of the basis of the obligor's contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The lien may be contested only on the basis that the arrearage is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), or the obligor is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the delinquent obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State."

PART 5. EFFECTIVE DATES

SECTION 5. Part 3 of this act becomes effective July 1, 2003. The remainder of this act is effective when it becomes law, except for Part 4 which becomes effective 90 days after this act becomes law.

SENATE BILL 423:
Amend Child Support Enforcement Laws - AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Thomas
Date:	June 3, 2003	**Summary by:**	Dianna Jessup
Version:	PCS S423-CSSW-33		Committee Counsel

SUMMARY: ***Senate Bill 423 would amend the child support laws regarding payment of arrears after support obligations terminate; reporting the revocation of licenses to DHHS for those who do not pay ordered child support; allowing child support payment information to be released prior to establishing or modifying support orders; and allowing DHHS to require financial institutions to levy the bank accounts of those who have delinquent child support obligations. The second edition made several changes to the bill including adding an additional statutory reference in Section 2, changing the amount of the arrears required before DHHS can for a levy of a financial account in Section 4 from three months and $500.00 to six months and $1000.00, changing the procedure that DHHS must follow in order to garnish bank accounts, and deleting the requirement in Section 4 that the financial institution make payment specifically to the North Carolina Child Support Enforcement Centralized Collections.***

The PCS makes clarifying changes to Section 4 and adds language that would hold financial institutions harmless for complying with the new requirements regarding disclosure of financial information to the Child Support Agency, and attachment and levy on accounts of delinquent child support obligors.

SECTION-BY-SECTION BILL ANALYSIS BETWEEN CURRENT LAW, BILL and SECOND EDITION

PART 1. LIQUIDATION

Section 1

CURRENT LAW: Courts are required to order child support payments in an amount to meet the reasonable needs of the child for health, education, and maintenance with regard to the estates, earnings, conditions and accustomed standard of living for the child and the parties involved. Payments continue until the child reaches 18 unless the child becomes emancipated or if the child is still in primary or secondary school when the child reaches 18. If the child is still in primary or secondary school when the child turns 18, the support payments will continue until the child graduates, stops attending school on a regular basis, or does not make progress towards graduation, or reaches age 20, whichever comes first. A court may also order in its discretion that payments stop at age 18 or prior to high school graduation.

BILL ANALYSIS: The bill would add a requirement that if there are any arrearages for child support or fees due when the child support obligation terminates for any reason, payments would have to continue in the same total amount that was due under the terms of the court order or incoming withholding that is in effect at the time of the support obligation. The payments would continue until all the arrearages and fees are satisfied or the court order otherwise.

Second Edition Changes: Added the requirement that in the death of an obligor, DHHS must determine if the estate of the obligor has sufficient assets and attempt to collect the arrearages.

PART 2. LICENSING BOARDS

Section 2

CURRENT LAW: Under G.S. 50-13.12, a court may revoke some or all licensing privileges of a person if a court finds that the person is willfully delinquent in child support payments equal to at least one month's child support or that the person has willfully failed to comply with a subpoena regarding child support or paternity establishments. These licensing privileges include privileges to hunt, fish, trap, drive, or engage in an occupation or profession. G.S. 93B-13 requires that when an occupational licensing board receives a court order that revokes an occupational license due to child support delinquency or failing to comply with a subpoena, the occupational licensing board must note that revocation in its records and follow the postrevocation rules and procedures that the board has in place just as if the board had ordered the revocation. The revocation is in effect until the board gets certification from the court clerk that the licensee is no longer delinquent or is in compliance with or no longer subject to the court's orders.

BILL ANALYSIS: The bill would add a requirement that when an occupational licensing board notes the revocation in its order and the board must report that notation to DHHS within 30 days of the notation.

Second Edition Changes: The second edition added a statutory reference to G.S. 110-142.1 so that the occupational licensing board would also have to note the revocation in its records of a license pursuant to a court order under G.S. 110-142.1 and report that notation to DHHS within 30 days of the notation.

G.S. 110-142.1 authorizes a court to revoke occupational licenses for IV-D cases. (IV-D cases are child support cases where the custodial parent is receiving some sort of benefit such as TANF (AFDC) and DHHS is therefore required by law to seek child support and establish parentage.) The second edition added language requiring the revocation to remain in effect for IV-D cases until DHHS certifies that the licensee is no longer delinquent or is in compliance with or is no longer subject to the court's order.

PART 3. PAY RECORDS

Second Edition deleted Section 3.1 of the bill and renumbered the rest of the sections.

Section 3.1

CURRENT LAW: DHHS is charged with attempting to locate absent parents for the purposes of establishing paternity and/or securing child support. DHHS receives information concerning absent parents and assists other agencies in locating absent parents, answering interstate inquires, and developing guidelines to coordinate with other agencies about finding absent parents. To implement these responsibilities, DHHS can request information and assistance from any governmental agency, board, etc. and all State, county and local agencies must cooperate with DHHS and provide pertinent information. All nonjudicial records maintained by DHHS relating to child support enforcement are confidential. Only duly authorized representatives of agencies that have child-support enforcement and related duties and members of legislative committees have access to these records.

BILL ANALYSIS: The bill would add language permitting the release of an obligor's payment history pursuant to a child support order so that it may examined by a court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee (such as an attorney). Income and expense information of one parent may be released to the other parent for the purpose of establishing or modifying a support order. Currently, there is no exchange of information between parties before the

court hearing and therefore, there can be no review of the payment history to verify its accuracy. This would permit the parties to review the information and possibly reduce the number of court appearances required in these cases.

Section 3.2

CURRENT LAW: A court must order the parent of minor child or other responsible party to maintain health insurance for a child when health insurance is available at a reasonable cost. It is considered to be reasonable in cost if it is employment related or other is from some other group health insurance.

BILL ANALYSIS: The bill adds language that if health insurance is not presently available to a parent or other responsible party at a reasonable cost, then court must order that the parent or other party maintain health insurance when it becomes available at a reasonable cost.

BACKGROUND: In *Buncombe County, on behalf of Angelia A, Frady, v. Rogers*, 148 N.C. App. 401, 559 S.E.2d 227 (2002), the North Carolina Court of Appeals held that while it is presumed that insurance through employment is reasonable, the statute contemplates that other insurance may be available at a reasonable cost, and it is up to the trial court to determine whether insurance is available at a reasonable cost.

PART 4 FINANCIAL INSTITUTIONS

Section 4

CURRENT LAW: Current law permits wage garnishment and income withholding from delinquent parents; however there is no provision for liens on bank accounts. Currently, DHHS and financial institutions are required to enter into agreements that provide for a data match system where the financial institutions provide DHHS with the full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the financial institution if DHHS certifies that the information is needed to locate a parent to collect child support.

BILL ANALYSIS: The bill adds a new subsection that would permit DHHS to place a lien on the bank account of a person who has delinquent child support obligations. DHHS may notify any financial institution doing business in the State that a person with an account at that institution has delinquent child support obligations and that person's account may be subject to a levy. An account would be subject to a lien if the person who maintains the account has either a three-month arrears or an arrears amount of $500.00, whichever is less. After the arrearage is certified, the Child Support Agency notifies the bank to institute a lien for the certified amount. The bank is then required, within five business days of the receipt of this notice to:

- Attach a lien to the account
- Notify the Child Support Agency of the balance on the account and the date of the attachment OR that the account does not have the money for the attachment

Within five business days of the receipt of the notice of the attachment from the bank, the Child Support Agency notifies the obligor of the attachment and this notice has to contain information on how to remove the lien through compliance with the child support order or how to contest the action. The bill would require the Child Support Agency to establish procedures for review and contest of the lien. If the Agency does not receive a "satisfactory" response within 15 days of the date of the notice, then the Agency must notify the bank to submit payment of up to the total amount of the arrears, if available to the

North Carolina Child Support Enforcement Centralized Collections and the payment is to be applied to the debt of the delinquent party.

SECOND EDITION CHANGES: The second edition added that the certification of the amount must be done in accordance with G.S. 44-86(c), which provides for a verified statement and determination of the arrearage as of the date of that statement, and changed the amount and age of the arrearage so that an account would be subject to a lien if there is a six-month arrearage or an arrears amount of $1000.00, whichever is less. The procedure for obtaining a lien on bank accounts was modified in the second edition to include notice to both the bank and the obligor at the same time, and the notice must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice must include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied, the certified arrears amount, information on how to remove or contest the lien, and a copy of the statute. The obligor must contest the lien in writing within 10 days of service of the notice and state the reason for the contest. The only reasons that can be the basis of the contest are that the obligor is not the right person, the obligor is not behind for six months or that the arrearage amount is less than $1000.00. The contest would be heard before the district court in the county where the original child support order was entered. and the court is given discretion to assess court costs against the losing party.

The second edition also deleted the requirement that the financial institution specifically submit payment of any available funds up the amount of the total arrears to the North Carolina Child Support Enforcement Centralized Collections.

CONSTITUTIONAL ISSUES: There were possible constitutional due process issues with the bank account levy procedure in the original bill because it provided for the seizure of property without a prior notice or hearing. While the statute could possibly still be challenged, the procedure in the second edition does provide notice to the obligor at the same time that the bank is notified to place a lien on the account. In *Town of Hudson v. Martin-Kahil Ford Lincoln Mercury,* Inc., 54 N.C. App. 272, 283 S.E.2d 417 (1981), the North Carolina Court of Appeals upheld the bank account levy procedure that is provided for in G.S. 105-366 and G.S. 105-368 for the collection of property taxes. G.S. 105-368 provides notice to all parties at the same time, and the Court held because there are statutory safeguards by allowing a judicial determination in the case of contest, the seizure of the property before a hearing was constitutional due to the governmental interests involved.

EFFECTIVE DATE: Sections 3.1 and 3.2 would become effective July, 1, 2003, Section 4 would become effective 90 days after the act becomes law and the remainder of the bill would becomes effective when it becomes law.

S423-SMSW-001

Drupti Chauhan, staff attorney, Research Division, substantially contributed to this summary.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☒ Committee Substitute for
S.B. 423 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND ENHANCE CHILD SUPPORT ENFORCEMENT LAWS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill ~~(#),~~ ☐ ~~which changes the title,~~ unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 694

Judiciary II Committee Substitute Adopted 4/30/03

Short Title: Analogues/Schedule I Controlled Substance. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IN THE SAME MANNER AS FEDERAL LAW THAT A CONTROLLED SUBSTANCE ANALOGUE SHALL, TO THE EXTENT INTENDED FOR HUMAN CONSUMPTION, BE TREATED AS A CONTROLLED SUBSTANCE IN SCHEDULE I OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-89.1. Treatment of controlled substance analogues.**

A controlled substance analogue shall, to the extent intended for human consumption, be treated for the purposes of any State law as a controlled substance in Schedule I."

SECTION 2. G.S. 90-87 is amended by adding the following new subdivision to read:

"(5a) "Controlled substance analogue" means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II; (ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or (iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; and does not include (i) a controlled substance; (ii) any substance for which there is an approved new drug application; (iii) with respect to a particular person any substance, if an

exemption is in effect for investigational use, for that person, under § 355 of Title 21 of the United States Code to the extent conduct with respect to such substance is pursuant to such exemption; or (iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance. The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to subdivision 802(34) or 802(35) of Title 21 of the United States Code does not preclude a finding pursuant to this subdivision that the chemical is a controlled substance analogue."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after December 1, 2003.

SENATE BILL 694:
Analgues/Schedule I Controlled Substance.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Thomas
Date:	June 3, 2003	**Summary by:**	Trina Griffin
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 694 would make substances that are intended for human consumption and that either have a chemical structure substantially similar to a controlled substance or that produce an effect substantially similar to that of a controlled substance ("analogues") Schedule I substances under Chapter 90. The Act would become effective December 1, 2003.***

CURRENT LAW: Under current state law, the manufacture, sale, delivery, or possession with intent to sell or deliver a scheduled controlled substance is a felony. Analogues of controlled substances are not scheduled offenses unless specified, as is the case for gamma-butyrolactone (GBL), an analogue to Gamma Hydroxybutyrate or "GHB" (known as the "date rape drug"). However, Section 813 of Title 21 of the United States Code states that analogues intended for human consumption will be treated as Schedule I controlled substances for the purpose of any federal law.

Possession of a Schedule I or II controlled substance is a Class I felony. The minimum penalty for a Class I felony is 3 months of community punishment. The maximum penalty is 15 months of active incarceration. The level of punishment imposed depends on the defendant's prior record.

The manufacture or delivery of or possession with intent to manufacture, sell or deliver a Schedule I controlled substance is a Class H felony. The minimum penalty for a Class H felony is 4 months of community punishment. The maximum penalty is 30 months of active incarceration. The level of punishment imposed depends on the defendant's prior record.

The sale of a Schedule I or II controlled substance is a Class G felony. The minimum penalty for a Class G felony is 8 months of intermediate level punishment. The maximum penalty is 36 months of active incarceration. The level of punishment imposed depends on the defendant's prior record.

BILL ANALYSIS: Senate Bill 694 would amend the North Carolina Controlled Substances Act to make substances intended for human consumption and that either have a chemical structure substantially similar to a controlled substance or that produce an effect substantially similar to that of a controlled substance ("analogues") Schedule I substances under Chapter 90. The bill would make state law consistent with federal law that treats controlled substance analogues as Schedule I controlled substances.

The bill defines "controlled substance analogue" as a substance:

- the chemical structure of which is *substantially similar* to the chemical structure of a controlled substance in Schedule I or II;
- which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is *substantially similar* to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
- with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or

greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

Under SB 694 "controlled substance analogue" *does not include*:

- a controlled substance;
- any substance for which there is an approved new drug application;
- any substance subject to an exemption for investigational use, to the extent conduct with respect to the substance is pursuant to an exemption; or
- any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

BACKGROUND: There are many types of substances treated as controlled substance analogues under federal law, including MAE-1and 1,4 butanediol, which are both analogues of Gamma Hydroxybutyrate or "GHB" (also known as the "date rape drug"). As of 1996, most controlled substance analogues identified in the illicit traffic are produced by modification of phenethylamine and amphetamine molecule. These modifications can lead to substances with pure central nervous system stimulant activity, hallucinogenic activity, or a combination of both depending on the dose).

EFFECTIVE DATE: This act would become effective December 1, 2003, and apply to offenses committed on or after that date.

Sandra Alley, counsel for Senate Judiciary II, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: SB 694 2nd Edition

SHORT TITLE: Analogues/Schedule I Controlled Substance

SPONSOR(S): Senator Thomas

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
GENERAL FUND					
Correction					
Recurring		Unable to determine exact amount.			
Nonrecurring					
Judicial					
Recurring		Unable to determine exact amount.			
Nonrecurring					
TOTAL EXPENDITURES:		Unable to determine exact amount.			
ADDITIONAL PRISON BEDS*		Unable to determine exact number of beds.			
POSITIONS: (cumulative)		Unable to determine exact amount.			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction (DOC); Judicial Branch

EFFECTIVE DATE: December 1, 2003

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: The bill add new section G.S. 90-89.1 to provide that controlled substance analogues, intended for human consumption, be treated as controlled substances in Schedule I under state law. The bill also amends G.S. 90-87 to clarify that the definition of controlled substance analogues is the same as that under federal law.

ASSUMPTIONS AND METHODOLOGY:

Currently, state drug laws do not specifically address the treatment of controlled substance analogues, which may be similar in structure to or produce similar effects as controlled substances. However, federal law does provide that controlled substance analogues, intended for human consumption, be treated as controlled substances in Schedule I. *According to a DEA pharmacologist, of the seven to ten controlled substance analogues detected in the last few years, only a couple appear on any schedule for controlled substances under federal law.*[1]

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division (FRD) does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

The Sentencing Commission notes that the addition of controlled substance analogues as Schedule I controlled substances could create additional violations of manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance (G.S. 90-95(a)(1)) and possess a controlled substance (G.S. 90-95(a)(3)). Assuming these substances are not currently classified as controlled substances, there is no historical data from which to estimate impact on the prison population. It is not known how many offenders might be convicted under this proposed bill.

While there is no historical data from which to estimate impact on the prison population, data is available concerning the number of convictions for offenses involving Schedule I controlled substances. In FY 2001-2002 there were 188 convictions for offenses involving Schedule I controlled substances (excluding convictions for LSD and heroin, as indicated by specific offense codes for these controlled substances).

[1] AOC Research and Planning Division

The Sentencing Commission notes:

- If the addition of these controlled substances resulted in two additional convictions for sale of a Schedule I controlled substance, which is currently a Class G offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.

- If the addition of these controlled substances resulted in three additional convictions for possession with intent to manufacture, sell or deliver a Schedule I controlled substance, which is currently a Class H offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year.

- If the addition of these controlled substances resulted in ten additional convictions for simple possession of a Schedule I controlled substance, which is currently a Class I offense, this would result in the need for 1 prison bed the first year and three prison beds the second year.

The addition of controlled substances as Schedule I controlled substances would likely create the need for additional prison beds, but an exact amount cannot be determined. Under the structured sentencing grid, Class G felons receive intermediate or active sentences. In FY 2001-2002, 59 percent of Class G felons received intermediate punishment and 41 percent received active sentences. On average, offenders were sentenced to a minimum of 15 and a maximum of 19 months. Class H and I felons are eligible to receive community punishment, intermediate sanctions, or active sentences under the structured sentencing grid. In FY 2001-2002, Class H felons, on average, were sentenced to a minimum of 10 and a maximum of 12 months. Class I felons, on average, were sentenced to a minimum of nine and a maximum of 10 months.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Although SBI indicates that no data are available on how often controlled substance analogues are detected for Schedule I drugs, the AOC suggests there may be a substantial impact on the courts as a result of the bill. They note, there could be additional defendants charged under the state law with violations of the drug laws due to the addition of controlled substance analogues to Schedule I. (The penalties in Chapter 90 are most severe for Schedule I drugs.) As a result they would expect an increase in trials and court time. Additionally, to the extent that commonly used drug analogues result in drug charges that are not being filed now, the impact could be substantial.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Nicole Kreiser and Jim Mills

Nicole Kreiser

APPROVED BY: James D. Johnson, Director, Fiscal Research Division

DATE: April 30, 2003

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
S.B. 694 A BILL TO BE ENTITLED AN ACT TO PROVIDE IN THE SAME MANNER AS FEDERAL LAW THAT A CONTROLLED SUBSTANCE ANALOGUE SHALL, TO THE EXTENT INTENDED FOR HUMAN CONSUMPTION, BE TREATED AS A CONTROLLED SUBSTANCE IN SCHEDULE I OF THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 753*

Judiciary I Committee Substitute Adopted 4/21/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S753-CSSW-46 [v.1]

6/5/2003 8:55:05 AM

Short Title: Qualif. for Magistrates/Juvenile Cust. Pilot. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES AND TO ESTABLISH A PILOT PROGRAM IN TWELFTH JUDICIAL DISTRICT TO ADDRESS CONFLICTING CHILD CUSTODY ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-171.2(b) reads as rewritten:

"(b) To be eligible for nomination as a magistrate, an individual shall have at least eight years' experience as the clerk of superior court in a county of this State or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date."

SECTION 2. (a) The Administrative Office of the Courts, in consultation with the Department of Health and Human Services, shall establish a pilot program in the Twelfth Judicial District that addresses the issue of conflicting child custody orders. To the extent that this act or the program established pursuant to it conflicts with any State law, the program supersedes that law. However, the Department of Health and Human Services shall ensure that federal funding is not jeopardized.

(b) Under this program, when a court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected or dependent:

(1) The court in the juvenile proceeding may stay any other civil action in this State in which the custody of the juvenile is an issue.

(2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to retain jurisdiction in the juvenile proceeding.

(3) The court in the juvenile proceeding may order that any civil action or claim for custody filed in the pilot judicial district be consolidated with the juvenile proceeding.

(4) If a civil action or claim for custody has been filed in a district other than the pilot judicial district, then the court in the juvenile proceeding may, after consulting with the court in the other district, order that the civil action or claim for custody be transferred to the pilot judicial district or may order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the other district.

(5) The court may establish a mechanism for determining the legal status of a juvenile after jurisdiction of the juvenile court terminates, including a determination as to who has custody of the juvenile and under what circumstances custody may subsequently be changed.

(c) The Administrative Office of the Courts shall evaluate the pilot program and report its findings and recommendations to 2005 General Assembly prior to its convening.

SECTION 3. This act is effective when it becomes law. Section 2 of this act shall expire June 30, 2005.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☒ Committee Substitute for
S.B. 753 A BILL TO BE ENTITLED AN ACT TO AMEND THE QUALIFICATIONS FOR PERSONS NOMINATED AS MAGISTRATES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill (#~~———~~), ☒which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1030

Short Title:	Handgun Permit Fee/Retired Law Officers.	(Public)
Sponsors:	Representatives Glazier; Gibson and Pate.	
Referred to:	Judiciary IV.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO WAIVE THE CONCEALED HANDGUN PERMIT FEES FOR QUALIFIED FORMER SWORN LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.19 is amended by adding a new subsection to read:

"(c) The permit fees under this Article are waived for any person who is a qualified former sworn law enforcement officer and shall not be collected from that person. This subsection does not apply if the person was involuntarily terminated as a law enforcement officer or if the person has been convicted of a misdemeanor or a felony."

SECTION 2. This act becomes effective July 1, 2003, and applies to applications for concealed handgun permits, permit renewals, and duplicate permits submitted on or after that date.

HOUSE BILL 1030:
Handgun Permit Fee/Retired Law Officers.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Glazier
Date:	June 5, 2003	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition H1030-CSSVf-18		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1030 reduces the concealed handgun permit application and renewal fee by $35.00 for law enforcement officers who are both retired and left their positions in good standing. The act would become effective July 1, 2003, and would apply to applications and renewals submitted on or after that date.***

This bill needs to be re-referred to House Finance.

CURRENT LAW: The permit fees for a concealed handgun permit are as follows:

Application Fee	$80.00
Renewal Fee	$75.00
Duplicate Permit Fee	$15.00

With regard to applications and renewals, a portion of the fee is remitted to the Department of Justice to cover the cost of performing State and federal criminal background checks and a portion is remitted to the sheriff to pay the costs of administering the handgun permitting process generally and for other law enforcement purposes. There is also an additional fee, not to exceed $10.00, which is retained by the sheriff and covers the cost of processing the applicant's fingerprints.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1030 would reduce, for qualified retired sworn law enforcement officers only, the application fee for a concealed handgun permit from $80.00 to $45.00, and the renewal fee from $75.00 to $40.00. In order to qualify for the fee reduction, the law enforcement officer would be required to produce the following documentation to the sheriff when applying for the permit:

- A copy of the officer's letter of retirement from either the North Carolina Teachers' and State Employees' Retirement System or the North Carolina Local Governmental Employees' Retirement System.
- Written documentation from the head of the agency where the person was previously employed indicating that the person was neither involuntarily terminated nor under administrative or criminal investigation within six months of retirement.

The reduced fee paid by the officer would be remitted to the Department of Justice to cover the cost of processing the State and criminal background checks performed in connection with processing applications. The officer would also still pay the $10.00 fingerprinting fee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1030
PROPOSED COMMITTEE SUBSTITUTE H1030-CSSVf-18 [v.5]

6/4/2003 4:54:36 PM

Short Title: Handgun Permit Fee/Retired Law Officers. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE CONCEALED HANDGUN PERMIT APPLICATION AND RENEWAL FEES FOR QUALIFIED RETIRED SWORN LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.19 reads as rewritten:

"**§ 14-415.19. Fees.**

(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer to be remitted or credited by the county finance officer in accordance with the provisions of this ~~subsection.~~section. Except as otherwise provided by this section, the~~The~~ permit fees are as follows:

Application fee $80.00
Renewal fee $75.00
Duplicate permit fee $15.00

The county finance officer shall remit forty-five dollars ($45.00) of each new application fee and forty dollars ($40.00) of each renewal fee assessed under this subsection to the North Carolina Department of Justice for the costs of State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article. The remaining thirty-five dollars ($35.00) of each application or renewal fee shall be used by the sheriff to pay the costs of administering this Article and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only.

(a1) The permit fees for a retired sworn law enforcement officer who provides the information required by subdivisions (1) and (2) of this subsection to the sheriff, in addition to any other information required under this Article, are as follows:

Application fee $45.00
Renewal fee $40.00

(1) A copy of the officer's letter of retirement from either the North Carolina Teachers' and State Employees' Retirement System or the North Carolina Local Governmental Employees' Retirement System.

(2) Written documentation from the head of the agency where the person was previously employed indicating that the person was neither involuntarily terminated nor under administrative or criminal investigation within six months of retirement.

The county finance officer shall remit the proceeds of the fee assessed under this subsection to the North Carolina Department of Justice to cover the cost of performing the State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article.

(b) An additional fee, not to exceed ten dollars ($10.00), shall be collected by the sheriff from an applicant for a permit to pay for the costs of processing the applicant's fingerprints, if fingerprints were required to be taken. This fee shall be retained by the sheriff."

SECTION 2. This act becomes effective July 1, 2003, and applies to applications for concealed handgun permits and permit renewals submitted on or after that date.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 1030 A BILL TO BE ENTITLED AN ACT TO WAIVE THE CONCEALED HANDGUN PERMIT FEES FOR QUALIFIED FORMER SWORN LAW ENFORCEMENT OFFICERS

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#),~~ ☒ which changes the title, unfavorable as to (the original bill) ~~(Committee Substitute Bill #),~~ (and recommendation that the committee substitute bill #) be re-referred to the Committee on Finance.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 919

Judiciary I Committee Substitute Adopted 4/28/03

Short Title: Homicide Prevention Act/Domestic Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Court Discretion. – If the court does not find any of the factors in subsection (a) of this section, the court, in its discretion, may order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. For purposes of this section, the term 'firearm' is as defined in G.S. 14-409.39(2).

(c) Ex parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying

information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(e) Surrender. – Upon service of the orders, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms shall also include the notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

(f) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court determines that the defendant should not be allowed to retrieve the weapons.

(g) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order and not later than 90 days after the expiration of the current order. Upon receipt of the motion, the court shall schedule a hearing and provide written

notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed;

(2) Whether the defendant is subject to any other protective orders; or

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal laws.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with sale, and in accordance with all applicable State and Federal law, shall be provided to the defendant.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court,

(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court, or

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. – This section shall not prohibit law enforcement and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only."

SECTION 2. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase of firearms by person subject to domestic violence order prohibited.**

(a) ~~It~~ In accordance with G.S. 50B-3.1, it is unlawful for any person to ~~purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in force and effect a domestic violence order issued pursuant to Chapter 50B of the General Statutes, prohibiting the person from purchasing a firearm.~~ own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a Class H felony."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 919

Judiciary I Committee Substitute Adopted 4/28/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S919-CSRL-38 [v.5]

6/4/2003 5:16:32 PM

Short Title: Homicide Prevention Act/Domestic Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant

(b) Ex parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law.

(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order and not later than 90 days after the expiration of the current order.

Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed;

(2) Whether the defendant is subject to any other protective orders; or

(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal laws.

(g) Motion for Return by Third Party Owner. – A third party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items by the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with sale, and in accordance with all applicable State and Federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing, and if ordered by the judge.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court,

(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court, or

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. – This section shall not prohibit law enforcement and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter."

SECTION 2. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase or possession of firearms by person subject to domestic violence order prohibited.**

(a) ~~It~~ In accordance with G.S. 50B-3.1, it is unlawful for any person to ~~purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in force and effect a domestic violence order issued pursuant to Chapter 50B of the General Statutes, prohibiting the person from purchasing a firearm.~~ own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a Class H felony."

SECTION 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. _____ DATE 6/5/03

S. B. No. 919-CSRL-38 (V.3) Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Glazier
Sen.)

moves to amend the bill on page 4, line 31
~~( ) WHICH CHANGES THE TITLE~~ as amended by Amendment #1,
by rewriting the line to read:
"Section 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 919

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S919-ASW-30 [v.1]

Date _____,2003

Comm. Sub. [YES]
Amends Title [NO]
PCS S919-CSRL-38[v.6]

Representative _____

moves to amend the bill on page 3, line 28, by adding after "defendant" the phrase "or third party owner";

and on page 4, line 12, by adding after "enforcement" the word "officers";

and on page 4, line 31, by rewriting the line to read:

"**SECTION 3.** This act becomes effective September 1, 2003.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 919:
Homicide Prevention Act/Domestic Violence.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Rand
Date:	June 5, 2003	**Summary by:**	Steven Rose
Version:	S919-CSRL-38 [v.5]		Committee Counsel

SUMMARY: ***This act specifically provides that where a court has issued an order to bring about a cessation of acts of domestic violence, the court shall order the defendant to surrender all firearms under the defendant's possession or control, if the court finds any one of several listed factors.***

CURRENT LAW: A court has the authority to prohibit a party from purchasing a firearm for a time fixed in the domestic violence order. G.S. 50B-3(a)(11). Courts are also authorized to enter orders deemed necessary to protect a party or a minor child.

BILL ANALYSIS: The bill adds a new G.S. 50B-3.1 and makes conforming changes to G.S. 14-269.8. The new provisions are as follows:

- Upon the issuance of a domestic violence restraining order, the court is required to order the defendant to surrender to the sheriff all firearms, permits to purchase firearms, and permits to carry concealed firearms that are in the defendant's care, custody, possession, ownership or control, if the court finds any of the following factors:

  (1) The use or threatened use of a deadly weapon by the defendant, or a pattern of prior conduct by defendant involving violence with a firearm against persons.

  (2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

  (3) Threats to commit suicide by the defendant.

  (4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

- The court is required to question the defendant as to the defendant's ownership or access to firearms, permits, and ammunition, as well as the identifying information of the same.
- The defendant is required to surrender to the sheriff all items listed in the order. The sheriff may charge a reasonable storage fee and is not liable for any damage due to storage or deterioration. The terms of the order must include a notice of the penalty for a violation and notice of the procedure for the defendant to request return of the firearms.
- By motion, the defendant may request the return of the items at the expiration of the order. The court is required to determine whether any State or federal law would preclude the return of the items. If a motion for return is not filed, or if the defendant is precluded by law from re-obtaining

- the items, or fails to remit fees to the sheriff for storage, then an order for disposition may be sought.
- A third party owner of the firearms may file a motion for return of the seized firearms.
- It is a Class H felony to (1) violate the court order, (2) fail to surrender the firearms, ammunition or permits, or (3) provide false information to the court.

The act is effective when it becomes law.

H. Alan Pell, Committee Counsel to the Senate Judiciary I Committee, contributed substantially to this summary.

S919-SMRL-002

Reported out 6/11.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Munford** (Chair) for the Committee on **Judiciary IV.**

☒ Committee Substitute for
S.B.919 A BILL TO BE ENTITLED AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the House committee substitute bill ~~(# ———),~~ ☐ ~~which changes the title,~~ unfavorable as to ~~(the original bill)~~ Senate Committee Substitute Bill # ~~———),~~ (and recommendation that the House committee substitute bill #~~———~~) be re-referred to the Committee on - **FINANCE.**)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 10, 2003

The House Committee on Judiciary IV met on June 10, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier Vice-Chair Bonner Stiller, Representatives Bowie, Goforth, Haire, Jeffus, Justus, and Kiser. Staff Counsel Trina Griffin, Dianna Jessup and Steve Rose were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Munford explained proposed technical changes amending SB 293 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS. This bill was previously adopted by our committee and re-referred back. These changes clarified that this bill was intended not to apply to for Realtors and would not award more than treble damages in the event of a suit.

HB 911 NO PROFIT FROM CRIME was originally scheduled for today's agenda, however, due to the technical nature of this legislation, the sponsor pulled the bill for further research.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JD IV — 06/10/03

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Rodd	Rick Blazier guest
David Black	" "
Julie Allen	NC Statewatch
John O'Hale	Governor's Office
Sam Hickman	Visitor
Jamie Fumo	Visitor
Amy Darden	NC Bar Assn.
John McMillan	MFTS
Stephanie Simpson	NCAR

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

June 10, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 293	Sales Representative Commissions	Rep. Munford
HB 911	No Profit from Crime	Rep. Eddins

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 3

SENATE BILL 293

Judiciary II Committee Substitute Adopted 4/2/03
House Committee Substitute Favorable 6/2/03

Short Title: Sales Representative Commissions Revisions. (Public)

Sponsors:

Referred to:

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE COMMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27 of Chapter 66 of the General Statutes reads as rewritten:

"Article 27.

"Sales Representative Commissions.

"**§ 66-190. Definitions.**

The following definitions apply in this Article:

(1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of ~~orders or sales~~ orders, sales, or profits or as a specified amount per order or per sale.

(2) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, estate, ~~or trust.~~ trust, or other entity.

(3) "Principal" means a person ~~who does not have a permanent or fixed place of business in this State and~~ who:

a. Manufactures, produces, imports, or distributes a ~~tangible~~ product ~~for sale at wholesale;~~ or service;

b. Contracts with a sales representative to solicit orders for the ~~product;~~ product or service; and

c. Compensates the sales representative, in whole or in part, by commission.

(4) "Sales representative" means a person who:

a. Contracts with a principal to solicit ~~wholesale orders;~~ orders for products or services;

b. Is compensated, in whole or in part, by commission;
c. ~~Does not place orders or purchase for his own account or for resale;~~ Is not a seller who complies with:
1. G.S. 25A-39 and G.S. 25A-40; or
2. Part 429 of 16 Code of Federal Regulations (January 1, 2003);
~~d. Does not sell or take orders for the sale of products at retail; and~~
e. Is not an employee of the ~~principal.~~ principal; and
f. Does not sell or take orders for the sale of advertising services.

(5) "Terminate" and "termination" mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party.

"**§ 66-190.1. Written contracts.**

The agreement or contract between a sales representative and a principal shall be in writing. The absence of a written agreement or contract shall not bar a cause of action by, or any remedy available to, a sales representative pursuant to this Article.

"**§ 66-191. Payment of ~~commissions.~~ commissions; termination.**

When a contract between a sales representative and a principal is terminated for any reason other than malfeasance on the part of the sales representative, the principal shall pay the sales representative all commissions ~~accrued under the contract to the sales representative within 45 days after the effective date of the termination.~~ due under the contract within 30 days after the effective date of the termination and all commissions that become due after the effective date of termination within 14 days after they become due. If the principal does not make payment as required by this section, the sales representative shall make a written demand upon the principal, sent by certified mail, for the commissions then due. The principal shall respond in writing to the demand within 15 days after the principal receives the written demand.

"**§ 66-192. Civil liability.**

(a) A principal who fails to comply with the provisions of ~~G.S. 66-191~~ G.S. 66-191 or is shown to have wrongfully revoked an offer of commission under G.S. 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed three times the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs.

(b) Where the court determines that an action brought by a sales representative against a principal under this Article is frivolous, the sales representative is liable to the principal for court costs and for attorney's fees actually and reasonably incurred by the principal in defending the action.

(c) A principal who is not a resident of this State who contracts with a sales representative to solicit orders in this State shall be subject to personal jurisdiction as provided in G.S. 1-75.4.

(d) Nothing in this Article shall invalidate or restrict any other or additional right or remedy available to a sales representative or preclude a sales representative from seeking to recover in one action on all claims against a principal.

"**§ 66-192.1. Revocable offers of commission; entitlement.**

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the commission agreed upon if:

(1) The principal revokes the offer of commission;

(2) The sales representative establishes that the revocation was for the purpose of avoiding payment of the commission;

(3) The revocation occurs after the principal has obtained a written order for the principal's product or service because of the efforts of the sales representative; and

(4) The principal's product or service that is the subject of the order is provided to and paid for by a customer.

"**§ 66-193. Contracts void.**

A provision in any contract between a sales representative and a principal purporting to waive any provision of this Article, whether by expressed waiver or by a contract subject to the laws of another state, is void."

SECTION 2. This act becomes effective October 1, 2003, and applies to causes of action accruing on or after that date.

SENATE BILL 293:
Sales Representative Commissions Revisions

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Thomas
Date:	May 15, 2003	**Summary by:**	Steven Rose
Version:	2		Committee Counsel

SUMMARY: ***SB 293 amends Article 27 of Chapter 66 of the General Statutes to expand its coverage to in-state principals and to principals who contract for the sale of services as well as products. It shortens the time frame for commission payments where the business relationship between a sales representative and a principal has been terminated. It increases the amount of punitive damages a sales representative may receive where a principal has refused to pay commissions that are due or for wrongful revocation of a commission offer. It also creates a cause of action by a sales representative where the principal has revoked a revocable offer of commission for the purpose of avoiding payment of the commission.***

CURRENT LAW: Article 27 of Chapter 66 is loosely modeled after the Model Commission Protection Act (drafted by the Manufacturers' Agents National Association). It currently only applies to principals who do not have a permanent or fixed place of business within North Carolina. A principal is a person or business entity that manufactures, produces, imports, or distributes a tangible product; contracts with a sales representative to solicit orders for the product, and compensates the sales representative by a commission. A sales representative is not an employee of the principal, but does contract to solicit orders for a principal's products and is compensated by commission. A sales representative does not include a person who takes orders for sale of a product at retail, such as a door-to-door sales person.

Within 45 days of the termination of a commission contract (for any reason other than malfeasance by the sales representative) the principal is supposed to pay any commissions due. If the principal refuses to pay the commissions, the sales representative my recover the amount due plus punitive damages not to exceed the amount of commissions owed. If the sales representative brings a frivolous action to recover sales commissions, the court may charge the sales representative with court costs and attorney fees. The provisions of Article 27 may not be waived.

BILL ANALYSIS:

G.S. 66-190. Definitions is amended to:

- Expand the coverage of the act to principals with offices inside North Carolina. Previously, the law only applied to out-of-state principals.
- Expand the definition of "principal" to include a business that sells services.
- Modify the definition of "sales representative" too more closely conform to the Model Commission Protection Act. It would not apply to door-to-door sales representatives who must provide consumers with a 3 day right to terminate a sales contract.
- Define "termination" and "terminate" to mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party.

G.S. 66-109.1 - Written Contracts is added. It provides that contracts between sales representatives and principals shall be in writing. However, the lack of a written contract would not be a bar to a cause of action or remedy to a sales representative.

G.S. 66-191 is amended to shorten the timeframe for payment of commissions where a contract for compensation has been terminated between a sales representative and a principal. Currently, the principal has 45 days to pay the commissions. Under the bill, the principal would have 30 days from the date of termination to pay commissions that were due as of the termination date. The principal would have to pay all commissions that come due after the termination date within 14 days after they become due. The act would also require that if the sales representative sends a written demand for payment to a principal by certified mail, the principal must respond in writing within 30 days of receipt of the demand.

G.S. 66-192 is the civil liability section. It is amended to allow up to three times the amount of commissions due the sales representative as punitive damages. It also provides that if the principal has failed to respond in writing to the sales representative's written demand for payment, the principal shall be presumed to have acted willfully and in bad faith. Given this presumption, a court would have to award punitive damages unless the principal rebutted the presumption.

G.S. 66-192.1 – Revocable offers of commission; entitlement is added as a new section. It creates a cause of action on behalf of the sales representative where a principal makes a revocable offer of commission and revokes the offer for the purpose of avoiding payment of the commission. In order to prevail, the sales representative would have to show:

- That the principal revoked the offer of commission;
- That the revocation was for the purpose of avoiding the payment of the commission;
- That the revocation occurred after the principal obtained a written order for the principal's product or service because of the efforts of the sales representative; and
- The principal's product or service is provided to and paid for by the customer.

The act becomes effective October 1, 2003 and applies to causes of action accruing on or after that date.

Kory Goldsmith, Committee Counsel to the Senate Judiciary II Committee, contributed substantially to this summary.

S293-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 911

Short Title: No Profit from Crime. (Public)

Sponsors: Representatives Eddins, Holliman (Primary Sponsors); and Gillespie.

Referred to: Judiciary I.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIME VICTIMS WITH A CAUSE OF ACTION TO RECOVER PROFITS RECEIVED AS A RESULT OF THE CRIMES COMMITTED AGAINST THEM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15B of the General Statutes is amended by adding a new section to read:

"**§ 15B-26. Profit received as a result of commission of a crime.**

(a) The General Assembly finds that the State has a compelling interest in ensuring that persons convicted of crimes do not profit from those crimes, and that victims of crime are compensated by those who have harmed them.

The General Assembly further finds that these compelling interests outweigh any interest of the offender and the offender's representatives may have in obtaining property or otherwise profiting as a result of having committed a crime. The General Assembly also finds that these compelling interests outweigh a third party's right to realize profits from the sale of crime memorabilia, to the extent that those profits would not have been realized were it not for the commission of the crime.

(b) Definitions. – As used in this section:

(1) 'Convicted' includes persons convicted by entry of a plea of guilty or no contest, persons convicted after trial, and persons found not guilty by reason of insanity.

(2) 'Eligible person' includes any of the following persons:

a. A victim of the particular crime in question as defined in G.S. 15B-2(13);

b. A surviving spouse, parent, or child of a deceased victim of the crime; or

c. Any other person dependent for the person's principal support upon a deceased victim of the crime.

However, 'eligible person' does not include the offender who committed the criminally injurious conduct or an accomplice to that offender.

(3) 'Profit from a crime' includes:

a. Any property obtained through, or any income generated from, the commission of a crime for which the offender's was convicted;

b. Any property obtained by, or income generated from, the sale, conversion, or exchange of proceeds of a crime for which the offender was convicted, including any gain realized by that sale, conversion, or exchange; and

c. Any property that the offender obtained, or income generated, as a result of the offender's having committed the crime for which the offender was convicted, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for, the commission of the crime, as well as any property obtained by, or income generated from, the sale, conversion, or exchange of that property and any gain realized by that sale, conversion, or exchange.

(4) 'Profiteer of a crime' means any person, including the offender, who sells or transfers for profit any memorabilia or other property or thing of the offender, the value of which is enhanced by the notoriety gained from the commission of the crime for which the offender was convicted. 'Profiteer of a crime' shall not include a media entity reporting on the offender or on the sale of memorabilia or other property of the offender, nor shall it include a person selling books, magazines, newspapers, films, or sound recordings, or giving interviews or making live presentations of any type, in the exercise of that person's rights under the First Amendment to the United States Constitution. 'Profiteer of a crime' shall also not include a person selling or transferring any other expressive work protected by the First Amendment unless the sale or transfer is primarily for a commercial or speculative purpose.

(c) Notice of Profit From Crime. – If a person has been convicted of a crime, any person who knowingly contracts for, pays, or agrees to pay any profit from a crime to that person, and any profiteer of that crime, shall give written notice to the Commission of the payment or obligation to pay within 30 days after discovering that payment or intended payment is a profit from a crime or that the person is a profiteer of a crime, and shall submit a copy of any contract or other agreement giving rise to the profit from a crime or the profit realized by the profiteer of a crime. The Commission, upon receipt of notice of a contract, an agreement to pay, or payment of profit from a crime, or that a person is a profiteer of a crime, shall notify all known eligible persons of the existence of the profit.

(d) Constructive Trust; Right of Action. – All profits from a crime and profits realized by profiteers of a crime shall be subject to a constructive trust for the benefit of eligible persons. A constructive trust established pursuant to this subsection shall continue for a period of five years from the date that profits from a crime or profits by a profiteer of a crime are realized. An eligible person may bring an action:

(1) To recover profits from a crime from a person convicted of a crime, the legal representative of that convicted person, or a person to whom profits of a crime have been transferred. If an eligible person brings an action within the five-year trust period, the trust character of the property shall continue until the conclusion of the action. The court may award an eligible person bringing an action pursuant to this subdivision a judgment of an amount no more than the total value of the profit from the crime minus any claims pursuant to subdivisions (1) and (2) of subsection (e) of this section.

(2) To recover profits realized from a profiteer of a crime. If an eligible person brings an action within the five-year trust period, the trust character of the property shall continue until the conclusion of the action. The court may award an eligible person bringing an action pursuant to this subdivision a judgment of an amount no more than the total value by which the sale or transfer was enhanced by the notoriety gained from the commission of the offense for which the offender was convicted minus any claims pursuant to subdivisions (1) and (2) of subsection (e) of this section.

An action pursuant to this subsection may be brought in the superior court of the county in which the eligible person resides, of the county in which the offender resides, or of the county in which the profits from crime or the profits realized by a profiteer of a crime reside.

(e) Priority of Claims. – Notwithstanding any other provision of law, claims on profits from crime and profits realized by profiteers of a crime subject to a constructive trust as provided in subsection (d) of this section shall have the following priorities:

(1) A court order of restitution.

(2) Subrogation by the Crime Victims Compensation Fund pursuant to G.S. 15B-18.

(3) A civil judgment of an eligible party.

At the end of the five-year trust period, any profits from a crime or profits realized by a profiteer of a crime that remain in the constructive trust after any claims shall be transferred to the Crime Victims Compensation Fund.

(f) Conviction Overturned or Pardon Issued. – If the conviction for the criminal offense from which profits from a crime are realized or profits by a profiteer of a crime are realized is reversed, vacated, or set aside, or if the offender has been granted an unconditional pardon of innocence for the criminal offense, the constructive trust established pursuant to subsection (d) of this section shall be extinguished, and any monies distributed pursuant to this section shall be returned to the rightful owner.

(g) Notice of Action. – Upon filing an action under subsection (d) of this section, an eligible person shall give notice to the Commission of the filing by delivering a copy of the complaint to the Commission. The eligible person may also give notice to the Commission prior to filing the action in order to allow the Commission to apply for any appropriate remedies that are otherwise authorized to be invoked prior to commencement of an action.

(h) Responsibilities of the Commission. – Upon receipt of a copy of a complaint, the Commission shall immediately take action as necessary to:

(1) Notify all other known eligible persons of the alleged existence of profit from a crime or profit realized by a profiteer of a crime by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission;

(2) Publish, at least once a year for three years from the date it is initially notified by an eligible person under subsection (g) of this section, a legal notice in newspapers of general circulation in the county in which the crime was committed and in counties contiguous to that county advising any eligible person of the existence of profit from a crime or profit realized by a profiteer of a crime. The Commission may, in its discretion, provide for additional notice as it deems necessary; and

(3) Avoid the wasting of the assets identified in the complaint as the newly discovered profit from a crime or profit realized by a profiteer of a crime in any manner consistent with subsection (g) of this section.

(i) Other Remedies. – The Commission, acting on behalf of all eligible persons, shall have the right to apply for any and all remedies that are also otherwise available to an eligible person bringing an action under subsection (d) of this section, such as attachment, injunction, and receivership. On a motion for a remedy, the moving party shall state whether any other remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

(j) Evasive Action Void. – Any action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this section shall be void as against the public policy of this State.

(k) Penalties. – Any person who willfully fails to do any of the following is subject to a civil penalty of not less than ten thousand dollars ($10,000) for each offense and not more than an amount equal to three times the contract amount:

(1) Give notice to the Commission of profit from a crime or profit realized by a profiteer of a crime within 30 days as required by subsection (c) of this section; or

(2) Submit a copy of the contract or other agreement described in subsection (c) of this section.

If two or more persons are subject to the penalties provided in this section, the persons shall be jointly and severally liable for the payment of the penalty imposed.

After providing notice and opportunity to be heard, the Commission may by order assess the penalties prescribed by this subsection. If the penalties are not paid within 30 days from the date of the order, any penalty assessed under this section shall bear interest at the rate of one percent (1%) per month, compounded monthly. An action to recover a civil penalty assessed under this section may be brought by the Commission within six years after the cause of action accrues.

The clear proceeds of penalties assessed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act is effective when it becomes law and applies to profits realized on or after that date.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 12, 2003

The House Committee on Judiciary IV met on June 10, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier Vice-Chair Bonner Stiller, Representatives Bowie, Goforth, Haire, Jeffus, Justus, and Kiser. Staff Counsel Trina Griffin, Dianna Jessup and Steve Rose were in attendance. A Visitor Registration list is attached and made part of these minutes.

SB 716 A BILL TO BE ENTITLED AN ACT TO REPEAL THE UNIFORM ARBITRATION ACT AND TO ENACT THE REVISED UNIFORM ARBITRATION ACT. Senator Hartsell was not able to attend this meeting due to a conflict. Chairman Munford called on Dianna Jessup to help explain this bill which included several technical changes that were incorporated to bring this original act up to date and uniform with other states. Joe Diab with the North Carolina Bar spoke in support of this bill. Bill Hale with Jordan Price spoke in support of this bill. After adopting two amendments the committee gave the PCS a favorable report, unfavorable as to the original bill.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

J. IV — 6-12-03

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
BILL HALE	JORDAN PRICE
Lucius Fullon	Attorney
Michelle Frazier	NC Bar Ass'n
Joe Diab	NC Bar Ass'n
[illegible]	Capitol Group
Jeremy Wilson	Rep. Hall - Intern
Mary Leech Singletary	Intern - Rep. Jeffus
Amy Dobson	NC State Watch
Camille Stell	KCLH

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

June 12, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 161	Restrict Court Ordered Arbitration	Sen. Clodfelter
SB 716	Revised Uniform Arbitration Act	Sen. Hartsell

SENATE BILL 716:
Revised Uniform Arbitration Act

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Hartsell
Date:	May 13, 2003	**Summary by:**	Dianna Jessup
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 716 would repeal the current Uniform Arbitration Act, adopted in 1973 and replace it with the Revised Uniform Arbitration Act (RUAA). The new RUAA would govern agreements to arbitrate made on or after January 1, 2004. The bill comes at the request of the North Carolina Bar Association.***

CURRENT LAW: Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy arising after the contract is signed. If a party refuses to arbitrate, the court decides if there is a valid agreement to arbitrate. If the parties agree to arbitrate, or if the court has determined that a valid agreement to arbitrate exists, the court appoints arbitrators. The arbitrators conduct a hearing in which the parties present evidence and witnesses. The parties have a right to be represented by an attorney at any arbitration proceeding or hearing. The majority of the arbitrators render a decision in the form of an award, which is in writing and must be sent to each party. When the arbitrators' award is finalized, a party may apply to the court to confirm, vacate, modify, or correct the award. Awards can be vacated, modified, or corrected only under certain, statutorily-prescribed circumstances. Orders confirming, modifying or correcting an award are docketed and enforced as any other judgment or decree.

BILL ANALYSIS: The bill would repeal current law governing arbitration agreements and proceedings and replace it with a new Article 45C of Chapter 1 of the General Statutes, the RUAA. As in current law, under the RUAA, persons can agree to arbitrate their disputes, and a court determines whether a dispute is subject to an agreement to arbitrate. The court appoints arbitrators, who conduct a hearing and determine an appropriate award by majority vote. Awards are confirmed, vacated, modified, or corrected by the court, and orders confirming, modifying, or correcting awards become judgments. New provisions would:

- Permit a court and an arbitrator to issue provisional remedies, depending upon when the application for a provisional remedy is requested.
- Specify that arbitration is initiated when a party gives written notice to the other party of the nature of the controversy and the remedy sought. Notice must be as provided in the agreement, or if the agreement is silent, by registered or certified mail or by service otherwise authorized in a civil action.
- Allow a court to consolidate arbitration proceedings.
- Require arbitrators to disclose facts reasonably likely to affect their impartiality.
- Make an arbitrator or arbitration organizations immune from civil actions to the same extent as a judge. However, if an arbitrator failed to disclose facts reasonable likely to affect the arbitrator's impartiality, the award could be vacated.
- Make arbitrators or representatives of arbitration organizations incompetent to testify in another proceeding.

- Grant arbitrators or representatives of arbitration organizations discretion to order discovery, issue protective orders, decide motions for summary dispositions, hold prehearing conferences and otherwise manage the arbitration process.
- Allow a court to enforce a preaward ruling by an arbitrator unless the court vacates, modifies, or corrects the award for statutory reasons such as corruption, fraud, undue duress, mathematical miscalculation or evident mistake.
- Specify the remedies an arbitrator may award. Attorney fees and punitive damages would be allowed if provided for in the arbitration agreement, the evidence justifies a claim for the award, and the award would be allowed in a civil action involving the same claim.
- Allow a court to award attorneys' fees and costs to a prevailing party in court review of an arbitrator's award.
- Make many sections of the RUAA not be waivable.

The RUAA would apply to agreements to arbitrate entered into on and after January 1, 2004, but would apply to any arbitration agreement after January 1, 2006 regardless of when the agreement was made.

BACKGROUND: The RUAA is a model act promulgated by the National Conference of Commissioners on Uniform State Laws. According to the Commissioners website, 5 states have adopted the RUAA (Hawaii, Nevada, New Mexico, North Dakota and Utah) and 14 states are considering legislation to adopt it.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 716

Judiciary II Committee Substitute Adopted 4/24/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S716-CSSW-52 [v.3]

Short Title: Revised Uniform Arbitration Act. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE UNIFORM ARBITRATION ACT AND TO ENACT THE REVISED UNIFORM ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 45A of Chapter 1 of the General Statutes is repealed.

SECTION 2. Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 45C.

"Revised Uniform Arbitration Act.

"**§ 1-569.1. Definitions.**

The following definitions apply in this Article:

(1) 'Arbitration organization' means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) 'Arbitrator' means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) 'Court' means a court of competent jurisdiction in this State.

(4) 'Knowledge' means actual knowledge.

(5) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(6) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"**§ 1-569.2. Notice.**

(a) Except as otherwise provided in this Article, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in the ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or at another location held out by the person as a place of delivery of communications.

"**§ 1-569.3. When Article applies.**

(a) This Article governs an agreement to arbitrate made on or after January 1, 2004.

(b) This Article governs an agreement to arbitrate made before January 1, 2004, if all parties to the agreement or to the arbitration proceeding agree in a record that this Article applies.

"**§ 1-569.4. Effect of agreement to arbitrate; nonwaivable provisions.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this Article to the extent provided by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of G.S. 1-569.5(a), 1-569.6(a), 1-569.8, 1-569.17(a), 1-569.17(b), 1-569.26, or 1-569.28;

(2) Agree to unreasonably restrict the right under G.S. 1-569.9 to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under G.S. 1-569.12 to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right under G.S. 1-569.16 of a party to an agreement to arbitrate to be represented by an attorney at any proceeding or hearing under this Article, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties shall not vary the effect of, the requirements of this section or G.S 1-569.3(a), 1-569.7, 1-569.14, 1-569.18, 1-569.20(d), 1-569.20(e), 1-569.22, 1-569.23, 1-569.24, 1-569.25(a), 1-569.25(b), 1-569.29, 1-569.30, 1-569.31. Any waiver contrary to this section shall not be effective but shall not have the effect of voiding the agreement to arbitrate.

"**§ 1-569.5. Application for judicial relief.**

(a) Except as otherwise provided in G.S. 1-569.28, an application for judicial relief under this Article shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this Article shall be served in the manner provided

by law for the service of a summons in a civil action. Otherwise, notice of the motion shall be given in the manner prescribed by law or rule of court for serving motions in pending cases.

"**§ 1-569.6. Validity of agreement to arbitrate.**

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revoking a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

"**§ 1-569.7. Motion to compel or stay arbitration.**

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appeal or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement to arbitrate, it shall not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or because grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in a court, a motion under this section shall be made in that court. Otherwise a motion under this section may be made in any court as provided in G.S. 1-569.27.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

"**§ 1-569.8. Provisional remedies.**

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy if the matter is urgent and the arbitrator is not able to act in a timely manner or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive the right to arbitrate by making a motion under subsection (a) or (b) of this section.

"**§ 1-569.9. Initiation of arbitration.**

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested, and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack or insufficiency of notice.

"**§ 1-569.10. Consolidation of separate arbitration proceedings.**

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court shall not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

"**§ 1-569.11. Appointment of arbitrator; service as a neutral arbitrator.**

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall not serve as an arbitrator required by an agreement to be neutral.

"**§ 1-569.12. Disclosure by arbitrator.**

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or to the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under G.S. 1-569.23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court under G.S. 1-569.23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under G.S. 1-569.23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under G.S. 1-569.23(a)(2).

"**§ 1-569.13. Action by majority.**

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under G.S. 1-569.15(c).

"**§ 1-569.14. Immunity of arbitrator; competency to testify; attorneys' fees and costs.**

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by G.S. 1-569.12 shall not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and shall not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this State acting in a judicial capacity. This subsection shall not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under G.S. 1-569.23(a)(1) or (a)(2) if the movant makes a prima facie showing that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorneys' fees, costs, and other reasonable expenses of litigation.

(f) Immunity under this section shall not apply to acts or omissions that occur with respect to the operation of a motor vehicle.

"**§ 1-569.15. Arbitration process.**

(a) An arbitrator may conduct an arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding objects to the lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but shall not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified did not appear. The court, upon request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding may be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases to or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with G.S. 1-569.11 to continue the proceeding and to resolve the controversy.

(f) The rules of evidence shall not apply in arbitration proceedings, except as to matters of privilege or immunities.

"**§ 1-569.16. Representation by lawyer.**

A party to an arbitration proceeding may be represented by an attorney or attorneys.

"**§ 1-569.17. Witnesses; subpoenas; depositions; discovery.**

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit any discovery the arbitrator decides is appropriate under the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action

against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this State.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the protection of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this State.

(h) An arbitrator shall not have the authority to hold a party in contempt of any order the arbitrator makes under this section. A court may hold parties in contempt for failure to obey an arbitrator's order, or an order made by the court, pursuant to this section, among other sanctions imposed by the arbitrator or the court.

"**§ 1-569.18. Judicial enforcement of preaward ruling by arbitrator.**

(a) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under G.S. 1-569.19. A prevailing party may make a motion to the court for an expedited order to confirm the award under G.S. 1-569.22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under G.S. 1-569.23 or G.S. 1-569.24.

(b) An arbitrator's ruling under subsection (a) of this section that denies a request for a preaward ruling is not subject to trial court review. A party whose request under subsection (a) of this section for a preaward ruling has been denied by an arbitrator may seek relief under G.S. 1-569.20 and G.S. 1-569.21 from any final award the arbitrator renders.

(c) There is no right of appeal from trial court orders and judgments on preaward rulings by an arbitrator after a trial court award under this section, G.S. 1-569.19, and G.S. 1-569.28.

"**§ 1-569.19. Award.**

(a) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated as authorized by federal or State law by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may extend the time within or after the time specified or ordered. A party waives any objection that an award was not timely made unless that party gives notice of the objection to the arbitrator before receiving notice of the award.

"**§ 1-569.20. Change of award by arbitrator.**

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within 20 days after the moving party receives notice of the award.

(c) A party to the arbitration proceeding shall give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to G.S. 1-569.19(a), 1-569.22, 1-569.23, and 1-569.24.

"**§ 1-569.21. Remedies; fees and expenses of arbitration proceeding.**

(a) An arbitrator may award punitive damages or other exemplary relief if:

(1) The arbitration agreement provides for an award of punitive damages or exemplary relief;

(2) An award for punitive damages or other exemplary relief is authorized by law in a civil action involving the same claim; and

(3) The evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable expenses of arbitration if an award of expenses is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding. An arbitrator may award reasonable attorneys' fees if:

(1) The arbitration agreement provides for an award of attorneys' fees; and

(2) An award of attorneys' fees is authorized by law in a civil action involving the same claim.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order any remedies the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that a

remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under G.S. 1-569.22 or for vacating an award under G.S. 1-569.23.

(d) An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

"**§ 1-569.22. Confirmation of award.**

After a party to an arbitration receives notice of an award, the party may make a motion to the court for an order confirming the award. Upon motion of a party for an order confirming the award, the court shall issue a confirming order unless the award is modified or corrected pursuant to G.S. 1-569.20 or G.S. 1-569.24 or is vacated pursuant to G.S. 1-569.23.

"**§ 1-569.23. Vacating award.**

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

a. Evident partiality by an arbitrator appointed as a neutral arbitrator;

b. Corruption by an arbitrator; or

c. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon a showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to G.S. 1-569.15 so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in G.S. 1-569.9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section shall be filed within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, unless the moving party alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the moving party.

(c) If the court vacates an award on a ground other than that set forth in subdivision (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4), or (6) of subsection (a) of this section, the rehearing may be held before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as the time provided in G.S. 1-569.19(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award pursuant to G.S. 1-569.24 is pending.

"**§ 1-569.24. Modification or correction of award.**

(a) Upon motion made within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

"**§ 1-569.25. Judgment on award; attorneys' fees and litigation expenses.**

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On motion of a prevailing party to a contested judicial proceeding under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may award reasonable attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

"**§ 1-569.26. Jurisdiction.**

(a) A court of this State having jurisdiction over the controversy and the parties to an agreement to arbitrate may enforce the agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award under this Article.

"**§ 1-569.27. Venue.**

A motion pursuant to G.S. 1-569.5 shall be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this State, in the court of any county in this State. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs.

"**§ 1-569.28. Appeals.**

(a) An appeal may be taken from:

(1) An order denying a motion to compel arbitration;

(2) An order granting a motion to stay arbitration;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A final judgment entered pursuant to this Article.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action.

"**§ 1-569.29. Uniformity of application and construction.**

In applying and construing this Article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 1-569.30. Relationship to federal Electronic Signatures in Global and National Commerce Act.**

The provisions of this Article governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of these records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., or as otherwise authorized by federal or State law governing these electronic records or electronic signatures.

"**§ 1-569.31. Short title.**

This Article may be cited as the Revised Uniform Arbitration Act."

SECTION 3. G.S. 1-567.64 reads as rewritten:

"**§ 1-567.64. Modifying or vacating of awards.**

Subject to the relevant provisions of federal law or any applicable international agreement in force between the United States of America and any other nation or nations, an arbitral award may be vacated by a court only upon a showing that the award is tainted by illegality, or substantial unfairness in the conduct of the arbitral proceedings. In determining whether an award is so tainted, the superior court shall have regard to the provisions of this Article, and of ~~G.S. 1-567.13 and G.S. 1-567.14,~~ G.S. 1-569.23 and G.S. 1-569.24, but shall not engage in de novo review of the subject matter of the dispute giving rise to the arbitration proceedings."

SECTION 4. This act becomes effective January 1,2004 and applies to agreements to arbitrate made on or after that date. Agreements to arbitrate made before January 1, 2004 shall be governed by Article 45A of Chapter 1 of the General Statutes, subject to the provisions of G.S. 1-569.3(b) as enacted in this act.

Carla Farmer (Rep. Munford)

From: robert ferone [rferone@nc.rr.com]
Sent: Friday, June 20, 2003 2:02 PM
To: The Honorable Don Munford
Subject: PROTECT DOMESTIC VIOLENCE VICTIMS FROM BECOMING GUN VICTIMS

robert ferone
4013 English Laurel Lane
Raleigh, NC 27612-3722

June 20, 2003

The Honorable Don Munford
16 W Jones St
Raleigh, NC 27601-1096

Dear Representative Munford:

Please vote "Yes" on SB 919 and allow judges to prohibit domestic violence batterers from possessing firearms while they are subject to an order of protection.

This year alone our state has seen the death of 30 victims of domestic violence, 22 (73%) of which died due to gun violence. Senate Bill 919 is common sense legislation, which would allow judges the discretion to determine how best to protect victims of domestic violence.

This is a serious problem in North Carolina. Please vote "YES" and support this lifesaving measure to protect countless women and their families from living in fear that their batterer can legally possess a firearm and further abuse and potentially murder them.

Sincerely,

robert ferone

The Wake County Board of Elections met on June 23, 2003 and discussed the statutory change in the method of requesting absentee ballots (163-230.2). The Board is hopeful that House Bill 1147 (repealing 163-230.2) can be moved out of the House Committee on Rules, Calendar and Operations and acted upon this session. Your help would also be appreciated.

Current law: **§ 163-230.2. Method of requesting absentee ballots.**

(a) Valid Types of Written Requests. - A written request for an absentee ballot as required by G.S. 163-230.1 is valid only if it is written entirely by the requester personally, or is on a form generated by the county board of elections and signed by the requester. The county board of elections shall issue a request form only to the voter seeking to vote by absentee ballot or to a person authorized by G.S. 163-230.1 to make a request for the voter. If a requester, due to disability or illiteracy, is unable to complete a written request, that requester may receive assistance in writing that request from an individual of that requester's choice.

(b) Invalid Types of Written Requests. - A request is not valid if it does not comply with subsection (a) of this section. If a county board of elections receives a request for an absentee ballot that does not comply with subsection (a) of this section, the board shall not issue an application and ballot under G.S. 163-230.1.

(c) Rules by State Board. - The State Board of Elections shall adopt rules for the enforcement of this section.
(2002-159, s.57 (a).)

The above statutory provision was enacted last year. At a conference several weeks ago, the State Board staff informed the counties that this means the county offices must "know to whom each 'request form' is issued." We were informed that we must remove any request form from our web pages and can no longer send print copies to have the forms available at nursing or retirement homes, town halls, libraries, colleges, or in pamphlets for distribution to voters wishing to request an absentee by-mail ballot.

We (and other counties) created this type of form years ago as a means of insuring that those requesting absentee ballots included in their request all the information we needed in order to process the request. This is not an application. It is simply a request mailed in by the voter asking us to send them a ballot. With the ballot we mail an application (printed on the envelope), which must be signed and witnessed when the ballot is returned.

A substantial number of our requests are filed using this, or a similar form. To prohibit the use of such a form raises significant barriers to voters' ability to request a ballot by mail and will likely make it more difficult for county offices to efficiently and accurately respond to the requests we receive. In addition, if the voter calls in about an absentee request, the county will now have to take the time to print the form, prepare the envelope, and use 37 cents postage to mail a form to the voter that currently is readily accessible.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 23, 2003

The House Committee on Judiciary IV met on June 23, 2003, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice-Chair Bonner Stiller, Representatives Bowie, Goforth, Haire, Jeffus, Justus, and Kiser. Staff Counsel, Dianna Jessup was in attendance. A Visitor Registration list is attached and made part of these minutes.

HB 1072 A BILL TO BE ENTITLED AN ACT TO REGULATE PERSONS SEEKING TO ENGAGE IN BUSINESS AS TICKET BROKERS AND TO APPLY THE PRIVILEGE TAX ON AMUSEMENTS TO SERVICES PROVIDED BY TICKET BROKERS.

Representatives Gibson and Miner were called upon to explain the bill. Cassandra Skinner with North Carolina Crime Control and Public Safety was available for questions, however they did not have any stance for or against this legislation. Mr. Chip Killian with Moore and Van Allen was in attendance to represent the ticket brokers. A PCS was introduced to include the amount of tickets available to ticket brokers to a maximum of 5% per event. The PCS passed with Representative Joe Kiser voting in opposition of the bill. The PCS will be re-referred to Finance.

SB 716 A BILL TO BE ENTITLED AN ACT TO REPEAL THE UNIFORM ARBITRATION ACT AND TO ENACT THE REVISED UNIFORM ARBITRATION ACT. This bill was referred back to our committee for technical changes. Dianna Jessup, Staff Counsel addressed these changes and the PCS was adopted and received a favorable report, unfavorable as to the original bill.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JD IV — 06/23/03

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
W.C. Shadley	NCALE
Jon Williams	CCPS
Roger Hutchings	Boxing Commission
CASANDRA SKINNER	CCPS
Jeremy Wilson	Intern - Haire
Mary Lech Engelhard	Intern - Rep. Jeffus
Jennifer Williston	Bill Drafting
Zeb Alley	Alley Associates Inc
Chris Kilbride	Moore & Van Allen
Kent McMahon	Alley Associates, INC.
BILL HALE	JORDAN PRICE LAW FIRM
Michelle Frazier	NC Bar Ass'n
Michael Hamer	NCAE
Cynthia Bonner	NBO
John McElroy	Cobb offices

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

June 19, 2003
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 716	**Revised Uniform Arbitration Act**	**Updates Only**
HB 1072	**Regulate Ticket Brokers**	**Rep. Miner Gibson**

H 1

HOUSE BILL 1072

Short Title:	Regulate Ticket Brokers.	(Public)
Sponsors:	Representatives Miner, Gibson (Primary Sponsors); Barbee, Church, Sherrill, West, and Yongue.	
Referred to:	Finance.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REGULATE PERSONS SEEKING TO ENGAGE IN BUSINESS AS TICKET BROKERS AND TO APPLY THE PRIVILEGE TAX ON AMUSEMENTS TO SERVICES PROVIDED BY TICKET BROKERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 32A.

"Ticket Brokers.

"**§ 66-259.1. Definitions.**

The following definitions apply in this Article:

(1) Promoter. – A person, firm, or corporation who assumes the financial responsibilities of an athletic contest or entertainment event, including contracting with the principals, renting the site, and collecting the gate receipts.

(2) Ticket. – A certificate or token showing that a fare or admission fee has been paid.

(3) Ticket broker. – A person, firm, or corporation who resells one or more tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or exhibitions where the general public is admitted, and meets the requirements of registration and bonding pursuant to this Article.

(4) Ticket sales agent. – A person, firm, or corporation who sells one or more tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or exhibitions where the general public is admitted.

"**§ 66-259.2. Authority to resell tickets.**

(a) Except as otherwise provided in G.S. 66-259.3, it shall be unlawful for any person other than a ticket broker to resell or offer for resale any ticket of admission or other evidence of the right of entry to any athletic contest, concert, theatre performance, amusement, exhibition, or other entertainment event where the general public is admitted for a price in excess of the face value of the ticket. Notwithstanding G.S. 14-344(a), a ticket broker may charge a service fee not to exceed three dollars ($3.00) when tickets or other evidences of the right of entry are sold by a ticket sales agent authorized to do business by the municipality or county where the ticket sales agent's place of business is located. The owner, operator, lessee, or tenant of the property where the athletic contest or entertainment event is to be held or is being held or the promoter of the contest or event may charge or may authorize, in writing, any person to charge a service fee for the sale of any ticket, privilege, or license of admission in addition to the face value of the ticket. The writing granting authority to another to charge a service fee shall specify the amount of the service fee to be charged for the sale of each ticket, privilege, or license of admission.

(b) For any athletic contest or entertainment event described in G.S. 66-259.6, a promoter of a contest or event may contractually restrict the resale of a ticket to that contest or event by giving notice of the restriction on the back of the ticket. An owner, operator, lessee, or tenant of the property where the contest or event is to be held or is being held may contractually restrict the resale of the right of occupancy of any specific suite, seat, or seating area by giving notice in writing of the restriction.

"**§ 90-259.3. Exemptions.**

(a) Nothing in this Article or any other provision of law shall criminally prohibit a person who is the original purchaser of one or more tickets to an athletic contest or entertainment event covered under this Article and who purchased the tickets for personal use from reselling or offering for resale the tickets for any price. However, the person shall not sell or offer to sell the ticket within 1,500 feet of a ticket office for the contest or event or a public entrance to the contest or event.

(b) Nothing in this Article or any other provision of law shall criminally prohibit a person who, for personal use, purchases one or more tickets to an athletic contest or entertainment event from reselling or offering for resale any of the tickets in any zone within the restricted areas, as provided in this subsection or in G.S. 66-259.6(b), where the activity is authorized by the promoter of the contest or event and the owner or operator of the venue where the contest or event is being held or to be held.

(c) Charitable organizations and their employees and volunteers shall not be subject to the provisions of this Article when offering for sale any tickets of admission in a raffle, auction, or similar fund-raising activity for the benefit of the organization's charitable purposes.

"**§ 90-259.4. Requirements; issuance of registration; renewal; failure to comply.**

(a) Before placing any advertisement or making any other representations to prospective buyers in this State, a person seeking to practice or engage in business as a ticket broker shall satisfy the following:

(1) Maintain a permanent office or place of business in this State, excluding a post-office box, for the purpose of engaging in the business of a ticket broker.

(2) File for registration as a ticket broker with the Secretary of State on a form provided by the Secretary of State. The filing shall contain the following:

a. The name and place of business of the ticket broker.

b. A statement describing the activities of the ticket broker, including that the ticket broker:

1. Engages in the resale of admission tickets on a regular and continuous basis from one or more permanent locations within the State.

2. Maintains as the principal place of business activity at those locations the resale of tickets.

3. Maintains at those locations a listing of the names and addresses of all persons employed by the ticket broker.

(3) Obtain a bond issued by a surety company authorized to do business in this State in the amount of one hundred thousand dollars ($100,000) and file a copy of the bond with the Secretary of State. The bond shall be executed in favor of this State for the benefit of any person damaged by the ticket broker's breach of contract or any obligation arising from the breach or by any violation of this Article. Any person claiming against the bond may maintain an action at law against the ticket broker and the surety. The aggregate liability of the surety shall be for actual damages and shall not exceed the amount of the bond.

(4) Pay a registration fee not to exceed two thousand dollars ($2,000).

(b) Upon finding that a ticket broker has complied with the requirements of subsection (a) of this section, the Secretary of State shall issue to the ticket broker a certificate of registration. The ticket broker shall display the certificate of registration prominently in the ticket broker's place of business.

(c) Ticket brokers shall renew their registration annually pursuant to rules adopted by the Secretary of State and pay a renewal fee not to exceed two thousand dollars ($2,000).

"**§ 66-259.5. Disclosure; refunds.**

(a) A ticket broker shall satisfy the following disclosure requirements:

(1) Post at the ticket broker's established place of business the terms of the purchaser's right to cancel the purchase of a ticket from a ticket broker.

(2) Disclose to the purchaser the refund policy of the ticket broker if an athletic contest or entertainment event is canceled or not rescheduled.

(3) Disclose to the purchaser in writing the difference between the face value of the ticket and the amount that the ticket broker is charging for the ticket.

(4) Sell tickets only at the ticket broker's permanent office or place of business. However, delivery of one or more tickets after the

transaction is completed to a place other than the ticket broker's office or place of business shall not violate this subdivision.

(b) Unless otherwise provided in a written agreement between a ticket broker and a purchaser, a ticket broker shall refund any payment received for the purchase of a ticket under this Article if: (i) the purchaser returns the ticket and requests a cancellation of the sale within 36 hours from the time of purchase of the ticket; and (ii) the return is made more than 72 hours preceding the athletic contest or entertainment event.

(c) A ticket broker is required to refund any payment received for the purchase of a ticket under this Article if the athletic contest or entertainment event is canceled or not rescheduled.

(d) If a ticket broker guarantees, in writing, the delivery of a ticket or tickets to an athletic contest or entertainment event to a purchaser and fails to complete the delivery, the ticket broker shall, within 15 days from the date of purchase, provide a full refund of any amount paid by the purchaser and pay the purchaser a refund fee of three times the amount paid by the purchaser for each ticket.

"**§ 66-259.6. County and municipal ordinances.**

(a) For any single athletic contest or entertainment event that occurs no more than once annually or any series of athletic contests that occur no more than once annually and occur within a time period not exceeding 10 days, the municipal corporation where the contest, event, or series of contests is to be held, or if the contest, event, or series of contests is to be held in an unincorporated area, the county of the unincorporated area is authorized to enact by ordinance regulations governing ticket brokers for the contest, event, or series of contests that are more restrictive than the provisions of this Article.

(b) The municipal corporation where an athletic contest or entertainment event is to be held, or if the contest or entertainment event is to be held in an unincorporated area, the county of the unincorporated area is authorized to enact an ordinance prohibiting any person, whether a ticket broker or an original purchaser who purchased tickets for personal use, from reselling or offering for resale one or more tickets within 2,700 feet of a venue that seats or admits 15,000 or more persons.

"**§ 66-259.7. Prohibited conduct.**

(a) A ticket broker or an employee or agent of a ticket broker is prohibited from engaging in any of the following:

(1) Employing any agent or employee for the purpose of making future purchases of tickets from the owner, operator, lessee, or tenant of the property where an athletic contest or entertainment event is to be held.

(2) Acquiring or reselling in excess of one percent (1%) of the total tickets allocated for any contest or event.

(3) Reselling or offering for resale any ticket within 1,500 feet from the venue where an event or contest is to be held or is being held.

(4) Paying any consideration, directly or indirectly, to any promoter, operator, or ticket sales agent to acquire or assist in the acquisition of a ticket, except for the actual face value of the ticket and any service fee authorized by G.S. 14-344(a).

(b) A promoter, operator, or ticket sales agent may not receive any consideration, directly or indirectly, from any person, firm, or corporation to acquire or assist in the acquisition of a ticket, except for the actual face value of the ticket and any service fee authorized by G.S. 14-344(a).

"**§ 90-259.8. Disqualification for felony conviction.**

No person shall practice or engage in business as a ticket broker, or be employed as general manager for a person practicing or engaged in business as a ticket broker, who has been convicted of a felony and has not been pardoned or had his or her civil rights restored.

"**§ 90-259.9. Violations.**

(a) Civil Penalties. – The Secretary of State may issue an order against a certificate holder or any other person who willfully violates any provision of this Article or rules adopted by the Secretary of State. Orders issued by the Secretary of State may include the following:

(1) An order requiring the certificate holder or other person to cease and desist from violating any provision of this Article.

(2) An order suspending or revoking the ticket broker's certificate of registration.

(3) An order imposing a civil penalty of up to one thousand dollars ($1,000) for each violation of this Article.

No order under this subsection may be entered without giving the certificate holder or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

Proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. – A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney who may, with or without reference, institute the appropriate criminal proceedings.

(c) Injunction. – Whenever it appears to the Secretary of State that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule adopted by the Secretary of State, the Secretary of State may bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

"**§ 90-259.10. Rules.**

The Secretary of State may, in accordance with Chapter 150B of the General Statutes, adopt rules necessary to carry out the provisions of this Article."

SECTION 2. G.S. 14-344 reads as rewritten:

"**§ 14-344. Sale of admission tickets in excess of printed price.**

(a) Any person, firm, or corporation shall be allowed to add a reasonable service fee to the face value of the tickets sold, and the person, firm, or corporation which sells or resells such tickets shall not be permitted to recoup funds greater than the combined face value of the ticket, tax, and the authorized service fee. This service fee may not

exceed three dollars ($3.00) for each ticket except that a promoter or operator of the property where the event is to be held and a ticket sales agency may agree in writing on a reasonable service fee greater than three dollars ($3.00) for the first sale of tickets by the ticket sales agent. This service fee may be a pre-established amount per ticket or a percentage of each ticket. The existence of the service fee shall be made known to the public by printing or writing the amount of the fee on the tickets which are printed for the event. Any person, firm or corporation which sells or offers to sell a ticket for a price greater than the price permitted by this section shall be guilty of a Class 2 misdemeanor.

(b) This section shall not apply to sales pursuant to Article 32A of Chapter 66 of the General Statutes."

SECTION 3. G.S. 105-37.1 reads as rewritten:

"**§ 105-37.1. Dances, athletic events, shows, exhibitions, and other entertainments.**

(a) Scope. – A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:

(1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.

(2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.

(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.

(a1) Ticket Brokers. – A privilege tax is imposed on the net receipts of a person who is engaged in the business of ticket brokering as defined under Article 32A of Chapter 66 of the General Statutes. For the purposes of this subsection, "net receipts" means the gross receipts less the face value of the tickets sold.

(b) Rate and Payment. – The rate of the privilege tax is three percent (3%) of the gross receipts from the activities described in subsection (a) of this ~~section.~~section and three percent (3%) of the net receipts from the activities described in subsection (a1) of this section. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month.

(c) Advance Report. – A person who owns or controls a performance, show, or exhibition subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the performance, show, or exhibition. The statement must be filed no less than five days before the first performance, show, or exhibition in this State.

(d) Local Taxes. – Cities may levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section; however, the tax may not exceed twenty-five dollars ($25.00). Cities may levy a license tax on a person taxed under subdivision (a)(3) of this section; however, the tax may not exceed twenty-five dollars ($25.00) for each day or part of a day the performance, show, or exhibition is given at each location

Counties may not levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section. Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city.

Neither a county nor a city may levy a license tax on a person taxed under subsection (a1) of this section."

SECTION 4. Section 3 of this act becomes effective July 1, 2003, and applies to tickets sold on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1072:
Regulate Ticket Brokers.

BILL ANALYSIS

Committee: House Judiciary IV
Date: June 19, 2003
Version: PCS for 1st Edition H1072-CSLUf-4 [v.21]

Introduced by: Reps. Gibson and Miner
Summary by: Trina Griffin, Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 1072 does the following:

- *It amends Article 68 of Chapter 143 of the General Statutes by renaming the North Carolina State Boxing Commission the "North Carolina State Boxing and Entertainment Commission."*
- *It creates a new Part 2 in Article 68, which sets out the regulation of ticket brokers by the Commission.*
- *It assesses a 3% privilege tax on the brokerage fee charged by a ticket broker. The tax would become effective October 1, 2003, and apply to tickets sold on or after that date.*
- *It authorizes a study on the effectiveness of regulating ticket brokers.*
- *It creates a Class 2 misdemeanor for any person to alter, restore or counterfeit admission tickets or to use or possess an altered, restored, or counterfeit ticket.*

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1072 amends Article 68 of Chapter 143 of the General Statutes as follows:

SECTION 1 THROUGH 6 OF THE BILL rename the North Carolina State Boxing Commission the North Carolina State Boxing **and Entertainment** Commission and make conforming changes to Article 68.

SECTION 7 OF THE BILL adds a new Part to Article 68. This new Part provides for the regulation of ticket brokers by the Commission.

§143-659.2 defines the following terms: commission, promoter, ticket, ticket broker, and ticket sales agent.

§143-659.3 sets out the powers and duties of the Commission when regulating ticket brokers.

§143-659.4 makes it unlawful to resell any ticket of admission to any athletic contest, concert, theatre performance, amusement, exhibition, or other entertainment event where the general public is admitted for a price in excess of the face value of the ticket UNLESS THE TICKET IS SOLD BY A REGISTERED TICKET BROKER OR UNLESS THE SALES PRICE DOES NOT EXCEED THE FACE VALUE OF THE TICKET, PLUS TAX AND A SERVICE CHARGE OF $3.00.

Exempts charitable or non-profit organizations from the new Part when the organization is selling tickets to a raffle, auction, or other fund-raising activity for the benefit of the organization's purposes.

Authorizes a promoter to contractually restrict the resale of a ticket to a single athletic contest or entertainment event that occurs no more than once annually or to any series of athletic contest that occur no more than once annually and occur within a time period not exceeding 10 days. The owner, operator, lessee, or tenant of the property where the contest or event is held may contractually restrict the resale of the right of occupancy.

§143-659.5 sets out the following requirements for a person seeking to practice or engage in the business as a ticket broker:

- Maintain a permanent office or place of business in the State.
- File for registration as a ticket broker with Commission.
- Obtain a bond in the amount of $25,000.
- Pay a registration fee not to exceed $2,000. This fee must be renewed annually, and the renewal fee may not exceed $2,000.

§143-659.6 requires the ticket broker to satisfy certain disclosure requirements. The ticket broker must post at his place of business the purchaser's right to cancel the purchase. The broker must disclose on the ticket the broker's refund policy and the difference between the face value of the ticket and the amount the broker charges for the ticket. A broker may only sell tickets at the broker's office or place of business.

§143-659.7 prohibits a ticket broker or the broker's employee from engaging in certain conduct.

§143-659.8 disqualifies a person from practicing as a ticket broker if the person has been convicted of a felony and has not been pardoned or had his or her civil rights restored.

§143-659.9 authorizes the Commission to issue an order against a person who willfully violates the Part. The Commission may order the person to cease from violating the Part, suspend or revoke the certificate of registration, or impose a civil penalty of up to $25,000 for each violation. A willful violation of the Part constitutes a Class 2 misdemeanor. Before an order is entered, the registrant must be given 15 days' prior notice and an opportunity for a contested case hearing. The Commission may also seek an injunction.

SECTION 8 OF THE BILL creates a new Class 2 misdemeanor offense by making it unlawful for any person to alter, restore, or otherwise prepare in any manner an admission ticket with the intent that it be used or to sell, use, or possess an altered, restored, or counterfeit ticket. A Class 2 misdemeanor is punishable by 1-60 days and a maximum $1,000 fine, depending on prior convictions. This section becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SECTION 9 OF THE BILL clarifies that the new Part is not applicable to current law set out in G.S. 14-344. This statute authorizes a person, firm, or corporation to add a reasonable service fee to the face value of a ticket sold. This service fee may not exceed $3.00 for each ticket, except that a promoter or operator of the property where the event is to be held and a ticket sales agency may agree on a fee greater than $3.00 for the first sale of tickets by the ticket sales agent

SECTION 10 OF THE BILL imposes 3% privilege tax on the brokerage fee charged by a ticket broker. A brokerage fee is the difference between the amount charged by the ticket broker for the ticket and the face value of the ticket. A county or city may not levy a license tax on a ticket broker who is assessed the 3% privilege tax on the brokerage fee. This section becomes effective October 1, 2003, and applies to tickets sold on or after that date.

SECTION 11 OF THE BILL directs the Commission to conduct a study to determine the effectiveness of its regulation of ticket brokers and to make an interim report to the 2004 Regular Session and a final report to the 2005 General Assembly.

EFFECTIVE DATE: Except as otherwise indicated (See Sections 8 and 10), this act is effective when it becomes law.

Martha Walston, counsel for House Finance, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 1072
PROPOSED COMMITTEE SUBSTITUTE H1072-CSLUf-4 [v.21]

6/18/2003 6:14:56 PM

Short Title: Regulate Ticket Brokers. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO RENAME THE NORTH CAROLINA STATE BOXING COMMISSION, TO REGULATE PERSONS SEEKING TO ENGAGE IN BUSINESS AS TICKET BROKERS, TO APPLY THE PRIVILEGE TAX ON AMUSEMENTS TO SERVICES PROVIDED BY TICKET BROKERS, TO AUTHORIZE A STUDY ON THE EFFECTIVENESS OF REGULATING TICKET BROKERS, AND TO MAKE IT UNLAWFUL TO USE ALTERED OR COUNTERFEIT ADMISSION TICKETS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 68 of Chapter 143 of the General Statutes is amended by designating G.S. 143-650 through G.S. 143-658 as:

"Part 1. Boxing.".

SECTION 2. The title of Article 68 of Chapter 143 of the General Statutes reads as rewritten:

"Article 68.

North Carolina State Boxing and Entertainment Commission."

SECTION 3. G.S. 143-651(5) reads as rewritten:

"The following definitions apply in this Article:

...

(5) Commission. – The North Carolina State Boxing and Entertainment Commission.

...."

SECTION 4. G.S. 143-651(23b) reads as rewritten:

"The following definitions apply in this Article:

...

(23b) Sanctioned amateur match. – Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized

and approved by the North Carolina State Boxing and Entertainment Commission.

...."

SECTION 5. G.S. 143-652(a) reads as rewritten:

"**§ 143-652. State Boxing and Entertainment Commission.**

(a) Creation.– The North Carolina State Boxing and Entertainment Commission is created within the Department of Crime Control and Public Safety to regulate in North Carolina live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of six voting members and two nonvoting advisory members. All the members shall be residents of North Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of Crime Control and Public Safety. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(4a) One member shall be appointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

(5) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

(6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the

health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of Crime Control and Public Safety shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of Crime Control and Public Safety. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of Crime Control and Public Safety."

SECTION 6. G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing and Entertainment Commission Revenue Account.**

(a) License Fees. – The Commission shall collect the following license fees:

Announcer	$ 50.00
Contestant	$ 25.00
Judge	$ 50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$ 50.00
Timekeeper	$ 50.00
Second	$ 25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. – The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 – 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing and Entertainment Commission Revenue Account. – There is created the State Boxing and Entertainment Commission Revenue Account within the Department of Crime Control and Public Safety. ~~Monies [moneys]~~Moneys collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

SECTION 7. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new Part to read:

"Part 2. Ticket Brokers.

"**§ 143-659.1. Regulation of ticket brokers by Commission.**

In addition to regulating boxing pursuant to Part 1 of this Article, the North Carolina State Boxing and Entertainment Commission shall regulate those persons who engage in business as ticket brokers as provided in this Part.

"**§ 143-659.2. Definitions.**

The following definitions apply in this Part:

(1) Commission. – The North Carolina State Boxing and Entertainment Commission within the Department of Crime Control and Public Safety.

(2) Promoter. – A person, firm, or corporation assuming the financial responsibilities of an athletic contest or entertainment event, including contracting with the principals, renting the site, and collecting the gate receipts.

(3) Ticket. – A certificate or token showing that a fare or admission fee has been paid.

(4) Ticket broker. – A person, firm, or corporation engaging in the business of reselling one or more tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or exhibitions where the general public is admitted, and meets the requirements of registration and bonding pursuant to this Part. For purposes of this definition, a firm or corporation engaging in business as a ticket broker must meet the requirements of registration and bonding and each individual engaging in business as a ticket broker and employed by a firm or corporation registered as a ticket broker must meet the requirements of registration and bonding pursuant to this Part.

(5) Ticket sales agent. – A person, firm, or corporation engaging in the business of selling one or more tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or exhibitions where the general public is admitted.

"**§ 143-659.3. Powers and duties of Commission.**

(a) The Commission shall have the power and duty to:

(1) Adopt rules necessary to carry out the provisions of this Part in accordance with Chapter 150B of the General Statutes.

(2) Administer and enforce the provisions of this Part.

(3) Establish requirements for issuance of registrations required by this Part.

(4) Inspect the premises and records of ticket brokers registered pursuant to this Part.

(5) Receive and investigate complaints from members of the public.

(6) Conduct investigations for the purpose of determining whether violations of this Part or grounds for disciplining registrants exist.

(b) The Commission shall have the authority to inspect the premises and records of ticket brokers at any reasonable hour to determine compliance with the provisions of this Part pursuant to rules adopted by the Commission.

(c) The Commission shall keep a record of its proceedings relating to the issuance, renewal, denial, restriction, suspension, and revocation of registrations. This record shall also contain each registrant's name, business and home addresses, registration number, and the date the registration was issued.

(d) The Commission shall require each ticket broker to undergo an audit each year and submit a report of the audit to the Commission within 30 days after the audit is completed. The Commission shall adopt rules establishing guidelines for audits.

"**§ 143-659.4. Authority to resell tickets; exemptions; restrictions.**

(a) It shall be unlawful for any person, firm, or corporation to resell or offer for resale any ticket of admission or other evidence of the right of entry to any athletic contest, concert, theatre performance, amusement, exhibition, or other entertainment event where the general public is admitted for a price in excess of the face value of the ticket unless that person, firm, or corporation is registered as a ticket broker pursuant to the provisions of this Part, except that it shall not be unlawful for any person, firm or corporation to resell, offer for resale, purchase, or offer to purchase such a ticket for a price not to exceed the face value of the ticket, plus tax and a service fee of three dollars ($3.00).

(b) Charitable or non-profit organizations and their employees or agents and volunteers shall not be subject to the provisions of this Part when offering for sale any tickets of admission in a raffle, auction, or other fund-raising activity for the benefit of the organization's purposes.

(c) For any single athletic contest or entertainment event that occurs no more than once annually or any series of athletic contests that occur no more than once annually and occur within a time period not exceeding 10 days, a promoter of a contest or event may contractually restrict the resale of a ticket to that contest or event by giving notice of the restriction on the back of the ticket. An owner, operator, lessee, or tenant of the property where the contest or event is to be held or is being held may contractually restrict the resale of the right of occupancy of any specific suite, seat, or seating area by giving notice in writing of the restriction.

"**§ 143-659.5. Requirements for registration; issuance of registration; renewal; moneys credited to State Boxing and Entertainment Commission Revenue Account.**

(a) Before placing any advertisement or making any other representations to prospective buyers in this State, a person, firm, or corporation seeking to practice or engage in business as a ticket broker shall satisfy the following:

(1) Maintain a permanent office or place of business in this State, excluding a post-office box, for the purpose of engaging in the business of a ticket broker.

(2) File for registration as a ticket broker with the Commission on a form provided by the Commission. The filing shall contain the following:

a. The name and place of business of the ticket broker.

b. A statement describing the activities of the ticket broker, including that the ticket broker:

1. Engages in the resale of admission tickets on a regular and continuous basis from one or more permanent locations within the State.
2. Maintains as the principal place of business activity at those locations the resale of tickets.
3. Maintains at those locations a listing of the names and addresses of all persons employed by the ticket broker. In the case of a firm or corporation filing for registration as a ticket broker, the firm or corporation shall maintain at its location a listing of the names and addresses of all persons employed by the firm or corporation as registered ticket brokers.

(3) Obtain a bond issued by a surety company authorized to do business in this State in the amount of twenty-five thousand dollars ($25,000) and file a copy of the bond with the Commission. The bond shall be executed in favor of this State for the benefit of any person damaged by the ticket broker's breach of contract or any obligation arising from the breach or by any violation of this Part. Any person claiming against the bond may maintain an action at law against the ticket broker and the surety. The aggregate liability of the surety shall be for actual damages and shall not exceed the amount of the bond.

(4) Pay a registration fee established by the Commission not to exceed two thousand dollars ($2,000).

(b) Upon finding that a ticket broker has complied with the requirements of subsection (a) of this section, the Commission shall issue to the ticket broker a certificate of registration. The ticket broker shall display the certificate of registration prominently in the ticket broker's place of business.

(c) Ticket brokers shall renew their registration annually pursuant to rules adopted by the Commission and pay a renewal fee established by the Commission not to exceed two thousand dollars ($2,000).

(d) Moneys collected pursuant to the provisions of this Part shall be credited to the State Boxing and Entertainment Commission Revenue Account pursuant to G.S. 143-655(c), and applied to the administration of this Part.

"**§ 143-659.6. Disclosure; refunds.**

(a) A ticket broker shall satisfy the following disclosure requirements:

(1) Post at the ticket broker's established place of business the terms of the purchaser's right to cancel the purchase of a ticket from a ticket broker.

(2) Disclose to the purchaser, on the ticket or receipt, the refund policy of the ticket broker if an athletic contest or entertainment event is canceled or not rescheduled.

(3) Disclose to the purchaser, on the ticket or receipt, the difference between the face value of the ticket and the amount that the ticket broker is charging for the ticket.

(4) Sell tickets only at the ticket broker's permanent office or place of business. However, delivery of one or more tickets after the transaction is completed to a place other than the ticket broker's office or place of business shall not violate this subdivision.

(b) Unless otherwise provided in a written agreement between a ticket broker and a purchaser, a ticket broker shall refund any payment received for the purchase of a ticket under this Part if: (i) the purchaser returns the ticket and requests a cancellation of the sale within 36 hours from the time of purchase of the ticket; and (ii) the return is made more than 72 hours preceding the athletic contest or entertainment event.

(c) A ticket broker is required to refund, within 15 days from the date of purchase, any payment received for the purchase of a ticket under this Part if the athletic contest or entertainment event is canceled or not rescheduled.

(d) If a ticket broker guarantees, in writing, the delivery of a ticket or tickets to an athletic contest or entertainment event to a purchaser and fails to complete the delivery, the ticket broker shall, within 15 days from the date of purchase, provide a full refund of any amount paid by the purchaser and pay the purchaser a refund fee of three times the amount paid by the purchaser for each ticket.

"**§ 143-659.7. Prohibited conduct.**

(a) A ticket broker or an employee or agent of a ticket broker is prohibited from engaging in any of the following:

(1) Employing any agent or employee for the purpose of making future purchases of tickets from the owner, operator, lessee, or tenant of the property where an athletic contest or entertainment event is to be held.

(2) Acquiring or reselling in excess of one percent (1%) of the total tickets allocated for any contest or event. For purposes of this subdivision, a firm or corporation engaging in business as a ticket broker is limited to one percent (1%) of the total tickets allocated for any contest or event regardless of the number of ticket brokers employed by the firm or corporation.

(3) Reselling or offering for resale any ticket within 1,500 feet from the venue where an event or contest is to be held or is being held.

(4) Paying any consideration, directly or indirectly, to any promoter, operator, or ticket sales agent to acquire or assist in the acquisition of a ticket, except for the actual face value of the ticket and any service fee authorized by G.S. 14-344(a).

(b) A promoter, operator, or ticket sales agent may not receive any consideration, directly or indirectly, from any person, firm, or corporation to acquire or assist in the acquisition of a ticket, except for the actual face value of the ticket and any service fee authorized by G.S. 14-344(a).

"**§ 143-659.8. Disqualification for felony conviction.**

No person shall practice or engage in business as a ticket broker, or be employed as general manager for a person practicing or engaged in business as a ticket broker, who has been convicted of a felony and has not been pardoned or had his or her civil rights restored.

"§ 143-659.9. Violations.

(a) Civil Penalties. – The Commission may issue an order against a registrant or any other person who willfully violates any provision of this Part or rules adopted by the Commission. Orders issued by the Commission may include the following:

(1) An order requiring the registrant or other person to cease and desist from violating any provision of this Part.

(2) An order suspending or revoking the ticket broker's registration.

(3) An order imposing a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of this Part.

No order under this subsection may be entered without giving the registrant or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

Proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. – A willful violation of any provision of this Part shall constitute a Class 2 misdemeanor. The Commission may refer any available evidence concerning violations of this Part to the proper district attorney who may, with or without reference, institute the appropriate criminal proceedings.

(c) Injunction. – Whenever it appears to the Commission that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Part or any rule adopted by the Commission, the Commission may bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Part or any rule or order issued pursuant to this Part."

SECTION 8. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-16.1. Use of altered or counterfeit admission tickets or re-use of admission tickets.**

(a) It shall be unlawful for a person to:

(1) alter, restore, or otherwise prepare in any manner an admission ticket with intent to use or cause it to be used after it has already been used;

(2) knowingly or wilfully buy, sell, offer for sale, or give away a restored or altered ticket to a person;

(3) knowingly use a restored or altered ticket or have in his possession an altered or restored ticket, which has been previously used for the purpose for which it was originally intended; or

(4) prepare, buy, sell, offer for sale, or have in his possession a counterfeit ticket.

(b) Any person who violates this section shall be guilty of a Class 2 misdemeanor."

SECTION 9. G.S. 14-344 reads as rewritten:

"**§ 14-344. Sale of admission tickets in excess of printed price.**

(a) Any person, firm, or corporation shall be allowed to add a reasonable service fee to the face value of the tickets sold, and the person, firm, or corporation which sells

or resells such tickets shall not be permitted to recoup funds greater than the combined face value of the ticket, tax, and the authorized service fee. This service fee may not exceed three dollars ($3.00) for each ticket except that a promoter or operator of the property where the event is to be held and a ticket sales agency may agree in writing on a reasonable service fee greater than three dollars ($3.00) for the first sale of tickets by the ticket sales agent. This service fee may be a pre-established amount per ticket or a percentage of each ticket. The existence of the service fee shall be made known to the public by printing or writing the amount of the fee on the tickets which are printed for the event. Any person, firm or corporation which sells or offers to sell a ticket for a price greater than the price permitted by this section shall be guilty of a Class 2 misdemeanor.

(b) This section shall not apply to the resale of tickets pursuant to Part 2 of Article 68 of Chapter 143 of the General Statutes."

SECTION 10. G.S. 105-37.1 reads as rewritten:

"**§ 105-37.1. Dances, athletic events, shows, exhibitions, and other entertainments.**

(a) Scope. – A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:

(1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.

(2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.

(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.

(a1) Ticket Brokers. – A privilege tax is imposed on the brokerage fee charged by a ticket broker registered under Part 2 of Article 68 of Chapter 143 of the General Statutes. For the purposes of this section, 'brokerage fee' means the difference between the amount charged by the ticket broker for resale of the ticket and the face value of the ticket.

(b) Rate and Payment. – The rate of the privilege tax is three percent (3%) of the gross receipts from the activities described in subsection (a) of this ~~section.~~section and three percent (3%) of the brokerage fees described in subsection (a1) of this section. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the ~~gross~~ receipts or fees received during the previous month.

(c) Advance Report. – A person who owns or controls a performance, show, or exhibition subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the performance, show, or exhibition. The statement must be filed no less than five days before the first performance, show, or exhibition in this State.

(d) Local Taxes. – Cities may levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section; however, the tax may not exceed twenty-five dollars ($25.00). Cities may levy a license tax on a person taxed under subdivision

(a)(3) of this section; however, the tax may not exceed twenty-five dollars ($25.00) for each day or part of a day the performance, show, or exhibition is given at each location.

Counties may not levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section. Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city.

Neither a county nor a city may levy a license tax on a person taxed under subsection (a1) of this section."

SECTION 11. The North Carolina State Boxing and Entertainment Commission, as renamed and enacted in Section 2 of this act, shall conduct a study to determine the effectiveness of its regulation of ticket brokers and address any issues that relate to the registration of ticket brokers, enforcement of the provisions of Part 2 of Article 68 of Chapter 143 of the General Statutes, enacted in Section 7 of this act, and any other issues the Commission deems necessary. The Commission shall make an interim report of its findings and recommendations to the 2004 Regular Session of the 2003 Session of the General Assembly and a final report to the 2005 General Assembly.

SECTION 12. Section 8 of this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. Section 10 of this act becomes effective October 1, 2003, and applies to tickets sold on or after that date. The remainder of this act is effective when it becomes law.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
H.B. 1072 A BILL TO BE ENTITLED AN ACT TO REGULATE PERSONS SEEKING TO ENGAGE IN BUSINESS AS TICKET BROKERS AND TO APPLY THE PRIVILEGE TAX ON AMUSEMENTS TO SERVICES PROVIDED BY TICKET BROKERS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#),~~ ☒ which changes the title, unfavorable as to (the original bill) ~~(Committee Substitute Bill #),~~ (and recommendation that the committee substitute bill #) be re-referred to the Committee on Finance.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

For Rep. Hug. to original bill.

PCS to bill because of technical change.

Bill Change title. ?

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S **D**

SENATE BILL 716

Judiciary II Committee Substitute Adopted 4/24/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S716-CSSW-52 [v.3]

Short Title: Revised Uniform Arbitration Act. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE UNIFORM ARBITRATION ACT AND TO ENACT THE REVISED UNIFORM ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 45A of Chapter 1 of the General Statutes is repealed.

SECTION 2. Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 45C.

"Revised Uniform Arbitration Act.

"**§ 1-569.1. Definitions.**

The following definitions apply in this Article:

(1) 'Arbitration organization' means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) 'Arbitrator' means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) 'Court' means a court of competent jurisdiction in this State.

(4) 'Knowledge' means actual knowledge.

(5) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(6) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 1-569.2. Notice.

(a) Except as otherwise provided in this Article, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in the ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or at another location held out by the person as a place of delivery of communications.

"§ 1-569.3. When Article applies.

(a) This Article governs an agreement to arbitrate made on or after January 1, 2004.

(b) This Article governs an agreement to arbitrate made before January 1, 2004, if all parties to the agreement or to the arbitration proceeding agree in a record that this Article applies.

"§ 1-569.4. Effect of agreement to arbitrate; nonwaivable provisions.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this Article to the extent provided by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of G.S. 1-569.5(a), 1-569.6(a), 1-569.8, 1-569.17(a), 1-569.17(b), 1-569.26, or 1-569.28;

(2) Agree to unreasonably restrict the right under G.S. 1-569.9 to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under G.S. 1-569.12 to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right under G.S. 1-569.16 of a party to an agreement to arbitrate to be represented by an attorney at any proceeding or hearing under this Article, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties shall not vary the effect of, the requirements of this section or G.S 1-569.3(a), 1-569.7, 1-569.14, 1-569.18, 1-569.20(d), 1-569.20(e), 1-569.22, 1-569.23, 1-569.24, 1-569.25(a), 1-569.25(b), 1-569.29, 1-569.30, 1-569.31. Any waiver contrary to this section shall not be effective but shall not have the effect of voiding the agreement to arbitrate.

"§ 1-569.5. Application for judicial relief.

(a) Except as otherwise provided in G.S. 1-569.28, an application for judicial relief under this Article shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this Article shall be served in the manner provided

by law for the service of a summons in a civil action. Otherwise, notice of the motion shall be given in the manner prescribed by law or rule of court for serving motions in pending cases.

"**§ 1-569.6. Validity of agreement to arbitrate.**

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revoking a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

"**§ 1-569.7. Motion to compel or stay arbitration.**

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appeal or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement to arbitrate, it shall not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or because grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in a court, a motion under this section shall be made in that court. Otherwise a motion under this section may be made in any court as provided in G.S. 1-569.27.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

"**§ 1-569.8. Provisional remedies.**

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy if the matter is urgent and the arbitrator is not able to act in a timely manner or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive the right to arbitrate by making a motion under subsection (a) or (b) of this section.

"**§ 1-569.9. Initiation of arbitration.**

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested, and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack or insufficiency of notice.

"**§ 1-569.10. Consolidation of separate arbitration proceedings.**

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court shall not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

"**§ 1-569.11. Appointment of arbitrator; service as a neutral arbitrator.**

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall not serve as an arbitrator required by an agreement to be neutral.

"**§ 1-569.12. Disclosure by arbitrator.**

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or to the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under G.S. 1-569.23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court under G.S. 1-569.23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under G.S. 1-569.23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under G.S. 1-569.23(a)(2).

"**§ 1-569.13. Action by majority.**

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under G.S. 1-569.15(c).

"**§ 1-569.14. Immunity of arbitrator; competency to testify; attorneys' fees and costs.**

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by G.S. 1-569.12 shall not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and shall not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this State acting in a judicial capacity. This subsection shall not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under G.S. 1-569.23(a)(1) or (a)(2) if the movant makes a prima facie showing that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorneys' fees, costs, and other reasonable expenses of litigation.

(f) Immunity under this section shall not apply to acts or omissions that occur with respect to the operation of a motor vehicle.

"**§ 1-569.15. Arbitration process.**

(a) An arbitrator may conduct an arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding objects to the lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but shall not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified did not appear. The court, upon request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding may be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases to or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with G.S. 1-569.11 to continue the proceeding and to resolve the controversy.

(f) The rules of evidence shall not apply in arbitration proceedings, except as to matters of privilege or immunities.

"**§ 1-569.16. Representation by lawyer.**

A party to an arbitration proceeding may be represented by an attorney or attorneys.

"**§ 1-569.17. Witnesses; subpoenas; depositions; discovery.**

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit any discovery the arbitrator decides is appropriate under the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action

against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this State.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the protection of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this State.

(h) An arbitrator shall not have the authority to hold a party in contempt of any order the arbitrator makes under this section. A court may hold parties in contempt for failure to obey an arbitrator's order, or an order made by the court, pursuant to this section, among other sanctions imposed by the arbitrator or the court.

"**§ 1-569.18. Judicial enforcement of preaward ruling by arbitrator.**

(a) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under G.S. 1-569.19. A prevailing party may make a motion to the court for an expedited order to confirm the award under G.S. 1-569.22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under G.S. 1-569.23 or G.S. 1-569.24.

(b) An arbitrator's ruling under subsection (a) of this section that denies a request for a preaward ruling is not subject to trial court review. A party whose request under subsection (a) of this section for a preaward ruling has been denied by an arbitrator may seek relief under G.S. 1-569.20 and G.S. 1-569.21 from any final award the arbitrator renders.

(c) There is no right of appeal from trial court orders and judgments on preaward rulings by an arbitrator after a trial court award under this section, G.S. 1-569.19, and G.S. 1-569.28.

"**§ 1-569.19. Award.**

(a) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated as authorized by federal or State law by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may extend the time within or after the time specified or ordered. A party waives any objection that an award was not timely made unless that party gives notice of the objection to the arbitrator before receiving notice of the award.

"**§ 1-569.20. Change of award by arbitrator.**

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within 20 days after the moving party receives notice of the award.

(c) A party to the arbitration proceeding shall give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to G.S. 1-569.19(a), 1-569.22, 1-569.23, and 1-569.24.

"**§ 1-569.21. Remedies; fees and expenses of arbitration proceeding.**

(a) An arbitrator may award punitive damages or other exemplary relief if:

(1) The arbitration agreement provides for an award of punitive damages or exemplary relief;

(2) An award for punitive damages or other exemplary relief is authorized by law in a civil action involving the same claim; and

(3) The evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable expenses of arbitration if an award of expenses is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding. An arbitrator may award reasonable attorneys' fees if:

(1) The arbitration agreement provides for an award of attorneys' fees; and

(2) An award of attorneys' fees is authorized by law in a civil action involving the same claim.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order any remedies the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that a

remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under G.S. 1-569.22 or for vacating an award under G.S. 1-569.23.

(d) An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

"**§ 1-569.22. Confirmation of award.**

After a party to an arbitration receives notice of an award, the party may make a motion to the court for an order confirming the award. Upon motion of a party for an order confirming the award, the court shall issue a confirming order unless the award is modified or corrected pursuant to G.S. 1-569.20 or G.S. 1-569.24 or is vacated pursuant to G.S. 1-569.23.

"**§ 1-569.23. Vacating award.**

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

a. Evident partiality by an arbitrator appointed as a neutral arbitrator;

b. Corruption by an arbitrator; or

c. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon a showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to G.S. 1-569.15 so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in G.S. 1-569.9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section shall be filed within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, unless the moving party alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the moving party.

(c) If the court vacates an award on a ground other than that set forth in subdivision (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4), or (6) of subsection (a) of this section, the rehearing may be held before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as the time provided in G.S. 1-569.19(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award pursuant to G.S. 1-569.24 is pending.

"**§ 1-569.24. Modification or correction of award.**

(a) Upon motion made within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

"**§ 1-569.25. Judgment on award; attorneys' fees and litigation expenses.**

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On motion of a prevailing party to a contested judicial proceeding under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may award reasonable attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

"**§ 1-569.26. Jurisdiction.**

(a) A court of this State having jurisdiction over the controversy and the parties to an agreement to arbitrate may enforce the agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award under this Article.

"**§ 1-569.27. Venue.**

A motion pursuant to G.S. 1-569.5 shall be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this State, in the court of any county in this State. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs.

"**§ 1-569.28. Appeals.**

(a) An appeal may be taken from:

(1) An order denying a motion to compel arbitration;

(2) An order granting a motion to stay arbitration;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A final judgment entered pursuant to this Article.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action.

"**§ 1-569.29. Uniformity of application and construction.**

In applying and construing this Article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 1-569.30. Relationship to federal Electronic Signatures in Global and National Commerce Act.**

The provisions of this Article governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of these records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., or as otherwise authorized by federal or State law governing these electronic records or electronic signatures.

"**§ 1-569.31. Short title.**

This Article may be cited as the Revised Uniform Arbitration Act."

SECTION 3. G.S. 1-567.64 reads as rewritten:

"**§ 1-567.64. Modifying or vacating of awards.**

Subject to the relevant provisions of federal law or any applicable international agreement in force between the United States of America and any other nation or nations, an arbitral award may be vacated by a court only upon a showing that the award is tainted by illegality, or substantial unfairness in the conduct of the arbitral proceedings. In determining whether an award is so tainted, the superior court shall have regard to the provisions of this Article, and of ~~G.S. 1-567.13 and G.S. 1-567.14,~~ G.S. 1-569.23 and G.S. 1-569.24, but shall not engage in de novo review of the subject matter of the dispute giving rise to the arbitration proceedings."

SECTION 4. This act becomes effective January 1,2004 and applies to agreements to arbitrate made on or after that date. Agreements to arbitrate made before January 1, 2004 shall be governed by Article 45A of Chapter 1 of the General Statutes, subject to the provisions of G.S. 1-569.3(b) as enacted in this act.

Carla Farmer (Rep. Munford)

From: robert ferone [rferone@nc.rr.com]
Sent: Friday, June 20, 2003 2:02 PM
To: The Honorable Don Munford
Subject: PROTECT DOMESTIC VIOLENCE VICTIMS FROM BECOMING GUN VICTIMS

robert ferone
4013 English Laurel Lane
Raleigh, NC 27612-3722

June 20, 2003

The Honorable Don Munford
16 W Jones St
Raleigh, NC 27601-1096

Dear Representative Munford:

Please vote "Yes" on SB 919 and allow judges to prohibit domestic violence batterers from possessing firearms while they are subject to an order of protection.

This year alone our state has seen the death of 30 victims of domestic violence, 22 (73%) of which died due to gun violence. Senate Bill 919 is common sense legislation, which would allow judges the discretion to determine how best to protect victims of domestic violence.

This is a serious problem in North Carolina. Please vote "YES" and support this lifesaving measure to protect countless women and their families from living in fear that their batterer can legally possess a firearm and further abuse and potentially murder them.

Sincerely,

robert ferone

The Wake County Board of Elections met on June 23, 2003 and discussed the statutory change in the method of requesting absentee ballots (163-230.2). The Board is hopeful that House Bill 1147 (repealing 163-230.2) can be moved out of the House Committee on Rules, Calendar and Operations and acted upon this session. Your help would also be appreciated.

Current law: **§ 163-230.2. Method of requesting absentee ballots.**

(a) Valid Types of Written Requests. - A written request for an absentee ballot as required by G.S. 163-230.1 is valid only if it is written entirely by the requester personally, or is on a form generated by the county board of elections and signed by the requester. The county board of elections shall issue a request form only to the voter seeking to vote by absentee ballot or to a person authorized by G.S. 163-230.1 to make a request for the voter. If a requester, due to disability or illiteracy, is unable to complete a written request, that requester may receive assistance in writing that request from an individual of that requester's choice.

(b) Invalid Types of Written Requests. - A request is not valid if it does not comply with subsection (a) of this section. If a county board of elections receives a request for an absentee ballot that does not comply with subsection (a) of this section, the board shall not issue an application and ballot under G.S. 163-230.1.

(c) Rules by State Board. - The State Board of Elections shall adopt rules for the enforcement of this section.
(2002-159, s.57 (a).)

The above statutory provision was enacted last year. At a conference several weeks ago, the State Board staff informed the counties that this means the county offices must "know to whom each 'request form' is issued." We were informed that we must remove any request form from our web pages and can no longer send print copies to have the forms available at nursing or retirement homes, town halls, libraries, colleges, or in pamphlets for distribution to voters wishing to request an absentee by-mail ballot.

We (and other counties) created this type of form years ago as a means of insuring that those requesting absentee ballots included in their request all the information we needed in order to process the request. <u>This is not an application</u>. It is simply a request mailed in by the voter asking us to send them a ballot. With the ballot we mail an application (printed on the envelope), which must be signed and witnessed when the ballot is returned.

A substantial number of our requests are filed using this, or a similar form. To prohibit the use of such a form raises significant barriers to voters' ability to request a ballot by mail and will likely make it more difficult for county offices to efficiently and accurately respond to the requests we receive. In addition, if the voter calls in about an absentee request, the county will now have to take the time to print the form, prepare the envelope, and use 37 cents postage to mail a form to the voter that currently is readily accessible.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 716

Judiciary II Committee Substitute Adopted 4/24/03

Short Title: Revised Uniform Arbitration Act. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE UNIFORM ARBITRATION ACT AND TO ENACT THE REVISED UNIFORM ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 45A of Chapter 1 of the General Statutes is repealed.

SECTION 2. Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 45C.

"Revised Uniform Arbitration Act.

"**§ 1-569.1. Definitions.**

The following definitions apply in this Article:

(1) 'Arbitration organization' means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) 'Arbitrator' means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) 'Court' means a court of competent jurisdiction in this State.

(4) 'Knowledge' means actual knowledge.

(5) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(6) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"**§ 1-569.2. Notice.**

(a) Except as otherwise provided in this Article, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or at another location held out by the person as a place of delivery of such communications.

"**§ 1-569.3. When Article applies.**

(a) This Article governs an agreement to arbitrate made on or after January 1, 2004.

(b) This Article governs an agreement to arbitrate made before January 1, 2004, if all parties to the agreement or to the arbitration proceeding so agree in a record.

"**§ 1-569.4. Effect of agreement to arbitrate; nonwaivable provisions.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this Article to the extent provided by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of G.S. 1-569.5(a), 1-569.6(a), 1-569.8, 1-569.17(a), 1-569.17(b), 1-569.26, or 1-569.28;

(2) Agree to unreasonably restrict the right under G.S. 1-569.9 to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under G.S. 1-569.12 to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right under G.S. 1-569.16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this Article, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties shall not vary the effect of, the requirements of this section or G.S 1-569.3(a), 1-569.3(c), 1-569.7, 1-569.14, 1-569.18, 1-569.20(d), 1-569.20(e), 1-569.22, 1-569.23, 1-569.24, 1-569.25(a), 1-569.25(b), 1-569.29, 1-569.30, 1-569.31.

"**§ 1-569.5. Application for judicial relief.**

(a) Except as otherwise provided in G.S. 1-569.28, an application for judicial relief under this Article must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this Article must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner prescribed by law or rule of court for serving motions in pending cases.

"**§ 1-569.6. Validity of agreement to arbitrate.**

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

"**§ 1-569.7. Motion to compel or stay arbitration.**

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appeal or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement to arbitrate, it may not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or because grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in a court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in G.S. 1-569.27.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

"**§ 1-569.8. Provisional remedies.**

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration

proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy if the matter is urgent and the arbitrator is not able to act in a timely manner or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b) of this section.

"**§ 1-569.9. Initiation of arbitration.**

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested, and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack or insufficiency of notice.

"**§ 1-569.10. Consolidation of separate arbitration proceedings.**

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

"**§ 1-569.11. Appointment of arbitrator; service as a neutral arbitrator.**

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

"**§ 1-569.12. Disclosure by arbitrator.**

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or to the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under G.S. 1-569.23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court under G.S. 1-569.23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under G.S. 1-569.23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under G.S. 1-569.23(a)(2).

"**§ 1-569.13. Action by majority.**

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under G.S. 1-569.15(c).

"**§ 1-569.14. Immunity of arbitrator; competency to testify; attorneys' fees and costs.**

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by G.S. 1-569.12 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this State acting in a judicial capacity. This subsection does not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under G.S. 1-569.23(a)(1) or (a)(2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorneys' fees, costs, and other reasonable expenses of litigation.

(f) Immunity under this section does not apply to acts or omissions that occur with respect to the operation of a motor vehicle.

"**§ 1-569.15. Arbitration process.**

(a) An arbitrator may conduct an arbitration in such a manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified did not appear. The court, upon request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases to or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with G.S. 1-569.11 to continue the proceeding and to resolve the controversy.

(f) The rules of evidence do not apply in arbitration proceedings, except as to matters of privilege or immunities.

"**§ 1-569.16. Representation by lawyer.**

A party to an arbitration proceeding may be represented by a lawyer or lawyers.

"**§ 1-569.17. Witnesses; subpoenas; depositions; discovery.**

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this State.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the protection of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this State.

(h) An arbitrator does not have the authority to hold a party in contempt of any order the arbitrator makes under this section. A court may hold parties in contempt for failure to obey an arbitrator's order, or an order made by the court, pursuant to this section, among other sanctions imposed by the arbitrator or the court.

"**§ 1-569.18. Judicial enforcement of preaward ruling by arbitrator.**

(a) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under G.S. 1-569.19. A prevailing party may make a motion to the court for an expedited order to confirm the award under G.S. 1-569.22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under G.S. 1-569.23 or G.S. 1-569.24.

(b) An arbitrator's ruling under subsection (a) of this section that denies a request for a preaward ruling is not subject to trial court review; a party whose request under subsection (a) of this section for a preaward ruling has been denied by an arbitrator retains the right to seek relief under G.S. 1-569.20 and G.S. 1-569.21 from any final award the arbitrator renders.

(c) There is no right of appeal from trial court orders and judgments on preaward rulings by an arbitrator after a trial court award under this section, G.S. 1-569.19, and G.S. 1-569.28.

"**§ 1-569.19. Award.**

(a) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated as authorized by federal or State law by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the

time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless that party gives notice of the objection to the arbitrator before receiving notice of the award.

"**§ 1-569.20. Change of award by arbitrator.**

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to G.S. 1-569.19(a), 1-569.22, 1-569.23, and 1-569.24.

"**§ 1-569.21. Remedies; fees and expenses of arbitration proceeding.**

(a) An arbitrator may award punitive damages or other exemplary relief if:

(1) The arbitration agreement provides for an award of punitive damages or exemplary relief;

(2) An award for punitive damages or other exemplary relief is authorized by law in a civil action involving the same claim;

(3) The evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding. An arbitrator may award reasonable attorneys' fees if:

(1) The arbitration agreement provides for an award of attorneys' fees; and

(2) An award of attorneys' fees is authorized by law in a civil action involving the same claim.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under G.S. 1-569.22 or for vacating an award under G.S. 1-569.23.

(d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

"**§ 1-569.22. Confirmation of award.**

After a party to an arbitration receives notice of an award, the party may make a motion to the court for an order confirming the award, at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to G.S. 1-569.20 or G.S. 1-569.24 or is vacated pursuant to G.S. 1-569.23.

"**§ 1-569.23. Vacating award.**

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

a. Evident partiality by an arbitrator appointed as a neutral arbitrator;

b. Corruption by an arbitrator; or

c. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon a showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to G.S. 1-569.15 so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in G.S. 1-569.9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the movant receives notice of a modified or corrected award pursuant to G.S. 1-569.20, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in subdivision (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4), or (6) of subsection (a) of this section, the rehearing may be before

the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in G.S. 1-569.19(5) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award pursuant to G.S. 1-569.24 is pending.

"**§ 1-569.24. Modification or correction of award.**

(a) Upon motion made within 90 days after the movant receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the movant receives notice of a modified or corrected award pursuant to G.S. 1-569.20, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

"**§ 1-569.25. Judgment on award; attorneys' fees and litigation expenses.**

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On motion of a prevailing party to a contested judicial proceeding under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may add reasonable attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

"**§ 1-569.26. Jurisdiction.**

(a) A court of this State having jurisdiction over the controversy and the parties may enforce the agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award under this Article.

"**§ 1-569.27. Venue.**

A motion pursuant to G.S. 1-569.5 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion

may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this State, in the court of any county in this State. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

"**§ 1-569.28. Appeals.**

(a) An appeal may be taken from:

(1) An order denying a motion to compel arbitration;

(2) An order granting a motion to stay arbitration;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A final judgment entered pursuant to this Article.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

"**§ 1-569.29. Uniformity of application and construction.**

In applying and construing this Article, the Revised Uniform Arbitration Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 1-569.30. Relationship to federal Electronic Signatures in Global and National Commerce Act.**

The provisions of this Article governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., or as otherwise authorized by federal or State law governing such electronic records or electronic signatures.

"**§ 1-569.31. Short title.**

This Article may be cited as the Revised Uniform Arbitration Act."

SECTION 3. This act does not affect an action or proceeding that commences or accrues before Article 45C, as enacted in Section 2 of this act, becomes effective. Subject to G.S. 1-569.3, as enacted in Section 2 of this act, an arbitration agreement made before the effective date of this act is governed by Article 45A of Chapter 1 of the General Statutes.

SECTION 4. Section 1 of this act becomes effective January 1, 2006. The remainder of this act becomes effective January 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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SENATE BILL 716

Judiciary II Committee Substitute Adopted 4/24/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S716-CSSW-35 [v.2]

6/11/2003 10:30:18 AM

Short Title: Revised Uniform Arbitration Act. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE UNIFORM ARBITRATION ACT AND TO ENACT THE REVISED UNIFORM ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 45A of Chapter 1 of the General Statutes is repealed.

SECTION 2. Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 45C.

"Revised Uniform Arbitration Act.

"**§ 1-569.1. Definitions.**

The following definitions apply in this Article:

(1) 'Arbitration organization' means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) 'Arbitrator' means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) 'Court' means a court of competent jurisdiction in this State.

(4) 'Knowledge' means actual knowledge.

(5) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(6) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 1-569.2. Notice.

(a) Except as otherwise provided in this Article, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in the ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or at another location held out by the person as a place of delivery of communications.

"**§ 1-569.3. When Article applies.**

(a) This Article governs an agreement to arbitrate made on or after January 1, 2004.

(b) This Article governs an agreement to arbitrate made before January 1, 2004, if all parties to the agreement or to the arbitration proceeding agree in a record that this Article applies.

"**§ 1-569.4. Effect of agreement to arbitrate; nonwaivable provisions.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this Article to the extent provided by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of G.S. 1-569.5(a), 1-569.6(a), 1-569.8, 1-569.17(a), 1-569.17(b), 1-569.26, or 1-569.28;

(2) Agree to unreasonably restrict the right under G.S. 1-569.9 to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under G.S. 1-569.12 to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right under G.S. 1-569.16 of a party to an agreement to arbitrate to be represented by an attorney at any proceeding or hearing under this Article, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties shall not vary the effect of, the requirements of this section or G.S 1-569.3(a), 1-569.3(c), 1-569.7, 1-569.14, 1-569.18, 1-569.20(d), 1-569.20(e), 1-569.22, 1-569.23, 1-569.24, 1-569.25(a), 1-569.25(b), 1-569.29, 1-569.30, 1-569.31. Any waiver contrary to this section shall not be effective but shall not have the effect of voiding the agreement to arbitrate.

"**§ 1-569.5. Application for judicial relief.**

(a) Except as otherwise provided in G.S. 1-569.28, an application for judicial relief under this Article shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this Article shall be served in the manner provided

by law for the service of a summons in a civil action. Otherwise, notice of the motion shall be given in the manner prescribed by law or rule of court for serving motions in pending cases.

"**§ 1-569.6. Validity of agreement to arbitrate.**

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revoking a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

"**§ 1-569.7. Motion to compel or stay arbitration.**

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appeal or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement to arbitrate, it shall not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or because grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in a court, a motion under this section shall be made in that court. Otherwise a motion under this section may be made in any court as provided in G.S. 1-569.27.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

"**§ 1-569.8. Provisional remedies.**

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy if the matter is urgent and the arbitrator is not able to act in a timely manner or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive the right to arbitrate by making a motion under subsection (a) or (b) of this section.

"**§ 1-569.9. Initiation of arbitration.**

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested, and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack or insufficiency of notice.

"**§ 1-569.10. Consolidation of separate arbitration proceedings.**

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court shall not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

"**§ 1-569.11. Appointment of arbitrator; service as a neutral arbitrator.**

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall not serve as an arbitrator required by an agreement to be neutral.

"**§ 1-569.12. Disclosure by arbitrator.**

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or to the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under G.S. 1-569.23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court under G.S. 1-569.23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under G.S. 1-569.23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under G.S. 1-569.23(a)(2).

"**§ 1-569.13. Action by majority.**

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under G.S. 1-569.15(c).

"**§ 1-569.14. Immunity of arbitrator; competency to testify; attorneys' fees and costs.**

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by G.S. 1-569.12 shall not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and shall not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this State acting in a judicial capacity. This subsection shall not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under G.S. 1-569.23(a)(1) or (a)(2) if the movant makes a prima facie showing that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorneys' fees, costs, and other reasonable expenses of litigation.

(f) Immunity under this section shall not apply to acts or omissions that occur with respect to the operation of a motor vehicle.

"**§ 1-569.15. Arbitration process.**

(a) An arbitrator may conduct an arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding objects to the lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but shall not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified did not appear. The court, upon request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding may be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases to or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with G.S. 1-569.11 to continue the proceeding and to resolve the controversy.

(f) The rules of evidence shall not apply in arbitration proceedings, except as to matters of privilege or immunities.

"**§ 1-569.16. Representation by lawyer.**

A party to an arbitration proceeding may be represented by an attorney or attorneys.

"**§ 1-569.17. Witnesses; subpoenas; depositions; discovery.**

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit any discovery the arbitrator decides is appropriate under the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action

against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this State.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the protection of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this State.

(h) An arbitrator shall not have the authority to hold a party in contempt of any order the arbitrator makes under this section. A court may hold parties in contempt for failure to obey an arbitrator's order, or an order made by the court, pursuant to this section, among other sanctions imposed by the arbitrator or the court.

"**§ 1-569.18. Judicial enforcement of preaward ruling by arbitrator.**

(a) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under G.S. 1-569.19. A prevailing party may make a motion to the court for an expedited order to confirm the award under G.S. 1-569.22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under G.S. 1-569.23 or G.S. 1-569.24.

(b) An arbitrator's ruling under subsection (a) of this section that denies a request for a preaward ruling is not subject to trial court review. A party whose request under subsection (a) of this section for a preaward ruling has been denied by an arbitrator may seek relief under G.S. 1-569.20 and G.S. 1-569.21 from any final award the arbitrator renders.

(c) There is no right of appeal from trial court orders and judgments on preaward rulings by an arbitrator after a trial court award under this section, G.S. 1-569.19, and G.S. 1-569.28.

"**§ 1-569.19. Award.**

(a) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated as authorized by federal or State law by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may extend the time within or after the time specified or ordered. A party waives any objection that an award was not timely made unless that party gives notice of the objection to the arbitrator before receiving notice of the award.

"**§ 1-569.20. Change of award by arbitrator.**

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within 20 days after the moving party receives notice of the award.

(c) A party to the arbitration proceeding shall give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to G.S. 1-569.19(a), 1-569.22, 1-569.23, and 1-569.24.

"**§ 1-569.21. Remedies; fees and expenses of arbitration proceeding.**

(a) An arbitrator may award punitive damages or other exemplary relief if:

(1) The arbitration agreement provides for an award of punitive damages or exemplary relief;

(2) An award for punitive damages or other exemplary relief is authorized by law in a civil action involving the same claim; or

(3) The evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable expenses of arbitration if an award of expenses is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding. An arbitrator may award reasonable attorneys' fees if:

(1) The arbitration agreement provides for an award of attorneys' fees; and

(2) An award of attorneys' fees is authorized by law in a civil action involving the same claim.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order any remedies the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that a

remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under G.S. 1-569.22 or for vacating an award under G.S. 1-569.23.

(d) An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

"**§ 1-569.22. Confirmation of award.**

After a party to an arbitration receives notice of an award, the party may make a motion to the court for an order confirming the award. Upon motion of a party for an order confirming the award, the court shall issue a confirming order unless the award is modified or corrected pursuant to G.S. 1-569.20 or G.S. 1-569.24 or is vacated pursuant to G.S. 1-569.23.

"**§ 1-569.23. Vacating award.**

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

a. Evident partiality by an arbitrator appointed as a neutral arbitrator;

b. Corruption by an arbitrator; or

c. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon a showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to G.S. 1-569.15 so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in G.S. 1-569.9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section shall be filed within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, unless the moving party alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the moving party.

(c) If the court vacates an award on a ground other than that set forth in subdivision (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4), or (6) of subsection (a) of this section, the rehearing may be held before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as the time provided in G.S. 1-569.19(5) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award pursuant to G.S. 1-569.24 is pending.

"**§ 1-569.24. Modification or correction of award.**

(a) Upon motion made within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

"**§ 1-569.25. Judgment on award; attorneys' fees and litigation expenses.**

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On motion of a prevailing party to a contested judicial proceeding under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may award reasonable attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

"**§ 1-569.26. Jurisdiction.**

(a) A court of this State having jurisdiction over the controversy and the parties to an agreement to arbitrate may enforce the agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award under this Article.

"**§ 1-569.27. Venue.**

A motion pursuant to G.S. 1-569.5 shall be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this State, in the court of any county in this State. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs.

"**§ 1-569.28. Appeals.**

(a) An appeal may be taken from:

(1) An order denying a motion to compel arbitration;

(2) An order granting a motion to stay arbitration;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A final judgment entered pursuant to this Article.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action.

"**§ 1-569.29. Uniformity of application and construction.**

In applying and construing this Article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"**§ 1-569.30. Relationship to federal Electronic Signatures in Global and National Commerce Act.**

The provisions of this Article governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of these records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., or as otherwise authorized by federal or State law governing these electronic records or electronic signatures.

"**§ 1-569.31. Short title.**

This Article may be cited as the Revised Uniform Arbitration Act."

SECTION 3. This act shall not affect an action or proceeding that commences or accrues before Article 45C, as enacted in Section 2 of this act, becomes effective. Subject to G.S. 1-569.3, as enacted in Section 2 of this act, an arbitration agreement made before the effective date of this act is governed by Article 45A of Chapter 1 of the General Statutes.

SECTION 4. Section 1 of this act becomes effective January 1, 2006. The remainder of this act becomes effective January 1, 2004.

SENATE BILL 716:
Revised Uniform Arbitration Act

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Hartsell
Date:	May 13, 2003	**Summary by:**	Dianna Jessup
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 716 would repeal the current Uniform Arbitration Act, adopted in 1973 and replace it with the Revised Uniform Arbitration Act (RUAA). The new RUAA would govern agreements to arbitrate made on or after January 1, 2004. The bill comes at the request of the North Carolina Bar Association.***

CURRENT LAW: Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy arising after the contract is signed. If a party refuses to arbitrate, the court decides if there is a valid agreement to arbitrate. If the parties agree to arbitrate, or if the court has determined that a valid agreement to arbitrate exists, the court appoints arbitrators. The arbitrators conduct a hearing in which the parties present evidence and witnesses. The parties have a right to be represented by an attorney at any arbitration proceeding or hearing. The majority of the arbitrators render a decision in the form of an award, which is in writing and must be sent to each party. When the arbitrators' award is finalized, a party may apply to the court to confirm, vacate, modify, or correct the award. Awards can be vacated, modified, or corrected only under certain, statutorily-prescribed circumstances. Orders confirming, modifying or correcting an award are docketed and enforced as any other judgment or decree.

BILL ANALYSIS: The bill would repeal current law governing arbitration agreements and proceedings and replace it with a new Article 45C of Chapter 1 of the General Statutes, the RUAA. As in current law, under the RUAA, persons can agree to arbitrate their disputes, and a court determines whether a dispute is subject to an agreement to arbitrate. The court appoints arbitrators, who conduct a hearing and determine an appropriate award by majority vote. Awards are confirmed, vacated, modified, or corrected by the court, and orders confirming, modifying, or correcting awards become judgments. New provisions would:

- Permit a court and an arbitrator to issue provisional remedies, depending upon when the application for a provisional remedy is requested.
- Specify that arbitration is initiated when a party gives written notice to the other party of the nature of the controversy and the remedy sought. Notice must be as provided in the agreement, or if the agreement is silent, by registered or certified mail or by service otherwise authorized in a civil action.
- Allow a court to consolidate arbitration proceedings.
- Require arbitrators to disclose facts reasonably likely to affect their impartiality.
- Make an arbitrator or arbitration organizations immune from civil actions to the same extent as a judge. However, if an arbitrator failed to disclose facts reasonable likely to affect the arbitrator's impartiality, the award could be vacated.
- Make arbitrators or representatives of arbitration organizations incompetent to testify in another proceeding.

- Grant arbitrators or representatives of arbitration organizations discretion to order discovery, issue protective orders, decide motions for summary dispositions, hold prehearing conferences and otherwise manage the arbitration process.
- Allow a court to enforce a preaward ruling by an arbitrator unless the court vacates, modifies, or corrects the award for statutory reasons such as corruption, fraud, undue duress, mathematical miscalculation or evident mistake.
- Specify the remedies an arbitrator may award. Attorney fees and punitive damages would be allowed if provided for in the arbitration agreement, the evidence justifies a claim for the award, and the award would be allowed in a civil action involving the same claim.
- Allow a court to award attorneys' fees and costs to a prevailing party in court review of an arbitrator's award.
- Make many sections of the RUAA not be waivable.

The RUAA would apply to agreements to arbitrate entered into on and after January 1, 2004, but would apply to any arbitration agreement after January 1, 2006 regardless of when the agreement was made.

BACKGROUND: The RUAA is a model act promulgated by the National Conference of Commissioners on Uniform State Laws. According to the Commissioners website, 5 states have adopted the RUAA (Hawaii, Nevada, New Mexico, North Dakota and Utah) and 14 states are considering legislation to adopt it.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☒ Committee Substitute for
S.B. 716 A BILL TO BE ENTITLED AN ACT TO REPEAL THE UNIFORM ARBITRATION ACT AND TO ENACT THE REVISED UNIFORM ARBITRATION ACT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill ~~(#),~~ ☐ ~~which changes the title~~, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

2004

HOUSE COMMITTEE ON JUDICIARY IV

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GLAZIER, Rick	Vice Chair	Carin Savel	733-5601	2215	107
STILLER, Bonner	Vice Chair	Ferebee Stainback	733-5974	508	29
BOWIE, Joni		Sharon Gaudette	733-5877	538	78
EARLE, Beverly		Ann Raeford	755-2530	634	95
GOFORTH, Bruce		Ann Jordan	733-5746	1220	115
HAIRE, Phil		Sara Jane Lennard	755-3005	419B	47
JEFFUS, Maggie		Mary Lee Robinson	733-5191	1013	79
JUSTUS, Carolyn		Glenda Jones	733-5904	1023	27
KISER, Joe		Marilyn Holder	733-5782	1326	18

EX-OFFICIO MEMBERS

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CULPEPPER, Bill	Dot Crocker	755-3028	404	36
CUNNINGHAM, Pete	Valerie Rustin	733-5778	541	7
EDDINS, Rick	Dorie Monroe	733-5828	1002	26

Trina Griffin, Staff
Dianna Jessup, Staff
Steve Rose, Staff

NORTH CAROLINA GENERAL ASSEMBLY

JUDICIARY IV
2003 – 2004 SESSION



Rep. Munford
Chair



Rep. Glazier
Vice chair



Rep. Stiller
Vice chair



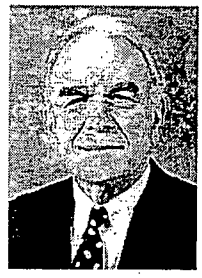
Rep. Bowie
Member



Rep. Earle
Member



Rep. Goforth
Member



Rep. Haire
Member



Rep. Jeffus
Member



Rep. Justus
Member



Rep. Kiser
Member



Rep. Brubaker
Ex-officio



Rep. Culpepper
Ex-officio



Rep. Cunningham
Ex-officio



Rep. Eddins
Ex-officio

ATTENDANCE

JUDICIARY IV)

DATES	6/11	6/15	6/25	6/26	6/26 PM	7/9									
Representative Munford, Chair	✓	✓	✓	✓	✓	✓									
Representative Glazier, Vice Chair	✓	✓	✓	✓	✓										
Representative Stiller, Vice Chair	Out	✓	✓	✓	✓	✓									
Representative Bowie	✓	✓	✓	✓	✓	✓									
Representative Earle	Out	✓													
Representative Goforth		✓	✓	✓											
Representative Haire	✓	✓			✓	✓									
Representative Jeffus	✓	✓	✓		✓										
Representative Justus	✓	✓	✓			✓									
Representative Kiser	✓	✓	✓			✓									
Rep. Brubaker, Ex-officio															
Rep. Culpepper, Ex-officio															
Rep. Cunningham, Ex-officio															
Rep. Eddins, Ex-officio	✓														

ROLL CALL VOTE

_____ _____ = _____(TOTAL) HB# _____
YES NO SB# _____

HOUSE STANDING COMMITTEE ON JUDICIARY IV

House Subcommittee on _____

YES	NO	**MEMBER** (last name)	YES	NO	**MEMBER** (last name)
____	____	MUNFORD	____	____	
____	____	GLAZIER	____	____	
____	____	STILLER	____	____	
____	____	BOWIE	____	____	
____	____	EARLE	____	____	
____	____	GOFORTH	____	____	
____	____	HAIRE	____	____	
____	____	JEFFUS	____	____	
____	____	JUSTUS	____	____	
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____	____		____	____	
		EX-OFFICIO MEMBER			
____	____	BRUBAKER			
____	____	CULPEPPER	____	____	
____	____	CUNNINGHAM	____	____	
____	____	EDDINS	____	____	

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 1, 2004

The House Committee on Judiciary IV met on June 1, 2004, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, members Bowie, Jeffus, Justus, Haire and Kiser. Also Staff Counsel Trina Griffin and Dianna Jessup were present. A Visitor Registration list is attached and made part of these minutes.

Representatives Rick Eddins and Hugh Holliman were asked to give comments on HB 1518 and HB 1519. Staff Council Trina Griffin was asked to explain each bill in depth. HB 1518 A BILL TO BE ENTITLED AN ACT REQUIRING A PERSON TO PAY ANY OUTSTANDING RESTITUTION ORDERS PRIOR TO THE EXPUNCTION OF THE PERSON'S CRIMINAL RECORD received a favorable report and was reported out of committee on June 2, 2004.

HB 1519 A BILL TO BE ENTITLED AN ACT TO PREVENT CRIMINALS FROM PROFITING FROM THEIR CRIMES AND TO BETTER ENABLE CRIME VICTIMS TO SATISFY RESTITUTION ORDERS AND CIVIL JUDGMENTS ENTERED AGAINST THEIR OFFENDERS FROM THE OFFENDERS' ASSETS, WHICH MAY INCLUDE PROFIT FROM CRIME did not receive a favorable report and was changed slightly with a committee substitute that did receive a favorable report and was reported out of committee on June 2, 2004.

Both bills should be introduced on June 3rd.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY IV — 6/1/04

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	NC Bar Ass'n
Mary Gurganus	NC Bar Ass'n
Ken Melton	D.O.R.
CASANDRA SKINNER	CCPS
Luke Gentry	Gov office
John McKay	Gov Office
John Cyrus	NCSG
Andy Romanet	NCLM
VL McBride	NCDA
Mac Chilton	NCVAN
Crissy Porter	Smith Anderson

VISITOR REGISTRATION SHEET

JUDICIARY IV — 6/1/04

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. H. Potter	NCDOJ
Marvin Waters	CCPS
Christian Duke	Rep Clary
Patrice Roulhac	NCACC
Rich Webb	NCGA Intern
John Phelps	NCLM
Steve Howell	AP
Janie Carmichael	CCPS
Mildred Spearman	NCDOC
Dena King	NCDOJ VCS
Matt Osborne	AOC

VISITOR REGISTRATION SHEET

JUDICIARY IV — 6/1/04

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Jo Horne	NCMS
Jim Blackburn	NC Assoc. County Commissioners

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

June 1, 2004
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 1518	Require Payment of Restitution for Expunction	Reps. Eddins & Holliman
HB 1519	Crime Victim Financial Recovery Asst. Act	Reps. Eddins & Holliman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1518

Short Title:	Require Payment of Restitution for Expunction.	(Public)
Sponsors:	Representatives Eddins, Holliman (Primary Sponsors); B. Allen, Gillespie, Harrell, Justus, Pate, A. Williams, K. Williams, Glazier, Hilton, and McLawhorn.	
Referred to:	Judiciary IV.	

May 19, 2004

A BILL TO BE ENTITLED

AN ACT REQUIRING A PERSON TO PAY ANY OUTSTANDING RESTITUTION ORDERS PRIOR TO THE EXPUNCTION OF THE PERSON'S CRIMINAL RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 2. This act becomes effective July 1, 2004, and applies to petitions for expunction filed on or after that date.

Fav. Rpot

HOUSE BILL 1518:
Require Payment of Restitution for Expunction.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Eddins and Holliman
Date:	June 1, 2004	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: This bill would require a person to pay any outstanding restitution orders prior to the expunction of the person's criminal record. This bill is a recommendation of the House Select Committee on Preventing Unjust Profiteering from Crime.

CURRENT LAW: A person may file a petition for expunction of the person's criminal record if that person is a first offender and has been convicted of one of the following:

- A misdemeanor while under the age of 18; or
- Possession of alcohol while under the age of 21

A court, after a hearing, shall order the misdemeanor conviction expunged and the petitioner's status pre-arrest status restored if the petitioner shows the following, supported by affidavits:

(1) That he has not been convicted of any felony or misdemeanor, other than a traffic violation, prior to the conviction in question or during the two-year period following that conviction.

(2) That he is of good character and reputation in the community in which he lives.

The petition for expunction cannot be filed earlier than two years after the date of conviction or any period of probation. The petition must be accompanied by a $65 filing fee.

BILL ANALYSIS: House Bill 1518 would add the requirement that the petitioner pay any outstanding restitution orders or civil judgments representing amounts ordered for restitution before the petitioner may be granted an expunction of his record.

The bill would become effective July 1, 2004 and apply to petitions for expunction filed on or after that date.

Original Bill

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

HOUSE BILL 1519

1

Failed PCS Date

Short Title:	Crime Victim Financial Recovery Assist. Act.	(Public)
Sponsors:	Representatives Eddins, Holliman (Primary Sponsors); B. Allen, Gillespie, Harrell, Justus, Pate, A. Williams, K. Williams, Hilton, McLawhorn, and Stiller.	
Referred to:	Judiciary IV.	

May 19, 2004

A BILL TO BE ENTITLED

AN ACT TO PREVENT CRIMINALS FROM PROFITING FROM THEIR CRIMES AND TO BETTER ENABLE CRIME VICTIMS TO SATISFY RESTITUTION ORDERS AND CIVIL JUDGMENTS ENTERED AGAINST THEIR OFFENDERS FROM THE OFFENDERS' ASSETS, WHICH MAY INCLUDE PROFIT FROM CRIME.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 1 through 25 of Chapter 15B of the General Statutes are redesignated as Article 1 of Chapter 15B. The Revisor of Statutes is authorized to make changes in the newly designated Article 1 that will reflect the results of the recodification.

SECTION 2. Chapter 15B of the General Statutes is amended by adding a new Article to read:

"Article 2.

"The Crime Victim Financial Recovery Assistance Act.

"**§ 15B-30. Declaration of policy and purpose.**

The General Assembly of North Carolina hereby declares as a matter of public policy that:

(1) No person who commits a crime should thereafter gain monetary profit as the result of committing the crime.

(2) Victims of crime have a special relationship to any profit from the crime committed against them, including the personal belongings and memorabilia of a convicted felon whose criminal actions and resulting notoriety enhance the value of those belongings and memorabilia.

(3) To the extent profit from crime would not have been realized but for an offender's commission of illegal acts, an offender does not have an

of an inmate or prisoner and deposits in an inmate account to the credit of the inmate or deposits in a prisoner account to the credit of the prisoner; or

b. Is not an inmate or prisoner but who is serving a sentence of probation, conditional discharge, or post-release supervision.

(8) Offender. – A person who has been convicted of a felony or that person's legal representative or assignee.

(9) Profit from crime. – Any income, assets, or property obtained through or generated from the commission of a crime for which the offender was convicted, including any income, assets, or property generated from the sale of crime memorabilia or obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of the crime, as well as any gain from the sale, conversion, or exchange of the income, assets, or property. 'Profit from crime' does not include voluntary donations or contributions to an offender used to assist in the appeal of a conviction, provided the donation or contribution is not given in exchange for something of material value.

(10) Victim. – Any natural person who suffers physical or emotional injury, or the threat of physical or emotional injury, as the result of the commission of a felony.

"**§ 15B-32. Notice of contract or agreement to pay.**

(a) Notice to Commission. –

(1) Every person, firm, corporation, partnership, association, or other legal entity, or representative of a person, firm, corporation, partnership, association, or entity that knowingly contracts for, pays, or agrees to pay to an offender (i) profit from crime or (ii) funds of an offender where the value or aggregate value of the payment or payments exceeds ten thousand dollars ($10,000) shall submit to the Commission a copy of the contract or reduce to writing the terms of any oral agreement or obligation to pay as soon as practicable after discovering the payment or intended payment constitutes profit from crime or funds of an offender.

(2) Whenever the payment or obligation to pay involves funds of an offender that a superintendent, sheriff, or municipal officer (i) receives or will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility, (ii) deposits or will deposit in an inmate account to the credit of an inmate or prisoner, and (iii) the value of such funds exceeds or will exceed ten thousand dollars ($10,000), the State or subdivision of the State shall also give written notice to the Commission.

(3) Whenever the State or a subdivision of the State makes a payment or has an obligation to pay funds of an offender and the value of such funds exceeds or will exceed ten thousand dollars ($10,000), the State

(1) Notify all other known eligible persons of the filing of the civil action by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission.

(2) ~~Publish, at least once every six months for three years from the date of the discovery of the profit from crime or funds of an offender, a legal notice in newspapers of general circulation in the county in which the crime was committed and in counties contiguous to that county advising any eligible person of the existence of profit from crime or funds of an offender.~~ The Commission may, in its discretion, provide for additional notice as it deems necessary.

(3) Avoid the wasting of the assets identified in the complaint as the profit from crime or funds of an offender in any manner consistent with subsection (d) of this section.

(d) Authority to Avoid Wasting of Assets. – The Commission, acting on behalf of all eligible persons, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action brought under subsection (a) of this section, such as attachment, injunction, constructive trust, and receivership. On a motion for a provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

(e) Enforcement of Judgment. – Notwithstanding any other provision of law to the contrary, a judgment obtained pursuant to this section shall not be subject to execution or enforcement against the first one thousand dollars ($1,000) deposited in an inmate account to the credit of the inmate or in a prisoner account to the credit of the prisoner. In addition, where the civil action involves funds of an offender and those funds were recovered by the offender pursuant to a judgment obtained in a civil action, a judgment obtained pursuant to this section may not be subject to enforcement or execution against the first ten percent (10%) of any compensatory damages awarded to the offender in a civil action.

"**§ 15B-34. Subrogation by the Crime Victims Compensation Fund.**

Claims on profit from crime or funds of an offender are subject to subrogation by the Crime Victims Compensation Fund pursuant to G.S. 15B-18.

"**§ 15B-35. Conviction overturned or pardon issued.**

If profit from crime is subject to a provisional remedy on behalf of eligible persons and the conviction for the criminal offense from which profit from crime is realized is reversed, vacated, or set aside, or if the offender has been granted an unconditional pardon of innocence for the criminal offense, those funds shall be returned to the rightful owner.

"**§ 15B-36. Evasive action void.**

Any action taken by an offender, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this Article shall be void as against the public policy of this State."

HOUSE BILL 1519:
Crime Victim Financial Recovery Assistance Act

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Eddins and Holliman
Date:	June 1, 2004	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: This bill, which is a modified "Son of Sam" law, is a recommendation of the House Select Committee on Preventing Unjust Profiteering from Crime. It better enables crime victims to satisfy restitution orders and civil judgments entered against their offenders from the offender's assets by providing notice of the assets to the victims and by reviving the statute of limitations for a civil action once assets are discovered.

CURRENT LAW:

Forty-two states and the federal government have enacted legislation designed to prevent criminals from profiting from their crimes by redirecting the profits to the victims. However, despite their popularity, the constitutionality of these laws, commonly referred to as "Son of Sam" laws, is unclear.

North Carolina has never enacted a Son of Sam statute. In North Carolina, there are three methods by which a crime victim may recover compensation for a crime committed against him or her: (1) obtain a restitution order, (2) file a claim with the Crime Victims' Compensation Commission, or (3) file a civil lawsuit and recover a money judgment.

1. *Restitution.* – When sentencing a defendant convicted of a criminal offense, the court is required to determine whether the defendant should be ordered to make restitution to any victim or the victim's estate for any injuries or damages arising directly from the offense. In determining the amount of restitution, the court must consider certain factors, such as the value of any property damaged or destroyed; in the case of physical injury, the cost of necessary medical and related professional services, any physical or occupational therapy, and income lost by the victim; and in the case of the victim's death, the cost of funeral and related services. However, an order of restitution may not include compensation for pain and suffering, according to a recent North Carolina Court of Appeals case.[1] The court must also take into account the resources of the defendant, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution. The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims Compensation Fund, that provided assistance to the victim. Generally, a restitution order is enforceable in the same manner as a civil judgment. A restitution order does not, however, abridge the right of a victim to bring a civil action against the defendant, but any amount paid by the defendant under the terms of a restitution order are credited against any judgment rendered against the defendant in favor of the same victim in a civil action arising out of the criminal offense committed by the defendant.
2. *Crime Victims Compensation Fund.* – A crime victim may apply to the Crime Victims Compensation Commission for an award to compensate the victim for economic loss resulting from criminally injurious conduct. In order to obtain an award, the claimant must file an application within two years

[1] *State of North Carolina v. Wilson*, 580 S.E.2d 386, 2003 N.C.App. LEXIS 1045 (June 3, 2003).

will receive on behalf of an inmate serving a sentence with the Department of Correction or a prisoner confined at a local correctional facility.

- The State or a subdivision of the State when it makes a payment or has an obligation to pay funds of an offender in excess of $10,000.00.
- In all other instances where the payment or obligation to pay involves funds of an offender and the value of the funds exceeds or will exceed $10,000.00, the offender who receives or will receive the funds shall give written notice to the Commission.

Responsibilities of the Commission. –

1. Notice to Eligible Persons. – The Commission, upon receipt of notice of a contract or agreement to pay profit from crime or funds of an offender, shall notify all known eligible victims of the existence of the contract or agreement.
2. Notice of Civil Action. – The Commission, upon notice of the filing of a civil action, shall notify all other eligible victims of the filing.
3. Authority to Avoid Wasting of Assets. – The Commission, acting on behalf of all eligible persons, shall have the right to apply for any and all provisional remedies that are also otherwise available to the plaintiff in the civil action, such as attachment, injunction, constructive trust, and receivership.

Civil Action. - An eligible person may, within three years of the discovery of any profit from crime or funds of an offender, bring a civil action in a court of competent jurisdiction to recover money damages from an offender.

Enforcement of Judgment. – A judgment obtained pursuant to this section shall not be subject to execution or enforcement against the first $1,000.00 deposited in an inmate account to the credit of the inmate or in a prisoner account to the credit of the prisoner. In addition, where the civil action involves funds of an offender and those funds were recovered by the offender pursuant to a judgment obtained in a civil action, a judgment obtained pursuant to this section may not be subject to enforcement or execution against the first ten percent (10%) of any compensatory damages awarded to the offender in a civil action.

BACKGROUND:

Origin. – In 1977, David Berkowitz, dubbed the "Son of Sam," committed a series of murders in New York creating a media frenzy. Before the investigation was even complete, publishers were offering to pay a huge sum of money for the rights to his story. In a hasty response, the New York State Legislature enacted a law prohibiting criminals from using their notoriety for profit, which became known as the "Son of Sam" law.[2] This law provided that when any person entered into a contract with a person accused of committing a crime with respect to the reenactment or recounting of the crime by way of a book, movie, television show, etc., the party (usually a corporation) contracting with him or her had to pay over to the state all profits that would otherwise be paid to the offender. These funds would be held for the benefit of the offender's victims, or in some cases, contributed to the state victim compensation fund. Following New York's lead, 41 additional states and the federal government enacted similar Son of Sam laws. The principle behind these laws being that it is contrary to public policy to allow violent criminals to profit

[2] Ironically, this law never applied to David Berkowitz. Berkowitz was found incompetent to stand trial, which exempted him from the law. Nevertheless, Berkowitz voluntarily donated the royalties he received from a book chronicling his criminal escapades to his victims and their estates. Today, Berkowitz claims to be a born-again Christian and is actively working against the ability of third parties to sell memorabilia with his likeness.

crime from criminals to their uncompensated victims. The court observed that the statute not only confiscated funds received from the telling of the story of the crime, but seized a convicted felon's proceeds from speech or expression on any theme or subject which includes the story of the felony, except by "mere passing mention." The court concluded that the effect of the statute was to discourage "the creation and dissemination of a wide range of ideas and expressive works which have little or no relationship to the exploitation of one's criminal misdeeds." The court struck down the California law and the United States Supreme Court denied certiorari in October of 2002.

While these two cases have been the most highly publicized, the Supreme Court of Rhode Island also struck down that State's Son of Sam law.

Legislative Response. – In response to the *Simon & Schuster, Inc.* decision, new legislation was enacted by the State of New York and several other states. However, nearly one-third of all states have not altered their notoriety-for-profit statutes. Some states that have amended their laws, have not addressed the Supreme Court's concerns. Most of these statutes, while still on the books, would likely be held unconstitutional if challenged. However, a number of states have attempted to revise their laws to make them constitutional but none of these revised statutes have been challenged on constitutional grounds.

The most common change made to such laws has been expanding them to cover any profit received, directly or indirectly, from crimes, not just profits from speech-related activities. For instance, Iowa targets "fruits of the crime" defined as "any profit which, were it not for the commission of the felony, would not have been realized." Oklahoma's amended law applies to "any proceeds or profits from any source, as a direct or indirect result of the crime or sentence, or the notoriety which the crime or sentence has conferred upon the defendant." In contrast, Tennessee targets "all income, from whatever source derived, which is owing to the defendant, or representative or assignee of the defendant, after the date of the crime."

Many of the amended laws still focus on speech-related profits, but exclude materials in which the reference to the crime was incidental or tangential. The Kansas law applies to speech-related profits "provided, such book, magazine or other publication, movie, radio or television presentation or live entertainment of any kind deals principally with the crime for which the person is accused and convicted." Another common change has been to restrict the notoriety-for-profit statutes to convicted offenders.

Crime Memorabilia Amendments. – Traditional Son of Sam laws did not prevent criminals from commercializing their crimes through non-speech-related activities. Generally, those laws only apply to the recounting or reenactment of a crime through speech-related activities, such as in movies and books. However, the emergence of an underground trade in objects associated with crime, especially murder, has resulted in a handful of states amending their Son of Sam statutes in an attempt to restrict profiteering from tangible goods owned by a criminal or associated with a crime, the value of which has been enhanced due to the notoriety of the criminal. These restrictions on profiteering may apply to the offender as well as to third parties selling items related to the crime.

In 2000, California amended its law to extend its involuntary trust provisions to profiteers. The *Keenan* case did not present a challenge to this portion of the law and thus, the Court did not address the constitutionality of this provision, which it found to be severable. In 2001, Texas amended its Son of Sam statute by requiring that any increased value gained from the notoriety of the crime be turned over to the state's attorney general. New York's revised law is also broad enough to cover crime memorabilia.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1519 DATE 6/1/04

S. B. No. Amendment No. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE

(Rep.) EL
(Sen.)

moves to amend the bill on page 4, line 23

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

" interest at the legal rate. An action to ";

and on page 5, lines 4-~~10~~ 8, by deleting the lines, ~~and renumbering the following subdivisions accordingly.~~

and rewriting lines 9-10 as follows:

"(2) The Commission may, in its discretion, provide for additional notice as it deems necessary. ~~The Commission~~"

SIGNED

ADOPTED FAILED TABLED

2003-2004

HOUSE
JUDICIARY IV

COMMITTEE
MINUTES

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 15, 2004

The House Committee on Judiciary IV met on June 15, 2004, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice Chair Bonner Stiller, members Bowie, Earle, Goforth, Jeffus, Justus, Haire and Kiser. Also Staff Counsel Trina Griffin and Dianna Jessup were present. A Visitor Registration list is attached and made part of these minutes.

Representatives McLawhorn and Sherrill were introduced and spoke briefly on House Bill 1354 Strengthen Domestic Violence Laws. A PCS was introduced and adopted for discussion purposes. Representative Justus sent forth an amendment to page 31 lines 35-42 deleting this text. A vote was taken and the amendment failed 5 to 4. Former Representative Sam Johnson spoke against this section of the bill also. Paul Valone with Grass Roots of NC has some concerns about section 16.1 of this bill and its impact on possession of firearms. After much discussion and debate the PCS passed and will be referred to the Finance Committee due to the imposed fee.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary IV — 6/15/04

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Will Polk	NC DOJ
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn.
Veronica Lucas	Lumberton NC Southeastern Family Violence Center
Jennifer Sullivan	Nat'l Assoc. of Social Workers
Starlee Scott Robbins	DMH/DD/SAS
Leslie Starsoneck	CFW DVC / DOA
Josh Kinsey	NCATC
Greg Stahl	AOC
John Kennedy	AOC
Ngoc Nguyen	AOC
Lorin Mueller	NC Coalition of Police
Melissa Reed	NARAL Pro-Choice NC
Agnieszka McCourt	" CHANGE Program
Rebecca Worley	"

VISITOR REGISTRATION SHEET

Judiciary IV — 6/15/04

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Rustin	NCFPC
Kathy Hodges	Coalition for Family Peace Siler City, NC
Barry Bryant	Governor's Crime Commission
Roz Sawyer	NCCCC
Paul Valone	Grass Roots North Carolina
C L Taylor	GRNC
KT George	NCACDSS
Johnny Lee	Peace @ Work
Ronnie Bower	Family Violence Prevention Center of Orange County
Mercedes Bransfield	"
BRAD JOHNSON	CHATHAM CO. SHERIFF'S OFFICE

VISITOR REGISTRATION SHEET

Judiciary IV — 6/15/04

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christina Skeeters	Legal Aid Society of NWNC 216 W 4th St — Winston-Salem NC 27101
Susan Borgesi	FVRC PO Box 1105 Pittsboro, NC 27312
[signature]	AP
Agnieszka Miller	NALA
Brent A. Sullivan	

VISITOR REGISTRATION SHEET

Judiciary IV — 6/15/04

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Johnson	Atty for NCAI
Bruce Clarke	CAI and NCAI
Theresa Brett	CAI and NCAI
Mildred Spearman	NCDOC
Mary Gurganus	NCBA
Susan S. King	Div. of Social Serv.
Debbra Collins	NCCADV
Mary Beth Loucks-Sorrell	NCCADV
Beth Fooshee	NCCADV
Anne [illegible]	[illegible]
Tommy Herrelson	Lobbyist
[illegible]	NCAGO

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Munford** (Chair) for the Committee on **Judiciary IV**.

☐ Committee Substitute for
H.B. 1354 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS, AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON DOMESTIC VIOLENCE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

x With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1354

Short Title:	Strengthen Domestic Violence Laws.	(Public)
Sponsors:	Representatives McLawhorn, Sherrill (Primary Sponsors); Adams, Alexander, L. Allen, Bordsen, Bowie, Carney, Coates, Crawford, Cunningham, Dickson, Farmer-Butterfield, Fisher, Frye, Gibson, Glazier, Goforth, Howard, Insko, Jeffus, Justice, Luebke, McAllister, Moore, Parmon, Pate, Rapp, Rayfield, Ross, Stam, Stiller, Wainwright, Warren, Weiss, and K. Williams.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS, AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

PART I. DOMESTIC VIOLENCE OFFENDER TREATMENT

SECTION 1.1. G.S. 15A-1343 reads as rewritten:

"**§ 15A-1343. Conditions of probation.**

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation.

(b3) Screening and Assessing for Chemical Dependency. – A defendant ordered to submit to a period of residential treatment in the Drug Alcohol Recovery Treatment program (DART) operated by the Department of Correction must undergo a screening to determine chemical dependency. If the screening indicates the defendant is chemically dependent, the court shall order an assessment to determine the appropriate level of treatment. The assessment may be conducted either before or after the court imposes the condition, but participation in the program shall be based on the results of the assessment.

(c) Statement of Conditions. – A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(d) Restitution as a Condition of Probation. – As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other

...

(2) Establish minimum educational and training standards that must be met in order to qualify for entry level employment and retention as a criminal justice officer in temporary or probationary status or in a permanent position. The standards for entry level employment shall include at least 16 hours of education and training in response to, and investigation of, domestic violence cases. The training shall include investigation for evidence based prosecutions."

SECTION 2.2. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the domestic violence education and training required by Section 2.1 of this part is incorporated into all Basic Law Enforcement Training (BLET) courses as soon as practicable. However, the domestic violence education and training shall be part of the required BLET curriculum no later than January 1, 2005.

SECTION 2.3. G.S. 17C-6(a)(14) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(14) Establish minimum standards for in-service training for criminal justice officers. In-service training standards shall include a minimum of two hours, every two years, of training in response to, and investigation of, domestic violence cases. The training shall include investigation for evidence based prosecutions."

SECTION 2.4. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the domestic violence in-service training required by Section 2.3 of this part is available no later than January 1, 2005. Criminal Justice Officers already certified prior to January 1, 2005, shall have until December 31, 2006, to complete the initial requirement for domestic violence in-service training required by Section 2.3 of this part.

SECTION 2.5. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(15) Establish minimum standards and levels of training for certification of instructors for the domestic violence training required by subdivisions (2) and (14) of this subsection."

SECTION 2.6. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the standards and training required for certification under Section 2.5 of this part are implemented no later than January 1, 2005.

SECTION 2.7. G.S. 17E-4(a)(2) reads as rewritten:

"(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

certification under Section 2.11 of this part are implemented no later than January 1, 2005.

SECTION 2.14. This part is effective when it becomes law.

PART III. STUDY OF ANTI-VIOLENCE EDUCATION IN SCHOOLS AND TRAINING FOR SCHOOL PERSONNEL

SECTION 3.1. The North Carolina Department of Public Instruction, in collaboration with the State Board of Education, shall study the issue of anti-violence programs in the schools. In studying this issue, the Department shall answer the following:

(1) How are schools currently addressing anti-violence in their curriculum;
(2) How do current curriculums vary at each grade level, K-12;
(3) Do currently used curriculums address physical violence and mental or verbal abuse, particularly instances of domestic and relationship violence;
(4) Should the State require every public school to have an anti-violence program of instruction incorporated into the curriculum;
(5) Should an anti-violence program be required at every grade level;
(6) What would be an appropriate curriculum for each grade level;
(7) What minimum requirements should be present in an appropriate curriculum to ensure that the curriculum addresses physical violence, mental or verbal abuse, and domestic and relationship violence;
(8) Should the State implement a particular anti-violence curriculum or allow individual schools to choose an appropriate curriculum from an approved list;
(9) What is the fiscal impact of implementing an anti-violence program for all schools, including additional staffing needs, if any.

In studying this issue, the Department shall examine some of the anti-violence programs that are in use through out the country. In addition to any other specific programs examined, the Department shall review in detail the "Second Step" program developed by the Committee for Children.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and to the Joint Legislative Education Oversight Committee no later than October 1, 2004, and a final report to the General Assembly on or before January 15, 2005.

SECTION 3.2. The North Carolina Department of Public Instruction, in collaboration with the State Board of Education, shall study training for school personnel dealing with students who are victims of physical violence and mental or verbal abuse, particularly instances of domestic violence and relationship violence. In studying this issue, the Department shall answer the following:

(1) What type of training is currently available and/or required for school personnel.
(2) Should training be required for school personnel.

of the named organizations dissolve, the entity or entities providing substantially the same services in substantially the same service area.

"**§ 7A-474.8. Eligible activities and limitations.**

(a) Eligible Activities. – Funds appropriated under this Article shall be used only for the following purposes:

(1) To provide legal assistance to domestic violence victims;

(2) To provide education to domestic violence victims regarding their rights and duties under the law;

(3) To involve the private bar in the representation of domestic violence victims pursuant to this Article.

(b) Eligible Cases. – The funds shall be prioritized by each legal services program to serve the greatest number of eligible clients, with emphasis placed on representation of clients needing legal assistance with proceedings pursuant to Chapter 50B of the General Statutes. Legal assistance shall be provided to eligible clients under this Article only in the following types of cases:

(1) Actions for protective orders issued pursuant to Chapter 50B of the General Statutes;

(2) Child custody and visitation issues; and

(3) Legal services which ensure the safety of the client and the client's children.

(c) Limitations. – No funds appropriated under this Article shall be used for any of the following purposes:

(1) To provide legal assistance with respect to any criminal proceeding; or

(2) To provide legal assistance to any prisoner within the North Carolina Department of Correction with regard to the terms of that person's incarceration.

"**§ 7A-474.9. Funds.**

Funds to provide representation pursuant to this Article shall be provided to the North Carolina State Bar for provision of direct services by and support of the established legal services programs. The North Carolina State Bar shall allocate these funds directly to each of the established legal services programs with Pisgah Legal Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties, and Legal Aid Society of Northwest North Carolina receiving the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties. Funds shall be allocated to each program based on the counties served by that program using the following formula:

(1) Twenty percent (20%) based on a fixed equal dollar amount for each county;

(2) Eighty percent (80%) based on the rate of civil actions filed pursuant to Chapter 50B of the General Statutes in that county.

The North Carolina State Bar shall not use any of these funds for its administrative costs.

"**§ 7A-474.10. Records and reports.**

any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

(7) A fee in the amount of one hundred dollars ($100.00).

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application.

(b) Fees collected under this section shall be remitted to the North Carolina State Bar for the provision of services described in G.S. 7A-474.9."

SECTION 4.3. Section 4.1 of this part is effective when it becomes law. Section 4.2 of this part becomes effective July 1, 2004, and applies to all motions filed on or after that date. The remainder of this part is effective when it becomes law.

PART V. DOMESTIC VIOLENCE OFFENDER FEE AND ADDITIONAL FUNDING FOR VICTIM SERVICES

SECTION 5.1. G.S. 50B-3 is amended by adding a new subsection to read:

"(a1) If, upon completion of the 10-day hearing, the court issues a protective order, the court shall require the defendant to pay a fee in the amount of one hundred dollars ($100.00). This fee shall be assessed only upon the initial issuance of the order, and not upon any renewal of the same order."

SECTION 5.2. There is appropriated from the General Fund to the Department of Administration, to be credited to the Domestic Violence Center Fund established under G.S. 50B-9, the sum of two million dollars ($2,000,000) for the 2004-2005 fiscal year. It is the intent of the General Assembly that this become a recurring appropriation.

SECTION 5.3. This part becomes effective July 1, 2004. Section 5.1 of this part applies to all orders issued on or after that date.

PART VI. DOMESTIC VIOLENCE ADVOCATES ON CHILD FATALITY TASK FORCE

SECTION 6.1. G.S. 7B-1402 reads as rewritten:

"**§ 7B-1402. Task Force – creation; membership; vacancies.**

(a) There is created the North Carolina Child Fatality Task Force within the Department of Health and Human Services for budgetary purposes only.

(b) The Task Force shall be composed of 35 members, 11 of whom shall be ex officio members, four of whom shall be appointed by the Governor, 10 of whom shall be appointed by the Speaker of the House of Representatives, and 10 of whom shall be appointed by the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

(1) The Chief Medical Examiner;
(2) The Attorney General;
(3) The Director of the Division of Social Services;
(4) The Director of the State Bureau of Investigation;
(5) The Director of the Division of Maternal and Child Health of the Department of Health and Human Services;

(22) A representative from the North Carolina Association of County Commissioners, appointed by the President Pro Tempore of the Senate upon recommendation of the Association;

(22a) A representative from the North Carolina Coalition Against Domestic Violence, appointed by the President Pro Tempore of the Senate upon recommendation of the Executive Director of the Coalition;

(23) ~~Two public members,~~One public member, appointed by the President Pro Tempore of the Senate; and

(24) Five members of the Senate, appointed by the President Pro Tempore of the Senate, and five members of the House of Representatives, appointed by the Speaker of the House of Representatives.

(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. Terms shall be two years. The members shall elect a chair who shall preside for the duration of the chair's term as member. In the event a vacancy occurs in the chair before the expiration of the chair's term, the members shall elect an acting chair to serve for the remainder of the unexpired term."

SECTION 6.2. The public members serving on the Child Fatality Task Force on the effective date of this act shall complete their current terms. The new appointments contained in Section 1 of this act shall take effect at the end of those terms.

SECTION 6.3. This part is effective when it becomes law.

PART VII. STUDY OF MENTAL HEALTH SERVICES FOR DOMESTIC VIOLENCE VICTIMS

SECTION 7.1. The Department of Health and Human Services shall study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs. The plan will address providing diagnostic and referral services for any client suspected of having a mental illness or a substance abuse problem. The plan will also address the delivery of appropriate services to clients meeting the target population criteria, as defined in the State Plan developed pursuant to G.S. 122C-102. Services must be best practices, as determined by the Department. The Department will consult various stakeholders in the domestic violence network of organizations. The Department will also consider the delivery of services to children identified through domestic violence programs. The Department shall also consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence no later than October 1, 2004, and a final report to the General Assembly on or before January 15, 2005.

SECTION 7.2. This part is effective when it becomes law.

PART VIII. STUDY OF CLE CREDIT FOR PRO BONO LEGAL REPRESENTATION

SECTION 8.1. The North Carolina State Bar, in cooperation with the North Carolina Bar Association, shall study the issue of providing Continuing Legal Education (CLE) credit to active attorneys for providing pro bono legal representation. The Bar

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
(10) The defendant was armed with or used a deadly weapon at the time of the crime.
(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or ~~confidence~~ confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

SECTION 9.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date.

PART X. CREATE STRANGULATION OFFENSE

SECTION 10.1. G.S. 14-32.4 reads as rewritten:

"**§ 14-32.4. Assault inflicting serious bodily ~~injury.~~injury; strangulation; penalties.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement,

(2) "An offense involving assault" includes any offense where an assault occurred, whether or not the conviction is for an offense under Article 8 of Chapter 14 of the General Statutes.

(3) "Inquiry" shall include any lawful review of the criminal records of persons convicted of an offense in this State, whether by law enforcement personnel or by private individuals."

SECTION 12.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date.

PART XIII. AMEND PROBATION RULES

SECTION 13.1. G.S. 15A-1343.2 reads as rewritten:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

(a) Applicability. – This section applies only to persons sentenced under Article 81B of this Chapter.

(b) Purposes of Probation for Community and Intermediate Punishments. – The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) Probation Caseload Goals. – It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) Lengths of Probation Terms Under Structured Sentencing. – Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;

(2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;

(3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and

(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. – The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. – For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

SECTION 13.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART XIV. STUDY OF MISDEMEANOR OFFENSE CLASSIFICATIONS

SECTION 14.1. The General Assembly finds that the North Carolina Sentencing and Policy Advisory Commission has adopted formal criteria for classifying felony offenses. The Sentencing Commission has identified three general types of harms: harms to persons (including both physical and mental injury); harms to property; and (3) harms to society. The degrees of harm are divided into three levels:

(1) Injury to person, property, or society;

(2) Significant injury to person, property, or society, and

(3) Serious injury to person, property, or society. The stated purpose of establishing the criteria was "to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future."

In contrast to the felony classification criteria, the Commission did not create classification criteria for misdemeanors. However, the current misdemeanor sentencing laws include an assault offense that has serious injury as an element – even though "serious injury to a person" is a category of harm for felony offense classification. The General Assembly finds that the classification of assault offenses that involve serious injury as misdemeanors is inconsistent with the Sentencing Commission's classification of felonies based on harm.

The General Assembly directs the North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, to study the classification of misdemeanor offenses. In particular, the Commission shall examine the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses. The Commission shall develop a system for classifying misdemeanor offenses on the basis of their severity. The Commission may consider reclassifying existing offenses and creating new offenses in order to insure proportionality and consistency. The Commission shall report its findings and recommendations to the 2005 General Assembly, 2005 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations and proposed legislation. The Commission shall make a final report to the 2005 General Assembly, 2006 Regular Session.

SECTION 14.2. This part is effective when it becomes law.

PART XV. WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL RELEASE CONDITIONS

SECTION 15.1. G.S. 15A-401 reads as rewritten:

"**§ 15A-401. Arrest by law-enforcement officer.**

(a) Arrest by Officer Pursuant to a Warrant. –

b. The arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.

(2) Upon making an arrest, a law-enforcement officer must:

a. Identify himself as a law-enforcement officer unless his identity is otherwise apparent,

b. Inform the arrested person that he is under arrest, and

c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident.

(d) Use of Force in Arrest. –

(1) Subject to the provisions of subdivision (2), a law-enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:

a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or

b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(2) A law-enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:

a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;

b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or

c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

(e) Entry on Private Premises or Vehicle; Use of Force. –

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a person, provided that an officer may utilize a copy of a warrant or order only if the

~~Nothing in this subsection would prohibit the right of any person to have possession of a firearm within his own home or on his lawful place of business.~~

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is permissible, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefore, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein."

SECTION 16.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutory provisions that would be applicable but for this act remain applicable to those prosecutions.

PART XVII. SPECIFICALLY ALLOW CROSS WARRANTS

SECTION 17.1. G.S. 15A-304 reads as rewritten:

"§ 15A-304. Warrant for arrest.

(a) Definition. – A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) When Issued. – A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned

person to render professional nursing services, except that the presiding judge of a superior or district court may compel disclosure if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule. Nothing in this section shall preclude the admission of otherwise admissible written or printed medical records in any judicial proceeding."

SECTION 18.2. G.S. 8-53.1 reads as rewritten:

"**§ 8-53.1. Physician-patient and nurse privilege waived in child abuse.**

Notwithstanding the provisions of G.S. ~~8-53,~~ 8-53 and 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina."

SECTION 18.3. This part becomes effective December 1, 2004.

PART XIX. TEMPORARY CHILD CUSTODY IN DOMESTIC VIOLENCE HEARINGS

SECTION 19.1. G.S. 50-13.2(b) reads as rewritten:

"(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic ~~violence.~~violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2) and (3). ~~Such orders may include a designation of time and place for the exchange of children away from the abused party, the participation of a third party, or supervised visitation.~~ If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child."

SECTION 19.2. G.S. 50B-2 reads as rewritten:

"**§ 50B-2. Institution of civil action; motion for emergency relief; temporary ~~orders.~~ orders; temporary custody.**

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.

effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter ~~such~~ orders as it deems necessary to protect the aggrieved party or minor children from ~~such~~ those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is necessary for the safety of the minor child. If the magistrate determines that the other party may have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody ~~to~~ pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 19.3. G.S. 50B-3(a)(4) reads as rewritten:

"**§ 50B-3. Relief.**

a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.
b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.
c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.
d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.
e. Ordering the noncustodial parent to pay the costs of supervised visitation.
f. Prohibiting overnight visitation.
g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.
h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.
i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

(4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter."

SECTION 19.5. G.S. 50B-3(b) reads as rewritten:

"(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed one year, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current ~~order.~~order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders entered,

SECTION 21.1. G.S. 50B-2(d) reads as rewritten:

"(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. The ~~Clerk~~ clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 21.2. This part is effective when it becomes law.

PART XXII. TRAINING FOR JUDGES AND COURT PERSONNEL

SECTION 22.1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

SECTION 22.2. The Administrative Office of the Courts shall study the issue of training for court personnel in the area of domestic violence. The study shall examine the following:

(1) The extent to which training is currently being done.

(2) The need for additional training.

(3) The amount and types of training that would be most appropriate.

(4) The potential costs and sources of funding for any additional training.

The Administrative Office of the Courts shall report its findings and recommendations to the 2005 Regular Session of the 2005 General Assembly.

SECTION 22.3. This part is effective when it becomes law.

PART XXIII. EFFECTIVE DATE

SECTION 23.1. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1354
PROPOSED COMMITTEE SUBSTITUTE H1354-CSSA-22 [v.6]

6/14/2004 2:33:32 PM

Short Title: Strengthen Domestic Violence Laws. (Public)

Sponsors:

Referred to:

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS, AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

PART I. DOMESTIC VIOLENCE OFFENDER TREATMENT

SECTION 1.1. G.S. 15A-1343 reads as rewritten:

"**§ 15A-1343. Conditions of probation.**

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that

the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation.

(b3) Screening and Assessing for Chemical Dependency. – A defendant ordered to submit to a period of residential treatment in the Drug Alcohol Recovery Treatment program (DART) operated by the Department of Correction must undergo a screening to determine chemical dependency. If the screening indicates the defendant is chemically dependent, the court shall order an assessment to determine the appropriate level of treatment. The assessment may be conducted either before or after the court imposes the condition, but participation in the program shall be based on the results of the assessment.

(c) Statement of Conditions. – A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(d) Restitution as a Condition of Probation. – As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered

permanent position. The standards for entry level employment shall include education and training in response to, and investigation of, domestic violence cases, as well as training in investigation for evidence based prosecutions."

SECTION 2.2. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the domestic violence education and training required by Section 2.1 of this part is incorporated into all Basic Law Enforcement Training (BLET) courses as soon as practicable. However, the domestic violence education and training shall be part of the required BLET curriculum no later than March 1, 2005.

SECTION 2.3. G.S. 17C-6(a)(14) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(14) Establish minimum standards for in-service training for criminal justice officers. In-service training standards shall include training in response to, and investigation of, domestic violence cases, as well as training investigation for evidence based prosecutions."

SECTION 2.4. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the domestic violence in-service training required by Section 2.3 of this part is available no later than March 1, 2005

SECTION 2.5. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(15) Establish minimum standards and levels of training for certification of instructors for the domestic violence training required by subdivisions (2) and (14) of this subsection."

SECTION 2.6. The North Carolina Criminal Justice Education and Training Standards Commission shall ensure that the standards and training required for certification under Section 2.5 of this part are implemented no later than March 1, 2005.

SECTION 2.7. G.S. 17E-4(a)(2) reads as rewritten:

"(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

...

(2) Establish minimum educational and training standards that may be met in order to qualify for entry level employment as an officer in temporary or probationary status or in a permanent ~~position;~~ position. The standards for entry level employment of officers shall include training in response to, and investigation of, domestic violence cases, as well as training in investigation for evidence based prosecutions. For purposes of the domestic violence training requirement, the term 'officers' shall include justice officers as defined in G.S. 17E-2(3)a.,

(1) How are schools currently addressing anti-violence in their curriculum;
(2) How do current curriculums vary at each grade level, K-12;
(3) Do currently used curriculums address physical violence and mental or verbal abuse, particularly instances of domestic and relationship violence;
(4) Should the State require every public school to have an anti-violence program of instruction incorporated into the curriculum;
(5) Should an anti-violence program be required at every grade level;
(6) What would be an appropriate curriculum for each grade level;
(7) What minimum requirements should be present in an appropriate curriculum to ensure that the curriculum addresses physical violence, mental or verbal abuse, and domestic and relationship violence;
(8) Should the State implement a particular anti-violence curriculum or allow individual schools to choose an appropriate curriculum from an approved list;
(9) What is the fiscal impact of implementing an anti-violence program for all schools, including additional staffing needs, if any.

In studying this issue, the Department shall examine some of the anti-violence programs that are in use through out the country. In addition to any other specific programs examined, the Department shall review in detail the "Second Step" program developed by the Committee for Children.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and to the Joint Legislative Education Oversight Committee no later than October 1, 2004, and a final report to the Joint Legislative Education Oversight Committee and the General Assembly on or before January 15, 2005.

SECTION 3.2. The North Carolina Department of Public Instruction, in collaboration with the State Board of Education, shall study training for school personnel dealing with students who are victims of physical violence and mental or verbal abuse, particularly instances of domestic violence and relationship violence. In studying this issue, the Department shall answer the following:

(1) What type of training is currently available and/or required for school personnel.
(2) Should training be required for school personnel.
(3) If training should be required, which school personnel should be required to receive the training.
(4) What type of training should be required.
(5) What is the fiscal impact of requiring school personnel to receive such training.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and to the Joint Legislative Education Oversight Committee no later than October 1, 2004, and a final report to the Joint Legislative

(2) To provide education to domestic violence victims regarding their rights and duties under the law;

(3) To involve the private bar in the representation of domestic violence victims pursuant to this Article.

(b) Eligible Cases. – The funds shall be prioritized by each legal services program to serve the greatest number of eligible clients, with emphasis placed on representation of clients needing legal assistance with proceedings pursuant to Chapter 50B of the General Statutes. Legal assistance shall be provided to eligible clients under this Article only in the following types of cases:

(1) Actions for protective orders issued pursuant to Chapter 50B of the General Statutes;

(2) Child custody and visitation issues; and

(3) Legal services which ensure the safety of the client and the client's children.

(c) Limitations. – No funds appropriated under this Article shall be used for any of the following purposes:

(1) To provide legal assistance with respect to any criminal proceeding; or

(2) To provide legal assistance to any prisoner within the North Carolina Department of Correction with regard to the terms of that person's incarceration.

"**§ 7A-474.9. Funds.**

Funds to provide representation pursuant to this Article shall be provided to the North Carolina State Bar for provision of direct services by and support of the established legal services programs. The North Carolina State Bar shall allocate these funds directly to each of the established legal services programs with Pisgah Legal Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania Counties, and Legal Aid Society of Northwest North Carolina receiving the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties. Funds shall be allocated to each program based on the counties served by that program using the following formula:

(1) Twenty percent (20%) based on a fixed equal dollar amount for each county;

(2) Eighty percent (80%) based on the rate of civil actions filed pursuant to Chapter 50B of the General Statutes in that county.

The North Carolina State Bar shall not use any of these funds for its administrative costs.

"**§ 7A-474.10. Records and reports.**

The established legal services programs shall keep appropriate records and make periodic reports, as requested, to the North Carolina State Bar. The North Carolina State Bar shall report annually to the General Assembly on the amount of the funds disbursed and the use of the funds by each legal services program receiving funds. The report to the General Assembly shall be made by January 15 of each year beginning January 15, 2006."

SECTION 4.2. G.S. 84-4.1 reads as rewritten:

SECTION 4.3. Section 4.1 of this part is effective when it becomes law. Section 4.2 of this part becomes effective July 1, 2004, and applies to all motions filed on or after that date. The remainder of this part is effective when it becomes law.

PART V. ADDITIONAL FUNDING FOR VICTIM SERVICES

SECTION 5.1. There is appropriated from the General Fund to the Department of Administration, to be credited to the Domestic Violence Center Fund established under G.S. 50B-9, the sum of two million dollars ($2,000,000) for the 2004-2005 fiscal year. It is the intent of the General Assembly that this become a recurring appropriation.

SECTION 5.2. This part becomes effective July 1, 2004.

PART VI. DOMESTIC VIOLENCE ADVOCATES ON CHILD FATALITY TASK FORCE

SECTION 6.1. G.S. 7B-1402 reads as rewritten:

"**§ 7B-1402. Task Force – creation; membership; vacancies.**

(a) There is created the North Carolina Child Fatality Task Force within the Department of Health and Human Services for budgetary purposes only.

(b) The Task Force shall be composed of 35 members, 11 of whom shall be ex officio members, four of whom shall be appointed by the Governor, 10 of whom shall be appointed by the Speaker of the House of Representatives, and 10 of whom shall be appointed by the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

(1) The Chief Medical Examiner;
(2) The Attorney General;
(3) The Director of the Division of Social Services;
(4) The Director of the State Bureau of Investigation;
(5) The Director of the Division of Maternal and Child Health of the Department of Health and Human Services;
(6) The Director of the Governor's Youth Advocacy and Involvement Office;
(7) The Superintendent of Public Instruction;
(8) The Chairman of the State Board of Education;
(9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
(10) The Secretary of the Department of Health and Human Services;
(11) The Director of the Administrative Office of the Courts;
(12) A director of a county department of social services, appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;
(13) A representative from a Sudden Infant Death Syndrome counseling and education program, appointed by the Governor upon recommendation of the Director of the Division of Maternal and Child Health of the Department of Health and Human Services;

the chair before the expiration of the chair's term, the members shall elect an acting chair to serve for the remainder of the unexpired term."

SECTION 6.2. The public members serving on the Child Fatality Task Force on the effective date of this act shall complete their current terms. The new appointments contained in Section 1 of this act shall take effect at the end of those terms.

SECTION 6.3. This part is effective when it becomes law.

PART VII. STUDY OF MENTAL HEALTH SERVICES FOR DOMESTIC VIOLENCE VICTIMS

SECTION 7.1. The Department of Health and Human Services shall study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs. The plan will address providing diagnostic and referral services for any client suspected of having a mental illness or a substance abuse problem. The plan will also address the delivery of appropriate services to clients meeting the target population criteria, as defined in the State Plan developed pursuant to G.S. 122C-102. Services must be best practices, as determined by the Department. The Department will consult various stakeholders in the domestic violence network of organizations. The Department will also consider the delivery of services to children identified through domestic violence programs. The Department shall also consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the House Select Committee on Domestic Violence and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services no later than October 1, 2004, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services and the General Assembly on or before January 15, 2005.

SECTION 7.2. This part is effective when it becomes law.

PART VIII. STUDY OF CLE CREDIT FOR PRO BONO LEGAL REPRESENTATION

SECTION 8.1. The North Carolina State Bar, in cooperation with the North Carolina Bar Association, shall study the issue of providing Continuing Legal Education (CLE) credit to active attorneys for providing pro bono legal representation. The Bar shall consider what types of pro bono legal representation, if any, should qualify for CLE credit and what administrative requirements would be necessary to provide such credit. The Bar shall specifically look at the possible benefits of providing CLE credit for pro bono legal representation to domestic violence victims. The Bar shall also consider the fiscal impact, if any, of providing the credit.

The Bar shall make a preliminary report to the House Select Committee on Domestic Violence no later than October 1, 2004, and a final report to the General Assembly on or before January 15, 2005.

SECTION 8.2. This part is effective when it becomes law.

PART IX. DOMESTIC RELATIONSHIP AGGRAVATING FACTOR

SECTION 9.1. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. – The following are aggravating factors:

(15) The defendant took advantage of a position of trust or ~~confidence~~ confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

SECTION 9.2. This part is effective December 1, 2004, and applies to offenses committed on or after that date.

PART X. CREATE STRANGULATION OFFENSE

SECTION 10.1. G.S. 14-32.4 reads as rewritten:

"**§ 14-32.4. Assault inflicting serious bodily ~~injury.~~injury; strangulation; penalties.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony."

SECTION 10.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date.

PART XI. AMEND HABITUAL MISDEMEANOR ASSAULT STATUTE

SECTION 11.1. G.S. 14-33.2 reads as rewritten:

"**§ 14-33.2. Habitual misdemeanor assault.**

A person commits the offense of habitual misdemeanor assault if that person violates any of the provisions of ~~G.S. 14-33(c) or G.S. 14-34~~G.S. 14-33 and causes physical

(b) Purposes of Probation for Community and Intermediate Punishments. – The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) Probation Caseload Goals. – It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) Lengths of Probation Terms Under Structured Sentencing. – Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;

(2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;

(3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and

(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. – The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original period of probation.

(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment to any of the following:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.

(2) Report to the offender's probation officer on a frequency to be determined by the ~~officer; or~~officer.

(3) Submit to substance abuse assessment, monitoring or treatment.

(4) Submit to a curfew that requires the offender to remain in a specified place for a specified period each day and wear a device that permits

(3) Serious injury to person, property, or society. The stated purpose of establishing the criteria was "to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future."

In contrast to the felony classification criteria, the Commission did not create classification criteria for misdemeanors. However, the current misdemeanor sentencing laws include an assault offense that has serious injury as an element – even though "serious injury to a person" is a category of harm for felony offense classification. The General Assembly finds that the classification of assault offenses that involve serious injury as misdemeanors is inconsistent with the Sentencing Commission's classification of felonies based on harm.

The North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall study the classification of misdemeanor offenses. In particular, the Commission shall examine the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses. The Commission shall develop a system for classifying misdemeanor offenses on the basis of their severity. The Commission may consider reclassifying existing offenses and creating new offenses in order to insure proportionality and consistency. The Commission shall report its findings and recommendations to the 2005 General Assembly, 2005 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations and proposed legislation. The Commission shall make a final report to the 2005 General Assembly, 2006 Regular Session.

SECTION 14.2. This part is effective when it becomes law.

PART XV. WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL RELEASE CONDITIONS

SECTION 15.1. G.S. 15A-401 reads as rewritten:

"**§ 15A-401. Arrest by law-enforcement officer.**

(a) Arrest by Officer Pursuant to a Warrant. –

(1) Warrant in Possession of Officer. – An officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction.

(2) Warrant Not in Possession of Officer. – An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession, may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible. This subdivision applies even though the arrest process has been returned to the clerk under G.S. 15A-301.

(b) Arrest by Officer Without a Warrant. –

(1) Subject to the provisions of subdivision (2), a law-enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:

a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or

b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(2) A law-enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:

a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;

b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or

c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

(e) Entry on Private Premises or Vehicle; Use of Force. –

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of a law enforcement agency located in the county where the officer is employed and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,

b. The officer has reasonable cause to believe the person to be arrested is present, and

c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there

similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is permissible, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefore, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein."

SECTION 16.2. This part becomes effective December 1, 2004, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutory provisions that would be applicable but for this act remain applicable to those prosecutions.

PART XVII. SPECIFICALLY ALLOW CROSS WARRANTS

SECTION 17.1. G.S. 15A-304 reads as rewritten:

"**§ 15A-304. Warrant for arrest.**

(a) Definition. – A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.

(b) When Issued. – A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.

(c) Statement of the Crime. – The warrant must contain a statement of the crime of which the person to be arrested is accused. No warrant for arrest, nor any arrest made pursuant thereto, is invalid because of any technicality of pleading if the statement is sufficient to identify the crime.

(d) Showing of Probable Cause. – A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe

neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina."

SECTION 18.3. This part becomes effective December 1, 2004.

PART XIX. TEMPORARY CHILD CUSTODY IN DOMESTIC VIOLENCE HEARINGS

SECTION 19.1. G.S. 50-13.2(b) reads as rewritten:

"(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic ~~violence.~~violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2) and (3). ~~Such orders may include a designation of time and place for the exchange of children away from the abused party, the participation of a third party, or supervised visitation.~~ If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child."

SECTION 19.2. G.S. 50B-2 reads as rewritten:

"**§ 50B-2. Institution of civil action; motion for emergency relief; temporary ~~orders.~~ orders; temporary custody.**

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.

(b) Emergency Relief. – A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the

aggrieved party or a minor child, the magistrate may enter ~~such~~ orders as it deems necessary to protect the aggrieved party or minor children from ~~such~~ those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is in the best interests of the minor child and is necessary for the safety of the minor child. If the magistrate determines that the other party may have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody ~~to~~ pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 19.3. G.S. 50B-3(a)(4) reads as rewritten:

"**§ 50B-3. Relief.**

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order to bring about a cessation of acts of domestic violence. The orders may:

...

(4) Award temporary custody of minor children and establish temporary visitation ~~rights;~~rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process;"

..."

SECTION 19.4. G.S. 50B-3 is amended by adding the following new subsection to read:

visitation or for 24 hours preceding an exchange of the minor child.

e. Ordering the noncustodial parent to pay the costs of supervised visitation.

f. Prohibiting overnight visitation.

g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.

h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.

i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

(4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter."

SECTION 19.5. G.S. 50B-3(b) reads as rewritten:

"(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed one year, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current ~~order.~~order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved."

SECTION 19.6. This part becomes effective October 1, 2004, and applies to actions filed on or after that date.

PART XX. PROHIBIT EMPLOYMENT DISCRIMINATION AGAINST DOMESTIC VIOLENCE VICTIMS

PART XXII. TRAINING FOR JUDGES AND COURT PERSONNEL

SECTION 22.1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

SECTION 22.2. The Administrative Office of the Courts shall study the issue of training for court personnel in the area of domestic violence. The study shall examine the following:

(1) The extent to which training is currently being done.

(2) The need for additional training.

(3) The amount and types of training that would be most appropriate.

(4) The potential costs and sources of funding for any additional training.

The Administrative Office of the Courts shall report its findings and recommendations to the 2005 Regular Session of the 2005 General Assembly.

SECTION 22.3. This part is effective when it becomes law.

PART XXIII. EFFECTIVE DATE

SECTION 23.1. Except as otherwise provided in this act, this act is effective when it becomes law.

GRNC

GRASS ROOTS NORTH CAROLINA / FORUM FOR FIREARMS EDUCATION
P.O. BOX 10684, RALEIGH, NC 27605 (919) 664-8565, www.grnc.org

GRNC Position:
HB 1354: "Strengthen Domestic Violence Laws"

Although Grass Roots North Carolina does not take a position on domestic violence legislation per se, two provisions of HB 1354 cause serious concern.

Part XVI. "Conform State Firearms Law to Federal Law"

- **This section is actually *more* stringent than federal law:** Under 18 USC Sec. 925 (c), someone who has been convicted of a felony may apply for restoration of his or her rights. No such provision exists in HB 1354.
  - **Federal law says:** "A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest."
- **Part XVI would apply to people convicted of non-violent crimes:** Given that the language fails to differentiate between classes of felonies or types of crimes, it would govern even those convicted of less serious "white collar" crimes such as mismanagement of a trust fund. Should such people suffer a permanent firearms "disability?"
- **Conclusion:** GRNC can support this section of HB 1354 only if: (1) It is more narrowly defined to encompass only violent felonies, or (2) A provision for applying for restoration of rights similar to federal law is added.

Part VI. "Domestic Violence Advocates on Child Fatality Task Force"

- **The Child Fatality Task Force has demonstrated antipathy to gun ownership:** The CFTF has endorsed or recommended nearly every gun control proposal presented to it, including gun show restrictions, required disclosure of private medical information, and other items unrelated to children.
- **The NC Coalition Against Domestic Violence is equally indifferent to gun owners' rights:** Passed in 2003, SB 919: "Homicide Prevention/Domestic Violence," for which NCCDV was the principle advocate, requires judges to "catalog" (meaning "register") the guns of people convicted of nothing, even requiring such "cataloging" in ex parte hearings in which a defendant may not even have an opportunity to defend himself.
- **Adding a permanent NCCDV representative would further politicize the CFTF.**
- **Conclusion:** GRNC must oppose any bill containing the language of Part VI unless balance is achieved by adding to the CFTF a member of a non-profit organization which is sensitive not only to domestic issues, but also to individual rights.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 14, 2004

TO: **House Judiciary IV Committee**

FROM: Douglas R. Holbrook
Fiscal Research Division

RE: HB 1354-CSSA-22, Strengthen Domestic Violence Laws PCS

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
REVENUES:	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000
OPERATING EXPENDITURES:	$3,910,824	$18,954,737	$30,806,406	$5,931,101**	$5,961,547**
Department of Correction—Operating	-	$13,086,150	$24,909,423	No est. avail**	No est. avail**
Department of Correction—Capital	There are no available prison beds in this time frame. This note assumes the use of contractual prison beds ($57.92 per bed per day). In the long term, due to the limited availability of contractual beds, the State will need to construct new cells at $56,500 per bed. Construction would have to begin in FY 04-5 for beds to be available in FY 07-8.				
Judicial Branch	$1,809,068	$3,293409	$3,293,409	$3,293409	$3,293409
Positions	25				
Department of Justice	$121,756	$121,756	$121,756	$121,756	$121,756
Positions	2				
Department of Administration	$2,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Community College System	-	$453,422	$481,818	$515,936	$546,382
POSITIONS TOTAL:	27	-	-	-	-
Judicial Branch	25				
Department of Justice	2				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts, Department of Correction, Department of Justice, Department of Administration, Community College System.

EFFECTIVE DATE: Upon ratification, except criminal penalty section: December 1, 2004.

This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1354 (First Edition)

SHORT TITLE: Strengthen Domestic Violence Laws.

SPONSOR(S): Representatives Sherrill and McLawhorn

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2004-05	**FY 2005-06**	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**
REVENUES:	**$3,460,000**	**$3,460,000**	**$3,460,000**	**$3,460,000**	**$3,460,000**
OPERATING EXPENDITURES:	**$3,910,824**	**$18,954,737**	**$30,806,406**	**$5,931,101****	**$5,961,547****
Department of Correction—Operating	-	**$13,086,150**	**$24,909,423**	**No est. avail****	**No est. avail****
Department of Correction—Capital	There are no available prison beds in this time frame. This note assumes the use of contractual prison beds ($57.92 per bed per day). In the long term, due to the limited availability of contractual beds, the State will need to construct new cells at $56,500 per bed. Construction would have to begin in FY 04-5 for beds to be available in FY 07-8.				
Judicial Branch	**$1,809,068**	**$3,293409**	**$3,293,409**	**$3,293409**	**$3,293409**
Positions	**25**				
Department of Justice	**$121,756**	**$121,756**	**$121,756**	**$121,756**	**$121,756**
Positions	**2**				
Department of Administration	**$2,000,000**	**$2,000,000**	**$2,000,000**	**$2,000,000**	**$2,000,000**
Community College System	-	**$453,422**	**$481,818**	**$515,936**	**$546,382**
POSITIONS TOTAL:	**27**	-	-	-	-
Judicial Branch	**25**				
Department of Justice	**2**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts, Department of Correction, Department of Justice, Department of Administration, Community College System.

from NC Coalition Against Domestic Violence, appointed by Senate President Pro Tem upon recommendation of coalition's Executive Director. Deletes two public members from Commission. Requires Department of Health and Human Services to study and develop plan for serving clients of domestic violence programs with mental health and substance abuse service needs; specifies reporting to legislative committee. Requires North Carolina State Bar, in cooperation with North Carolina Bar Association, to study issue of providing CLE credit to attorneys for providing pro bono legal representation, and specifically for such representation to domestic violence victims; specifies reporting to legislative committee.

Effective for offenses committed on or after December 1, 2004, (1) amends statutory aggravating factor in GS 15B-1340.16(d)(15) (taking advantage of position of trust) to specifically include domestic relationship; (2) amends GS 14-32.4 to provide that person who assaults another person and inflicts physical injury by strangulation is guilty of Class H felony; (3) amends GS 14-33.2 (habitual misdemeanor assault) to require proof of two or more prior convictions for either misdemeanor or felony assault (now, requires proof of five or more prior misdemeanor convictions, two or which were misdemeanor assaults); provides that conviction of GS 14-33.2 may not be used as prior conviction for any other habitual offense statute; and (4) amends GS 15A-1343.2(e) (delegation to probation officer in community punishment) to add within delegation probationer's submission to curfew requiring probationer to remain in specified place for specified period each day and wear electronic monitoring device.

Effective for offenses committed on or after December 1, 2004, adds new GS 15A-1382.1 to provide that when defendant is convicted of offense involving assault or communicating threat and judge determines that victim had personal relationship [as defined in GS 50B-1(b)] between defendant and victim, then judge must indicate on judgment that case involved domestic violence; clerk must insure that official record of defendant's conviction includes this determination. If community punishment is imposed, court must determine whether defendant must comply with special conditions of probation under GS 15A-1343(b1); judge is also authorized to require electronic monitoring under GS 15A-1343(b1)(3c), despite the provisions of GS 15A-1340.11(6)c.

Directs Sentencing and Policy Advisory Commission to study classification of misdemeanor offenses, particularly classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses; Commission to develop system for classifying misdemeanor offenses based on their severity. Specifies reporting to General Assembly.

Effective for offenses committed on or after December 1, 2004, amends GS 15A-401(b)(2) to authorize law enforcement officer to make arrest without arrest warrant when defendant has violated pretrial release order entered under GS 15A-534.1(2) (apparently intends (a)(2), which concerns judge's imposition of conditions when defendant was released after being charged with domestic violence crime). Effective for offenses committed on or after December 1, 2004, amends GS 14-415.1 to prohibit convicted felon from possessing any firearm (now, only handgun or firearm with barrel length less than 18 inches or overall length less than 26 inches). Deletes provision that allows convicted felon to possess firearm in own home or place of business. Amends GS 15A-304 to provide that judicial official may not refuse to issue arrest warrant solely because prior arrest warrant had been issued for another person involving same matter.

The Community College System provides Basic Law Enforcement Training (BLET), where the additional 16 hours would be added under this bill. Adding time to the BLET curriculum, based on current-year full-time equivalents, would be around $450,000 in the second year of the analysis time-frame, going up to $546,000 by year 5 due to enrollment increases. Any costs for in-service training in the Community Colleges cannot be determined.

Section III directs the Department of Public Instruction to study the issue of anti-violence programs in the schools, as well as training for school personnel in dealing with students who are victims of abuse. This section is not expected to have any fiscal impact.

Section IV creates a new fund to provide legal services for domestic violence victims. This fund would be administered by the State Bar, and would be funded by a new $100 *pro hac vice* fee, a fee charged to attorneys not licensed in North Carolina who wish to participate in a case here. The Administrative Office of the Courts estimates the fee could generate $1 million per year. The funds will be passed through to the State Bar to be used in individual counties on a formula basis: 20% of the funds shall be based on an even-share basis, 80% based on the rate of domestic violence protective orders issued under GS 50B in that county. This section becomes effective July 1, 2004.

Section V creates a $100 fee for defendants against whom a 50B order is obtained. The fee could generate as much as $2.46 million if collected in every case. This money goes into the General Fund. In Subsection 5.2, the bill also appropriates $2 million recurring from the General Fund to the Domestic Violence Center Fund. This section becomes effective July 1, 2004.

Section VI adds two domestic violence advocates to the Child Fatality Task Force. This section has no expected fiscal impact.

Section VII directs the Department of Health and Human Services to study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse needs. As this section requires a study, it has no expected fiscal impact. The findings of the study, due to the 2005 session of the General Assembly, may have fiscal impact.

Section VIII directs the State Bar to study the issue of providing Continuing Legal Education credit to active attorneys for pro bono legal representation in domestic violence proceedings for victims. This section has no expected fiscal impact.

Section IX modifies an existing felony aggravating factor, which can be used to extend a sentence to prison; the factor allows sentence enhancement for abuse in a position of trust, including a domestic relationship. This may have some fiscal impact, but cannot be projected since aggravating factors reflect judicial discretion within the sentencing grid.

Section X creates a Class H felony for assault by strangulation inflicting serious injury. The new strangulation assault offense may have significant impact on the prison population, as well as court operations. The offense represents roughly $1.3 million in court impact in the first year. Felonies are usually tried in Superior Court rather than District Court; felony trials also generally take longer than misdemeanor trials. Trials in Superior Court involve juries and much more prosecutor preparation time. AOC also expects the trial rate to increase. Misdemeanor offenses often result in guilty pleas,

Rows 4 and 5 in the following chart show the impact of this bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation might add up to 1,091 inmates to the prison system by the end of FY 2006-07.

	June 30 2004	June 30 2005	June 30 2006	June 30 2007	June 30 2008
1. Projected No. Of Inmates Under Current Structured Sentencing Act[1]	35,851	36,787	37,739	38,687	39,557
2. Projected No. of Prison Beds (DOC Expanded Capacity)[2]	34,561	34,729	34,729	34,729	34,729
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,290	-2,058	-3,010	-3,958	-4,828
4. No. of Projected Additional Inmates Due to this Bill[3]	0	0	521	1,091	N/A
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill[3]	0	0	521	570	N/A

These beds would be over and above those already needed by the prison system, so they would have to be procured either by finding space through contracts and temporary beds or constructing new prison facilities. As a practical matter, some temporary or contractual beds will be needed to carry forward until new facilities could be constructed. Projecting from current average incarceration costs per day of $57.92, and assuming 3% annual inflation, we assume the annual operating cost for a prison bed to be $23,100 for 2005-06, and $23,793 for 2006-07. Applying these rates to the numbers projected for the strangulation offense, we expect a cost to the Department of Correction of $11,041,800 in 2005-06 and $22,865,073 in 2006-07.

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[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

[2] Projected number of prison beds is based on beds completed or funded and under construction as of 12/14/02. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. ***These bed capacity figures do not include the potential loss in bed capacity due to any proposals in the 2003 Session to eliminate prison beds or close prisons. Figures include three new prisons due to open in 2003-04.***

[3] Criminal Penalty bills effective December 1, 2003 will only affect inmate population for one month of FY 2003-04, June 2004, due to the lag time between when an offense is committed and an offender is sentenced.

Section XVII prohibits a judicial official from refusing to issue a warrant for arrest solely because a prior warrant has been issued for the arrest of another person involved in the same matter. This is expected to have no fiscal impact on the state.

Section XVIII amends the nurse's privilege laws to clarify that the privilege does not preclude the admission of otherwise admissible written or printed medical records. This should have no fiscal impact.

Section XIX expands the circumstances under which a temporary child custody award may be made as part of an ex parte domestic violence protective order and gives the court specific factors to consider in deciding custody in domestic violence cases. A survey of District Court judges implies no significant fiscal impact from this change.

Section XX prohibits employers from firing, or otherwise discriminating against, an employee because the employee has taken time off work to seek relief under Chapter 50B.

Section XXI requires Clerks of Superior Court, where feasible, to provide a private area for complainants in domestic violence cases filing for protective orders under GS 50B to fill out forms and ask questions. Court facilities are the responsibility of county governments; as such, providing private space for handling domestic violence cases does not affect state resources. The AOC has conducted a survey of clerks, and has learned that many already have provision for private space, either through construction or through creative use of existing space.

Section XXII requests that the Supreme Court adopt rules establishing domestic violence training requirements for judges and requires AOC to study the issue of domestic violence training for other court personnel. As this is a study provision, no cost is expected, but the study's findings may indicate the need for future expansion of the AOC training budget.

Section XXIII is the effective date of the whole bill. It is effective upon ratification, except that the criminal penalty sections, IX, X, and XI, are effective on December 1, 2004, which is the standard date for criminal law changes.

HOUSE BILL 1354:
Strengthen Domestic Violence Laws

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. McLawhorn & Sherrill
Date:	June 15, 2004	**Summary by:**	Susan L. Sitze & Hal Pell
Version:	H1354-CSSA-22[v.6]		Staff Attorneys

SUMMARY: ***House Bill 1354 strengthens the laws against domestic violence, provides additional assistance to domestic violence victims and makes other changes as recommended by the House Select Committee on Domestic Violence.***

BILL ANALYSIS:

Part I – Domestic Violence Offender Treatment

Section 1.1 requires attendance and completion of an abuser treatment program while on probation if the court finds that the defendant is responsible for acts of domestic violence and there is a program reasonably available to the defendant. If the court makes those findings, the court must order the treatment as a regular condition of probation unless the court finds that it would not be in the best interest of justice.

Section 1.2 requires the Department of Correction to establish a domestic violence treatment program for offenders in the custody of the Department whose official record includes a finding by the court that the offender committed acts of domestic violence. The Department must ensure that those inmates complete the domestic violence treatment program prior to being released, unless other requirements, deemed critical by the Department prevent program completion. If the inmate does not complete the program, the Department must document, in the inmate's official record, specific reasons why that inmate did not or was not able to complete the program.

Section 1.3 provides that this part is effective December 1, 2004 and applies to offenses committed on or after that date.

Part II – Domestic Violence Training for Law Enforcement

Sections 2.1 through 2.15 require the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission to establish minimum standards for training of law enforcement officers in domestic violence. The training standards shall be developed for entry-level employment, for in-service training, and for certification of instructors, and shall include training in response to, and investigation of, domestic violence cases, as well as training in investigation for evidence based prosecutions.

The Commissions must have the training in place no later than March 1, 2005 and shall report to the General Assembly on or before March 1, 2005 on the exact standards implemented and the date they were implemented.

Part III – Study of Anti-Violence Education in Schools and Training for School Personnel

Section 3.1 requires the Department of Public Instruction, in collaboration with the State Board of Education, to study the issue of anti-violence programs in schools. The Department is directed to address several questions and to look at different programs used across the country.

Part VIII – Study of CLE Credit for Pro Bono Legal Representation

Section 8.1 requires the North Carolina State Bar, in cooperation with the North Carolina Bar Association, to study the issue of providing Continuing Legal Education (CLE) credit to active attorneys for providing pro bono legal representation. The Bar shall make a preliminary report to the House Select Committee on Domestic Violence by October 1, 2004 and a final report to the General Assembly by January 15, 2005.

Part IX – Domestic Relationship Aggravating Factor

Section 9.1 would amend the portion of the Criminal Procedure Act that applies to aggravating the sentence for a defendant who has been convicted of a felony offense. In felony sentencing, there are three ranges for the sentencing judge to determine a **minimum** sentence length.

Following is an example of the sentencing options for a person who has been convicted of a Class D felony, and who has no prior record points (no prior offenses):

Aggravated Range: 64-80 Months

Presumptive Range: 51-64 Months

Mitigated Range: 38-51 Months

If a court finds that aggravating or mitigating circumstances exist, it may depart from the presumptive range. If the aggravating factors present outweigh the mitigating factors that may be present, then the court may sentence in the aggravated range (and vice versa). [note: if a firearm is used, displayed, or threatened to be used in the course of the offense, a separate statute provides that an additional 60 months may be added to the minimum sentence.]

One of the current statutory aggravating factors is set forth at G.S. 15A-1340.16(d)(15): "The defendant took advantage of a position of trust or confidence to commit the offense." The factor has generally been applied to defendants who have been in a fiduciary relationship with the victim, e.g., embezzled money from the victim.

The proposed amendment would clarify that that a defendant may also take advantage of the trust or confidence in a domestic relationship to commit the offense. "Domestic relationship" is not defined in the section; however, domestic violence is defined by statute [G.S. 50B-1(a)], and applies to those whom the defendant has a personal relationship. The State has the burden of proving that the defendant did, in fact, take advantage of the relationship to commit the offense. If the trial judge sentences in the aggravated (or mitigated) range, then the judge must make written findings.

Part X – Create Strangulation Offense

Section 10.1 would create a new criminal offense: assault by strangulation. The offense would be a Class H felony. The State would have the burden of proving that the defendant attempted to strangle the victim, and cause physical injury by the act of strangulation. A first time offender would be subject to community punishment, intermediate punishment, or an active sentence. The presumptive range for an active sentence would be a minimum of 5-6 months.

Although the term "serious bodily injury" is defined by statute, the terms "serious injury" and "physical injury" are not. Whether or not serious or physical injury has occurred is a jury determination, based upon common law.

- Any person making a lawful inquiry into a person's criminal history would be able to determine that the person had been convicted of an offense involving domestic violence.

If the judge determines that there was a personal relationship, then the judge is also required to determine whether the defendant should be required to comply with any special conditions of probation. Due to an ambiguity in the statutes, the new provision makes clear that the judge may (but is not required to) sentence the defendant to house arrest with electronic monitoring.

Background: Federal law prohibits persons convicted of a misdemeanor involving domestic violence from possessing a firearm. Currently, there is no consistent and uniform method to insure that convictions involving domestic violence are reflected in a person's official criminal record. In addition, although "assault on a female" is generally used in domestic violence cases, there is no accurate method for collecting accurate data on DV cases. Consequently, there has been some difficulty in providing information to assist policymakers in determining whether any changes in the judicial response to DV crimes are needed.

Part XIII – Amend Probation Rules

Section 13.1 allows the Division of Community Corrections, Department of Correction to place an offender on house arrest and electronic monitoring, whether the defendant has been sentenced to community or intermediate punishment. The Division would have this delegated authority unless the presiding judge determines that delegation is not appropriate.

Part XIV – Study of Misdemeanor Offense Classifications

Section 14.1 requires the North Carolina Sentencing and Policy Advisory Commission to study the classification of misdemeanor offenses, and to develop a system for classifying misdemeanor offenses based upon their severity. The Commission is required to examine the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses. This section includes a finding by the General Assembly that the classification of assault offenses that cause serious injury as misdemeanors is inconsistent with the Commission's own classification of felonies based upon harm. The Commission is required to report to the 2005 General Assembly, 2005 Regular Session, with its findings and recommendations (status and any completed recommendations). A final report is due to the 2005 General Assembly, 2006 Regular Session.

Background: The Commission has adopted formal criteria for the classification of felony offenses, but did not create any classification criteria for misdemeanors. Although the felony classification criteria includes "serious injury" to the person, the current offense of assault causing serious injury is a misdemeanor.

Part XV – Warrantless Arrest for Violation of Pretrial Release Conditions

Section 15.1 amends the law to provide that if a law enforcement officer has probable cause to believe that a person has violated a condition of a pretrial release order in a domestic violence case, then the officer may arrest the defendant without a warrant. The arrest must be based upon a violation of one of the following provisions of a release order issued under G.S. 15A-534.1(2):

a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;

b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;

Part XIX – Temporary Child Custody in Domestic Violence Hearings

Sections 19.1 through 19.6 remove the current limitations under which courts may address temporary custody under Chapter 50B.

Custody under Chapter 50B at the ex parte stage: These sections would amend the law regarding ex parte custody orders by allowing the court to enter orders at that stage if the child is exposed to a substantial risk of physical or emotional injury (not "bodily" injury) or sexual abuse. This would give the court more discretion in deciding when a child is at risk.

The changes would also require the court, if requested by the aggrieved party, to consider whether the other party should stay away from the child, or return the child to, or not remove the child from, the physical case of a parent or person in loco parentis. If the court decides the other party should have contact with the child, it would be required to issue an order specifying the terms of contact to protect the safety of the child and the aggrieved party.

The same provisions would apply to an authorized magistrate issuing an ex parte protective order.

Custody under Chapter 50B at a hearing following notice to the other party: These sections would create new requirements for the court when deciding whether to award temporary custody and visitation rights at a hearing under Chapter 50B after the other party has received notice or service of process. Rather than being discretionary, the court would be required to consider the issue of custody upon the request of either party. However, it would ultimately be within the discretion of the court to decide whether to actually grant an award of custody.

In determining whether custody and visitation should be awarded, the court would be required to consider the following listed factors:

- Whether the child was exposed to a substantial risk of physical or emotional injury or sexual abuse.
- Whether the child was present during acts of domestic violence.
- Whether a weapon was used or threatened to be used during any act of domestic violence.
- Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the child.
- Whether a party placed the aggrieved party or the child in reasonable fear of imminent serious bodily injury.
- Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.
- Whether there is a pattern of abuse against an aggrieved party or the child.
- Whether a party has abused or endangered the child during visitation.
- Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.
- Whether a party has improperly concealed or detained the child.
- Whether a party has otherwise acted in a manner that is not in the best interest of the child.

If the court decides to award temporary custody, then the court would also be required to consider visitation. If ordering visitation, the court must provide for the safety and well being of both the child and

- Compensation for lost wages, lost benefits, and other economic losses. (If the court finds that the violation was willful, the court shall treble the amount of damages awarded.)

Part XXI – Privacy for 50B Intake

Section 21.1 requires the clerk of superior court, whenever feasible, to provide a private area for 50B complainants to fill out forms and make inquiries.

Part XXII – Training for Judges and Court Personnel

Section 22.1 requests the North Carolina Supreme Court to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

Section 22.2 directs the Administrative Office of the Courts to study the issue of training for court personnel in the area of domestic violence, and to report its findings and recommendations to the 2005 Regular Session of the 2005 General Assembly.

EXAMPLE 1: Defendant assaults his girlfriend and causes physical injury. The defendant and girlfriend live together.

Prior Record: (1) Assault Inflicting Serious Injury (Class A1, one point)
(2) Assault on a Female (Class A1, one point)

	Charge	Elements	Classification	Possible Sentence
Current Law	Assault on a Female		A1 Misdemeanor	1-75 days C/I/A
Current Law	Simple Assault		Class 2 Mis.	1-45 days C/I
Bill	Habitual Misdemeanor Assault	Physical Injury	Class H felony (PRL I)*	Min. range: 6-8 months, C/I/A (Agg. Range)

* If the defendant had any other offenses with points, he would move up from PRL I.

EXAMPLE 2: Husband assaults wife in their home. He causes injury by strangulation.

Prior Record: (1) Simple Assault (Class 2 Misdemeanor, No points).

Current Law	Assault with deadly weapon with intent to kill and causing serious injury	1- Serious Injury 2- Intent to Kill 3 - Hands as "deadly weapon"	Class C felony	Min. range: 58-73 months Active
Current Law	Assault with a deadly weapon causing serious injury	1- Serious Injury 2- Hands as "deadly weapon"	Class E felony	Min. range: 20-25 months I/A
Current Law	Assault with a deadly weapon with intent to kill	1-Intent to kill 2- Hands as "deadly weapon"	Class E felony	Min. range: 20-25 months I/A
Bill	Physical Injury by Strangulation	1- Physical injury	Class H felony	Min. range: 6-8 months* C/I/A (Agg. Range).
Current Law	Assault on a Female		A1 Misdemeanor	1-75 days C/I/A
Current Law	Simple Assault		Class 2 Mis.	1-45 days C/I

BRIEF SUMMARY OF H1354
H1354-CSSA-22 [v.6]

Parts I – III Rep. Bowie and Rep. Parmon
Part I requires all domestic violence offenders to complete an abuser treatment program.

Part II requires domestic violence training for entry-level law enforcement officers, and also domestic violence in-service training for active law enforcement officers.

Part III directs the Department of Public Instruction to study the issue of anti-violence programs in the schools. The Department is also instructed to study training for school personnel dealing with students who are victims of abuse.

Parts IV – VIII Rep. Ray and Rep. Warren
Part IV creates a new fund, administered by the State Bar, to provide legal services to domestic violence victims. A new fee of $100 is created for out of state attorneys who wish to appear in a court case in North Carolina. This fee is estimated to raise $1 Million/year, which will go into the new legal services fund.

Part V makes a direct appropriation of $2 Million to the Domestic Violence Center Fund.

Part VI adds two domestic violence advocates to the Child Fatality Task Force.

Part VII directs the Department of Health and Human Services to study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs.

Part VIII directs the State Bar to study the issue of providing CLE credit to active attorneys for pro bono legal representation.

Parts IX – XVIII Rep. Earle and Rep. Stam
Part IX modifies an existing felony aggravating factor to clarify that a position of trust or confidence can include a domestic relationship.

Part X creates a Class H felony for assault by strangulation inflicting physical injury.

Part XI amends the Habitual Misdemeanor Assault Statute so that it becomes a Class H felony on the 3rd assault conviction, when that assault causes physical injury.

Part XII provides for a system of indicating on criminal judgments that an offense involves domestic violence. This part also clarifies that house arrest may be used for domestic violence offenders that receive community punishment.

Part XIII authorizes DOC to place a probationer on house arrest.

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1354 DATE 6/15/04

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ H1354-CSSA-22 [v.6]

(Rep.) Sen.) Justus

1 moves to amend the bill on page 31, line 42

2 ~~( )~~ ~~WHICH CHANGES THE~~ TITLE

3 ~~by~~ through page 32, line 35, by deleting those lines;

4 and by renumbering the remaining Parts and

5 Sections accordingly.

SIGNED Carolyn Justus

ADOPTED FAILED TABLED

THE FOLLOWING WORKED WITH THE COMMITTEE AND PROVIDED VALUABLE INPUT AND RECOMMENDATIONS.

ADMINISTRATIVE OFFICE OF COURT
Rick Kane: (919) 715-4870

CONFERENCE OF DISTRICT COURT JUDGES
Judge Robert Rader: (Wake County): (919) 755-4101 office number (919) 835-3225 direct line

DEPARTMENT OF HEATH AND HUMAN SERVICES
- DIVISION OF INJURY AND VIOLENCE PREVENTION
- DIVISION OF SOCIAL SERVICES
  Rob Lamme: (919) 733-4534

GOVERNORS CRIME COMMISSION
Barry Bryant: (919) 733-4565

LEGAL AID OF NORTH CAROLINA (DOMESTIC VIOLENCE INITIATIVE)
TeAndra Miller: (919) 856-2142

LEGAL AID SOCIETY OF NORTHWEST NORTH CAROLINA
Andrea Kurtz: (336) 725-9166

NORTH CAROLINA BAR ASSOCIATION
Jonathan McGirt: (919) 677-0561

NORTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE
Beth Froeling: (919) 956-9124

NORTH CAROLINA COALITION AGAINST SEXUAL ASSAULT
Monika Johnson Hostler: (919) 431-0995

NORTH CAROLINA CONFERENCE OF DA'S
Peg Dorer: (919) 733-3484

NORTH CAROLINA COUNCIL FOR WOMEN

Leslie Starsoneck; (919) 733-2455

NORTH CAROLINA DEPARTMENT OF CORRECTION
Tracy Little: (919) 716-3711
Dan Steineke: (919) 716-3709

NORTH CAROLINA DEPARTMENT OF JUSTICE: ATTORNEY GENERALS OFFICE
Will Polk: (919) 716-6780

NORTH CAROLINA DOMESTIC VIOLENCE COMMISSION
Leslie Starsoneck: (919) 733-2455

NORTH CAROLINA FAMILY PRACTICE COURT
John Koontz:

NORTH CAROLINA LEGAL SERVICES PLANNING COUNCIL
Jim Barrett: (828) 253-0406

NORTH CAROLINA NURSES ASSOCIATION
Joanne Stevens: (919) 816-9205

NORTH CAROLINA SENTENCING COMMISSION
Susan Katzenelson: (919) 789-3684

NORTH CAROLINA SHERIFF ASSOCIATION
Eddie Caldwell: (919) 831-1801

NORTH CAROLINA STATE BAR
Alice Mine: (919) 828-4620

OFFICE OF ADMINISTRATIVE HEARING
Jo McCants: (919) 715-4864

PITT COUNTY SHERIFF'S DEPARTMENT
John Guard: (252) 830-4687

PISGAH LEGAL SERVICES
Jim Barrett: (828) 253-0406

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 24, 2004

The House Committee on Judiciary IV met on June 24, 2004, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice Chair Bonner Stiller, members Bowie, Goforth, Jeffus, Justus, and Kiser. Also Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup were present. A Visitor Registration list is attached and made part of these minutes.

Rep. Frye was asked to explain House Bill 1665 Venue for Juvenile Hearing. A PCS was adopted for discussion purposes. After much discussion, this bill was displaced to create an amendment. This bill was not discussed any further and will be on the agenda for the next meeting.

Senator Hartsell was asked to discuss SB 470 Compensation of Trustee/Other Fiduciaries. A PCS was adopted for discussion purposes. This bill was also displaced to create an amendment and will be on the agenda for the next meeting.

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary IV — 6/24/04

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Tracy Dick	DJJDP
Judy Stephens	DJJDP
Donn Hargrove	DJJDP
Pamela Kelly	AOC
Michael Gordon	School Boy Brook Hall Elkington 650
Patricia Pearson	NCACC
Jo McCants	AOC
Michelle Fazier	NC Bar Ass'n

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

June 24, 2004
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 1665	**Venue for Juvenile Hearings**	**Rep. Frye**
SB 470	**Compensation of Trustees/Other Fiduciaries**	**Sen. Hartsell**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 470

Judiciary II Committee Substitute Adopted 4/14/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S470-CSSV-17 [v.4]

6/24/2004 7:49:31 AM

Short Title: Compensation of Trustees/Other Fiduciaries. (Public)

Sponsors:

Referred to:

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE LAW AFFECTING THE COMPENSATION OF TRUSTEES AND OTHER FIDUCIARIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 32 of the General Statutes is repealed.

SECTION 2. Chapter 32 of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"Compensation of Trustees and Other Fiduciaries.

"**§ 32-53. Definitions.**

The following definitions apply in this Article:

(1) "Interested person" means (i) the grantor of the trust, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income or principal of the trust; (iii) all living persons who would be entitled to income and/or principal of the trust (without regard to the exercise of any power of appointment) if the trust terminated; and (iv) any special trustee, trust protector, or advisor named in the trust instrument who is entitled to receive similar notices pursuant to the terms of the trust.

(2) "Trust" is as defined in G.S. 36A-22.1(5).

"**§ 32-54. Compensation of trustees.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee is entitled to receive compensation that is reasonable under the circumstances and shall be empowered to pay such compensation from the assets of the trust without prior approval of the clerk of superior court.

(b) The trustee shall consider all of the following factors in determining reasonableness of compensation:

(1) The definition of "interested person" in G.S. 32-53(1) shall control in all matters relating to the review, including the determination of who may initiate a proceeding under G.S 36A-23.1 and the determination of when an interested person may be represented by others under G.S. 36A-26.3(2).

(2) For purposes of G.S. 36A-26.1, all interested persons who are not joined as petitioners shall be joined as respondents, but all known beneficiaries are not required to be joined as respondents unless they are interested persons.

(3) In addition to other powers of the clerk of superior court acting under Article 3 of Chapter 36A of the General Statutes, the clerk may order the trustee to make appropriate refunds if the clerk determines upon review that a trustee has received excessive compensation or expense reimbursement.

(b) Notwithstanding the foregoing, if a proceeding for review of the reasonableness of compensation or expense reimbursement paid to a trustee is not initiated within one year from the date when notice of the payment is given pursuant to G.S. 32-56, then the compensation or expense reimbursement is presumed to be reasonable.

"**§ 32-58. Compensation of other fiduciaries.**

Unless otherwise provided by the General Statutes or by the instrument creating the fiduciary relationship, fiduciaries other than trustees under a trust shall be entitled, upon written request to the clerk of superior court, to reasonable compensation in an amount to be determined by the clerk after taking into consideration the factors set forth in G.S. 32-54(b) and to reimbursement for expenses properly incurred in the administration of the fiduciary relationship.

"**§ 32-59. Effect of provisions in instrument.**

In those instances where the instrument creating the trust or other fiduciary relationship provides that the compensation of the fiduciary shall be the amount "provided by law", the "maximum amount provided by law", or other similar language, or references former G.S. 32-50, this language shall be construed as an intention that the trustee or other fiduciary shall receive reasonable compensation as allowed under this Article. In those instances where the instrument creating the trust or other fiduciary relationship provides that the trustee or other fiduciary shall serve without compensation, this language shall be construed as being a provision relating to compensation, and the trustee or other fiduciary shall not be entitled to receive reasonable compensation as allowed under this Article.

"**§ 32-60. Counsel fees allowable to attorneys serving as fiduciaries.**

The clerk of superior court may exercise discretion to allow counsel fees to an attorney serving as a fiduciary or trustee (in addition to the compensation allowed to the attorney as a fiduciary or trustee) where the attorney, on behalf of the trust or fiduciary relationship, renders professional services as an attorney that are different from the services normally performed by a fiduciary or trustee and of a type which would

authorized by this subsection shall not exceed twelve percent (12%) of the income produced by such investment. A corporation acting in a fiduciary capacity has complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the corporation's periodic statements set forth the method of computing such fees."

SECTION 6. This act becomes effective January 1, 2005, and applies to payments made to a fiduciary on or after that date.

SENATE BILL 470:
Compensation of Trustees/Other Fiduciaries

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Hartsell
Date:	June 24, 2004	**Summary by:**	Trina Griffin
Version:	PCS for 2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 470 rewrites the law dealing with the compensation of trustees and other fiduciaries when the terms of certain trusts do not specify the compensation. The bill would eliminate the minimum fee schedule and prior approval by the clerk of superior court. Instead, trustees and fiduciaries would be entitled to compensation that is reasonable under the circumstances. They would be required to provide annual written notice to all interested parties of all compensation, expense reimbursement, professional fees, counsel fees, and distributions or payments. Interested parties would be allowed to initiate a proceeding by the clerk of court for a review of the reasonableness of the compensation or expense reimbursement. The bill also would allow an attorney-in-fact under a power of attorney that does not contain the amount of compensation to be entitled to reasonable compensation.***

The Proposed Committee Substitute makes technical corrections only and revises the effective date.

CURRENT LAW: Currently, trustees of certain trusts receive annual compensation for serving as trustees based on a minimum fee schedule set out in G.S. 32-50. For this fee schedule to apply, a trust must be silent as to the amount of compensation. In addition to the minimum compensation, the clerk of superior court at the written request of the trustee may in the clerk's discretion allow additional compensation (subject to a cap) when the trustee has rendered services beyond the routine services expected of a trustee. The clerk of court may also authorize compensation for fiduciaries other than the trustee and for counsel fees for attorneys who serve as a fiduciary or trustee where the attorney renders professional services, as an attorney, that are beyond the ordinary routine of management and that would reasonably justify the retention of legal counsel.

SECTION-BY-SECTION ANALYSIS:

Section 1 would repeal Article 5 of Chapter 32 of the General Statutes, which governs compensation of trustees and fiduciaries (see attached).

Section 2 would create a new Article 5A of Chapter 32 of the General Statutes to be entitled, "Compensation of Trustees and Other Fiduciaries."

- G.S. 32-53 would define "interested person" as (i) the grantor, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income or principal; (iii) all living persons entitled to trust income or principal, or both, upon the trust's termination; and (iv) any special trustee, trust protector or advisor named in the trust who is entitled to receive notices under the terms of the trust. This term does not include all persons who may have a future interest in the trust.
- G.S. 32-53 also would define "trust" to have the same meaning as it has in Article 3 of Chapter 36A of the General Statutes.
- G.S. 32-54 would specify that, if the trust does not specify the compensation, then the trustee is entitled to receive compensation that is reasonable under the circumstances. Prior approval of the

Article 5.

Compensation.

§ 32-50. Compensation.

(a) Express Trust in Writing. – Unless otherwise provided in the instrument creating the trust relationship, a trustee under an express trust in writing, either inter vivos or testamentary, shall receive compensation for serving as a trustee as follows:

(1) Income Compensation. – An annual charge on gross income of:
- a. Five percent (5%) on the first five thousand dollars ($5,000) of income;
- b. Four percent (4%) on the next seven thousand five hundred dollars ($7,500) of income;
- c. Three percent (3%) on the next twelve thousand five hundred dollars ($12,500) of income;
- d. Two and one-half percent (2 1/2%) on the next twenty-five thousand dollars ($25,000) of income;
- e. Two percent (2%) on all income over fifty thousand dollars ($50,000).

(2) Compensation on Principal Consisting of Personal Property. – An annual charge on the current value of that portion of the principal consisting of personal property, of:
- a. Four-tenths (4/10) of one percent (1%) on the first twenty- five thousand dollars ($25,000) of principal;
- b. Three-tenths (3/10) of one percent (1%) on the next twenty- five thousand dollars ($25,000) of principal;
- c. Two-tenths (2/10) of one percent (1%) on the next fifty thousand dollars ($50,000) of principal;
- d. One-tenth (1/10) of one percent (1%) on the next one hundred thousand dollars ($100,000) of principal;
- e. One-twentieth (1/20) of one percent (1%) on all principal over two hundred thousand dollars ($200,000).

(3) Maximum Compensation. – In addition to the minimum compensation set out in (1) and (2) above, the clerk of superior court at the written request of the trustee may in his discretion allow additional compensation in those cases where the trustee has rendered services beyond the routine services expected by a trustee but in no event shall the total annual aggregate compensation exceed five percent (5%) upon the gross income and the expenditures made in accordance with law, and five-tenths (5/10) of one percent (1%) upon the current value of principal, both real and personal property, held as assets of the trust. In determining the amount of such additional compensation, if any, the clerk of superior court shall consider the time, responsibility, and skill involved in the management activities of the trustee.

For purposes of determining the annual compensation on principal, the current value of the principal shall be determined as of the date of the first annual accounting and each year thereafter on the anniversary of that date by an appraisal of the trustee and certified to the clerk of superior court.

When computing the current value of real property for purposes of subdivision (3) of this subsection (a) the value of a usual dwelling house occupied by a beneficiary and lands reasonably necessary to the use and enjoyment thereof shall not be included.

This section is not applicable to trustees under bond issues, trustees of corporate trusts, employee benefit trusts, deeds of trusts of real property used for purposes of securing loans, or trusts for similar purposes.

(b) Effect of Provisions in the Instrument. – Nothing in the provisions of this section shall be interpreted to prevent a corporate trustee from applying its regularly adopted schedule of compensation in effect and applicable at the time of performance of such services where the settlor or testator in the instrument creating the trust has so stipulated. In those instances where the compensation provision in the instrument creating the trust relationship provides that the compensation shall not exceed the maximum allowed by law this shall be construed as an expression of intention that the compensation shall not exceed the maximum compensation as provided in G.S. 32-50(a)(3), above.

(c) Other Fiduciary Relationships. – Unless otherwise provided, fiduciaries other than trustees under express trusts shall be entitled to compensation fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal and real property when received, and upon the expenditures made in accordance with law. In determining the amount of such compensation, both upon the property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of such property. The clerk of superior court may allow compensation from time to time during the course of the management but the total amount allowed shall be determined on final settlement and shall not exceed the limit fixed in this subsection.

HB 1665:
Venue For Juvenile Hearings

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Frye
Date:	June 24, 2004	**Summary by:**	Steven Rose
Version:	H1665-CSRL-47 [v.2]		Committee Counsel

SUMMARY: The Proposed Committee Substitute for HB 1665 modifies the venue statute applicable to proceedings in District Court involving an allegation that a juvenile is delinquent or undisciplined. The bill would prevent transfer of the case to the district where the juvenile resides prior to the dispositional hearing if the juvenile is in residential treatment or foster care in the district where the proceedings are commenced.

CURRENT LAW: G.S. 7B-1800 prescribes the venue for proceedings involving a juvenile alleged to be delinquent or undisciplined. It requires the proceeding to be commenced and adjudicated in the district where the offense took place. However, if that district is not the district of residence of the juvenile, there are transfer options to transfer the case to the district of residence available after adjudication, but before disposition. These include:

1. Transfer by the court.
2. Transfer upon the request of the chief district court judge of the district where the juvenile resides.
3. Transfer to the residence district upon motion of the juvenile.

BILL ANALYSIS: HB 1665 amends G.S. 7B-1800 by providing that if the non-resident juvenile is in a residential treatment program or foster care in the district where the proceedings are commenced, the court must conduct the dispositional hearing in that district.

The act is effective October 1, 2004 and applies to hearings conducted on or after that date.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 29, 2004

The House Committee on Judiciary IV met on June 29, 2004, in Room 415 of the Legislative Office Building at 10:00 AM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice Chair Bonner Stiller, members Bowie, Goforth, Jeffus, Justus, and Kiser. Also Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup were present. A Visitor Registration list is attached and made part of these minutes.

Rep. Frye was asked to explain House Bill 1665 Venue for Juvenile Hearing. A PCS was adopted for discussion purposes. The committee substitute was given a favorable report, unfavorable as to the original bill.

Senator Hartsell was asked to discuss SB 470 Compensation of Trustee/Other Fiduciaries. A PCS was adopted for discussion purposes. The PCS was given a favorable report, unfavorable as to the original bill.

Committee Chair

Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

June 29, 2004
Room 415
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

HB 1665	**Venue for Juvenile Hearings**	**Rep. Frye**
SB 470	**Compensation of Trustee/Other Fiduciaries**	**Sen. Hartsell**

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 470 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) GLAZIER

moves to amend the bill on page 2, line 21

( ) WHICH CHANGES THE TITLE

by adding the following at the end of the line:

" The notice shall contain a statement that the beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonabl~~objection~~ with the clerk of superior court in accordance with Article 3 of Chapter 36A of the General Statutes."

and on page 3, line 5 and line 13 by deleting the word "15" and substituting the word "20"

and on page 1, line 16 by deleting "56" and substituting ~~56~~ "55".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 470

Judiciary II Committee Substitute Adopted 4/14/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S470-CSSV-54 [v.4]

6/28/2004 10:41:44 PM

Short Title: Compensation of Trustees/Other Fiduciaries. (Public)

Sponsors:

Referred to:

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE LAW AFFECTING THE COMPENSATION OF TRUSTEES AND OTHER FIDUCIARIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 32 of the General Statutes is repealed.

SECTION 2. Chapter 32 of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"Compensation of Trustees and Other Fiduciaries.

"**§ 32-53. Definitions.**

The following definitions apply in this Article:

(1) "Beneficiary" means (i) all living persons who are currently receiving or who are eligible to receive distributions of income or principal of the trust and (ii) all living persons who would be entitled to income and/or principal of the trust if the trust were to terminate at the time of the giving of the notice referred to in G.S. 32-56 (without regard to the exercise of any power of appointment).

(2) "Representative" means, with respect to a beneficiary who is under a legal disability, the beneficiary's agent under a durable power of attorney, general guardian, guardian of the estate, or guardian of the person of a beneficiary, and the parent of a minor beneficiary.

(3) "Trust" is as defined in G.S. 36A-22.1(5).

"**§ 32-54. Compensation of trustees.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee is entitled to receive from the assets of the trust compensation that is reasonable under the circumstances.

(1) The annual amount of compensation does not exceed four-tenths (4/10) of 1% of the principal value of the assets of the trust on the last day of the trust accounting year; or

(2) No beneficiary has initiated a proceeding under G.S. 32-57 for review of the reasonableness of the compensation within 15 days after notice has been given by the trustee in accordance with G.S. 32-55.

"**§ 32-57. Judicial review; payment of compensation and other payments with court order.**

(a) The trustee or any beneficiary may initiate a proceeding under Article 3 of Chapter 36A of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 15-day period referred to in G.S. 32-56(a)(2) has expired.

(b) In connection with reviewing the reasonableness of any compensation or expense reimbursement, the clerk of superior court may order the trustee to make appropriate refunds if the clerk determines upon review that a trustee has received excessive compensation or expense reimbursement.

"**§ 32-58. Reimbursement for expenses incurred.**

In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled to reimbursement out of the assets of the trust for expenses properly incurred in the administration of the trust and shall be empowered to pay the expenses from the assets of the trust without prior approval of the clerk of superior court.

"**§ 32-59. Compensation of other fiduciaries.**

Unless otherwise provided by the General Statutes or by the instrument creating the fiduciary relationship, fiduciaries other than trustees under a trust shall be entitled, upon written request to the clerk of superior court, to reasonable compensation in an amount to be determined by the clerk after taking into consideration the factors set forth in G.S. 32-54(b) and to reimbursement for expenses properly incurred in the administration of the fiduciary relationship.

"**§ 32-60. Effect of provisions in instrument.**

In those instances where the instrument creating the trust or other fiduciary relationship provides that the compensation of the fiduciary shall be the amount "provided by law", the "maximum amount provided by law", or other similar language, or references former G.S. 32-50, this language shall be construed as an intention that the trustee or other fiduciary shall receive reasonable compensation as allowed under this Article. In those instances where the instrument creating the trust or other fiduciary relationship provides that the trustee or other fiduciary shall serve without compensation, this language shall be construed as being a provision relating to compensation, and the trustee or other fiduciary shall not be entitled to receive reasonable compensation as allowed under this Article.

"**§ 32-61. Counsel fees allowable to attorneys serving as fiduciaries.**

The clerk of superior court may exercise discretion to allow counsel fees to an attorney serving as a fiduciary or trustee (in addition to the compensation allowed to the attorney as a fiduciary or trustee) where the attorney, on behalf of the trust or fiduciary

funds held awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby. The fee authorized by this subsection shall not exceed twelve percent (12%) of the income produced by such investment. A corporation acting in a fiduciary capacity has complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the corporation's periodic statements set forth the method of computing such fees."

SECTION 6. This act becomes effective January 1, 2005, and applies to payments made to a fiduciary on or after that date.

SENATE BILL 470:
Compensation of Trustees/Other Fiduciaries

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Hartsell
Date:	June 29, 2004	**Summary by:**	Trina Griffin
Version:	PCS for 2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 470 rewrites the law dealing with the compensation of trustees and other fiduciaries when the terms of certain trusts do not specify the compensation. The bill eliminates the minimum fee schedule and states that trustees are entitled to compensation that is reasonable under the circumstances.***

The Proposed Committee Substitute would require trustees to give all beneficiaries prior written notice of the payment of compensation, unless the compensation is less than a minimum amount. The PCS would also authorize trustees to pay themselves reasonable compensation, without prior approval of the court, as long as the compensation does not exceed a minimum amount or no beneficiary has filed a petition for review of the reasonableness of the compensation within 15 days after being given written notice.

CURRENT LAW: Currently, trustees of certain trusts receive annual compensation for serving as trustees based on a minimum fee schedule set out in G.S. 32-50. For this fee schedule to apply, a trust must be silent as to the amount of compensation. In addition to the minimum compensation, the clerk of superior court at the written request of the trustee may in the clerk's discretion allow additional compensation (subject to a cap) when the trustee has rendered services beyond the routine services expected of a trustee. The clerk of court may also authorize compensation for fiduciaries other than the trustee and for counsel fees for attorneys who serve as a fiduciary or trustee where the attorney renders professional services, as an attorney, that are beyond the ordinary routine of management and that would reasonably justify the retention of legal counsel.

SECTION-BY-SECTION ANALYSIS:

Section 1 would repeal Article 5 of Chapter 32 of the General Statutes, which governs compensation of trustees and fiduciaries (see attached).

Section 2 would create a new Article 5A of Chapter 32 of the General Statutes to be entitled, "Compensation of Trustees and Other Fiduciaries."

- G.S. 32-53 would define "beneficiary" as (i) all living persons who are currently receiving or eligible to receive distributions of income or principal and (ii) all living persons entitled to trust income or principal, or both, if the trust were to terminate at the time of the giving of notice referred to in G.S. 32-56.
- G.S. 32-53 also would define "trust" to have the same meaning as it has in Article 3 of Chapter 36A of the General Statutes.
- G.S. 32-54 would specify that, if the trust does not specify the compensation, then the trustee is entitled to receive compensation that is reasonable under the circumstances. There are enumerated factors that must be considered in determining "reasonableness."

Article 5.

Compensation.

§ 32-50. Compensation.

(a) Express Trust in Writing. – Unless otherwise provided in the instrument creating the trust relationship, a trustee under an express trust in writing, either inter vivos or testamentary, shall receive compensation for serving as a trustee as follows:

(1) Income Compensation. – An annual charge on gross income of:
   a. Five percent (5%) on the first five thousand dollars ($5,000) of income;
   b. Four percent (4%) on the next seven thousand five hundred dollars ($7,500) of income;
   c. Three percent (3%) on the next twelve thousand five hundred dollars ($12,500) of income;
   d. Two and one-half percent (2 1/2%) on the next twenty-five thousand dollars ($25,000) of income;
   e. Two percent (2%) on all income over fifty thousand dollars ($50,000).

(2) Compensation on Principal Consisting of Personal Property. – An annual charge on the current value of that portion of the principal consisting of personal property, of:
   a. Four-tenths (4/10) of one percent (1%) on the first twenty- five thousand dollars ($25,000) of principal;
   b. Three-tenths (3/10) of one percent (1%) on the next twenty- five thousand dollars ($25,000) of principal;
   c. Two-tenths (2/10) of one percent (1%) on the next fifty thousand dollars ($50,000) of principal;
   d. One-tenth (1/10) of one percent (1%) on the next one hundred thousand dollars ($100,000) of principal;
   e. One-twentieth (1/20) of one percent (1%) on all principal over two hundred thousand dollars ($200,000).

(3) Maximum Compensation. – In addition to the minimum compensation set out in (1) and (2) above, the clerk of superior court at the written request of the trustee may in his discretion allow additional compensation in those cases where the trustee has rendered services beyond the routine services expected by a trustee but in no event shall the total annual aggregate compensation exceed five percent (5%) upon the gross income and the expenditures made in accordance with law, and five-tenths (5/10) of one percent (1%) upon the current value of principal, both real and personal property, held as assets of the trust. In determining the amount of such additional compensation, if any, the clerk of superior court shall consider the time, responsibility, and skill involved in the management activities of the trustee.

For purposes of determining the annual compensation on principal, the current value of the principal shall be determined as of the date of the first annual accounting and each year thereafter on the anniversary of that date by an appraisal of the trustee and certified to the clerk of superior court.

When computing the current value of real property for purposes of subdivision (3) of this subsection (a) the value of a usual dwelling house occupied by a beneficiary and lands reasonably necessary to the use and enjoyment thereof shall not be included.

This section is not applicable to trustees under bond issues, trustees of corporate trusts, employee benefit trusts, deeds of trusts of real property used for purposes of securing loans, or trusts for similar purposes.

(b) Effect of Provisions in the Instrument. – Nothing in the provisions of this section shall be interpreted to prevent a corporate trustee from applying its regularly adopted schedule of compensation in effect and applicable at the time of performance of such services where the settlor or testator in the instrument creating the trust has so stipulated. In those instances where the compensation provision in the instrument creating the trust relationship provides that the compensation shall not exceed the maximum allowed by law this shall be construed as an expression of intention that the compensation shall not exceed the maximum compensation as provided in G.S. 32-50(a)(3), above.

(c) Other Fiduciary Relationships. – Unless otherwise provided, fiduciaries other than trustees under express trusts shall be entitled to compensation fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal and real property when received, and upon the expenditures made in accordance with law. In determining the amount of such compensation, both upon the property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of such property. The clerk of superior court may allow compensation from time to time during the course of the management but the total amount allowed shall be determined on final settlement and shall not exceed the limit fixed in this subsection.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1665
PROPOSED COMMITTEE SUBSTITUTE H1665-CSSQ-6 [v.3]

6/28/2004 6:45:54 PM

Short Title: Venue for Juvenile Hearings. (Public)

Sponsors:

Referred to:

May 26, 2004

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DISPOSITIONAL HEARING OF A JUVENILE WHO IS IN RESIDENTIAL TREATMENT BE HELD IN THE COUNTY IN WHICH THE JUVENILE IS RECEIVING TREATMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1800 reads as rewritten:

"**§ 7B-1800. Venue.**

(a) A proceeding in which a juvenile is alleged to be delinquent or undisciplined shall be commenced and adjudicated in the district in which the offense is alleged to have occurred. When a proceeding is commenced in a district other than that of the juvenile's residence, the court shall proceed to adjudication in that ~~district.~~ district and, if the juvenile is in residential treatment or foster care in that district, the court shall conduct the dispositional hearing in that district as well, unless the judge enters an order, supported by findings of fact, that a transfer would serve the ends of justice and be in the best interests of the juvenile.

(b) ~~After~~ Except as provided in subsection (a) of this section, after adjudication, the following procedures shall be available to the court:

(1) The court may transfer the proceeding to the court in the district where the juvenile resides for disposition.

(2) Where the proceeding is not transferred under subdivision (1) of this section, the court shall immediately notify the chief district court judge in the district in which the juvenile resides. If the chief district court judge requests a transfer within five days after receipt of notification, the court shall transfer the proceeding.

(3) Where the proceeding is not transferred under subdivision (1) or (2) of this section, the court, upon motion of the juvenile, shall transfer the proceeding to the court in the district where the juvenile resides for

disposition. The court shall advise the juvenile of the juvenile's right to transfer under this section."

SECTION 2 This act becomes effective October 1, 2004 and applies to hearings conducted on or after that date.

HB 1665:
Venue For Juvenile Hearings

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Frye
Date:	June 29, 2004	**Summary by:**	Steven Rose
Version:	H1665-CSSQ-6		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for HB 1665 modifies the venue statute applicable to proceedings in District Court involving an allegation that a juvenile is delinquent or undisciplined. The bill would restrict transfer of the case to the district where the juvenile resides prior to the dispositional hearing if the juvenile is in residential treatment or foster care in the district where the proceedings are commenced.***

CURRENT LAW: G.S. 7B-1800 prescribes the venue for proceedings involving a juvenile alleged to be delinquent or undisciplined. It requires the proceeding to be commenced and adjudicated in the district where the offense took place. However, if that district is not the district of residence of the juvenile, there are transfer options to transfer the case to the district of residence available after adjudication, but before disposition. These include:

1. Transfer by the court.
2. Transfer upon the request of the chief district court judge of the district where the juvenile resides.
3. Transfer to the residence district upon motion of the juvenile.

BILL ANALYSIS: BILL ANALYSIS: HB 1665 amends G.S. 7B-1800 by providing that if the non-resident juvenile is in a residential treatment program or foster care in the district where the proceedings are commenced, the court must conduct the dispositional hearing in that district unless the judge enters an order, supported by findings of fact, that a transfer would serve the ends of justice and be the best interests of the juvenile.

The act is effective October 1, 2004 and applies to hearings conducted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1665
PROPOSED COMMITTEE SUBSTITUTE H1665-CSSQ-6 [v.3]

6/28/2004 6:45:54 PM

Short Title: Venue for Juvenile Hearings. (Public)

Sponsors:

Referred to:

May 26, 2004

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DISPOSITIONAL HEARING OF A JUVENILE WHO IS IN RESIDENTIAL TREATMENT BE HELD IN THE COUNTY IN WHICH THE JUVENILE IS RECEIVING TREATMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1800 reads as rewritten:

"**§ 7B-1800. Venue.**

(a) A proceeding in which a juvenile is alleged to be delinquent or undisciplined shall be commenced and adjudicated in the district in which the offense is alleged to have occurred. When a proceeding is commenced in a district other than that of the juvenile's residence, the court shall proceed to adjudication in that ~~district.~~ district and, if the juvenile is in residential treatment or foster care in that district, the court shall conduct the dispositional hearing in that district as well, unless the judge enters an order, supported by findings of fact, that a transfer would serve the ends of justice ~~and~~ or be in the best interests of the juvenile.

(b) ~~After~~ Except as provided in subsection (a) of this section, after adjudication, the following procedures shall be available to the court:

(1) The court may transfer the proceeding to the court in the district where the juvenile resides for disposition.

(2) Where the proceeding is not transferred under subdivision (1) of this section, the court shall immediately notify the chief district court judge in the district in which the juvenile resides. If the chief district court judge requests a transfer within five days after receipt of notification, the court shall transfer the proceeding.

(3) Where the proceeding is not transferred under subdivision (1) or (2) of this section, the court, upon motion of the juvenile, shall transfer the proceeding to the court in the district where the juvenile resides for

disposition. The court shall advise the juvenile of the juvenile's right to transfer under this section."

SECTION 2 This act becomes effective October 1, 2004 and applies to hearings conducted on or after that date.

HB 1665:
Venue For Juvenile Hearings

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Frye
Date:	June 29, 2004	**Summary by:**	Steven Rose
Version:	H1665-CSSQ-6		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for HB 1665 modifies the venue statute applicable to proceedings in District Court involving an allegation that a juvenile is delinquent or undisciplined. The bill would restrict transfer of the case to the district where the juvenile resides prior to the dispositional hearing if the juvenile is in residential treatment or foster care in the district where the proceedings are commenced.***

CURRENT LAW: G.S. 7B-1800 prescribes the venue for proceedings involving a juvenile alleged to be delinquent or undisciplined. It requires the proceeding to be commenced and adjudicated in the district where the offense took place. However, if that district is not the district of residence of the juvenile, there are transfer options to transfer the case to the district of residence available after adjudication, but before disposition. These include:

1. Transfer by the court.

2. Transfer upon the request of the chief district court judge of the district where the juvenile resides.

3. Transfer to the residence district upon motion of the juvenile.

BILL ANALYSIS: BILL ANALYSIS: HB 1665 amends G.S. 7B-1800 by providing that if the non-resident juvenile is in a residential treatment program or foster care in the district where the proceedings are commenced, the court must conduct the dispositional hearing in that district unless the judge enters an order, supported by findings of fact, that a transfer would serve the ends of justice and be the best interests of the juvenile.

The act is effective October 1, 2004 and applies to hearings conducted on or after that date.

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV.**

☐ Committee Substitute for
S.B. 470 A BILL TO BE ENTITLED AN ACT TO MODERNIZE THE LAW AFFECTING THE COMPENSATION OF TRUSTEES AND OTHER FIDUCIARIES

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#), ☐ which changes the title~~, unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for
H.B. 1665 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE DISPOSITIONAL HEARING OF A JUVENILE WHO IS IN RESIDENTIAL TREATMENT BE HELD IN THE COUNTY IN WHICH THE JUVENILE IS RECEIVING TREATMENT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill ~~(#_____),~~ ☒ which changes the title, unfavorable as to (the original bill) ~~(Committee Substitute Bill #_____), (and recommendation that the committee substitute bill #_____) be re-referred to the Committee on Appropriations.)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

June 29, 2004

The House Committee on Judiciary IV met on June 29, 2004, in Room 415 of the Legislative Office Building at 5:00 PM. The following members were present: Chairman Don Munford, Vice-Chair Rick Glazier, Vice Chair Bonner Stiller, members Bowie, Haire, and Jeffus. Also Staff Counsel Steve Rose, Trina Griffin and Dianna Jessup were present. A Visitor Registration list is attached and made part of these minutes.

Senator Pursell and Representative Weiss were asked to explain SB 1218 Child Restraint Systems Modified. Tom Vetalari with the Child Fatality Task Force, Jane Paoki with AAA of the Carolinas, David Stoller with State Farm, and Steve Shore with NC Chapter of the Academy of Pediatrics all spoke in favor of this bill.

Representative Glazier made an amendment to the bill. The amendment passed and the amendment was rolled into a committee substitute. The PCS was voted favorable, unfavorable as to the original bill. The bill was reported out of committee on July 1, 2004

Committee Chair

Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary Committee — 6-28-01
Name of Committee — Date — Time: 5:15

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Clemmie Tollerson	CFTF
Tom Vitazkone	NCCAT
Roz Smith	NC United Crime Coalition
Starla Mfleur	NC DHHS
Susan Valdani	Nationwide
David Stoller	STATE FARM
Sarai Schmidt	Comment w/ NC's Children
Steve Shone	NC Pediatric Society
Audrey Galloway	NC March of Dimes
Joanne Stevens	NCNA
Karen George	NC ACDSS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 2

SENATE BILL 1218

House Committee Substitute Favorable 6/23/04

Short Title: Child Restraint Systems Modified. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CHILD RESTRAINT SYSTEM REQUIREMENTS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.1(a1) reads as rewritten:

"(a1) A child less than ~~five~~ eight years of age and less than ~~40~~80 pounds in weight shall be properly secured in a weight-appropriate child passenger restraint system. In vehicles equipped with an active passenger-side front air bag, if the vehicle has a rear seat, a child less than five years of age and less than 40 pounds in weight shall be properly secured in a rear seat, unless the child restraint system is designed for use with air bags. A child less than eight years of age and more than 40 but less than 80 pounds in weight may be restrained only by a properly fitted lap belt only if all seating positions equipped with lap and shoulder belts are occupied."

SECTION 2. G.S. 20-137.1(c) reads as rewritten:

"(c) Any driver found responsible for a violation of this section may be punished by a penalty not to exceed twenty-five dollars ($25.00), even when more than one child less than 16 years of age was not properly secured in a restraint system. No driver charged under this section for failure to have a child under ~~five~~ eight years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint ~~system.~~system for a vehicle in which the child is normally transported."

SECTION 3. This act becomes effective October 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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SENATE BILL 1218:
Child Restraint Systems Modified

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Senator Purcell
Date:	June 16, 2004	**Summary by:**	R. Erika Churchill
Version:	2nd Edition		Staff Counsel

SUMMARY: ***Senate Bill 1218 would amend the child restraint law to:***

- ***Require that children aged 8 and under and less than 80 pounds must be secured in a weight appropriate child passenger restraint system***
- ***Permit a child less than 8 years old and weighing between 40 and 80 pounds to be restrained by only a lap belt when all the seating positions with lap and shoulder belts are occupied.***

CURRENT LAW: Currently, a child less than 5 years old and less than 40 pounds must be properly secured in a weight appropriate child passenger restraint system when being transported. The child passenger restraint system requirement does not apply in the following situations:

1. Ambulances or other emergency vehicles.
2. When the child's personal needs are being attended to.
3. If all seating positions equipped with child passenger restraint systems or seat belts are occupied.
4. To vehicles which are not required by federal law or regulation to be equipped with seat belts.

BILL ANALYSIS: The bill would require the child passenger restraint system when a child is less than 8 years of age and less than 80 pounds. The bill would also clarify that it is appropriate for a child less than 8 years of age and between 40-80 pounds to be restrained by a properly fitted lap belt if all seating equipped with lap and shoulder belts is occupied.

The act would become effective when it becomes law.

BACKGROUND: The National Highway Traffic Safety Administration (NHTSA) and the American Academy of Pediatrics recommend that young children between 4 and 8 weighing over 40 pounds should use a belt positioning booster seat. Belt positioning booster seats must be used with both lap and shoulder belts. After a child is over age 8 or is 4'9" tall then they can use seat belts without a belt positioning booster seat.

The UNC Highway Safety Research Center (Center) is concerned that children are prematurely moving to seat belt use. According to information from the Center, the safest option for children between 40 and 60 pounds is the booster seat. In recent child restraint surveys conducted by the Center, results showed that among restrained children weighing 40 to 60 pounds, only 16% were in booster seats. More than half of the children this size were wearing seat belts. Many of the children were wearing the seat belts incorrectly, which is not only uncomfortable for the child but also unsafe.

Research by the Partners for Child Passenger Safety shows that a belt positioning booster seat can reduce a child's risk of injury by 59%.

Sara Kamprath contributed to this summary.

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Sara Kamprath contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1218

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1218-AST-52 [v.2]

Date _____,2004

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative _____

moves to amend the bill on page 1, lines 11-13 by rewriting those lines to read:

"air bags. If no seating position equipped with a lap and shoulder belt to properly secure the weight-appropriate child passenger restraint system is available, a child less than eight years of age and between 40 and 80 pounds may be restrained by a properly fitted lap belt only.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1218

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(to be filled in by
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Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1218

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1218-AST-52 [v.2]

Date _____ ,2004

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Amends Title [NO]
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SIGNED _____
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. 2

H. B. No. _____ DATE _____

S. B. No. S1218 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Brian Lafferty
Sen.)

1 moves to amend the bill on page 1, line 23
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 deleting the phrase "October 1, 2004." and
5 _____
6 substituting the phrase "January 1, 2005."
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MINUTES
HOUSE COMMITTEE ON
JUDICIARY IV

July 8, 2004

The House Committee on Judiciary IV met on July 8, 2004, in Room 425 of the Legislative Office Building at 4:00 PM. The following members were present: Chairman Don Munford, Vice-Chair Bonner Stiller, Representatives Bowie, Haire, Jeffus, Justus, and Kiser. Staff Counsel Dianna Jessup was in attendance. A Visitor Registration list is attached and made part of these minutes.

SB 1054 Increase Methamphetamine Penalties was explained by Senator Dalton. A PCS was introduced and adopted for discussion purposes. Representative Haire sent forth an amendment that was adopted. Representative Bowie made a motion to give the new PCS including the amendments by Rep. Haire a favorable report, unfavorable as to the original bill. The bill was reported out of committee on July 9th.

_____
Committee Chair

_____
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

July 8, 2004
Room 424
10:00 am

OPENING REMARKS

Representative Don Munford, Chair

AGENDA ITEMS

SB 1054	**Increase Methamphetamine Penalties**	**Senator Dalton**

VISITOR REGISTRATION SHEET

Judiciary II Committee — 7-8-04

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Rick Zechini	NC Assoc. of REALTORS
Andy Ellen	NCRMH
Rob Hamme	NCDHHS
Steve Cline	NC DHHS - DPH
Ann Hamlin	NCSBI
Gary Mulvey	NCACC
John Madler	NC Sentencing Commission
(illegible)	(illegible)
Eddie Caldwell	NC Sheriffs Assn/NC Law Enf Off Assn.
Ken Melton	D.C.R.
John Goodman	Alley Associates

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative **Don Munford** (Chair) for the Committee on **JUDICIARY IV**.

☐ Committee Substitute for

S.B. 1054 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE UNLAWFUL DISTRIBUTION OF METHAMPHETAMINE THAT PROXIMATELY RESULTS IN THE DEATH OF A PERSON IS SECOND DEGREE MURDER, TO MAKE IT AN AGGRAVATING FACTOR TO MANUFACTURE METHAMPHETAMINE IN A LOCATION THAT ENDANGERS A CHILD, TO INCREASE THE CRIMINAL PENALTY FOR THE UNLAWFUL MANUFACTURE OF METHAMPHETAMINE, AND TO INCREASE THE CRIMINAL PENALTY FOR THE POSSESSION OF PRECURSOR SUBSTANCES FOR METHAMPHETAMINE, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE, TO REQUIRE THE COMMISSION FOR HEALTH SERVICES TO ESTABLISH DECONTAMINATION STANDARDS FOR PROPERTY USED FOR THE MANUFACTURE OF METHAMPHETAMINE AND TO IMPOSE AN ENHANCED SENTENCE FOR CONVICTION OF MANUFACTURE OF METHAMPHETAMINE IF THE OFFENSE RESULTS IN SERIOUS INJURY TO A LAW ENFORCEMENT OFFICER, PROBATION OR PAROLE OFFICER, EMS EMPLOYEE, OR FIREFIGHTER.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill ~~(#)~~, ☐ which changes the ~~title,~~ unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1054

Judiciary II Committee Substitute Adopted 5/27/04
Third Edition Engrossed 7/6/04
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1054-CSLH-27 [v.3]

7/8/2004 10:57:41 AM

Short Title: Increase Methamphetamine Penalties. (Public)

Sponsors:

Referred to:

May 12, 2004

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE UNLAWFUL DISTRIBUTION OF METHAMPHETAMINE THAT PROXIMATELY RESULTS IN THE DEATH OF A PERSON IS SECOND DEGREE MURDER, TO MAKE IT AN AGGRAVATING FACTOR TO MANUFACTURE METHAMPHETAMINE IN A LOCATION THAT ENDANGERS A CHILD, TO INCREASE THE CRIMINAL PENALTY FOR THE UNLAWFUL MANUFACTURE OF METHAMPHETAMINE, AND TO INCREASE THE CRIMINAL PENALTY FOR THE POSSESSION OF PRECURSOR SUBSTANCES FOR METHAMPHETAMINE, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE, TO REQUIRE THE COMMISSION FOR HEALTH SERVICES TO ESTABLISH DECONTAMINATION STANDARDS FOR PROPERTY USED FOR THE MANUFACTURE OF METHAMPHETAMINE, TO IMPOSE AN ENHANCED SENTENCE FOR CONVICTION OF MANUFACTURE OF METHAMPHETAMINE IF THE OFFENSE RESULTS IN SERIOUS INJURY TO A LAW ENFORCEMENT OFFICER, PROBATION OR PAROLE OFFICER, EMS EMPLOYEE, OR FIREFIGHTER AND TO PROVIDE IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY FOR CERTAIN GOOD FAITH ACTIONS OF A PERSON PARTICIPATING IN A METHAMPHETAMINE WATCH PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait,

remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1)."

SECTION 4. G.S. 90-95(d1) reads as rewritten:

"(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class ~~H~~ F felon."

SECTION 5. G.S. 90-95(d2) reads as rewritten:

"(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Acetic anhydride.
(2) Acetone.
~~(1)~~(3) Anhydrous ammonia.
~~(1a)~~(4) Anthranilic acid.
(5) Benzyl chloride.
~~(2)~~(6) Benzyl cyanide.
(7) 2-Butanone (Methyl Ethyl Ketone).
~~(3)~~(8) Chloroephedrine.
~~(4)~~(9) Chloropseudoephedrine.
~~(5)~~(10) D-lysergic acid.
~~(6)~~(11) Ephedrine.
~~(7)~~(12) Ergonovine maleate.
~~(8)~~(13) Ergotamine tartrate.
(14) Ethyl ether.
~~(9)~~(15) Ethyl Malonate.
~~(10)~~(16) Ethylamine.
(17) Gamma-butyrolactone.
(18) Hydrochloric Acid.
~~(10a)~~(19) Iodine.
~~(11)~~(20) Isosafrole.
~~(11a)~~(21) Lithium.
~~(12)~~(22) Malonic acid.
~~(13)~~(23) Methylamine.
(24) Methyl Isobutyl Ketone.
~~(14)~~(25) N-acetylanthranilic acid.
~~(15)~~(26) N-ethylephedrine.
~~(16)~~(27) N-ethylepseudoephedrine.
~~(17)~~(28) N-methylephedrine.
~~(18)~~(29) N-methylpseudoephedrine.

maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(b) An indictment or information for the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) shall allege in that indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the offense of manufacture of methamphetamine and that as a result of the offense a law enforcement officer, probation officer, parole officer, emergency medical services employee, or firefighter suffered serious injury while discharging or attempting to discharge his or her official duties. One pleading is sufficient for all felonies that are tried at a single trial.

(c) The State shall prove the issue set out in subsection (b) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the offense of manufacture of methamphetamine unless the defendant pleads guilty or no contest to the issue. If the defendant pleads guilty or no contest to the offense of manufacture of methamphetamine but pleads not guilty to the issue set out in subsection (b) of this section, then a jury shall be impaneled to determine the issue.

(d) This section does not apply if the offense is packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container."

SECTION 7. Chapter 114 of the General Statutes is amended by adding a new article to read:

Article 7.

Methamphetamine Watch Program

"**§ 114-43. Methamphetamine Watch Program—good faith actions immune from civil and criminal liability.**

Anyone who, in good faith, does any of the acts listed in subdivisions (1) through (3) of this section as part of a Methamphetmine Watch Program approved by the Department of Justice is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action. In any proceeding involving liability, good faith is presumed. The actions for which immunity is granted under this section are as follows:

(1) The person files a report with a law enforcement agency concerning the purchase or theft of ingredients used to manufacture methamphetamine.

(2) The person cooperates in any law enforcement investigation concerning the manufacture of methamphetamine.

(3) The person testifies in any judicial proceeding concerning the manufacture of methamphetamine."

SECTION 8. Sections 1 through 5 of this act and Section 6.1 of this act become effective December 1, 2004, and apply to offenses committed on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. Section 6 of this act becomes effective January 1, 2005. The remainder of this act is effective when it becomes law, at which time the Commission for Health Services may adopt rules under Section 6 of this act.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 8, 2004

TO: House Judiciary IV Committee

FROM: Chloe Gossage
Fiscal Research Division

RE: Senate Bill 1054 PCS

FISCAL IMPACT

Yes (X) No ( ) No Estimate Available ( )

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
GENERAL FUND					
Correction					
Sections 1, 4 - 6	**$ -**	**Cannot be determined**			
Sections 2 & 3	**$ -**	**FY 05-6 range: $336,420 - $1,704,528**	**FY 06-7 range: $716,131 - $3,557,554**		**(see p. 3)**
Section 6.1	**Amount cannot be determined; impact begins after 8 years**				

There are no available prison beds in this time frame. This note assumes the use of contractual prison beds ($57.92 per bed per day). In the long term, due to the limited availability of contractual beds, the State will need to construct new cells at $69,500 per bed. Construction would have to begin in FY 04-5 for beds to be available in FY 07-8.

Judicial					
Sections 1, 4 - 6, 6.1	**Cannot be determined**				
Section 3	**FY 04-5 range (7 months): $85,134 - $464,366**	**FY 05-6 range: $153,241 - $835,859**			**(see p. 3)**
HHS -Public Health	**Cannot be determined. See page 6 – Decontamination Rules**				
ADDITIONAL PRISON BEDS*					
Section 1	**For every 1 conviction, 1 bed each year**				
Sections 2 & 3	**-**	**15 – 76 beds**	**31 – 154 beds**	**increase in later years**	
Sections 4 & 5	**For every 6 convictions, 1 bed in year 1 and 2 beds in year 2**				
Section 6.1	**Amount cannot be determined; impact begins after 8 years**				
POSITIONS:	**See Assumptions & Methodology**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Health & Human Services (HHS)

EFFECTIVE DATE: Sections 1 – 5, 6.1: December 1, 2004. Section 6: January 1, 2005. Section 7: when it becomes law.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system and the Judicial Department.*

ASSUMPTIONS AND METHODOLOGY:

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or other criminal penalty bills.

Section 1: Second Degree Murder

The Medical Examiner's Office reported three deaths due to methamphetamine overdose in 2003 and one meth-related fatal auto accident. However, many people who take methamphetamine also manufacture it for their own use, so we cannot determine whether another manufacturer or provider could have been charged in those deaths. Based on survey results from AOC, for every four second-degree murder (Class B2) charges under this bill there would be, on average, two trials and one plea to a lesser offense. If offenders are now charged under involuntary manslaughter (Class F), the AOC anticipates that the increase in penalty would increase the jury trial rate and court time for such cases. For example, the difference between the cost of a *guilty plea* for a Class F felony and a *jury trial* for a Class B2 felony is $13,000. Every Class B2 conviction would lead to one prison bed, with an average minimum sentence of 174 months.

Sections 2 and 3: New Aggravating Factor & Increase Penalty for Manufacture

When legislation proposes to increase the felony class of an existing offense, the Sentencing Commission and AOC typically project court and prison impact based on the historic number of charges and convictions for the offense and the difference in average length of sentence, active sentence rate, and trial versus plea rate for the new offense class compared to the old offense class. However, this method is not necessarily appropriate for this particular legislation. First, we cannot identify the exact historic number of charges, because methamphetamine manufacture cannot be separated out from the data on other non-cocaine Schedule II controlled substances. Second, there has been a rapid increase in the number of meth labs found each year – 98 labs in 2002, 177 labs in 2003, 350 to 375 labs projected for 2004, and 500 labs projected for 2005. Therefore, using the number of charges and convictions in 2002 may significantly underestimate the number of charges and convictions that will occur in 2005.

Rather than rely solely on historic court data, we have identified four scenarios for the percentage of charges and convictions under Manufacture Schedule II Controlled Substance that are for manufacture – not packaging or labeling – of methamphetamine:

1. Assume 25 percent of charges and convictions are for meth.
2. Assume 50 percent of charges and convictions are for meth.
3. Assume 75 percent of charges and convictions are for meth.
4. Assume 100 percent of charges and convictions are for meth (AOC and Sentencing Commission believe that most of the charges and convictions are for meth).

For these Scenarios, we have also used the following projections and assumptions:

- SBI projected increase in labs – 2002 to 2004: 98 to 367 - increase by 3.74 times
- SBI projected increase in labs – 2003 to 2004: 177 to 367 - increase by 2.07 times
- SBI projected increase in labs – 2002 to 2005: 98 to 500 - increase by 5.10 times
- SBI projected increase in labs – 2003 to 2005: 177 to 500 - increase by 2.82 times

are no surplus prison beds available for the five year Fiscal Note horizon and beyond. That means the number of beds needed is always equal to the projected additional inmates due to a bill.

Under Scenario 1(a), approximately 12 positions would be needed to supervise the additional inmates housed under this bill by 2006-07; under Scenario 4(b), 62 positions would be needed. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by DOC and the three new prisons under construction.

Community Corrections Savings: Over the short term, the Division of Community Corrections (DCC) will see a caseload decrease from this bill. DCC supervises offenders given non-active (community or intermediate) sentences, at a cost of $1.75 to $10.06 per offender per day. Class H felons serve an average of two years on non-active sentences. Sixty-five percent of offenders convicted of Schedule II manufacture were given Class H non-active sentences, and 42 percent of those offenders, on average, will have their probation revoked and be sent to prison.

Under this legislation, all offenders convicted of methamphetamine manufacture (except packaging/labeling) would serve active sentences, so DCC would no longer supervise these offenders as probationers. However, unlike Class H felons, Class C felons enter Community Corrections after prison, under post-release supervision, for a term of nine months. Once the Class C felons serve their terms (average minimum sentence is 92 months), DCC will see an increase in post-release supervision caseload.

Judicial Branch

For charges increased from Class H to Class C, the AOC anticipates that cases will be more complex, require more time, and have a higher rate of trials (5% instead of 1%). Costs increases primarily reflect increases in workload for superior court judges, clerks, court reporters, jury costs, and indigent defense. The AOC estimates an increase in costs of $663 per case. The estimates on page 1 reflect seven months of costs for FY 2004-5 and annual inflation of five percent. The estimates also reflect AOC's anticipated indigency rate of 100 percent.

The number of positions required by AOC will depend on the number of charges. For example, under Scenario 1(a) (220 charges) the systemwide increase in workload would be the equivalent of just under one Assistant District Attorney position. Under Scenario 4(b) (1,200 charges), the systemwide increase would be the equivalent of just under four Assistant District Attorney positions and about two-thirds of a position each for a Superior Court Judge, Court Reporter, and Deputy Clerk.

The AOC estimates that, at a minimum, the aggravating factor would create two hours of additional work at the guilt/innocence and sentencing phases. If, for example, the aggravated factor added two hours per case to trials, there would be an additional 165 to 225 hours of court time required. In addition, if there were two additional hours per conviction for pleas, another 11 to 54 hours of court time would be required. Six hours of court time cost $1,510, and six hours of indigent defense cost $390. Court costs would increase by 5 percent each year.

Section 6.1: Sentence Enhancement for Injury to Firefigher/LEO

Under current law, there is an aggravating factor for offenses that proximately cause serious injury to a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

This section has long-term potential fiscal impact, but we are unable to determine the amount. Section 3 increases the penalty for manufacture of methamphetamine from a Class H to a Class C felony. In conjunction with Section 6.1, an offender whose manufacturing of meth causes serious injury to a law enforcement officer or firefighter could be charged *either* (1) in the aggravated range of Class C *or* (2) in the presumptive range of Class C plus 24 months. Section 2 also creates the aggravating factor of child endangerment. If applicable, this factor or another aggravating factor in current statute[1] could be applied to the Class C manufacturing offense. Thus, an offender who, in the course of manufacturing methamphetamine, both endangers a child and inflicts serious injury on a law enforcement officer or firefighter, could be charged with Class C Aggravated *plus* a sentence enhancement of 24 months. The longest possible minimum sentence under each option is listed below (in number of months):

	Prior Record Level					
	I	II	III	IV	V	VI
Manufacture Meth & Seriously Injure Law Enforcement/Firefighter						
Options:						
Class C Aggravated	92	125	145	167	188	210
Class C Presumptive + 24 months	109	136	152	169	187	204
Plus Child Endangerment or Other Existing Aggravating Factor[1]						
Options:						
Class C Aggravated	92	125	145	167	188	210
Class C Aggravated + 24 months	128	163	181	203	224	244

For example, the longest minimum sentence an offender with no prior record could receive with the aggravating factor is 7.7 years. With the sentence enhancement, the longest minimum sentence would be 9.1 years. If another aggravating factor could be applied, the longest minimum sentence with the sentence enhancement would be 10.7 years. Thus, this section has the potential to increase sentence lengths and therefore increase the need for prison beds over the long term.

It is likely that there will be some cases in which the enhanced sentence could be applied. The SBI reports that, in 2003, 27 law enforcement officers and firefighters were injured by methamphetamine labs. The number of labs is projected to increase in 2004, and this may impact the number of injuries.

[1] § 15A-1340.16 lists other aggravating factors in addition to the serious injury of a criminal justice or public safety officer. Examples include joining with other offenders to commit the offense, commission of the offense while on pre-trial release for another crime, sale or delivery of a controlled substance to a minor, etc. These other factors, if applicable, could be used to move the offender into the aggravated sentencing range.

SENATE BILL 1054:
Increase Methamphetamine Penalties

BILL ANALYSIS

Committee: House Judiciary IV
Date: July 8, 2004
Version: PCS S1054-CSLH-27

Introduced by: Senator Dalton
Summary by: Dianna Jessup
Committee Counsel

SUMMARY: ***A recommendation of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, Senate Bill 1054 would (i) provide that the unlawful distribution of methamphetamine that proximately results in the death of a person is second degree murder, (ii) make it an aggravating factor to manufacture methamphetamine in a location that endangers a child, (iii) increase the criminal penalty for the unlawful manufacture of methamphetamine, (iv) increase the criminal penalty for the possession of precursor substances and add several methamphetamine precursor (v) direct the Commission for Health Services to adopt rules that establish decontamination standards for certain property used for the manufacture of methampthetamine; provide for an enhanced penalty of 60 months if a defendant is convicted of the manufacture of methamphetamine and the offense resulted in serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter.***

The PCS would reduce the enhancement penalty from 60 months to 24 months; would clarify that the enhancement penalty would apply only if the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine; and would add Section 7 that would provide immunity from civil and criminal liability to a person who, as part of a Methamphetamine Watch Program, files a report with a law enforcement agency concerning the purchase or theft of ingredients used to manufacture methamphetamine, cooperates in any law enforcement investigation concerning the manufacture of methamphetamine, or testifies in any judicial proceeding concerning the manufacture of methamphetamine.

BACKGROUND: According to the Office of National Drug Control Policy (ONDCP), Methamphetamine can be easily manufactured in clandestine laboratories (meth labs) using ingredients purchased in local stores. Over-the-counter cold medicines containing ephedrine or pseudoephedrine and other materials are "cooked" in meth labs to make methamphetamine.

Meth labs can be portable and so are easily dismantled, stored, or moved. This portability helps methamphetamine manufacturers avoid law enforcement authorities. Meth labs have been found in many different types of locations, including apartments, hotel rooms, rented storage spaces, and trucks. Methamphetamine labs have been known to be boobytrapped and lab operators are often well armed.

According to DEA, in 2001 there were 12,715 methamphetamine laboratory incidents reported in 46 States. The West Coast accounted for most of the laboratory incidents. On the East Coast, the following States reported the highest incident rates: Georgia (51), North Carolina (31), and Florida (29). Nationally, the highest rate of lab activity took place in Missouri, which reported 2,207 incidents. California and Washington also had high incident rates with 1,847 and 1,477, respectively. *(Source: ONDCP Drug Policy Information Clearinghouse Fact Sheet, November 2003)*

BILL ANALYSIS

I. UNLAWFUL DISTRIBUTION/2ND DEGREE MURDER (Section 1)

CURRENT LAW: Second Degree Murder is a Class B2 Felony, which is punishable by an absolute minimum of 94 months active, and an absolute maximum of 480 months active, depending on the defendant's prior record. Opium and cocaine are already in the current law as 2nd Degree Murder when opium or cocaine is unlawfully distributed and the ingestion of the substance causes the death of the user.

ANALYSIS: The bill would direct the Commission for Health Services to adopt rules establishing decontamination standards to ensure that a residence or place of business, or a structure appurtenant to the residence or place of business is reasonably safe for habitation. An owner, lessee, operator or other person in control of a residence (a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside), a place of business (a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work), or a structure appurtenant to the residence or business, would be required to comply with the rules.

VI. ENHANCED SENTENCE IF MANUFACTURE CAUSES INJURY (Section 6.1)

CURRENT LAW: Currently, there are three North Carolina statutes that require a sentencing judge to increase a defendant's sentence beyond the ranges authorized by structured sentencing. These statutes are: (i) firearm enhancement (60 months); (ii) enhancement for Class B1 felonies involving young victims (life imprisonment without parole); and (iii) bulletproof vest enhancement (one class higher than the underlying felony). Courts have held that any fact, other than a prior conviction, that increases the punishment for a crime beyond the statutory maximum for that crime must be submitted to the jury and proven beyond a reasonable doubt.

ANALYSIS: The bill would provide that if a person is convicted of manufacturing methamphetamine and it is found that a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter suffered serious injury, and that the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine, then the person's sentence would be increased by 24 months. The issue of enhancement would have to be proven beyond a reasonable doubt and would have to be determined by a jury. The enhancement would not apply if the offense is packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container.

VII. GOOD FAITH IMMUNITY FOR PARTICIPATION IN APPROVED METHAMPHETAMINE WATCH PROGRAM (Section 7)

CURRENT LAW: Law enforcement agencies currently send out information to businesses asking businesses to notify them if they notice purchases of unusually law quantities of precursors, which could include things such as acetone, sodium, ephedrine, and iodine. Participation by businesses in these "watch programs" is voluntary.

ANALYSIS: The bill would add a new section to the statutes that would provide that any person who, as part of a Methamphetamine Watch Program approved by the Department of Justice, (i) files a report with a law enforcement agency concerning the purchase or theft of ingredients used to manufacture methamphetamine, (ii) cooperates in any law enforcement investigation concerning the manufacture of methamphetamine, or (iii) testifies in any judicial proceeding concerning the manufacture of methamphetamine, would be immune from civil or criminal liability. Participation in these watch programs would continue to be voluntary.

EFFECTIVE DATE: Sections 1-5 and Section 6.1 of the bill would take effect December 1, 2004, and apply to offenses committed on or after that date. Section 6 of the bill would take effect January 1, 2005. The remainder of the bill would become effective when it becomes law, at which time the Commission may adopt its rules.

**S1054-SMSW-001: Brenda Carter, Susan Sitze, and Robin Johnson, Attorneys, Research Division, substantially prepared this summary*

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

(e) Mitigating Factors. – The following are mitigating factors:
(1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.
(2) The defendant was a passive participant or played a minor role in the commission of the offense.
(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
(4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
(5) The defendant has made substantial or full restitution to the victim.
(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
(9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
(10) The defendant reasonably believed that the defendant's conduct was legal.
(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
(13) The defendant is a minor and has reliable supervision available.
(14) The defendant has been honorably discharged from the United States armed services.
(15) The defendant has accepted responsibility for the defendant's criminal conduct.
(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
(17) The defendant supports the defendant's family.
(18) The defendant has a support system in the community.
(19) The defendant has a positive employment history or is gainfully employed.

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or
(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anhydrous ammonia.
(1a) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.
(30) Gamma-butyrolactone.

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

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.
(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he

have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. –

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or