The General Statutes of North Carolina

1977 Cumulative Supplement

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the direction of
W. M. Willson, J. H. Vaughan and Sylvia Faulkner

Volume 1C
1975 Replacement

Annotated through 292 N.C. 643 and 33 N.C. App. 240. For complete scope of annotations, see scope of volume page.

Place with corresponding volume of main set. This supersedes previous pocket supplement, which may be retained for reference purposes.

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THE GENERAL STATUTES OF
NORTH CAROLINA

IMPLEMENTATION

An Annotated Update of the Provisions of the September
1949 General Statutes of the State of North Carolina

UNDER THE DIRECTION OF
M. W. Michie II, Managing and Editorial Editor

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BY

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Preface

This Cumulative Supplement to Replacement Volume 1C contains the general laws of a permanent nature enacted at the First and Second 1975 and the 1977 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.
Progress

In the context of ongoing efforts to promote sustainable development, it is imperative to acknowledge the significant challenges and opportunities presented by the current global climate crisis. The United Nations Sustainable Development Goals (SDGs) serve as a framework to address these challenges by promoting sustainable consumption and production patterns. To achieve these goals, it is essential to implement innovative strategies that not only reduce environmental impact but also enhance social well-being and economic growth.

Agriculture, as asector of paramount importance, plays a crucial role in the larger context of sustainable development. However, it faces numerous challenges, including climate change, water scarcity, and soil degradation. To address these issues, it is necessary to adopt sustainable agricultural practices that not only ensure food security but also preserve natural resources and biodiversity.

In conclusion, while the road to sustainable development is long and challenging, the potential for progress is immense. By adopting innovative approaches and fostering international collaboration, we can ultimately achieve a more sustainable and equitable future for all.
Scope of Volume

Statutes:
Permanent portions of the general laws enacted at the First and Second 1975 and the 1977 Sessions of the General Assembly affecting Chapters 15 through 20 of the General Statutes.

Annotations:

Sources of the annotations:
North Carolina Reports volumes 285 (p. 598)-292 (p. 643).
North Carolina Court of Appeals Reports volumes 22 (p. 509)-33 (p. 240).
Federal Reporter 2nd Series volumes 498 (p. 913)-554 (p. 1074).
Federal Supplement volumes 377 (p. 193)-431 (p. 434).
Federal Rules Decisions volumes 63 (p. 230)-74 (p. 213).
United States Reports volumes 415 (p. 605)-419 (p. 984).
Supreme Court Reporter volume 95 (p. 2683)-97 (p. 2204).
North Carolina Law Review volume 55 (pp. 1-750).
Wake Forest Intramural Law Review volumes 8-13 (p. 269).
North Carolina Central Law Journal volume 2 (pp. 1-164), volume 3 (pp. 123-268), volume 7 (pp. 201-413), volume 8 (pp. 1-122).
Opinions of the Attorney General.
Scope of Volume

Statement

Purpose of the volume is to provide a comprehensive understanding of the Israel-Palestine conflict and the role of the United Nations (UN) in addressing it. This volume aims to provide a detailed analysis of the conflict, its historical context, and the involvement of international organizations.

Annotations

Some of the annotations include:

- World Congress Reports volumes 24, 32, 38, 65, and 103.
- International Committee of the Red Cross reports.
- United Nations Human Rights Committee reports.
- Reports of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions.
Article 2.
Record and Disposition of Seized, etc., Articles.
Sec.

Article 7.
Fugitives from Justice.
15-49. [Repealed.]

Article 10.
Bail.
15-103.1. [Repealed.]
15-103.2. [Repealed.]
15-104.1. [Repealed.]
15-107.1. [Repealed.]

Article 11.
Forfeiture of Bail.
15-110 to 15-124. [Repealed.]

Article 12.
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Article 15.
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Article 16.
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15-159. Commitment after judgment.

Article 17.
Trial in Superior Court.
15-173.1. [Repealed.]
15-174. [Repealed.]

Article 18.
Appeal.
Sec.
15-179. [Repealed.]
15-180. Appeal by defendant to appellate division.
15-180.1. [Repealed.]
15-180.2. Appeal after plea of guilty or nolo contendere.
15-180.3. Manner and time for taking appeal in criminal action.
15-181, 15-182. [Repealed.]
15-184. Appeal not to vacate judgment; stay of execution.
15-185, 15-186. [Repealed.]

Article 20.
Suspension of Sentence and Probation.
15-197. [Repealed.]
15-197.1. Special probation.
15-198. [Repealed.]
15-200. [Repealed.]
15-200.1. Notice of intention to pray revocation of probation or suspension; appeal from revocation.
15-200.2. [Repealed.]
15-205. Duties and powers of the probation officers.
15-205.1. [Repealed.]
15-208. [Repealed.]

Article 22.
Review of Criminal Trials.
15-217. [Repealed.]
15-218 to 15-222. [Repealed.]

Article 23.
Expunction of Records of Youthful Offenders.
15-223. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.

ARTICLE 1.
General Provisions.


§ 15-10. Speedy trial or discharge on commitment for felony.

This section is for the protection, etc. —

§ 15-10.2. Mandatory disposition of detainers — request for final disposition of charges; continuance; information to be furnished prisoner.

Prisoner Must Follow, etc. —
An inmate must follow the section's requirements. He must send by registered mail a demand to the district attorney, and sending it to the clerk of the superior court unregistered is insufficient, when the district attorney does not know of the demand. Farrington v. North Carolina, 391 F. Supp. 714 (M.D.N.C. 1975).

Failure to send the motion by registered mail to the district attorney of the judicial district in which the charges are pending will deprive defendant of the benefit of this section. State v. Wright, 290 N.C. 45, 224 S.E.2d 624 (1976), cert. denied, U.S., 97 S. Ct. 760, 50 L. Ed. 2d 765 (1977).

Defendant's letter requesting a speedy trial did not comply with the provisions of this section where, for example, he failed to send the letter by registered mail to the district attorney; he failed to give notice of his place of confinement; and he failed to include a certificate from the Secretary of Correction. Having failed to follow the provisions of the statute, defendant was not entitled to the statutory relief. State v. Wright, 28 N.C. App. 426, 221 S.E.2d 751, aff'd, 290 N.C. 45, 224 S.E.2d 624 (1976).


ARTICLE 2.

Record and Disposition of Seized, etc., Articles.

§ 15-11.1. Seizure, custody and disposition of articles; exceptions. — (a) If a law-enforcement officer seizes property pursuant to lawful authority, he shall safely keep the property under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial. Upon application to the court by the lawful owner or a person, firm, or corporation entitled to possession, after notice to all parties, including the defendant, and after hearing, the court may in its discretion order any or all of the property returned to the lawful owner or a person, firm, or corporation entitled to possession. The court may enter such order as may be necessary to assure that the evidence will be available for use as evidence at the time of trial, and will otherwise protect the rights of all parties. Notwithstanding any other provision of law, photographs or other identification or analyses made of the property may be introduced at the time of the trial provided that the court determines that the introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.

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

(c) Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith. (1977, c. 613.)

ARTICLE 3.

Warrants.


ARTICLE 4.

Search Warrants.


ARTICLE 6.
Arrest.


ARTICLE 7.
Fugitives from Justice.


Constitutionality of Section. — This section is procedurally deficient under the due process clause of the Fourteenth Amendment in these respects: (1) It is not required that an impartial judicial officer determine probable cause, i.e., that a felony has been committed and that the person proposed to be outlawed probably committed it. (2) Alternatively, it is not required that an arrest warrant have been issued or an indictment returned by a grand jury. (3) It is not required that an arrest warrant or other process have been served, or an attempt made to serve it, and a return made that the accused is not to be found within the county. (4) There is no provision for notice and opportunity to be heard. Autry v. Mitchell, 420 F. Supp. 967 (E.D.N.C. 1976).


§ 15-49: Repealed by Session Laws 1975, c. 166, s. 26, effective September 1, 1975.
§ 15-50 1977 CUMULATIVE SUPPLEMENT § 15-103.2

Editor’s Note. — See Editor’s note following the analysis to Chapter 15A.


ARTICLE 8.

Extradition.


ARTICLE 9.

Preliminary Examination.


ARTICLE 10.

Bail.


§ 15-103.1: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross Reference. — For present provisions as to pretrial release, see §§ 15A-531 through 15A-535.

§ 15-103.2: Repealed by Session Laws 1975, c. 166, s. 26, effective September 1, 1975.

Editor’s Note. — See Editor’s note following the analysis to Chapter 15A.


§ 15-104.1: Repealed by Session Laws 1975, c. 166, s. 26, effective September 1, 1975.

Editor's Note. — See Editor's note following the analysis to Chapter 15A.


Editor's Note. — See Editor's note following the analysis to Chapter 15A.


ARTICLE 11.

Forfeiture of Bail.


Cross Reference. — For present provisions as to forfeiture of bail, see § 15A-544.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."


Cross Reference. — For present provisions as to forfeiture of bail, see § 15A-544.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent
§ 15-117 1977 CUMULATIVE SUPPLEMENT § 15-126

purpose." Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."


Cross Reference. — For present provisions as to forfeiture of bail, see § 15A-544.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

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Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."

ARTICLE 12.
Commitment to Prison.


§ 15-126. Commitment to county jail. — All persons committed to prison before conviction shall be committed to the jail of the county in which the examination is had, or to that of the county in which the offense is charged to have been committed: Provided, if the jails of these counties are unsafe, or injurious to the health of prisoners, the committing magistrate may commit to the jail of any other convenient county. And every sheriff or jailer to whose jail any person shall be committed by any court or magistrate of competent jurisdiction shall receive such prisoner and give a receipt for him, and be bound for his safekeeping as prescribed by law. (1868-9, c. 178, subch. 2, s. 33; Code, s. 1164; Rev., s. 3231; C. S., s. 4598; 1973, c. 1286, s. 26; 1975, c. 166, s. 25.)

Editor's Note. — Session Laws 1975, c. 166, s. 25, effective Sept. 1, 1975, reinstated this section, which was repealed by Session Laws 1973, c. 1286, s. 26, effective Sept. 1, 1975.

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975. See Editor's note following the analysis to Chapter 15A.


ARTICLE 13.

Venue.


§ 15-129. In offenses on waters dividing counties. — When any offense is committed on any water, or watercourse whether at high or low water, which water or watercourse, or the sides or shores thereof, divides counties, such offense may be dealt with, inquired of, tried and determined, and punished at the discretion of the court, in either of the two counties which may be nearest to the place where the offense was committed. (R. C., c. 35, s. 24; Code, s. 1193; Rev., s. 3234; C. S., s. 4601; 1973, c. 1286, s. 26; 1975, c. 166, s. 25.)

Editor's Note. — Session Laws 1975, c. 166, effective Sept. 1, 1975, reinstated this section, which was repealed by Session Laws 1973, c. 1286, s. 26, effective Sept. 1, 1975.


ARTICLE 14.

Presentment.


ARTICLE 15.

Indictment.


§ 15-144. Essentials of bill for homicide.

What Is Sufficient, etc. —
A bill of indictment drawn in the words of this section was sufficient to support a conviction of murder in the first degree. State v. Davis, 290 N.C. 511, 227 S.E.2d 97 (1976).

Indictment Will Support Conviction, etc. —

Killing with Malice, etc. —

An indictment under this section will support a verdict of murder in the first degree if the jury finds beyond a reasonable doubt that an accused killed with malice and after premeditation and deliberation or in the perpetration or attempted perpetration of any arson, rape, robbery, burglary or other felony the commission of which creates any substantial foreseeable human risk and actually results in loss of life. State v. Bush, 289 N.C. 159, 221 S.E.2d 333 (1976).

A felony murder may be proven by the State under the statutory language of this section. State v. Swift, 290 N.C. 383, 226 S.E.2d 652 (1976).

Reading to Jury Not Prejudicial. — An indictment closely following this section could not have prejudiced defendant by its being read in the presence of the jury, even though it is true that in some instances bills of indictment charging murder will contain the words “premeditation and deliberation,” the elements that distinguish murder in the first degree from murder in the second degree. State v. Castor, 28 N.C. App. 336, 220 S.E.2d 819, appeal dismissed, 289 N.C. 453, 223 S.E.2d 161 (1976).

Indictment under Section Held to Give Full Information, etc. —
Where, in addition to the murder indictment, defendant was also charged in another bill of indictment with the willful discharge of a firearm into occupied property, the two indictments, when read together, informed defendant of the crimes with which he was charged. State v. Swift, 290 N.C. 383, 226 S.E.2d 652 (1976).

Bill of Particulars. —


§ 15-144.1. Essentials of bill for rape. —

(a) In indictments for rape it is not necessary to allege every matter required to be proved on the trial, but in the body of the indictment, after naming the person accused, the date of the offense, the county in which the offense of rape was allegedly committed, and the averment “with force and arms,” as is now usual, it is sufficient in describing rape to allege that the accused person unlawfully, willfully, and feloniously did ravish and carnally know the victim, naming her, by force and against her will and concluding as is now required by law. Any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for rape in the first degree and will support a verdict of guilty of rape in the first degree, rape in the second degree, assault with intent to commit rape or assault on a female.
(b) If the victim is a virtuous female child under the age of 12 years it is sufficient to allege that the accused unlawfully, willfully, and feloniously did carnally know and abuse a virtuous child under 12, naming her, and concluding as aforesaid. Any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for the rape of a virtuous female child under the age of 12 years and all lesser included offenses. (1977, c. 861, s. 1.)

Editor's Note. — Session Laws 1977, c. 861, s. 2, makes this section effective July 1, 1977.

§ 15-145. Form of bill for perjury.


§ 15-151. Intent to defraud; larceny and receiving.

In General. — Elements of the offense but not specifying to whom checks were uttered is sufficient. State v. McAllister, 287 N.C. 178, 214 S.E.2d 75 (1975).


§ 15-153. Bill or warrant not quashed for informality.

I. NATURE AND PURPOSE.

Purpose of Section. — The authorities are in unison that an indictment, whether at common law or under a statute, to be good must allege lucidly and accurately all the essential elements of the offense endeavored to be charged. The purpose of such constitutional provisions is: (1) such certainty in the statement of the accusation as will identify the offense with which the accused is sought to be charged; (2) to protect the accused from being twice put in jeopardy for the same offense; (3) to enable the accused to prepare for trial, and (4) to enable the court, on conviction or plea of nolo contendere or guilty, to pronounce sentence according to the rights of the case. State v. Arnold, 285 N.C. 751, 208 S.E.2d 646 (1974).

The purpose of the rule as to variance in an indictment is to avoid surprise and to protect the accused from another prosecution for the same offense. State v. Martin, 29 N.C. App. 17, 222 S.E.2d 718, cert. denied, 290 N.C. 96, 225 S.E.2d 325 (1976).

Quashing Indictments, etc. — Quashal of indictments is not favored where they do not affect the merits of the case. State v. Swift, 290 N.C. 388, 226 S.E.2d 652 (1976).


II. GENERAL EFFECT.

Plain, Intelligible and Explicit, etc. — In accord with 10th paragraph in original. See State v. Arnold, 285 N.C. 751, 208 S.E.2d 646 (1974).

If an indictment charges the offense in a plain, intelligible and explicit manner and contains
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averments sufficient to enable the court to proceed to judgment, and to bar a subsequent prosecution for the same offense, it is sufficient. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).

The requirements of this section are met where the indictment sets forth in a plain, intelligible and explicit manner all elements of the crime charged. State v. Page, 32 N.C. App. 478, 222 S.E.2d 460 (1977).

Where the bills of indictment contained allegations sufficient to set forth fully and clearly all essential elements of the offenses charged, denial of defendant's motion to quash on the ground that the bills were "too vague and insufficient, too broad and general" was proper. State v. Coleman, 24 N.C. App. 530, 232 S.E.2d 460 (1977).

Following Words of Statute. —
An indictment for a statutory offense is sufficient as a general rule when it charges the offense in the language of the statute. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).

Identity of Accused. — For an indictment to be valid, the name of the accused must be alleged in a manner sufficient to identify him with certainty. State v. Bagnard, 24 N.C. App. 566, 211 S.E.2d 471 (1975).

Bill of indictment identifying the accused in the body thereof as "John Doe AKA 'Varne'" was insufficient to charge a defendant named "Vaughn Bagnard" with any offense. State v. Bagnard, 24 N.C. App. 566, 211 S.E.2d 471 (1975).

Identifying Premises Entered. — An indictment for burglary is fatally defective if it fails to identify the premises broken into and entered with sufficient certainty to enable the defendant to prepare his defense and to offer him protection from another prosecution for the same incident. State v. Coffey, 289 N.C. 431, 222 S.E.2d 217 (1976).

The indictment for burglary must specify the particular felony which the defendant is alleged to have intended to commit at the time of the breaking and entering, and it is not sufficient to charge generally an intent to commit an unspecified felony. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).

But Felony Need Not Be Set Out As Specifically. — In an indictment for burglary, the felony intended need not be set out as fully and specifically as would be required in an indictment for the actual commission of that felony. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).

In specifying the felony intended in an indictment for burglary it is enough to state the offense generally and to designate it by name. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).

It is not necessary that an indictment for burglary describe the property stolen by the burglar. State v. Coffey, 289 N.C. 431, 222 S.E.2d 217 (1976).

III. DEFECTS CURED.
B. Omissions and Mistakes.

Foreman's Failure to Sign Bill. — The report of the grand jury, signed by the foreman, in which was listed the bill against defendant as having been returned a true bill charging a noncapital felony, rendered the foreman's failure to sign the bill itself amendable, and defendant's motion to quash the indictment was properly denied. State v. Spinks, 24 N.C. App. 548, 211 S.E.2d 476 (1975).

C. Allegations Differing from Proof.

Number of Victims. — In a prosecution for armed robbery, where the indictment referred only to the robbery of a single victim but the trial judge in his charge to the jury referred to another victim, there was no prejudicial variance since there was only a single criminal transaction, and defendant therefore was in no danger of a subsequent prosecution for the robbery of the other victim. State v. Martin, 29 N.C. App. 17, 222 S.E.2d 718, cert. denied, 290 N.C. 96, 225 S.E.2d 325 (1976).


§ 15-155. Defects which do not vitiate.

**In General.**

The purpose of the rule as to variance in an indictment is to avoid surprise and to protect the accused from another prosecution for the same offense. State v. Martin, 29 N.C. App. 17, 222 S.E.2d 718, cert. denied, 290 N.C. 96, 225 S.E.2d 325 (1976).

**The words “with force and arms,” etc.**


**Variance.**

Where bill of indictment charges that defendant escaped while lawfully confined in the North Carolina State Prison System in the lawful custody of the North Carolina Department of Correction, and the evidence shows he escaped while assigned by an official of the Department of Correction to work under an employee of the State Highway Commission, the variance is not fatal. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

Where a larceny indictment describes the stolen property as “a 1970 Plymouth, Serial # PM14360F239110, the personal property of George Edison Biggs,” and the evidence shows the taking by defendant of a 1970 Plymouth which was owned by George Edison Biggs but there is no evidence as to the serial number, the variance is not fatal. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

In a prosecution for armed robbery, where the indictment referred only to the robbery of a single victim but the trial judge in his charge to the jury referred to another victim, there was no prejudicial variance since there was only a single criminal transaction, and defendant therefore was in no danger of a subsequent prosecution for the robbery of the other victim. State v. Martin, 29 N.C. App. 17, 222 S.E.2d 718, cert. denied, 290 N.C. 96, 225 S.E.2d 325 (1976).

**ARTICLE 15B.**

**Pretrial Examination of Witnesses and Exhibits of the State.**


**Editor’s Note.** — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

**ARTICLE 16.**

**Trial before Justice.**


**Editor’s Note.** — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-159. Commitment after judgment. — The commitment to the county prison shall set forth —

1. The name of the guilty person.
2. The nature of the offense of which he is convicted and the date of the trial.
3. The period of his imprisonment.
4. It shall be directed to the sheriff of the county, or to the keeper of the county jail, and shall direct him to keep the prisoner for the time stated, or until discharged by law.
5. The name of the constable or other officer required to execute it.
6. It shall be signed by the justice and be dated. (1868-9, c. 178, subch. 4, s. 17; Code, s. 1238; Rev., s. 3259; C.S., s. 4629; 1973, c. 1286, s. 26; 1975, c. 166, s. 25.)
Cross Reference. — For provisions as to commitment to Department of Correction or local confinement facility, effective July 1, 1978, see §§ 15A-1352, 15A-1353. For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor's Note. —
Session Laws 1975, c. 166, s. 25, effective Sept. 1, 1975, reinstated this section, which was repealed by Session Laws 1973, c. 1286, s. 26, effective Sept. 1, 1975.

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the act effective Sept. 1, 1975, rather than July 1, 1975. See Editor's note following the analysis to Chapter 15A.

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35 provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."


ARTICLE 17.

Trial in Superior Court.


§ 15-167. Extension of session of court by trial judge.


§ 15-169. Conviction of assault, when included in charge.

When Section Applicable. —


Same — Murder. —

In a rape case, the trial court did not err in failing to submit the lesser included offenses of assault with intent to commit rape and assault on a female where all the State's evidence tended to show commission of rape and the defendant's evidence was that he had never had intercourse with the prosecutrix nor did he touch her in a manner constituting an assault. State v. Lampkins, 286 N.C. 497, 212 S.E.2d 106 (1975), cert. denied, 428 U.S. 909, 96 S. Ct. 3220, L. Ed. 2d (1976).
§ 15-170. Conviction for a less degree or an attempt.

**Application of Section.** —


**Crime of Accessory Included.** —
The crime of accessory before the fact is a lesser offense of a felony charged in the bill of indictment, and a defendant may be convicted of accessory before the fact on an indictment charging the principal crime. State v. Buie, 26 N.C. App. 151, 215 S.E.2d 401 (1975).

**Indictment for Attempt, etc.** —
An attempt to commit a crime is an indictable offense and as a matter of form and on proper evidence, in this jurisdiction, a conviction may be sustained on a bill of indictment making a specific charge, or one which charges a completed offense. State v. Arnold, 285 N.C. 751, 208 S.E.2d 646 (1974).

**Defendant Entitled to Complete Charge.** —
Where there is evidence of defendant's guilt of a lesser degree of the crime charged in the indictment, the court must submit defendant's guilt of the lesser included offense to the jury, and if the court fails to do so, the error is not cured by a verdict convicting defendant of the offense charged. State v. Putnam, 24 N.C. App. 570, 211 S.E.2d 493 (1975).

**Uncontradicted Evidence Showing, etc.** —
Where the State's evidence is positive as to each and every element of the crime charged and there is no conflicting evidence relating to any element of the charged crime, the court is not required to submit an issue as to defendant's guilt or innocence of a lesser included offense. State v. Owen, 24 N.C. App. 598, 212 S.E.2d 830, cert. denied, 287 N.C. 263, 214 S.E.2d 485 (1975).

**The misdemeanor of larceny, etc.** —

In Prosecution for Robbery. —

Where the evidence necessarily restricted the jury to the return of one of two verdicts; namely, a verdict of guilty of robbery with a dangerous weapon, or a verdict of not guilty, the trial court did not err by failing to instruct the jury that it might acquit the defendant of the crime of robbery with a dangerous weapon as charged in the bill of indictment and convict him of the lesser offense of common-law robbery. State v. Black, 286 N.C. 191, 209 S.E.2d 458 (1974).

In Prosecution for Rape. —
In a rape case, the trial court did not err in failing to submit the lesser included offenses of assault with intent to commit rape and assault on a female where all the State's evidence tended to show commission of rape and the defendant's evidence was that he had never had intercourse with the prosecutrix nor did he touch her in a manner constituting an assault. State v. Lampkins, 286 N.C. 497, 212 S.E.2d 106 (1975), cert. denied, 428 U.S. 909, 96 S. Ct. 3220, L. Ed. 2d 1 (1976).

**Necesity for instructing jury, etc.** —

A court is not required to submit a lesser included offense to the jury when there is no evidence to support such a charge. State v. Carriker, 24 N.C. App. 91, 210 S.E.2d 98 (1974), rev'd on other grounds, 287 N.C. 530, 215 S.E.2d 184 (1975).

In Prosecution for Arson. —


§ 15-172. Verdict for murder in first or second degree.

§ 15-173. Demurrer to the evidence.

No Difference in Motion to Dismiss, etc. — In accord with original. See State v. Everhart, 291 N.C. 700, 231 S.E.2d 604 (1977).

A motion to dismiss will be treated the same as a motion for judgment of nonsuit. State v. Stewart, 292 N.C. 219, 232 S.E.2d 443 (1977).

Motion for a directed verdict, etc. — The test of the sufficiency of the evidence to withstand motions for a directed verdict and for judgment of nonsuit is the same. State v. Hunt, 289 N.C. 403, 222 S.E.2d 234 (1976).

Motions for a directed verdict and for a judgment of nonsuit are the same in legal effect. State v. McCall, 289 N.C. 512, 223 S.E.2d 303 (1976).

Motion for directed verdict or for judgment of nonsuit should be denied when, upon such consideration of the evidence, there is substantial evidence to support a finding that an offense charged in the bill of indictment has been committed and the defendant committed it. State v. Hunt, 289 N.C. 403, 222 S.E.2d 234 (1976).

Upon motions for directed verdict of not guilty and nonsuit, the court must find that there is substantial evidence both that an offense charged has been committed and that the defendant committed it before it can overrule the motions. State v. Alford, 289 N.C. 372, 222 S.E.2d 222 (1976).

Upon motion for judgment as of nonsuit in a criminal prosecution, the questions before the court are whether there is substantial evidence of each essential element of the crime charged, and whether the accused was the perpetrator of the charged offense. State v. Bush, 289 N.C. 159, 221 S.E.2d 333 (1976).

Upon motion for nonsuit, the question for the court is whether, upon consideration of the evidence in the light most favorable to the State, there is reasonable basis upon which the jury might find that the offense charged in the indictment has been committed and the defendant was the perpetrator or one of the perpetrators of the crime. State v. Covington, 290 N.C. 313, 226 S.E.2d 629 (1976); State v. Thomas, 292 N.C. 527, 234 S.E.2d 615 (1977).

Upon motion for nonsuit, the question is whether there is substantial evidence — direct, circumstantial or both — to support a finding that the offense charged has been committed and the accused committed it. State v. Stewart, 292 N.C. 219, 232 S.E.2d 443 (1977); State v. Barrow, 292 N.C. 227, 232 S.E.2d 693 (1977).

Means of Raising Objection, etc. — In accord with 3rd paragraph in original. See State v. Chavis, 30 N.C. App. 74, 226 S.E.2d 389 (1976).

On motion to nonsuit, the court is required, etc. — In considering a motion for judgment as of nonsuit, the court is not concerned with the weight of the testimony, or with its truth or falsity, but only with the question of whether there is sufficient evidence for the jury to find that the offense charged has been committed and that defendant committed it. State v. Hines, 286 N.C. 377, 211 S.E.2d 201 (1975); State v. Williams, 31 N.C. App. 588, 229 S.E.2d 889 (1976); State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

Nonsuit should be denied where there is sufficient evidence, direct, circumstantial or both, from which the jury could find that the offense charged has been committed and that defendant committed it. State v. Abrams, 29 N.C. App. 144, 223 S.E.2d 516 (1976).

Upon considering a motion for nonsuit, the court must find that there is substantial evidence both that an offense charged has been committed and that the defendant committed it before such motion can be overruled. State v. McCall, 289 N.C. 512, 223 S.E.2d 303 (1976).

On a motion to nonsuit the question is whether, when all of the evidence is considered, there is substantial evidence to support a finding both that an offense charged in the bill of indictment has been committed and that the defendant committed it. State v. Scott, 289 N.C. 712, 224 S.E.2d 185 (1976).

Upon the defendant’s motion for judgment of nonsuit in a criminal action, the question for the court is whether there is substantial evidence of each essential element of the offense charged, or of a lesser offense included therein, and of the defendant’s being the perpetrator of such offense. State v. Hill, 32 N.C. App. 261, 231 S.E.2d 682 (1977).
After the evidence is considered in the light most favorable to the State, the ultimate question for the court's determination is whether there is a reasonable basis upon which the jury might find that the offenses charged in the indictments had been committed and that the defendant was the perpetrator, or one of the perpetrators of the offenses. State v. Hyatt, 32 N.C. App. 623, 233 S.E.2d 649 (1977).


Upon the consideration of a motion for judgment of nonsuit, evidence for the State, even though improperly admitted, is taken into account. State v. Williams, 286 N.C. 422, 212 S.E.2d 113 (1975).

All admitted evidence which is favorable to the State, whether competent or incompetent, must be taken into account and so considered by the court when ruling upon a motion for nonsuit. State v. Biggs, 289 N.C. 522, 223 S.E.2d 371 (1976).

All of the evidence actually admitted, whether competent or incompetent, which is favorable to the State must be taken into account and must be so considered by the court in ruling upon the motion for directed verdict or for judgment of nonsuit. State v. Hunt, 289 N.C. 408, 222 S.E.2d 294 (1975).

Incompetent evidence admitted is considered as if it were competent in considering a motion for nonsuit. State v. Bush, 289 N.C. 159, 221 S.E.2d 338 (1976).

All the evidence actually admitted, whether competent or incompetent, which is favorable to the State must be considered when ruling on the motion for motion for nonsuit. State v. Smith, 291 N.C. 505, 231 S.E.2d 663 (1977); State v. Stewart, 292 N.C. 219, 232 S.E.2d 443 (1977); State v. Barrow, 292 N.C. 227, 232 S.E.2d 693 (1977).

Effect of Defendant Introducing Testimony, etc. —


Defendant's exception to the denial of his motion for nonsuit made at the close of all the evidence raises the question of the sufficiency of all the evidence to go to the jury. State v. Rigsbee, 285 N.C. 708, 208 S.E.2d 656 (1974).

Same — Waiver. —

A defendant, by introducing evidence at trial, waives his right to except on appeal to the denial of his motion for nonsuit at the close of the State's evidence. State v. Lilly, 32 N.C. App. 467, 222 S.E.2d 405 (1977); State v. Lee, 33 N.C. App. 162, 234 S.E.2d 482 (1977).

Since defendant offered evidence at the trial he waived his right to urge as error on appeal the denial of his motion to dismiss interposed at the close of the State's evidence. State v. Stewart, 292 N.C. 219, 232 S.E.2d 443 (1977).

Where defendant offered evidence at trial, under the provisions of this section, she waived her right to except on appeal to the denial of her motion at the close of the State's evidence. State v. Barrow, 292 N.C. 227, 232 S.E.2d 693 (1977).

When Motion Allowed. —

In accord with 1st paragraph in original. See State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

If, when the evidence is considered in the light most favorable to the State, it is sufficient only to raise a suspicion or conjecture as to the commission of the offense, the motion for nonsuit should be allowed. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

If, when the evidence is considered in the light most favorable to the State, it is sufficient only to raise a suspicion or conjecture as to whether the commission of the offense or the identity of the defendant as the perpetrator of it, the motion for nonsuit should be allowed, and this is true even though the suspicion aroused by the evidence is strong. State v. Scott, 289 N.C. 712, 224 S.E.2d 185 (1976).

When Motion Denied. —

A motion for judgment of nonsuit is properly denied if there is any competent evidence to support the allegations contained in the bill of indictment; and all the evidence which tends to sustain those allegations must be considered in the light most favorable to the State and the State is entitled to every reasonable inference to be drawn therefrom. State v. Bell, 285 N.C. 746, 208 S.E.2d 506 (1974).

If there is substantial evidence, whether direct, circumstantial, or both, of all material elements of the offense charged, then the motion for nonsuit must be denied and it is then for the jury to determine whether the evidence establishes guilt beyond a reasonable doubt. State v. Coble, 24 N.C. App. 79, 210 S.E.2d 118 (1974).

If there is evidence, direct, circumstantial or both, from which the jury can find that the defendant committed the offense charged, the motion should be overruled. State v. Dangerfield, 32 N.C. App. 608, 233 S.E.2d 663 (1977).

The motion for nonsuit must be denied where there is sufficient evidence that the offense charged was committed and that the defendant committed it. State v. Hales, 32 N.C. App. 725, 233 S.E.2d 601 (1977).

When there is sufficient evidence, direct or circumstantial, from which the jury could find that the charged offense has been committed and that defendant was the person who committed it, the motion should be denied. State v. Covington, 290 N.C. 313, 226 S.E.2d 629 (1976).
If, when the evidence is viewed in the light most favorable to the State, there is evidence from which a jury could find that the offense charged has been committed and that defendant committed it, the motion to nonsuit should be overruled. State v. McKenna, 289 N.C. 668, 224 S.E.2d 557 (1976).

When the evidence is viewed in the light most favorable to the State, if there is any competent evidence of each essential element of the offense charged, then the trial judge must deny the motion and submit the case to the jury. State v. Yancey, 291 N.C. 656, 231 S.E.2d 637 (1977).

If there is any competent evidence tending to establish each material element of the offense charged in the bill of indictment the motion to dismiss or for nonsuit must be overruled. State v. Thomas, 292 N.C. 251, 292 S.E.2d 411 (1977).

If there is any evidence tending to prove the fact of guilt, or which reasonably leads to that conclusion as a logical and legitimate deduction, the motion must be denied. State v. Stewart, 292 N.C. 219, 292 S.E.2d 448 (1977).

If there is any evidence tending to prove the fact of guilt, or which reasonably leads to that conclusion as a logical and legitimate deduction, the question of guilt is for the jury. State v. Barrow, 292 N.C. 227, 292 S.E.2d 693 (1977).

**Sufficiency of Evidence.**


In accord with 36th paragraph in original. See State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).


In accord with 45th paragraph in original. See State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

In accord with 46th paragraph in original. See State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

All of the evidence favorable to the State is considered, and defendant’s evidence relating to matters of defense or defendant’s evidence in conflict with that of the State is not considered. State v. McKinney, 24 N.C. App. 259, 210 S.E.2d 450 (1974), rev’d on other grounds, 288 N.C. 113, 215 S.E.2d 578 (1975).


In passing upon a motion for judgment as of nonsuit, the trial judge must consider all the evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn from the evidence and considering so much of defendant’s evidence as may be favorable to the State. State v. Hines, 286 N.C. 377, 211 S.E.2d 201 (1975); State v. Williams, 31 N.C. App. 588, 229 S.E.2d 839 (1976).

Upon a motion for judgment of nonsuit, the evidence for the State is taken to be true and the State is entitled to every reasonable inference
which may be drawn therefrom, contradictions and discrepancies in the State's evidence are disregarded and the evidence of the defendant in conflict with that of the State is not taken into consideration. State v. Lampkins, 286 N.C. 497, 212 S.E.2d 106 (1975), cert. denied, 428 U.S. 909, 96 S. Ct. 3220, L. Ed. 2d (1976); State v. Williams, 286 N.C. 422, 212 S.E.2d 113 (1975).

In considering a motion for nonsuit the evidence must be considered in the light most favorable to the State, and the State is entitled to every reasonable inference therefrom. State v. Dull, 289 N.C. 55, 220 S.E.2d 344 (1975), death sentence vacated, U.S. , 96 S. Ct. 3211, 49 L. Ed. 2d 1211 (1976).

Motion to nonsuit requires the trial court to consider the evidence in the light most favorable to the State, take it as true and give the State the benefit of every reasonable inference to be drawn therefrom. State v. Miller, 289 N.C. 1, 220 S.E.2d 572 (1975); State v. Biggs, 289 N.C. 522, 223 S.E.2d 371 (1976).

For the purpose of ruling upon a motion for judgment as of nonsuit, the evidence for the State is taken to be true, every reasonable inference favorable to the State is to be drawn therefrom and discrepancies therein are to be disregarded. State v. Sellers, 289 N.C. 268, 221 S.E.2d 264 (1976); State v. Manuel, 291 N.C. 705, 231 S.E.2d 588 (1977).

In considering a motion for nonsuit, the evidence for the State, considered in the light most favorable to it, is deemed to be true and the State is entitled to the benefit of all inferences which may reasonably be drawn therefrom. State v. McCall, 289 N.C. 512, 225 S.E.2d 303 (1976).

In ruling on defendant's motions for nonsuit or for directed verdict of not guilty the trial judge must consider the State's evidence in the light most favorable to the State without considering the evidence of defendant in conflict therewith. State v. Alford, 289 N.C. 372, 222 S.E.2d 222 (1976).

In considering a motion for directed verdict or for judgment of nonsuit the evidence for the State must be deemed to be true and must be considered in the light most favorable to it, the State being entitled to the benefit of all inferences in its favor which may reasonably be drawn therefrom. State v. Hunt, 289 N.C. 403, 222 S.E.2d 234 (1976).

Upon motion for nonsuit, in determining whether there is substantial evidence of each essential element of the crime, and whether the accused was the perpetrator of the crime, the evidence before the court must be considered in the light most favorable to the State and the State is entitled to the benefit of every reasonable inference which may be drawn from the evidence. State v. Bush, 289 N.C. 159, 221 S.E.2d 333 (1976).

Evidence which is inherently impossible or in conflict with indisputable physical facts or laws of nature is not sufficient to take the case to the jury. State v. Cox, 289 N.C. 414, 222 S.E.2d 246 (1976).

In ruling upon the motions for judgment as of nonsuit, the trial court is required to view the evidence in the light most favorable to the State and to give the State the benefit of every reasonable inference and intention to be drawn therefrom. State v. Dangerfield, 32 N.C. App. 608, 238 S.E.2d 663 (1977).

A motion to nonsuit requires the trial judge to consider the evidence in the light most favorable to the State and to give the State the benefit of every reasonable inference to be drawn therefrom. State v. Stewart, 292 N.C. 219, 232 S.E.2d 443 (1977); State v. Barrow, 292 N.C. 227, 232 S.E.2d 693 (1977).

The rule to be applied when considering whether the State has introduced sufficient evidence to withstand a motion for nonsuit is well settled in this jurisdiction. A motion for nonsuit is properly denied when there is any evidence, whether introduced by the State or defendant, which will support the charges contained in the bill of indictment or warrant, considering the evidence in the light most favorable to the State and drawing every reasonable inference, deducible from the evidence, in favor of the State. State v. Everhart, 291 N.C. 700, 231 S.E.2d 604 (1977).

Upon a motion for judgment of nonsuit, the evidence by the State is to be deemed true and is to be considered in the light most favorable to the State. State v. Madden, 292 N.C. 114, 232 S.E.2d 656 (1977).

In passing upon the validity of a motion to dismiss or for judgment as of nonsuit, the court considers the evidence in the light most favorable to the State, giving it the benefit of every legitimate inference arising therefrom. State v. Thomas, 292 N.C. 251, 232 S.E.2d 411 (1977).

On a motion for nonsuit, the court considers all of the evidence actually admitted, whether from the State or defendant, in the light most favorable to the State, resolves any contradictions and discrepancies therein in the State's favor, and gives the State the benefit of all reasonable inferences from the evidence. State v. Strickland, 290 N.C. 169, 225 S.E.2d 531 (1976).

When considering a motion to dismiss, the evidence for the State, considered in the light most favorable to it, is deemed to be true, and inconsistencies or contradictions therein are disregarded. Any evidence of the defendant which is favorable to the State is considered, but his evidence which is in conflict with that of the State is not considered. State v. Jacobs, 31 N.C. App. 582, 230 S.E.2d 550 (1976); State v. Banks, 31 N.C. App. 667, 230 S.E.2d 429 (1976).

When considering the sufficiency of the
evidence to survive a motion to dismiss, the evidence, considered in the light most favorable to the State, is deemed to be true, and inconsistencies or contradictions therein are disregarded. State v. Hyatt, 32 N.C. App. 623, 233 S.E.2d 649 (1977).

The conclusion of the court with respect to the sufficiency of the evidence is unaffected by defendants' contention that some of the State's evidence is contradictory and casts doubt on the credibility of the witnesses. Such contradictions and discrepancies are matters for the jury and do not warrant nonsuit. State v. Smith, 291 N.C. 505, 231 S.E.2d 668 (1977).

Any contradictions and inconsistencies, when in the State's evidence, are to be disregarded by the court in considering a trial court's denial of a motion for judgment as of nonsuit. State v. Williams, 31 N.C. App. 588, 229 S.E.2d 839 (1976).

The court must consider all of the evidence actually admitted in the light most favorable to the State, resolve any contradictions and discrepancies therein in the State's favor, and give the State the benefit of all reasonable inferences from the evidence. State v. Scott, 289 N.C. 712, 224 S.E.2d 185 (1976).

Same — Circumstantial Evidence. —


In accord with 11th paragraph in original. See State v. Minor, 290 N.C. 68, 224 S.E.2d 180 (1976).

Motion challenging the sufficiency of circumstantial evidence to go to the jury should be denied if there is evidence, considered in the light most favorable to the State, from which the jury could find that a crime has been committed and that defendant committed it. State v. Solomon, 24 N.C. App. 527, 211 S.E.2d 478 (1975).

Nonsuit should be denied when there is sufficient evidence, direct, circumstantial or both, from which the jury could find that the offense charged has been committed and that defendant committed it. State v. Mull, 24 N.C. App. 502, 211 S.E.2d 515 (1975); State v. Phifer, 290 N.C. 203, 225 S.E.2d 786 (1976), cert. denied, U.S., 97 S. Ct. 1160, 51 L. Ed. 2d 573 (1977).

Same — Prosecution for Homicide. —

The evidence was sufficient to be submitted to the jury in a second degree murder prosecution where it tended to show that the defendant and the deceased were imprisoned in the same prison unit; that a prison guard saw them arguing and broke them up; that later the guard saw defendant approach deceased who was lying on his bunk and make a striking movement toward the deceased's body; that although the guard saw no knife or other weapon in defendant's hand, a small knife was later discovered in a heater and deceased had died from a stab wound in the chest. State v. Mull, 24 N.C. App. 502, 211 S.E.2d 515 (1975).

In a prosecution for first-degree murder, the evidence was sufficient to withstand a motion for nonsuit where it tended to show that deceased died as a result of gunshot wounds inflicted by a shot fired from a trailer, defendant, a short time before the shooting, had test fired a 12 gauge shotgun, 12 gauge shotgun wadding was found in a straight line between the trailer and the bodies after the shooting, a freshly-fired 12 gauge shotgun was later found in defendant's house hidden between the quilts and mattress of a bed and defendant was the only person in the trailer when the fatal shots were fired. State v. McCall, 289 N.C. 512, 223 S.E.2d 303 (1976).

In a prosecution for first-degree murder, where defendant stole an automobile and drove it into a ditch in the vicinity of the home occupied by deceased, defendant then went to the home of deceased, and thereafter defendant fatally attacked him with a knife, and defendant then robbed the body of deceased, ransacked the dwelling and left deceased lying in a pool of his own blood, there was sufficient substantial evidence to permit the jury to find that after premeditation and deliberation defendant formed a fixed purpose to kill and did kill the deceased. State v. Bush, 289 N.C. 159, 221 S.E.2d 333 (1976).

In a prosecution for first-degree murder, where defendant drove a stolen automobile into a ditch in the vicinity of the home of deceased, killed deceased and then robbed deceased's body, the evidence was sufficient to permit a jury to find that defendant killed deceased while in the perpetration of a robbery. State v. Bush, 289 N.C. 159, 221 S.E.2d 333 (1976).

In a prosecution for first-degree murder, where defendant admitted to State's witness that he and his brother had a blunt instrument and a knife when they decided to rob decedent, and evidence showed that decedent died of injuries inflicted by both blunt and sharp objects, the evidence was sufficient to withstand a motion for nonsuit even though defendant's admissions did not include the actual use of the weapons against decedent. State v. Warren, 289 N.C. 551, 223 S.E.2d 317 (1976).

In a prosecution for first-degree murder and armed robbery where the jury could find that (1) defendant borrowed the murder weapon on a date previous to the commission of the crimes; (2) defendant had possession of the murder weapon and the victim's weapon on the
afternoon the crimes were committed; (3) defendant sent his girl friend to retrieve the murder weapon from its hiding place in order to sell it to a man who, upon cleaning the pistol, found that it had been fired twice; (4) defendant had asked another individual a few days before the shooting to help him rob two stores but was refused; (5) defendant and an accomplice were in possession of several hundred dollars on the afternoon of the crimes and several payroll checks that had already been endorsed, at least two of which were identified as having been cashed at the store at which the crime was committed the night before the shooting; and (6) defendant admitted telling his girl friend that he and an accomplice had killed and robbed the victim, the evidence presented by the State was sufficient to carry the case to the jury on the murder charge contained in the bill of indictment. State v. Carter, 289 N.C. 35, 220 S.E.2d 313 (1975), death sentence vacated, U.S. , 96 S. Ct. 3212, 49 L. Ed. 2d 1211 (1976).

In a prosecution for first-degree murder by poison, the evidence was sufficient to withstand motions for directed verdict and for judgment of nonsuit, where defendant purchased rat poison with intent to kill deceased and, pursuant to a preconceived plan to do so, defendant poured it into tea prepared specially for deceased's hangover from his arm at the time he went into the kitchen to take food from the refrigerator, and that it was no longer necessary for him to use or threaten to use the weapon at the time of the robbery since he had already injured and subdue the victim, viewing this evidence in the light most favorable to the State, there was sufficient evidence of the commission of an armed robbery and a first-degree rape and of defendant's role as perpetrator to withstand a motion for nonsuit. State v. Williams, 31 N.C. App. 588, 229 S.E.2d 839 (1976).

Considering the evidence in the light most favorable to the State and giving the State the benefit of every reasonable inference to be drawn therefrom, there was sufficient evidence of the commission of an armed robbery and a first-degree rape where the evidence clearly indicated that defendant had carnal knowledge of the prosecutrix by force and against her will, the defendant had attempted to choke the prosecutrix, told her how easy it would be to kill her and held an open knife against her stomach prior to the commission of the rape. State v. Williams, 31 N.C. App. 588, 229 S.E.2d 839 (1976).

Same — Armed Robbery. — Where the State's evidence showed that the defendant held a dangerous weapon in his hand at the time he assaulted the victim, that he still had the weapon hanging from his arm at the time he went into the kitchen to take food from the refrigerator, and that it was no longer necessary for him to use or threaten to use the weapon at the time of the robbery since he had already injured and subdue the victim, viewing this evidence in the light most favorable to the State, there was sufficient evidence to submit the charge of armed robbery to the jury, and the trial court properly denied the defendant's motion for nonsuit as to that charge. State v. Lilly, 32 N.C. App. 467, 232 S.E.2d 495 (1977).

Same — Breaking and Entering, etc. — The court properly denied the motion for nonsuit where the State, introduced substantial evidence of each element of the offense of breaking or entering the building as charged in the indictment and that defendant was one of the persons who committed the offense, therefore the question of his guilt or innocence was properly submitted to the jury. State v. Burch, 24 N.C. App. 514, 211 S.E.2d 511 (1975).

If the evidence offered at trial fails to show the ownership as alleged in the indictment of the premises entered and the property taken, a
motion for judgment of nonsuit should be allowed, both to a charge of breaking or entering and to a charge of felonious larceny. State v. Crawford, 29 N.C. App. 117, 228 S.E.2d 534 (1976).

In a prosecution for breaking and entering a motor vehicle and larceny, evidence that defendant was present in the vehicle containing stolen items and with individuals who had attempted to negotiate stolen traveler's checks, without any evidence that any of the stolen items were under the actual control of defendant, is insufficient to carry the question of defendant's guilt to the jury. State v. Millsaps, 29 N.C. App. 176, 228 S.E.2d 559 (1976).

In prosecution for breaking and entering, testimony by a qualified expert that fingerprints found at the scene of the crime correspond with the fingerprints of the accused, when accompanied by substantial evidence of circumstances from which the jury can find that the fingerprints could only have been impressed at the time the crime was committed, is sufficient to withstand motion for nonsuit and carry the case to the jury. State v. Miller, 289 N.C. 1, 220 S.E.2d 572 (1975).

Nonsuit is correctly denied in a larceny case where the State relies on the doctrine of possession of recently stolen goods and presents evidence of possession of the stolen goods by defendant soon after the theft. State v. Hales, 32 N.C. App. 729, 233 S.E.2d 601 (1977).

Same — Conspiracy. —
The State's evidence was sufficient to be submitted to the jury on the issue of defendant's guilt of conspiracy to commit murder where there was evidence that defendant had discussed with another the murder and the means by which it might be accomplished; that defendant sent the coconspirator a picture of the victim for identification purposes; that defendant sent sums of money to the coconspirator; and that after an unsuccessful attempt was made upon the victim's life, defendant had stated to a friend who had introduced her to the coconspirator that the coconspirator knew somebody who would "finish the job." State v. Graham, 24 N.C. App. 591, 211 S.E.2d 805, cert. denied, 287 N.C. 262, 214 S.E.2d 434 (1975).

Same — Manslaughter. —
The evidence showed that both defendant and deceased had been out drinking; that they were arguing; that defendant asked deceased to go to bed with him and she replied that "she won't never going to bed with him no more"; that witnesses heard a shot; that defendant told them "come see what I did to Chris"; and that she died as a result of the gunshot wound. This evidence, when viewed in the light most favorable to the State, was amply sufficient to require submission of the case to the jury, and defendant's motion for nonsuit to the charge of involuntary manslaughter was properly denied.


Same — Injury by Means of Dynamite. — In a prosecution for willful and malicious injury to person and property by means of dynamite, and conspiracy to injure a person by means of dynamite, where defendant knew the victim was an undercover narcotics agent, an informer saw defendant and his coconspirators in possession of dynamite while they were besides the victim's car with its hood raised, defendant stated in coming away from the car that "it would happen in the morning," and the victim was injured the next morning by an explosion when he attempted to start his car, the evidence for the State was sufficient to withstand defendant's motion for nonsuit. State v. Sellers, 289 N.C. 268, 221 S.E.2d 264 (1976).

Conflicting Evidence. —


Demurrer to the Evidence Properly Denied. —

Judgment of Nonsuit Has Effect, etc. —
The motion for judgment of nonsuit and the motion for a directed verdict of not guilty have the force and effect of verdict of not guilty, and the State may not appeal. State v. Pinkney, 25 N.C. App. 316, 212 S.E.2d 907 (1975).
Under § 15-173.1 the sufficiency of the evidence of the State in a criminal case is reviewable upon an appeal without regard to whether a motion has been made pursuant to this section. State v. Rigsbee, 285 N.C. 708, 208 S.E.2d 656 (1974).


Editor’s Note. — Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 35, provides: “None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, “Parole” shall not apply to persons sentenced before July 1, 1978.”


Cross Reference. — For provisions as to post-trial relief in criminal cases, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor’s Note. — Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 35, provides: “None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, “Parole” shall not apply to persons sentenced before July 1, 1978.”

Motion for Continuance. — A new trial will be awarded because of a denial of a motion for continuance only if the defendant shows that there was error in the denial and that the defendant was prejudiced thereby. State v. Harrill, 289 N.C. 186, 221 S.E.2d 325, death sentence vacated, U.S. ,96 S. Ct. 3212, 49 L. Ed. 2d 1211 (1976).

Incorrect Charge to Jury. — A new trial is necessary where the court charges the jury correctly at one point and incorrectly at another, particularly when the incorrect portion of the

New trial must result when ambiguity in the charge affords an opportunity for the jury to act upon a permissible but incorrect interpretation. State v. Harris, 289 N.C. 275, 221 S.E.2d 343 (1976).


When Motion for Nonsuit Proper. — A motion for a new trial does not properly present the question of the sufficiency of the evidence to justify the submission of the case to the jury, which is more properly raised by a motion for nonsuit. State v. Dull, 289 N.C. 55, 220 S.E.2d 344 (1975), death sentence vacated, U.S. , 96 S. Ct. 3211, 49 L. Ed. 2d 1211 (1976).

Defendant Must Show Prejudice. — New trials are not given, even in capital cases, where there is no reasonable basis for supposing that, but for the error, a different result would have been reached. State v. Hunt, 289 N.C. 403, 222 S.E.2d 234 (1976).


ARTICLE 17A.

Informing Jury in Case Involving Death Penalty.

§ 15-176.3. Informing and questioning potential jurors on consequences of guilty verdict.


§ 15-176.4. Instruction to jury on consequences of guilty verdict.

Instruction Mandatory. — This section makes it mandatory that the trial judge give the instruction upon the request of either party. State v. Bernard, 288 N.C. 321, 218 S.E.2d 327 (1975).

Instruction in Absence of Request. — It is not error to give an instruction as to the death penalty even in the absence of a request. State v. Boyd, 287 N.C. 131, 214 S.E.2d 14 (1975).

Prejudice Must Be Shown. — Trial judge erred when he refused to give the instruction mandated by this section, but there was no prejudice to the defendant since the jury knew the sentence of death would be imposed upon the return of a verdict of guilty of the crime of rape. State v. Bernard, 288 N.C. 321, 218 S.E.2d 327 (1975).


§ 15-176.5. Argument to jury on consequences of guilty verdict.

Stated in State v. Bell, 287 N.C. 248, 214 S.E.2d 58 (1975);

ARTICLE 17B.
Informing Jury of Possible Punishment upon Conviction.

§ 15-176.9. Loss of motor vehicle driver’s license.

Editor’s Note.—


ARTICLE 18.
Appeal.

§ 15-179: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross Reference.—
For provisions as to appeals in criminal cases, effective July 1, 1978, see §§ 15A-1441 through 15A-1453.

Editor’s Note.—

Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 35, provides: “None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, “Parole” shall not apply to persons sentenced before July 1, 1978.”

But Not from a General Verdict, etc.—
The State has no right to appeal from a verdict of not guilty. State v. Gilbert, 30 N.C. App. 130, 226 S.E.2d 229 (1976).

Arrest of Judgment and Judgment of Nonsuit.—An order for arrest of judgment is based upon the insufficiency of the indictment or other defect appearing on the face of the record and it is appealable by the State; a judgment of nonsuit, on the other hand, has the force and effect of verdict of not guilty, and the State may not appeal. State v. Pinkney, 25 N.C. App. 316, 212 S.E.2d 907 (1975).

Appeal from Directed Verdict.—An appeal by the State from an order of the superior court directing a verdict for defendant is not authorized under this section. State v. Brown, 29 N.C. App. 180, 223 S.E.2d 572 (1976).

§ 15-180. Appeal by defendant to appellate division. — In all cases of conviction in the superior court for any criminal offense, the defendant shall have the right to appeal, on giving adequate security to abide the sentence, judgment or decree of the appellate division. The manner and time for taking appeal are as provided in G.S. 15-180.3. The procedure for perfecting and prosecuting the appeal after its taking is as provided by the rules of appellate procedure. (1818, c. 962, s. 4, P. R.; R. C., c. 4, s. 21; Code, s. 1234; Rev., s. 3277; C. S., s. 4650; 1969, c. 44, s. 36; 1975, c. 391, s. 5.)

Cross Reference. —
For provisions as to appeals in criminal cases, effective July 1, 1978, see §§ 15A-1441 through 15A-1453.

Editor's Note. —
The 1975 amendment deleted "and the appeal shall be perfected and the case for the appellate division settled, as provided in civil actions" at the end of the first sentence and added the second and third sentences.

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

§ 15-180.2. Appeal after plea of guilty or nolo contendere. — Notwithstanding any other provision of law, when a defendant pleads guilty or nolo contendere to a charge pending in the superior court division of the General Court of Justice, there shall be no right of appeal to the appellate division of such plea of guilty or nolo contendere but such defendant shall have the right to petition the appellate division for the issuance of a writ of certiorari to review the proceedings in the superior court division of the General Court of Justice. In the event the sentence imposed is life imprisonment the petition shall be directed to the Supreme Court; in all other cases it shall be directed to the Court of Appeals.

Should a defendant, who is determined to be an indigent as provided in G.S.
§ 15-180.3. Manner and time for taking appeal in criminal action. — (a) Any party entitled by law to appeal to the appellate division from a judgment or order of a superior or district court rendered in a criminal action may take appeal by:

(1) Giving oral notice of appeal at trial, or

(2) Filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within 10 days after the last day of the session at which rendered.

(b) Content and Service of Notice of Appeal. — The content and mode of service of the notice of appeal required by this section are as prescribed by the rules of appellate procedure. (1975, c. 391, s. 6.)

Editor's Note. — Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."
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Cross Reference. — For provisions as to appeals in criminal cases, effective July 1, 1978, see §§ 15A-1441 through 15A-1453.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."


Cross Reference. — For provisions as to appeals in criminal cases, effective July 1, 1978, see §§ 15A-1441 through 15A-1453.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."

§ 15-183. Custody of convicted persons not released. — Any person who shall appeal to the appellate division of the General Court of Justice, having been sentenced to a term of imprisonment for longer than 30 days, and is not released pending appeal, such person may be placed in the custody of the Secretary of Correction until such time as he may be released upon bail or by other lawful means and pending the action of the appellate division.

The provisions of G.S. 162-39, 148-4, 148-29 and 15-184 notwithstanding, the expense of maintaining any such person placed in the custody of the Secretary of Correction pending appeal shall be the responsibility of the Department of Correction, as if such person had been committed upon affirmance of appeal, and the Department of Correction shall assume full financial responsibility and shall not charge the forwarding county with the cost and expense of maintaining such person pending appeal. Provided, nothing herein shall be deemed to relieve any county of the obligation to pay any indebtedness accruing prior to June 24, 1975, for the cost and expense of maintaining persons forwarded to the Department of Correction by that county. If the amount of indebtedness accrued by any county has not been paid in full within 24 months from June 24, 1975, the State Treasurer is hereby authorized to deduct the amount of that indebtedness from the intangible personal property taxes to be distributed to that county. If a county retains custody of a person who has been convicted, but has appealed such conviction, the Department of Correction shall pay to such county the same amount of money that would be required to maintain such person in the Department of Correction. (1850-1, c. 2; R. C., c. 35, s. 12; Code, s. 1181; Rev., s. 3280; C. S., s. 4653; 1953, c. 56; 1969, c. 542, s. 1; 1973, c. 1262, s. 10; c. 1286, s. 15; 1975, c. 796.)
§ 15-184. Appeal not to vacate judgment; stay of execution. — In criminal cases an appeal to the appellate division shall not have the effect of vacating the judgment appealed from, but upon perfecting the appeal as now required by law, either by giving bond or obtaining an order allowing appeal in forma pauperis, there shall be a stay of execution during the pendency of the appeal. If for any reason the defendant should wish to withdraw his appeal before the same is docketed in the appellate division, he may appear before the clerk of the superior court in which he was convicted and request in writing the withdrawal of the appeal. The said clerk shall file and make an entry of such withdrawal and shall, if a sentence be called for, issue a commitment and deliver same to the sheriff. The sentence shall begin as of the date of the issuance of the commitment. (1887, c. 191, s. 1; c. 192, s. 4; Rev., s. 3281; 1919, c. 5; C.S., s. 4654; 1955, c. 882; 1969, c. 44, s. 38; 1975, c. 769.)

§ 15-185: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross Reference. — For provisions as to appeals in criminal cases, effective July 1, 1978, see §§ 15A-1441 through 15A-1453.

Editor’s Note. — Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 35, provides: “None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, ‘Parole’ shall not apply to persons sentenced before July 1, 1978.”

Language Directive. — The language of this section providing that “in criminal cases where the judgment is not affirmed the cases shall be placed upon the docket for trial at the first ensuing criminal session of the court after the receipt of such certificate” is merely a directive to the clerk of superior court as to steps to take when the appellate division has affirmed or failed to affirm the trial court’s judgment. State v. Jackson, 24 N.C. App. 394, 210 S.E.2d 876, rev’d on other grounds, 287 N.C. 470, 215 S.E.2d 123 (1975).

Whether there is good cause for delay in the scheduling of a case for retrial and whether the defendant has been denied his constitutional right to a speedy retrial must be answered in light of the facts in a particular case, and in answering these questions the same principles applied by the courts in deciding whether a defendant has been denied his right to a speedy trial should be applied. State v. Jackson, 24 N.C. App. 394, 210 S.E.2d 876, rev’d on other grounds, 287 N.C. 470, 215 S.E.2d 123 (1975).

Where a new trial is granted on appeal, the clerk is directed to schedule a case for retrial at the first ensuing session of court following receipt of the certificate ordering a new trial. State v. Jackson, 24 N.C. App. 394, 210 S.E.2d 876, rev’d on other grounds, 287 N.C. 470, 215 S.E.2d 123 (1975).

ARTICLE 19A.

Credits against the Service of Sentences and for Attainment of Prison Privileges.

§ 15-196.1. Credits allowed.

§ 15-196.3. Effect of credit.

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 17, effective July 1, 1978, will substitute “the minimum and maximum term of a” for “the determinate term or the minimum and maximum term of an indeterminate” near the beginning of the first sentence.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, “Parole” shall not apply to persons sentenced before July 1, 1978.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

ARTICLE 20.
Suspension of Sentence and Probation.

§ 15-197: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross References. — For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor’s Note. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 35, provides: “None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 15-197.1. Special probation. — (a) The legislative purpose and intent of this section is hereby defined as being to provide the sentencing judge an additional alternative to lengthy incarceration or probation when:

(1) The offense charged carries a maximum prison sentence of not more than 10 years; and

(2) The defendant would otherwise be sentenced to a longer determinate sentence or a longer minimum indeterminate sentence and the defendant has not served an active sentence within the previous five years; but

(3) The court, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, determines that

(4) The permanent rehabilitation of the offender would best be promoted by the imposition of a split sentence pursuant to this section.
(b) Upon entering a judgment of conviction for any offense where the maximum sentence is not more than 10 years, the court may, under the circumstances set forth in subsection (a) of this section, provide that the defendant be committed to the custody of the Department of Correction, if the active sentence exceeds 30 days, for a period not to exceed six months, or one-fourth the minimum active sentence suspended in lieu thereof, whichever is less, or to a local confinement or treatment facility, if the active sentence is 30 days or less, and that the execution of the remainder of the sentence be suspended and the defendant be placed on special probation for such period and upon such terms and conditions as the court deems best, which may include a condition that the defendant comply with applicable rules and regulations while in the custody of the Department of Correction. Credit for time spent in confinement prior to commitment shall not apply to reduce the length of the active sentence, but shall be applied to the remaining sentence of confinement in cases where probation is revoked. The conditions of special probation shall be fixed in the same manner as probation. The period of the active sentence imposed to precede the term of special probation shall be served day for day, without parole eligibility or credit for “good time” granted by the Department of Correction. However, credit for “gained time” may be applied, but only for extra days actually worked. The period of probation, together with any extension thereof, and including the period of active sentence, shall not exceed five years. The court may revoke or modify any condition of special probation, or may change the period of probation within the limits provided by this section. Special probation may be revoked or terminated in the same manner as probation.

(c) As a term and condition of special probation as provided in subsection (b), the court may order that the defendant make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the defendant arising out of the offense or offenses for which the defendant has been convicted. The order providing for restitution or reparation shall be in accordance with the applicable provisions of G.S. 15-199(10). (1975, c. 360, s. 1; 1977, c. 614, s. 2.)

Cross Reference. — For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor’s Note. — Session Laws 1975, c. 360, s. 3, as amended by Session Laws 1977, c. 888, s. 1, makes this section effective July 1, 1975.

The 1977 amendment, effective Oct. 1, 1977, added subsection (c). Session Laws 1977, c. 614, s. 10, provides: “This act shall become effective on Oct. 1, 1977, and shall apply to offenses committed on and after that date.”

Session Laws 1977, c. 614, s. 9, contains a severability clause.


Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 35, provides: “None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, ‘Parole’ shall not apply to persons sentenced before July 1, 1978.”


Cross Reference. — For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor’s Note. — Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or
§ 15-199. Conditions of probation. — The court shall determine and may impose, by order duly entered, and may at any time modify the conditions of probation and may include among them the following, or any other: That the probationer shall:

(10) 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 for which the defendant has been convicted. When restitution or reparation is a condition imposed, the court shall take into consideration the resources of the defendant, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation. The amount must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the offense or offenses is greater than that which the defendant is able to pay. The court shall fix the manner of performing the restitution or reparation, and in doing so, the court may take into consideration the recommendation of the probation officer. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, "restitution" shall mean compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action. As used herein, "reparation" shall include but not be limited to the performance 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" shall include individuals, firms, corporations, associations or other organizations, and government agencies, whether federal, State or local. Provided, that no government agency shall benefit by way of restitution or reparation except for particular damage or loss to it over and above its normal operating costs. Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders and to provide for compensation to victims of crime, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State.

(13) Violate no penal law of any state or of the United States and be of general good behavior; however, probation may not be revoked solely for conviction of a misdemeanor unless it is punishable by imprisonment for more than 80 days;

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."
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(15) Perform certain reasonable and useful community activities under appropriate supervision.

(16) Within the first 30 days of his probation, visit, with his probation officer, a prison unit maintained by the Department of Correction for a tour thereof so that he may better appreciate the consequences of probation revocation. (1937, c. 132, s. 3; 1957, c. 1351; 1963, c. 54; c. 632, s. 2; 1969, c. 982; 1975, c. 131; c. 229, s. 2; 1977, c. 364; c. 614, s. 1.)

Cross Reference. — For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor's Note. — The first 1975 amendment, effective July 1, 1975, added subdivision (15).

The second 1975 amendment added subdivision (16).

The first 1977 amendment, effective Oct. 1, 1977, in subdivision (18), substituted “of the United States” for “the federal government” and added the language beginning “however, probation may not be revoked” to the end.

The second 1977 amendment, effective Oct. 1, 1977, rewrote subdivision (10). Session Laws 1977, c. 614, s. 10, provides: “This act shall become effective on Oct. 1, 1977, and shall apply to offenses committed on and after that date.”

Session Laws 1975, c. 229, s. 3, provides that the act shall become effective 60 days after ratification. The act was ratified May 6, 1975.

Session Laws 1977, c. 614, s. 9, contains a severability clause.

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (10), (13), (15) and (16) are set out.

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 35, provides: “None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.”

§ 15-200: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross Reference. — For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978.”

Conditions Which Curtail Constitutional Rights. — This section recognizes a wide variety of conditions which may be imposed upon suspension of sentence, many of which touch upon and curtail rights guaranteed by State and federal Constitutions. State v. Mitchell, 22 N.C. App. 663, 207 S.E.2d 263 (1974).

Condition of Consent to Warrantless Search. — Conditions of the prior suspended sentences by which defendants gave consent to search of their premises at reasonable hours without a search warrant were valid. State v. Mitchell, 22 N.C. App. 663, 207 S.E.2d 263 (1974).

Voluntary waiver and consent to a warrantless search of one's premises may effectively be given by agreeing thereto as one of the conditions of a suspended sentence, and this should especially be true where such a condition is clearly designed to facilitate the State's supervision of the probationer's rehabilitation. State v. Mitchell, 22 N.C. App. 668, 207 S.E.2d 268 (1974).

Although the condition imposed, i.e., that probationer waive his right to be free from warrantless searches, is not among those listed in this section, the list is not exclusive. State v. Craft, 32 N.C. App. 357, 232 S.E.2d 282 (1977).

without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

There is nothing unusual in the denial by North Carolina law of credit for probation or parole time against a prison sentence; it is common to both State and federal probation and parole systems and the validity of such denial has been universally recognized both in federal and State decisions. Hall v. Bostic, 529 F.2d 990 (4th Cir. 1975).

The refusal to credit probation time against the prison sentence is not double jeopardy, or an extension or enlargement of the original sentence of imprisonment, since the period of probation is not counted as a part of the period of imprisonment. Hall v. Bostic, 529 F.2d 990 (4th Cir. 1975).

The primary purpose, etc. —


The period during which the execution, etc.


Discretion of Court. — In hearings under this section the findings of fact and the judgment entered thereupon are matters to be determined in the sound discretion of the court, and the exercise of that discretion in the absence of gross abuse cannot be reviewed. State v. Simpson, 25 N.C. App. 176, 212 S.E.2d 566, cert. denied, 287 N.C. 263, 214 S.E.2d 436 (1975).

Where the judgment does not specify the period of time that execution of the sentence is suspended upon conditions, execution of the sentence is suspended or stayed for the period of time that the court is empowered by this section to suspend the sentence. State v. Simpson, 25 N.C. App. 176, 212 S.E.2d 566, cert. denied, 287 N.C. 263, 214 S.E.2d 436 (1975).

A condition which is a violation of the defendant's constitutional rights and, therefore, beyond the power of the court to impose is per se unreasonable. State v. Simpson, 25 N.C. App. 176, 212 S.E.2d 566, cert. denied, 287 N.C. 263, 214 S.E.2d 436 (1975).

Condition directly related to and growing out of the offense for which the defendant is convicted, and consistent with proper punishment for the crime, neither violates the defendant's constitutional rights nor is otherwise unreasonable. State v. Simpson, 25 N.C. App. 176, 212 S.E.2d 566, cert. denied, 287 N.C. 263, 214 S.E.2d 436 (1975).


Defendant's consent does not preclude him from contesting reasonableness of condition which he has broken when such breach is made the ground for putting the prison sentence into effect. State v. Simpson, 25 N.C. App. 176, 212 S.E.2d 566, cert. denied, 287 N.C. 263, 214 S.E.2d 436 (1975).

The probationary judgment does not have to be formally introduced into evidence at the revocation hearing if the record indicates, as in the case at bar, that the judge has the order before him, and where reference is made in the judgment to specific conditions that defendant allegedly violated. State v. Hogan, 27 N.C. App. 34, 217 S.E.2d 712 (1975).

Imprisonment Is for Original Crime. — A petitioner, upon revocation of his suspended sentence, suffers imprisonment under a sentence, not for the matters that may have caused the revocation of his probation, but for the crime for which he was originally found guilty. Hall v. Bostic, 529 F.2d 990 (4th Cir. 1975).

In a probation hearing, the court is not bound, etc. —

At a hearing to revoke the suspension of a prison sentence for the alleged violation of a valid condition of suspension, the court is not bound by strict rules of evidence. All that is required in a hearing of this character is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended. State v. Simpson, 25 N.C. App. 176, 212 S.E.2d 566, cert. denied, 287 N.C. 263, 214 S.E.2d 436 (1975).

Where defendants agreed to consent to a warrantless search of their premises as a condition of a suspended sentence, officers appearing to conduct the search did not have the right to break unannounced into defendants' home. They should have first announced their presence and requested entry. Had entry been refused, defendants as probationers could have been cited for violation of the terms of their probation, and upon a finding that the conditions had been violated, the previously suspended sentences could have been put into effect. State v. Mitchell, 22 N.C. App. 663, 207 S.E.2d 263 (1974).

§ 15-200.1. Notice of intention to pray revocation of probation or suspension; appeal from revocation. — In all cases of probation or suspension of sentence in the superior and district court[s], before a probation or suspension of sentence may be revoked, the probation officer, district attorney or other officer shall inform the probationer in writing, not less than seven days prior to the time he intends to pray judgment placing such suspended sentence into effect or revocation of such probation, [of] the grounds upon which revocation is prayed. The probationer shall be entitled to representation by counsel, including court-appointed counsel if he is indigent and confinement is possible. In all cases where probation or suspension of sentence entered in a court inferior to the superior court is revoked and sentence is placed into effect, the defendant shall have the right of appeal therefrom to the superior court, and, upon such appeal, the matter shall be determined by the judge without a jury, but only upon the issue of whether or not there has been a violation of the terms of probation or of the suspended sentence. Upon its finding that the conditions were violated, the superior court shall enforce the judgment of the lower court unless the judge finds as a fact that circumstances and conditions surrounding the terms of the probation and the violation thereof have substantially changed, so that enforcement of the judgment of the lower court would not accord justice to the defendant, in which case the judge may modify or revoke the terms of the probationary or suspended sentence in the court's discretion. Appeals from lower courts to the superior courts from judgments revoking probation or invoking suspended sentence may be heard in session or out of session, in the county or out of the county, by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special superior court judge residing in the district. (1951, c. 1038; 1963, c. 632, s. 3; 1969, c. 1013, s. 8; 1973, c. 47, s. 2; c. 1141, s. 20; 1975, c. 309, s. 1.)

Cross Reference. — For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted, at the end of the first sentence, the language beginning "not less than seven days" for "of his intention to pray the court to revoke probation or suspension and to put the suspended sentence into effect, and shall set forth in writing the grounds upon which revocation is prayed." The amendment also deleted the former third sentence, which read "He is also entitled to a reasonable time to prepare his defense" and substituted "sentence" for "sentences" near the beginning of the last sentence.

For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."


Scope of Inquiry into Changed Circumstances Surrounding Terms of Suspended Sentence. — Where the superior court finds that the terms of the suspended sentence have been violated, it "shall enforce the judgment unless" it finds that the circumstances surrounding the conditions have changed so much that revocation would be unjust. However, the inquiry into changed circumstances is directed only to circumstances which are relevant to the conditions of suspension. State v. Cash, 30 N.C. App. 677, 228 S.E.2d 85 (1976).

Cross Reference. — For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor's Note. — This section was again repealed by Session Laws 1977, c. 711, s. 38, effective July 1, 1978.

§ 15-205. Duties and powers of the probation officers. — A probation officer shall investigate all cases referred to him for investigation by the judges of the courts or by the Secretary of Correction, and shall report in writing thereon. He shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct him regarding the same. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the court or the Secretary of Correction may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the court or the Secretary of Correction, to aid and encourage persons on probation to bring about improvement in their conduct and condition, and shall within the first 30 days of a person's probation take such person to a prison unit maintained by the Department of Correction for a tour thereof so that he may better appreciate the consequences of probation revocation. Such officer shall keep detailed records of his work; shall make such reports in writing to the Secretary of Correction as he may require; and shall perform such other duties as the Secretary of Correction may require. A probation officer shall have, in the execution of his duties, the powers of arrest and, to the extent necessary for the performance of his duties, the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this State. (1937, c. 182, s. 9; 1978, c. 1262, s. 10; 1975, c. 229, s. 1.)

Editor's Note. — The 1975 amendment added the language following "condition" at the end of the fourth sentence.

Session Laws 1975, c. 229, s. 3, provides that the act shall become effective 60 days after ratification. The act was ratified May 6, 1975.

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 18, effective July 1, 1978, will delete "and shall report in writing thereon" at the end of the first sentence and will delete the second sentence of this section.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 15-205.1: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross Reference. — For provisions as to post-trial relief, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."
§ 15-207. Records treated as privileged information.


ARTICLE 22.

Review of Criminal Trials.


Cross References. — For provisions as to probation effective July 1, 1978, see §§ 15A-1341 through 15A-1347.

For provisions as to post-trial relief in criminal cases, effective July 1, 1978, see §§ 15A-1411 through 15A-1422.

Editor's Note. —

Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 35, provides: “None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, ‘Parole’ shall not apply to persons sentenced before July 1, 1978.”


Cross Reference. — For provisions as to probation effective July 1, 1978, see §§ 15A-1341 through 15A-1347.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”


Review on Habeas Corpus in Federal Court, etc. —

Petitioner must present each of his contentions raised in his application for federal habeas corpus in a post-conviction hearing following the appropriate State procedure under the “North Carolina Post-Conviction Hearing Act” before such contention may be raised properly before the United States District Court. Manning v. Jones, 385 F. Supp. 312 (E.D.N.C. 1974).

A State prisoner who seeks federal habeas corpus must present to the State courts the same claim he urges upon the federal courts, in order that it may be found that he has exhausted his State remedies. Vester v. Lewis, 403 F. Supp. 255 (E.D.N.C. 1975).

Once the federal claim has been fairly presented to the State courts, the exhaustion requirement is satisfied. Vester v. Lewis, 403 F. Supp. 255 (E.D.N.C. 1975).

applying to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978.'


Cross Reference. — For provisions as to probation effective July 1, 1978, see §§ 15A-1841 through 15A-1347.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

§ 15-220: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

§ 15-221: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross Reference. — For provisions as to probation effective July 1, 1978, see §§ 15A-1341 through 15A-1347.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

§ 15-222: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Cross Reference. — For provisions as to probation effective July 1, 1978, see §§ 15A-1341 through 15A-1347.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be
deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."


ARTICLE 23.

Expunction of Records of Youthful Offenders.

§ 15-223. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor. — (a) Whenever any person who has 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, 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.

2. Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

3. A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

4. Affidavits of the clerk of superior court, chief of police, where appropriate, sheriff of the county wherein the petitioner was convicted, and official records of the Federal Bureau of Investigation and the State Bureau of Investigation, all showing that the petitioner has not been convicted of a 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 at any time prior to the conviction for the misdemeanor in question or during the two-year period following the conviction for the misdemeanor in question.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation.
Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(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. (1973, c. 47, s. 2; c. 748; 1975, c. 650, s. 5; 1977, c. 642, s. 1; c. 699, ss. 1, 2.)

Editor's Note. —


The first 1977 amendment divided the former provisions of subsection (c) into the present first and second sentences by deleting “and,” inserted “the” preceding “said misdemeanor conviction” in the present first sentence, substituted “the sheriff, chief of police, or other arresting agency” for “all law-enforcement agencies concerned and to the F.B.I. and S.B.I. with the cost thereof to be taxed against the petitioner” at the end of the present second sentence, and added the third and fourth sentences.

The second 1977 amendment, in subsection (a), inserted “other than a traffic violation” in the first sentence in the introductory language and near the middle of subdivision (4).

Session Laws 1975, c. 650, s. 6, provides in part: “All expunction records presently maintained in the North Carolina Department of Justice in accordance with G.S. 90-96, G.S. 90-113.14 and G.S. 15-223 will be transferred to the Administrative Office of the Courts at the time this act becomes effective.”

As subsection (b) was not changed by the amendments, it is not set out.
Chapter 15A.
Criminal Procedure Act.

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§ 15A-101

1977 CUMULATIVE SUPPLEMENT

§ 15A-101

Editor's Note.—
Session Laws 1975, c. 166, ss. 27 and 28, provide:
"Sec. 27. Chapter 15A of the General Statutes is hereby amended by striking out the words "district solicitor" wherever the words appear throughout Chapter 15A, and inserting in lieu thereof the words "district attorney," and by striking out the word "solicitor," wherever the word appears throughout Chapter 15A and inserting in lieu thereof the word "prosecutor.”
The Michie Company, publishers of the General Statutes of North Carolina, is authorized and directed to make the changes directed above wherever they might appear appropriate in the text of Chapter 15A of the General Statutes.
"Sec. 28. This act shall become effective on the date that Chapter 1286 of the 1973 Session Laws becomes effective."
Sections in Chapter 15A have not been set out in this supplement, merely to give effect to the changes directed by Session Laws 1975, c. 166, s. 27. Such changes will be made as the sections affected are set out for other purposes.

SUBCHAPTER I. GENERAL.

ARTICLE 1.
Definitions and General Provisions.

§ 15A-101. Definitions. — Unless the context clearly requires otherwise, the following words have the listed meanings:
(2) Clerk. — Any clerk of superior court, acting clerk, or assistant or deputy clerk.
(4) District Attorney. — The person elected and currently serving as district attorney in his prosecutorial district.
(7) Prosecutor. — The district attorney, any assistant district attorney or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney.

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, rewrote subdivision (2), substituted “attorney” for “solicitor” and “prosecutorial” for “solicitorial” in subdivision (4) and substituted “Prosecutor” for “Solicitor” in one place, and “attorney” for “solicitor” in four places, in subdivision (7).
As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (2), (4) and (7) are set out.
Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 19, will amend this section by adding new subdivisions as follows:
"(0.1) Appeal. — When used in a general context, the term “appeal” also includes appellate review upon writ of certiorari.

“(4) Entry of Judgment. — Judgment is entered when sentence is pronounced. Prayer for judgment continued upon payment of costs, without more, does not constitute the entry of judgment.”
Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, “Parole” shall not apply to persons sentenced before July 1, 1978.”
Session Laws 1977, c. 711, s. 36, contains a severability clause.

(f) For the purposes of this Article, pretrial proceedings are proceedings occurring after the initial appearance before the magistrate and prior to arraignment. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, s. 194.)

Editor's Note. — The 1975, 2nd Sess., amendment, effective July 1, 1976, substituted "are proceedings occurring after the initial appearance before the magistrate and" for "include all proceedings" in subsection (f).


§ 15A-141. When entry of attorney in criminal proceeding occurs. — An attorney enters a criminal proceeding when he:

(3) Appears in a criminal proceeding for a limited purpose and indicates the extent of his representation by filing written notice thereof with the clerk; or

(1975, 2nd Sess., c. 983, s. 135.)

Editor's Note. — The 1975, 2nd Sess., amendment, effective July 1, 1976, deleted "or entering oral notice thereof in open court at the time of his initial appearance" following "the clerk" in subdivision (3).

§ 15A-143. Attorney making general entry obligated to represent defendant at all subsequent stages. — An attorney who enters a criminal proceeding without limiting the extent of his representation pursuant to G.S. 15A-141(3) undertakes to represent the defendant for whom the entry is made at all subsequent stages of the case until entry of final judgment, at the trial stage. An attorney who appears for a limited purpose under the provisions of G.S. 15A-141(3) undertakes to represent the defendant only for that purpose and is deemed to have withdrawn from the proceedings, without the need for permission of the court, when that purpose is fulfilled. (1973, c. 1286, s. 1; 1977, c. 1117.)

Editor's Note. — The 1977 amendment, effective Oct. 1, 1977, substituted "at all subsequent stages of the case until entry of final judgment, at the trial stage" for "at all stages
§ 15A-231. Other searches and seizures.

Seizure and Introduction of Evidence, etc.—

In a prosecution for first-degree murder, where a State trooper had stopped defendants’ car for reckless driving and had subsequently observed the butt of a revolver protruding from under the center armrest, the revolver was properly admissible in evidence as the fruit of a lawful warrantless “plain view” seizure under circumstances requiring no search. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976).

Where the circumstances require no search the constitutional immunity never arises, and the guarantee against unreasonable searches and seizures does not prohibit a warrantless seizure where the contraband subject matter is fully disclosed and open to the eye and hand. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976).

Warrant Not Required Where Article Seized, etc.—


When officers are conducting a valid search for one type of contraband and find other types of contraband, the law is not so unreasonable as to require them to turn their heads. State v. Oldfield, 29 N.C. App. 131, 223 S.E.2d 569, cert. denied, 290 N.C. 96, 225 S.E.2d 325 (1976).

By being lawfully on the premises officers are entitled to seize such evidentiary objects connected with defendants as are in plain view. State v. Alford, 289 N.C. 372, 222 S.E.2d 222 (1976).

The plain view doctrine is firmly established and consistently supported by both State and federal courts. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976).

A police officer may search the person, etc.—


Where the arrest is lawful, the police have the right, without a search warrant, to conduct a contemporaneous search of the person and area within the immediate control for weapons or for fruits of the crime or weapons used in its commission. State v. Young, 27 N.C. App. 308, 219 S.E.2d 261 (1975), cert. denied, 289 N.C. 455, 223 S.E.2d 164 (1976).

ARTICLE 11.

Search Warrants.

§ 15A-241. Definition of search warrant.

Evidence unconstitutionally obtained, etc.—

Evidence obtained by unreasonable search is inadmissible in both federal and State courts. State v. Johnson, 29 N.C. App. 534, 225 S.E.2d 113 (1976).

§ 15A-243. Who may issue a search warrant.


§ 15A-244. Contents of the application for a search warrant.

Sufficiency of Affidavit Generally.—


“Probable Cause”.—


Probable cause to search means a reasonable ground to believe that a search of the place named will uncover the objects sought, and that the objects sought will aid in the apprehension or conviction of an offender. State v. Guffey, 31 N.C. App. 515, 229 S.E.2d 837 (1976).
§ 15A-245. Basis for issuance of a search warrant; duty of the issuing official.

When Probable Cause Exists. — Within the meaning of the Fourth Amendment, § 15A-243 through this section, probable cause means a reasonable ground to believe that the proposed search will reveal the presence, upon the premises to be searched, of the objects sought and that those objects will aid in the apprehension or conviction of the offender. State v. Riddick, 291 N.C. 399, 230 S.E.2d 506 (1976).

Where when the detailed nature of the informant's report and the fact that the officer swore that his informer was reliable are considered in a common sense and practical fashion, it would induce a prudent and disinterested magistrate to credit the report and conclude that the informant's information was reliable and not a casual rumor or a conclusory fabrication so that the affidavit was sufficient to warrant a finding of probable cause to search the defendant's house. State v. Chapman, 24 N.C. App. 462, 211 S.E.2d 489 (1975).

The test to determine the sufficiency of affidavits upon which search warrants are issued is that the magistrate must be informed of some of the underlying circumstances from which the informant concluded that what he stated to the affiant was correct, and some of the underlying circumstances from which the officer concluded that the informant whose identity need not be disclosed was "credible" or his information "reliable." State v. Chapman, 24 N.C. App. 462, 211 S.E.2d 489 (1975).


An affidavit may be based on hearsay, etc. — In accord with 3rd paragraph in original. See State v. Hayes, 291 N.C. 293, 230 S.E.2d 146 (1976).

In a prosecution for possession of more than one ounce of marijuana, irrespective of the challenged hearsay in the affidavit to obtain a warrant, the information in the affidavit of the purchase of tetrahydrocannabinols only a few minutes before issuance of the warrant, along with the detailed description of the location of the trailer to be searched, and the results of three weeks of surveillance of the premises constituted probable cause to issue the search warrant. State v. Oldfield, 29 N.C. App. 131, 223
§ 15A-246. Form and content of the search warrant.

A search warrant will be presumed regular, etc. —


Common Sense Interpretation. — Search warrants must be tested and interpreted by magistrates and courts in a common sense and realistic fashion, as they are normally drafted by nonlawyers in the midst and haste of a criminal investigation. State v. Hansen, 27 N.C. App. 459, 219 S.E.2d 641 (1975), cert. denied, 289 N.C. 453, 223 S.E.2d 161 (1976).


Description in Warrant, etc. —

A description of a mobile home to be searched was not fatally defective when the warrant named the son as owner when in fact it was rented to the son by his father or when there was another mobile home of the same color as that described in the warrant but which was not owned by either of these parties or occupied by the defendant. State v. Woods, 26 N.C. App. 584, 216 S.E.2d 492, cert. denied, 288 N.C. 396, 218 S.E.2d 469 (1975).

Scope of Warrant Not Exceeded. — The search of defendant's premises did not exceed the scope of the warrant by including a tool shed as well as the house itself. State v. Travatello, 24 N.C. App. 511, 211 S.E.2d 467 (1975).


§ 15A-249. Officer to give notice of identity and purpose.

Purpose of Notice Requirement. — The notice requirement is for the protection of the officers as well as the protection of the occupants and their constitutional rights. State v. Gaines, 33 N.C. App. 66, 234 S.E.2d 42 (1977).

Officers to Give Notice, etc. —


§ 15A-251. Entry by force.


§ 15A-253. Scope of the search; seizure of items not named in the warrant.

Scope of Warrant Not Exceeded. — The search of defendant's premises did not exceed the scope of the warrant by including a tool shed as well as the house itself. State v. Travatello, 24 N.C. App. 511, 211 S.E.2d 467 (1975).

The trial court in a prosecution for possession of heroin did not err in allowing testimony with respect to a box and its contents found in the trunk of defendant's automobile which was parked in defendant's driveway, since a search warrant authorized a search of the premises of defendant. State v. Logan, 27 N.C. App. 150, 218 S.E.2d 213 (1975).

Items in Plain View. — An item is lawfully seized even though it is not listed in the warrant if the officer is at a place where he has a legal right to be and if the item seized is in plain view. State v. Riddick, 291 N.C. 399, 230 S.E.2d 506 (1976).

While conducting a lawful search where officers found in plain view property identified as that reported missing, these items were lawfully seized. State v. Travatello, 24 N.C. App. 511, 211 S.E.2d 467 (1975).

§ 15A-256. Detention and search of persons present in private premises or vehicle to be searched.

§ 15A-271. Authority to issue order.

Editor's Note. — For a critical analysis of this article, see 12 Wake Forest L. Rev. 387 (1976).

Applicability of Article. — A construction of §§ 15A-272, 15A-274, 15A-276 and 15A-502 so as to achieve a logical relationship and to effectuate apparent legislative intent mandates that Article 14 of Chapter 15A applies only to suspects and accused persons before arrest, and persons formally charged and arrested who have been released from custody pending trial. The Article does not apply to an in-custody accused. State v. Irick, 291 N.C. 480, 231 S.E.2d 833 (1977).

After arrest of a defendant based upon probable cause, a law-enforcement officer may utilize normal investigative procedures including fingerprinting, photographing, lineups, etc., and need not follow exclusively the Article 14 nontestimonial identification procedures. Opinion of Attorney General to Mr. Anthony Brannon, 45 N.C.A.G. 60 (1975).

Effect of Article. — This Article provides an investigative procedure, not previously available in this State, for use in cases where there are reasonable grounds to suspect that a particular person committed an offense punishable by imprisonment for more than one year but where there is yet lacking a sufficient basis for making a lawful arrest. State v. McDonald, 32 N.C. App. 457, 232 S.E.2d 467 (1977).

§ 15A-272. Time of application; additional investigative procedures not precluded.


§ 15A-273. Basis for order.

Editor's Note. — For a discussion of this article in the context of constitutional requirements, see 12 Wake Forest L. Rev. 387 (1976).


§ 15A-274. Issuance of order. — Upon a showing that the grounds specified in G.S. 15A-273 exist, the judge may issue an order requiring the person named or described with reasonable certainty in the affidavit to appear at a designated time and place and to submit to designated nontestimonial identification procedures. Unless the nature of the evidence sought makes it likely that delay will adversely affect its probative value, or when it appears likely that the person named in the order may destroy, alter, or modify the evidence sought or may not appear, the order must be served at least 72 hours before the time designated for the nontestimonial identification procedure. (1973, c. 1286, s. 1; 1977, c. 832, s. 1.)

Editor's Note. — The 1977 amendment inserted the language beginning “or when it appears likely” and ending “or may not appear” in the second sentence and substituted “nontestimonial identification procedure” for “nontestimonial identification procedures” at the end of that sentence. Cited in State v. Irick, 291 N.C. 480, 231 S.E.2d 833 (1977).


§ 15A-277. Service of order. — An order to appear pursuant to this Article may be served by a law-enforcement officer. The order must be served upon the person named or described in the affidavit by delivery of a copy to him personally. The order must be served at least 72 hours in advance of the time of compliance, unless the judge issuing the order has determined, in accordance with G.S. 15A-274, that delay will adversely affect the probative value of the evidence sought or when it appears likely that the person named in the order may destroy, alter, or modify the evidence sought, or may not appear. (1973, c. 1286, s. 1; 1977, c. 832, s. 2.)

Editor's Note. — The 1977 amendment added the language beginning "or when it appears likely" to the end of the section.

§ 15A-278. Contents of order.

Editor's Note. — For a discussion of this article in the context of constitutional requirements, see 12 Wake Forest L. Rev. 387 (1976).

§ 15A-279. Implementation of order.

Editor's Note. — For a discussion of this article in the context of constitutional requirements, see 12 Wake Forest L. Rev. 387 (1976).

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 20, effective July 1, 1978, will amend subsection (e) and add new subsections (f) and (g) to read as follows:

"(e) Any person who resists compliance with the authorized nontestimonial identification procedures may be held in contempt of the court which issued the order pursuant to the provisions of G.S. 5A-12(a) and G.S. 5A-21(b).

"(f) A nontestimonial identification order may not be issued against a person previously subject to a nontestimonial identification order unless it is based on different evidence which was not reasonably available when the previous order was issued.

"(g) Resisting compliance with a nontestimonial identification order is not itself grounds for finding probable cause to arrest the suspect, but it may be considered with other evidence in making the determination whether probable cause exists."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

SUBCHAPTER III. CRIMINAL PROCESS.

ARTICLE 17.

Criminal Process.

§ 15A-301. Criminal process generally. — (a) Formal Requirements. —

(1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk.

(2) Criminal process, other than a citation, must be signed and dated by the justice, judge, magistrate, or clerk who issues it. The citation must be signed and dated by the law-enforcement officer who issues it.
§ 15A-302 GENERAL STATUTES OF NORTH CAROLINA § 15A-303

(d) Return. —
(1) The officer who serves or executes criminal process must enter the date of the service or execution on the process and return it to the clerk of court in the county in which issued.
(2) If criminal process is not served or executed within the number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with the reason for the failure of service or execution noted thereon.
- Warrant for arrest — 90 days.
- Order for arrest — 90 days.
- Criminal summons — 90 days or the date the defendant is directed to appear, whichever is earlier.
(3) Failure to return the process to the clerk does not invalidate the process, nor does it invalidate service or execution made after the period specified in subdivision (2).
(4) The clerk to which return is made may redeliver the process to a law-enforcement officer for further attempts at service. If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.

(1975, 2nd Sess., c. 988, ss. 186, 187.)

Editor's Note. — The 1975, 2nd Sess., amendment, effective July 1, 1976, substituted "record" for "copy" and "maintained" for "filed" in subdivision (1) of subsection (a) and added the second sentence of subdivision (4) of subsection (d).

§ 15A-302. Citation.

(e) Dismissal by Prosecutor. — If the prosecutor finds that no crime is charged in the citation, or that there is insufficient evidence to warrant prosecution, he may dismiss the charge and so notify the person cited. An appropriate entry must be made in the records of the clerk. It is not necessary to enter the dismissal in open court or to obtain consent of the judge.

(f) Citation No Bar to Criminal Summons or Warrant. — A criminal summons or a warrant may issue notwithstanding the prior issuance of a citation for the same offense.

(1975, c. 166, ss. 3, 27.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "prosecutor" for "solicitor" in subsection (e) and deleted subdivision (2) of subsection (f), which provided for the enforcement of citations in the case of motor vehicle offenses.


(d) Order to Appear. — The summons must order the person named to appear in a designated court at a designated time and date and answer to the charges made against him and advise him that he may be held in contempt of court for failure to appear. Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the issuance or reissuance of the criminal summons.

(e) Enforcement. —
(1) A warrant for arrest, based upon the same or another showing of probable cause, may be issued by the same or another issuing official, notwithstanding the prior issuance of a criminal summons.
(2) An order for arrest, as provided in G.S. 15A-305, may issue for the arrest
of any person who fails to appear as directed in a duly executed criminal summons.

(3) A person served with criminal summons who willfully fails to appear as directed may be punished for contempt as provided in G.S. 5-1.

(4) Repealed by Session Laws 1975, c. 166, s. 4, effective September 1, 1975.

(f) Who May Issue. — A criminal summons, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, ss. 4, 5; 1975, 2nd Sess., c. 983, s. 188.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, repealed subdivision (4) of subsection (e), which provided for the enforcement of citations in the case of motor vehicle offenses, and inserted "valid throughout the State" in subsection (f).


Fourth Amendment Applies, etc. —
In accord with original. See State v. Freeman, 31 N.C. App. 335, 229 S.E.2d 238 (1976).


(d) Who May Issue. — An order for arrest, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, s. 6.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, added subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

Amendment Effective July 1, 1978. —
Session Laws 1977, c. 711, s. 5, effective July 1, 1978, will amend subdivision (4) and add subdivisions (8) and (9) of subsection (b) to read as follows:

"(b) When Issued. — An order for arrest may be issued when:

(1) A grand jury has returned a true bill of indictment against a defendant who is not in custody and who has not been released from custody pursuant to Article 26 of this Chapter, Bail, to answer to the charges in the bill of indictment.

(2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.

(3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to G.S. 15A-303.

(4) A defendant has violated the conditions of probation.

(5) In any criminal proceeding in which the defendant has become subject to the jurisdiction of the court, it becomes necessary to take the defendant into custody.

(6) It is authorized by G.S. 15A-803 in connection with material witness proceedings.

(7) The common-law writ of capias has heretofore been issuable.

(8) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.

(9) It is authorized by G.S. 5A-16 in connection with contempt proceedings."

Session Laws 1977, c. 711, s. 39, provides: 'This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978.'

Session Laws 1977, c. 711, s. 36, contains a severability clause.

I. GENERAL CONSIDERATION.

A person has the right to resist an unlawful arrest. State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282 (1977).


II. ARREST WITHOUT WARRANT.

A. In General.

An arrest without warrant, etc. — In accord with 1st paragraph in original. See State v. Little, 27 N.C. App. 54, 218 S.E.2d 184, cert. denied, 288 N.C. 512, 219 S.E.2d 347 (1975).


The existence of probable cause, etc. — In accord with 1st paragraph in original. See State v. Young, 27 N.C. App. 308, 218 S.E.2d 261 (1975), cert. denied, 289 N.C. 455, 223 S.S.W.2d 164 (1976).


Flight from unlawful arrest cannot be added to other relevant facts to give the officer probable cause for making a warrantless arrest. State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282 (1977).

When Flight May Be Considered in Assessing Probable Cause. — Flight is a strong indicia of mens rea, and when coupled with other relevant facts or the specific knowledge on the part of the arresting officer relating the subject to the evidence of the crime, it may properly be considered in assessing probable cause. State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282 (1977).

Probable cause and reasonable ground, etc. — In accord with 1st paragraph in original. See State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976), appeal dismissed, 291 N.C. 713, 228 S.E.2d 202 (1977).

"Reasonable ground" and "probable cause" are basically equivalent terms with similar meanings. State v. Young, 27 N.C. App. 308, 219 S.E.2d 261 (1975), cert. denied, 289 N.C. 455, 223 S.E.2d 164 (1976).


An officer need not show that a felony has actually been committed. It is only necessary for the officer to have reasonable ground to believe that such an offense has been committed. State v. Campbell, 30 N.C. App. 652, 228 S.E.2d 52, appeal dismissed, 291 N.C. 324, 230 S.E.2d 677 (1976).

Reasonable Ground for Belief Drawn from Totality of Circumstances. — The basis of reasonable ground for belief that felony has been committed is drawn from the totality of facts and circumstances surrounding the arrest, known to the officers. State v. Little, 27 N.C. App. 54, 218 S.E.2d 184, cert. denied, 288 N.C. 512, 219 S.E.2d 347 (1975).

Reasonable Ground for Belief May Be Based, etc. — In accord with original. See State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976), appeal dismissed, 291 N.C. 713, 228 S.E.2d 202 (1977).

Probable cause may be based upon information given to the officer by another, the source of such information being reasonably reliable. State v. Phifer, 290 N.C. 203, 225 S.E.2d 786 (1976), cert. denied, U.S., 97 S. Ct. 1160, 51 L. Ed. 2d 573 (1977).

Arrest Not Complete Where Defendant Fled from Unlawful Attempt to Arrest. — Where the defendant fled from the unlawful attempt to arrest him, the arrest was not complete under subsection (c)(1) because the defendant did not "submit to the control" of the officer, nor had the officer taken him "into custody by the use of physical force." State v. Williams, 32 N.C. App. 204, 231 S.E.2d 282 (1977).

B. Illustrative Cases.

1. Offenses in Presence of Officer. Carrying Concealed Weapon. — Where a fully-justified frisk by a police officer revealed that defendant was carrying a revolver, and the officer had probable cause to arrest him for carrying a concealed weapon in violation of § 14-269, at that point, the officer had absolute knowledge that defendant was violating the statute and that he was committing a misdemeanor in his presence. Thus, defendant's arrest for carrying a concealed weapon was not in violation of his constitutional rights, and the police officer did not exceed his authority under State law to arrest without a warrant. State v. McZorn, 288 N.C. 417, 225 S.E.2d 786 (1976), death sentence vacated, US. , 96 S. Ct. 1160, 51 L. Ed. 2d 573 (1977).

2. Offense Out of Presence of Officer. Arrest for Manslaughter. — Probable cause to believe defendant had committed the felony of manslaughter was present where, through his investigation, the officer had reasonable cause to believe the defendant had driven his vehicle while under the influence of intoxicating liquor and that he had driven his vehicle across the median of the highway, struck one vehicle and crashed into a second vehicle, killing the two occupants. State v. Stewardson, 32 N.C. App. 344, 232 S.E.2d 308 (1977).

Information Sufficient to Authorize Arrest for Robbery. — Where although the officer had not personally participated in investigation of the robbery for which defendant was arrested, but the record showed that at the time he made the arrest he knew that defendant had been identified from a photograph by one of the eyewitnesses as the man who was involved in the robbery, the arresting officer had probable cause to believe defendant had committed a felony. State v. McDonald, 32 N.C. App. 457, 232 S.E.2d 467 (1977).

Description of Robbers and Vehicle. — When the police officer had been notified by the State highway patrol radio dispatcher that a bank robbery and shooting had taken place and that a maroon Cadillac bearing New Jersey license plates had been seen outside the bank, and when the police officer shortly thereafter saw the car answering this description traveling away from the scene of the crime, he had sufficient probable cause to stop the vehicle and search it for contraband and weapons as well as probable cause to arrest the defendant therein. State v. Phifer, 290 N.C. 208, 225 S.E.2d 786 (1976), cert. denied, US. , 96 S. Ct. 1160, 51 L. Ed. 2d 573 (1977).

Arrest for Sale of LSD. — Where the officer received information from an informant of known reliability that a described person was at that time at a particular location engaged in selling LSD, went to the scene accompanied by another officer and found the defendant, dressed in the manner described by the second informant, observed the defendant for several minutes, during which time his actions were consistent with the activity of selling LSD, and where, when the officers approached, defendant started walking rapidly away, the officer's own observations and defendant's activities in the officer's presence served to verify the information furnished by the reliable informant, and thus, it was lawful for the officer to effect a warrantless arrest. State v. Hardy, 31 N.C. App. 67, 228 S.E.2d 487 (1976), appeal dismissed, 291 N.C. 713, 232 S.E.2d 202 (1977).

III. USE OF FORCE IN ARREST.

Purpose of Deadly Force Provision. — Subsection (d)(2) was designed solely to codify and clarify those situations in which a police officer may use deadly force without fear of incurring criminal or civil liability. State v. Irick, 281 N.C. 489, 231 S.E.2d 833 (1977).

IV. ENTRY ON PREMISES.


SUBCHAPTER V. CUSTODY.

ARTICLE 23.

Police Processing and Duties upon Arrest.

§ 15A-501. Police processing and duties upon arrest generally. — Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

(1) Must inform the person arrested of the charge against him or the cause for his arrest.

(2) Must, with respect to any person arrested without a warrant and, for purpose of setting bail, with respect to any person arrested upon a warrant or order for arrest, take the person arrested before a judicial official without unnecessary delay.

(1975, c. 166, ss. 7, 8.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, added “or the cause for his arrest” at the end of subdivision (1) and substituted “order for arrest” for “order of arrest” in subdivision (2).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1) and (2) are set out.


Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 39, contains a severability clause.

Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, “Parole” shall not apply to persons sentenced before July 1, 1978.”


§ 15A-503. Police assistance to persons arrested while unconscious or semiconscious. — (a) Whenever a law-enforcement officer arrests a person who is unconscious, semiconscious, or otherwise apparently suffering from some disabling condition, and who is unable to provide information on the causes of the condition, the officer should make a reasonable effort to determine if the person arrested is wearing a bracelet or necklace containing the Medec Alert Foundation's emergency alert symbol to indicate that the person suffers from diabetes, epilepsy, a cardiac condition, or any other form of illness which would cause a loss of consciousness. If such a symbol is found indicating that the person being arrested suffers from one of those conditions, the officer must make a reasonable effort to have appropriate medical care provided.

(b) Failure of a law-enforcement officer to make a reasonable effort to discover an emergency alert symbol, as required by this section, does not by itself establish negligence of the officer, but may be considered along with other
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evidence to determine if the officer took reasonable precautions to ascertain the emergency medical needs of the person in his custody.
(c) A person who is provided medical care under the provisions of this section is liable for the reasonable costs of that care unless he is indigent.
(d) Repealed by Session Laws 1975, c. 818, s. 1. (1975, c. 306, s. 1; c. 818, s. 1.)

Editor's Note. — The 1975 amendment repealed subsection (d), which stated: "Willful false representation of the existence of diabetes, epilepsy, a cardiac condition, or other disabling condition covered by this section, is punishable as provided in G.S. 14-223.1."

§§ 15A-504 to 15A-510: Reserved for future codification purposes.

ARTICLE 24.

Initial Appearance.

§ 15A-511. Initial appearance. — (a) Appearance before Magistrate.—
(1) A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in G.S. 15A-501.
(2) The magistrate must proceed in accordance with this section, except in those cases in which he has the power to determine the matter pursuant to G.S. 7A-273. In those cases, if the arrest has been without a warrant, the magistrate must prepare a magistrate's order containing a statement of the crime with which the defendant is charged.
(3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he may be confined or otherwise secured. If this is done, the magistrate's order must provide for an initial appearance within a reasonable time so as to make certain that the defendant has an opportunity to exercise his rights under this Chapter.

(b) Statement by the Magistrate. — The magistrate must inform the defendant of:
(1) The charges against him;
(2) His right to communicate with counsel and friends; and
(3) The general circumstances under which he may secure release under the provisions of Article 26, Bail.

(c) Procedure When Arrest Is without Warrant; Magistrate's Order. — If the person has been arrested, for a crime, without a warrant:
(1) The magistrate must determine whether there is probable cause to believe that a crime has been committed and that the person arrested committed it, and in the manner provided by G.S. 15A-304(d).
(2) If the magistrate determines that there is no probable cause the person must be released.
(3) If the magistrate determines that there is probable cause, he must issue a magistrate's order:
   a. Containing a statement of the crime of which the person is accused in the same manner as is provided in G.S. 15A-304(c) for a warrant for arrest, and
   b. Containing a finding that the defendant has been arrested without a warrant and that there is probable cause for his detention.
(4) Following the issuance of the magistrate's order, the magistrate must
proceed in accordance with subsection (e) and must file the order with any supporting affidavits and records in the office of the clerk.

(1975, c. 166, ss. 9-11; 1975, 2nd Sess., c. 983, s. 141.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, inserted “a magistrate's order containing” in the second sentence of subdivision (2) of subsection (a), substituted “release under the provisions of Article 26, Bail” for “pretrial release” at the end of subdivision (3) of subsection (b) and inserted “for a crime” in the introductory language of subsection (c). The 1975, 2nd Sess., amendment, effective July 1, 1976, added subdivision (3) of subsection (a).

As the rest of the section was not changed by the amendments, only subsections (a), (b) and (c) are set out.

Effect of Failure to Take Arrested Person, etc. —


ARTICLE 25.
Commitment.

§ 15A-521. Commitment to detention facility pending trial.

(c) Copies and Use of Order, Receipt of Prisoner. —

(1) The order of commitment must be delivered to a law-enforcement officer, who must deliver the order and the prisoner to the detention facility named therein.

(2) The jailer must receive the prisoner and the order of commitment, and note on the order of commitment the time and date of receipt. As used in this subdivision, “jailer” includes any person having control of a detention facility.

(3) Upon releasing the prisoner pursuant to the terms of the order, or upon delivering the prisoner to the court, the jailer must note the time and date on the order and return it to the clerk.

(4) Repealed by Session Laws 1975, 2nd Sess., c. 983, s. 142.

(1975, 2nd Sess., c. 983, s. 142.)

Editor's Note. — The 1975, 2nd Sess., amendment, effective July 1, 1976, deleted subdivision (4) of subsection (c), relating to filing of the order of commitment.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Section Inapplicable to Detention of Federal Prisoner in Local Jail. — See opinion of Attorney General to Mr. Louis A. Giovanetti, Special Agent, United States Department of Justice, Federal Bureau of Investigation, 45 N.C.A.G. 258 (1976).

ARTICLE 26.
Bail.

§ 15A-531. Definitions. — As used in this Article the following definitions apply unless the context clearly requires otherwise:

(1) Bail Bond. — An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 109-25, and an appearance bond secured by at least one solvent surety.

(1975, c. 166, s. 12.)
§ 15A-534. Procedure for determining conditions of pretrial release.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

1. In a misdemeanor case tried in the district court, the noting of an appeal; and
2. In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(1975, c. 166, s. 18.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "first" for "initial" in two places near the beginning of subsection (e).

§ 15A-535. Issuance of policies on pretrial release. — (a) Subject to the provisions of this Article, the senior resident superior court judge of each judicial district in consultation with the chief district court judge must devise and issue recommended policies to be followed within the district in determining whether, and upon what conditions, a defendant may be released before trial.

(b) In any county in which there is a pretrial release program, the senior resident superior court judge of the judicial district may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by judicial officials to supervision of such programs, and subject to its rules and regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a). (1973, c. 1286, s. 1; 1975, c. 791, s. 1.)

Editor's Note. — The 1975 amendment designated the existing section as subsection (a) and added subsection (b).

Session Laws 1975, c. 791, s. 2, makes the amendment effective the same date that Chapter 1286, Session Laws 1973 becomes effective. That Chapter, originally made effective July 1, 1975, was amended by Session Laws 1975, c. 573, so as to make it effective Sept. 1, 1975.

§ 15A-537. Persons authorized to effect release.

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 23, will rewrite this section to read as follows:

"§ 15A-537. Persons authorized to effect release. — (a) Following any authorization of release of any person in accordance with the provisions of this Article, any judicial official must effect the release of that person upon satisfying himself that the conditions of release have been met. In the absence of a judicial official, any law-enforcement officer or custodial official having the person in custody must effect the release upon satisfying himself that the conditions of release have been met, but law-enforcement and custodial agencies may administratively direct which officers or officials are authorized to effect release under this section. Satisfying oneself whether conditions of release are met includes determining if sureties are sufficiently solvent"
§ 15A-601. First appearance before a district court judge; right in felony and other cases in original jurisdiction of superior court; consolidation of first appearance before magistrate and before district court judge.

(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, within 96 hours after being taken into custody, first appearance must be held at the next session of district court held in the county. This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).

(d) Upon motion of the defendant, the first appearance before a district court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, ss. 139, 140.)

Editor's Note. — The 1975, 2nd Sess., amendment, effective July 1, 1976, deleted the former third sentence of subsection (c), which related to continuance of the first appearance with the consent of the defendant and the solicitor, and the former fourth sentence of subsection (c), which was identical to the second sentence of present subsection (d), added the present third sentence of subsection (c) and added subsection (d).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 15A-606. Demand or waiver of probable-cause hearing.

This section does not prescribe mandatory procedures affecting the validity of the trial in the absence of a showing that defendant was prejudiced thereby. State v. Burgess, 33 N.C. App. 76, 294 S.E.2d 40 (1977).


§ 15A-606. Demand or waiver of probable-cause hearing.

No Right to Hearing after Indictment. — This section does not entitle a criminal defendant to a probable-cause hearing as a matter of right after a bill of indictment has been returned. State v. Dangerfield, 32 N.C. App. 608, 233 S.E.2d 663 (1977).

Hearing within Specific Time Not Required by Due Process. — Due process does not require that a probable-cause hearing be held within a specific number of days following arrest. State v. Siler, 292 N.C. 543, 234 S.E.2d 733 (1977).


ARTICLE 30.

Probable-Cause Hearing.


Hearing Not Required after Indictment. — This section does not require a preliminary hearing after defendant is indicted for a felony and the superior court acquires jurisdiction. State v. Page, 32 N.C. App. 478, 232 S.E.2d 460 (1977).

There is nothing in this Chapter or its legislative history which demonstrates the legislature’s intention to alter the preexisting rule which dispensed with the requirement for a preliminary, or probable-cause, hearing when the defendant has been charged by indictment. State v. Sutton, 31 N.C. App. 697, 230 S.E.2d 572 (1976).

§ 15A-612. Disposition of charge on probable-cause hearing. — (a) At the conclusion of a probable-cause hearing the judge must take one of the following actions:

(1) If he finds that the defendant probably committed the offense charged, or a lesser included offense of such offense within the original jurisdiction of the superior court, he must bind the defendant over to a superior court for further proceedings in accordance with this Chapter. The judge must note his findings in the case records.

(2) If he finds no probable cause as to the offense charged but probable cause with respect to a lesser included offense within the original jurisdiction of the district court, he may set the case for trial in the district court in accordance with the terms of G.S. 15A-618. In the absence of a new pleading, the judge may not set a case for trial in the district court on any offense which is not lesser included.

(3) If he finds no probable cause pursuant to subdivisions (1) or (2) as to any charge, he must dismiss the plea in question.

(b) No action made by a judge under this section precludes the State from instituting a subsequent prosecution for the same offense. (1973, c. 1286, s. 1; 1975, c. 166, s. 14.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "pleading" for "warrant or information" in the second sentence of subdivision (2) of subsection (a).

ARTICLE 31.

The Grand Jury and Its Proceedings.

§ 15A-622. Formation and organization of grand jury; other preliminary matters.

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 24, effective July 1, 1978, will amend this section by adding at the end of subsection (a) a sentence to read as follows:

"Challenges to the panel from which grand jurors were drawn are governed by the procedure in G.S. 15A-1211."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and

Editor's Note. — For note dealing with a witness' access to his own grand jury testimony, see 13 Wake Forest L. Rev. 216 (1977).

§ 15A-628. Functions of grand jury; record to be kept by clerk.

The grand jury does not have authority to compel the county commissioners to repair county buildings. Opinion of Attorney General to Mr. R. Wendel Hutchins, County Attorney, Plymouth, N.C., 46 N.C.A.G. 221 (1977).

§ 15A-630. Notice to defendant of true bill of indictment. — Upon the return of a bill of indictment as a true bill the presiding judge must immediately cause notice of the indictment to be mailed or otherwise given to the defendant unless he is then represented by counsel of record. The notice must inform the defendant of the time limitations upon his right to discovery under Article 48 of this Chapter, Discovery in the Superior Court, and a copy of the indictment must be attached to the notice. If the judge directs that the indictment be sealed as provided in G.S. 15A-623(f), he may defer the giving of notice under this section for a reasonable length of time. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 148.)

Editor's Note. — The 1975, 2nd Sess., amendment, effective July 1, 1976, rewrote this section.

ARTICLE 32.

Indictment and Related Instruments.

§ 15A-644. Form and content of indictment, information or presentment.

The office of an indictment, etc. — If an indictment charges the offense in a plain, intelligible and explicit manner and contains averments sufficient to enable the court to proceed to judgment, and to bar a subsequent prosecution for the same offense, it is sufficient. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).


An indictment for burglary is fatally defective if it fails to identify the premises broken and entered with sufficient certainty to enable the defendant to prepare his defense and to offer him protection from another prosecution for the same incident. State v. Coffey, 289 N.C. 431, 222 S.E.2d 217 (1976).

It is not required that the indictment for first-degree burglary describe the property which the defendant intended to steal, or that which he did steal. State v. Coffey, 289 N.C. 431, 222 S.E.2d 217 (1976).

In an indictment for burglary the felony intended need not be set out as fully and specifically as would be required in an indictment for the actual commission of that felony. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).

The indictment for burglary must specify the particular felony which the defendant is alleged to have intended to commit at the time of the breaking and entering, and it is not sufficient to charge generally an intent to commit an unspecified felony. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).

Kidnapping. — An indictment charging that defendant "unlawfully, did feloniously and
forcibly kidnap" a person named is not defective or violative of North Carolina Const., Art. I, §§ 22 and 23 for failure to charge additionally that the victim was forcibly carried away against her will. State v. Norwood, 289 N.C. 424, 222 S.E.2d 253 (1976).


SUBCHAPTER VII. SPEEDY TRIAL; ATTENDANCE OF DEFENDANTS.

ARTICLE 35.

§ 15A-701. Policy of appropriate promptness.

Article Amended Effective Oct. 1, 1978. — Session Laws 1977, c. 787, s. 1, effective Oct. 1, 1978, will rewrite this Article to read as follows:

"§ 15A-701. Time limits and exclusions. — (a) The trial of the defendant charged with a criminal offense shall begin within the time limits specified below:

(1) Within 90 days from the date the defendant is arrested, served with criminal process, waives an indictment or is notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, whichever occurs last;

(2) Within 90 days of the giving of notice of appeal in a misdemeanor case for a trial de novo in the superior court;

(3) When a charge is dismissed, other than under G.S. 15A-703, and the defendant is afterwards charged with the same offense or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, then within 90 days from the date that the defendant was arrested, served with criminal process, waived an indictment, or was notified pursuant to G.S. 15A-630 that an indictment has been filed with the superior court against him, whichever occurs last, for the original charge;

(4) When the defendant is to be tried again following a declaration by the trial judge of a mistrial, then within 60 days of that declaration; or

(5) Within 60 days from the date the action occasioning the new trial becomes final when the defendant is to be tried again following an appeal or collateral attack.

(b) The following periods shall be excluded in computing the time within which the trial of a criminal offense must begin:

(1) Any period of delay resulting from other proceedings concerning the defendant including, but not limited to, delays resulting from

a. A mental or physical examination of the defendant, or a hearing on his mental or physical incapacity;

b. Trials with respect to other charges against the defendant;

c. Interlocutory appeals; or

d. Hearings on pretrial motions or the granting or denial of such motions;

(2) Any period of delay during which the
prosecution is deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct;

(3) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness for the defendant or the State. For the purpose of this subdivision, a defendant or an essential witness shall be considered:
   a. Absent when his whereabouts are unknown and he is attempting to avoid apprehension or prosecution or when his whereabouts cannot be determined by due diligence; and
   b. Unavailable when his whereabouts are known but his presence for testifying at the trial cannot be obtained by due diligence or he resists appearing at or being returned for trial;

(4) Any period of delay resulting from the fact that the defendant is mentally incapacitated or physically unable to stand trial;

(5) When a charge is dismissed by the prosecutor under the authority of G.S. 15A-938 and afterwards a new indictment or information is filed against the same defendant or the same defendant is arrested or served with criminal process for the same offense, or an offense based on the same act or transaction or on the same series of acts or transactions connected together or constituting parts of a single scheme or plan, any period of delay from the date the initial charge was dismissed to the date the time limits for trial under this section would have commenced to run as to the subsequent charge;

(6) A period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted;

(7) Any period of delay resulting from a continuance granted by any judge if the judge granting the continuance finds that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial and sets forth in writing in the record of the case the reasons for so finding.

The factors, among others, which a judge shall consider in determining whether to grant a continuance are as follows:

a. Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;

b. Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the time limits established by this section; and

c. Whether delay after the grand jury proceedings have begun, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the State;

(8) Any period of delay occasioned by the venue of the defendant's case being within a county where due to limited number of court sessions scheduled for the county, the time limitations of this section cannot reasonably be met;

(9) A period of delay resulting from the defendant's being in the custody of a penal or other institution of a jurisdiction other than the jurisdiction in which the criminal offense is to be tried;

(10) A period of delay when the defendant or his attorney has an obligation of service to the State of North Carolina or to the United States Government and the court, with the consent of both the defendant and the State, continues the case for a period of time consistent with that obligation.

c. If trial does not begin within the time limitations specified in this section because the defendant entered a plea of guilty or no contest which was subsequently withdrawn to any or all charges, the applicable period of time limits as specified in this section shall begin to run on the day the order permitting withdrawal of the plea of guilty or no contest becomes final."

Session Laws 1977, c. 787, s. 2, provides: "This act shall apply to any person who is arrested, served with criminal process, waives an indictment, or is notified pursuant to G.S. 15A-630 that an indictment has been filed with superior court against him, on or after Oct. 1, 1978."

Session Laws 1977, c. 787, s. 3, provides: "Subsection (a1) of G.S. 15A-701 is repealed effective July 1, 1980."

"§ 15A-702. Counties with limited court sessions. — (a) If the venue of the defendant's case lies within a county where, due to the limited number of court sessions scheduled for the county, the applicable time limits specified by G.S. 15A-701 has not been met, the defendant


§ 15A-740. Guilt or innocence of accused, when inquired into.

§ 15A-743. Application for issuance of requisition; by whom made; contents.

(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the Director of Prisons or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(1975, c. 132.)

Editor's Note. — The 1975 amendment deleted a comma following “county” the second time that word appears near the middle of subsection (b).

ARTICLE 38.

Interstate Agreement on Detainers.

§ 15A-761. Agreement on Detainers entered into; form and contents.


Good Cause for Continuance. — Where the State had some, but not all, of its witnesses available, and where it was approximately six years after the crime for which defendant was apprehended, there was “good cause” within the meaning of Article IV(c) of this Section to extend the date of defendant’s trial beyond the 120-day period. State v. Collins, 29 N.C. App. 478, 224 S.E.2d 647 (1976).

ARTICLE 39.

Other Special Process for Attendance of Defendants.


(a) The court attendance of an organization for purposes of commencing or prosecuting a criminal action against it may be accomplished by:

(1) Issuance and service of a criminal summons; or

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

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

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

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

(c) For purposes of this section, “organization” means corporation, unincorporated association, partnership, body politic, consortium, or other group, entity, or organization. (1973, c. 1286, s. 1; 1977, c. 557.)

Editor's Note. — The 1977 amendment, in subsection (a), substituted “an organization” for “a corporation” in the first sentence, designated “the issuance and service of a criminal
summons” as subdivision (1), added “or” to the end of that subdivision, added subdivisions (2) and (3), and in the second sentence, inserted “or notice of indictment,” substituted “organization, and must be served by delivery to” for “corporation, and must be served upon the corporation by delivery thereof,” and substituted “of the organization” for “of such corporation” in two places. The amendment also substituted “an organization” for “a corporate defendant” and “the organization” for “the corporation” in subsection (b) and added subsection (c).

SUBCHAPTER VIII. ATTENDANCE OF WITNESSES; DEPOSITIONS.

ARTICLE 42.

Attendance of Witnesses Generally.

§ 15A-801. Subpoena for witness. — The presence of a person as a witness in a criminal proceeding may be obtained by subpoena, which must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure, G.S. 1A-1. (1973, c. 1286, s. 1; 1975, c. 166, s. 15.)

Editor’s Note. — The 1975 amendment, effective Sept. 1, 1975, substituted “G.S. 1A-1” for “G.S. 1-1A” at the end of the section.

§ 15A-802. Subpoena for the production of documentary evidence. — The production of records, books, papers, documents, or tangible things in a criminal proceeding may be obtained by subpoena which must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure, G.S. 1A-1. (1973, c. 1286, s. 1; 1975, c. 166, s. 15.)

Editor’s Note. — The 1975 amendment, effective Sept. 1, 1975, substituted “G.S. 1A-1” for “G.S. 1-1A” at the end of the section.

DOCUMENTS RELATING TO OFFER OF REWARD. —
This section governs motions to produce documents relating to the offer of a reward.

ARTICLE 43.

Uniform Act to Secure Attendance of Witnesses from without a State in Criminal Proceedings.


§ 15A-812. Summoning witness in this State to testify in another state.


§ 15A-813. Witness from another state summoned to testify in this State.

§ 15A-901. Application of Article.

Purpose of Rules of Discovery. — The rules of discovery contained in the Criminal Procedure Act were enacted by the General Assembly to ensure, insofar as possible, that defendants received a fair trial and not be taken by surprise. They were not enacted to serve as mandatory rules of exclusion for trivial defects in the State's mode of compliance. State v. Thomas, 291 N.C. 687, 231 S.W.2d 585 (1977).


§ 15A-902. Discovery procedure.


§ 15A-903. Disclosure of evidence by the State — information subject to disclosure.

The common law, etc. —


Right Given by Former Statute, etc. —

A refusal to grant a pretrial motion for discovery is not reversible error unless the movant shows that evidence favorable to him was suppressed. State v. Branch, 288 N.C. 514, 220 S.E.2d 495 (1975).

The purpose of former § 15-155A, etc. —

In accord with 1st paragraph in original. See State v. Branch, 288 N.C. 514, 220 S.E.2d 495 (1975).

Defendant is not entitled, etc. —

In accord with 1st paragraph in original. See State v. Tatum, 291 N.C. 73, 229 S.E.2d 562 (1976).

Nor to receive the work product, etc. —

In accord with 1st paragraph in original. See State v. Tatum, 291 N.C. 73, 229 S.E.2d 562 (1976).

Inspection of Pretrial Statement. —


Scope of Subsection (a). — The requirement in G.S. 15A-903(a) that the State furnish to the defense copies of statements of the defendant which the State intends to offer at trial does not extend to remarks or conversation by the defendant to or in the presence of witnesses who are subsequently interviewed by persons acting on behalf of the State. Opinion of Attorney General to Mr. Anthony Brannon, 45 N.C.A.G. 60 (1975).

State Not Required to Introduce Writings in Precise Form Inspected by Defense. — While this section requires the State, upon proper motion, to divulge certain writings or documents, there is nothing that requires the State to offer the writings into evidence at trial in the precise form that they were in when inspected by defense counsel, State v. Williams, 29 N.C. App. 319, 224 S.E.2d 250 (1976).

List of State Witnesses. — Neither this section nor common law requires the State to furnish a defendant with the names and addresses of all the witnesses the State intends to call. State v. Tatum, 291 N.C. 73, 229 S.E.2d 562 (1976).

No right to discover the names and addresses of State's witnesses exists by statute in this
§ 15A-907

State. Neither former § 15-155.4 nor this section requires the State to furnish the accused with a list of witnesses who are to testify against him. State v. Smith, 291 N.C. 505, 231 S.E.2d 663 (1977).

In the absence of a statute requiring the State to furnish it, the defendant in a criminal case is not entitled to a list of the State’s witnesses who are to testify against him. State v. Spaulding, 288 N.C. 397, 219 S.E.2d 178 (1975), death sentence vacated, U.S. , 96 S.Ct. 3210, 49 L.Ed. 2d 1210 (1976).

Absent a statutory requirement, the defendant in a criminal case is not entitled to a list of witnesses who are to testify against him, and neither former § 15-155.4 nor this section requires this. State v. Carter, 289 N.C. 35, 220 S.E.2d 313 (1975), death sentence vacated, U.S. , 96 S.Ct. 3212, 49 L.Ed. 2d 1211 (1976).

It was never the intention of the General Assembly when it enacted Article 48 of the Criminal Procedure Act to require the district attorney to furnish the names and addresses of witnesses the State intended to call. It follows that trial judges should not encourage, by court order, what the legislature specifically rejected during consideration of the legislation. State v. Smith, 291 N.C. 505, 231 S.E.2d 663 (1977).

Procedure Where State Calls Witness Not on List Furnished by Order of Court. — Where the State has substantially complied with the order of the court to furnish the names and addresses of the State’s witnesses and where such a list has been furnished and the State subsequently seeks to call a witness not on that list, the court will look to see whether the district attorney acted in bad faith, and whether the defendant was prejudiced thereby. State v. Smith, 291 N.C. 505, 231 S.E.2d 663 (1977).


§ 15A-907. Continuing duty to disclose. — If a party, subject to compliance with an order issued pursuant to this Article, discovers prior to or during trial additional evidence or decides to use additional evidence, and the evidence is or may be subject to discovery or inspection under this Article, he must promptly notify the attorney for the other party of the existence of the additional evidence. (1973, c. 1286, s. 1; 1975, c. 166, s. 16.)

Editor’s Note. — The 1975 amendment, effective Sept. 1, 1975, deleted “or the name of each additional witness” at the end of the section.

Remedy for Failure to Comply Within Discretion of Trial Court. — Although it does appear that the prosecution failed to comply with this section, it does not follow that the court was thereby required to prohibit the State from introducing the evidence which it had failed to disclose or that defendant is entitled to a new trial because the court permitted introduction of such evidence. Which of the several remedies available under § 15A-910(a) should be applied in a particular case is a matter within the trial court’s sound discretion. State v. Kessack, 32 N.C. App. 536, 228 S.E.2d 859 (1977).


§ 15A-910. Regulation of discovery — failure to comply. — If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

(1) Order the party to permit the discovery or inspection, or
(2) Grant a continuance or recess, or
(3) Prohibit the party from introducing evidence not disclosed, or
(4) Enter other appropriate orders. (1973, c. 1286, s. 1; 1975, c. 166, s. 17.)

Editor’s Note. — The 1975 amendment, effective Sept. 1, 1975, deleted former subsections (b) and (c), which provided remedies where a party called a witness other than a rebuttal witness without first giving notice to the other party of the name of the witness.

Particular Remedy Within Discretion of Trial Court. — Which of the several remedies available under this section should be applied in a particular case is a matter within the trial court’s sound discretion. State v. Morrow, 31 N.C. App. 654, 228 S.E.2d 568 (1976); State v. Kessack, 32 N.C. App. 536, 228 S.E.2d 859 (1977).

Imposition of the sanctions found in subsections (a)(1) through (a)(4) rests entirely

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Regulation of discovery and failure to comply determinations are within the sound discretion of the trial court. The court has broad and flexible powers to rectify the situation if a party fails to comply with discovery orders or provisions of the discovery article. State v. Artis, 31 N.C. App. 193, 238 S.E.2d 768 (1976).

The exclusion of evidence for the reason that the party offering it has failed to comply with statutes granting the right of discovery, or with an order of the court issued pursuant thereto, rests in the discretion of the trial court. State v. Dollar, 292 N.C. 344, 238 S.E.2d 521 (1977).

Where a discovery order to supply defendant with certain information had been issued and the State had purported to comply with it, and no evidence of bad faith on the part of the State was shown, permitting witnesses whose names the State had failed to supply to defendant to testify and accepting photographs into evidence which also had not been supplied to defendant, were matters within the discretion of the trial judge, not reviewable on appeal in the absence of a showing of an abuse of discretion. State v. Carter, 289 N.C. 35, 220 S.E.2d 313 (1975), death sentence vacated, U.S. , 96 S. Ct. 3212, 49 L. Ed. 2d 1211 (1976).


Trial Judge Should Not Encourage by Court Order Requirement That State Furnish Witness List. — It was never the intention of the General Assembly when it enacted Article 48 of the Criminal Procedure Act to require the district attorney to furnish the names and addresses of witnesses the State intended to call. It follows that trial judges should not encourage, by court order, what the legislature specifically rejected during consideration of the legislation. State v. Smith, 291 N.C. 505, 231 S.E.2d 663 (1977).


ARTICLE 49.

Pleadings and Joinder.

§ 15A-921. Pleadings in criminal cases. — Subject to the provisions of this Article, the following may serve as pleadings of the State in criminal cases:

(4) Magistrate’s order pursuant to G.S. 15A-511 after arrest without warrant.

(1975, c. 166, s. 18.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted “G.S. 15A-511” for “G.S. 15A-511(c)” in subdivision (4). As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 15A-924. Contents of pleadings; duplicity; alleging and proving previous convictions; failure to charge crime; surplusage.

(d) In alleging and proving a prior conviction, it is sufficient to state that the defendant was at a certain time and place convicted of the previous offense, without otherwise fully alleging all the elements. A duly certified transcript of the record of a prior conviction is, upon proof of the identity of the person of the defendant, sufficient evidence of a prior conviction. If the surname of a defendant charged is identical to the surname of a defendant previously convicted and there is identity with respect to one given name, or two initials, or two initials corresponding with the first letters of given names, between the two defendants, and there is no evidence that would indicate the two defendants are not one and the same, the identity of name is prima facie evidence that the two defendants are the same person. Proof of previous convictions under G.S. 20-138 and 20-139 may be made in accordance with G.S. 8-35.1.

(1975, c. 642, s. 2.)

Editor's Note. — The 1975 amendment, effective Oct. 1, 1975, added the last sentence of subsection (d). As the rest of the section was not changed by the amendment, only subsection (d) is set out.

Separate Offenses in Same Count. — In a
§ 15A-925 prosecution for felonious sale and delivery of marijuana, and felonious possession of marijuana with intent to sell, the fact that the State included in the same count as a single offense both sale and delivery, even though the two acts could have been charged as separate offenses, was not prejudicial to the defendant. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).


The function of a bill of particulars, etc. —


The purpose of a bill of particulars is to give an accused notice of the specific charge or charges against him and to apprise him of the particular transactions which are to be brought in question on the trial. State v. Johnson, 30 N.C. App. 376, 226 S.E.2d 876 (1976).

What Bill Will Not Supply. —
An accused is not entitled to require the State to elect, by a bill of particulars, which witness’s version of the events it will present. State v. Johnson, 30 N.C. App. 376, 226 S.E.2d 876 (1976).

An accused is not entitled to require the State to resolve discrepancies in its evidence in advance by a bill of particulars. State v. Johnson, 30 N.C. App. 376, 226 S.E.2d 876 (1976).

An accused is not entitled to an order requiring the State to recite matters of evidence in a bill of particulars. State v. Johnson, 30 N.C. App. 376, 226 S.E.2d 876 (1976).

Defendant was not entitled to have the State specify in the bill of particulars the precise place from where defendant obtained or produced the pistol with which he shot the deceased. State v. Johnson, 30 N.C. App. 376, 226 S.E.2d 876 (1976).

Granting or Denial of Motion within Trial Court's Discretion. — The granting of a bill of particulars lies largely within the trial judge’s discretion. State v. Covington, 290 N.C. 313, 226 S.E.2d 629 (1976).


— Two or more offenses may be joined in one pleading or for trial when the offenses, whether felonies or misdemeanors or both, are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan. Each offense must be stated in a separate count as required by G.S. 15A-924.

(b) Separate Pleadings for Each Defendant and Joinder of Defendants for Trial. —

(1) Each defendant must be charged in a separate pleading.

(2) Upon written motion of the prosecutor, charges against two or more defendants may be joined for trial:

a. When each of the defendants is charged with accountability for each offense; or

b. When, even if all of the defendants are not charged with accountability for each offense, the several offenses charged:

1. Were part of a common scheme or plan; or

2. Were part of the same act or transaction; or

3. Were so closely connected in time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) Failure to Join Related Offenses. —

(1) When a defendant has been charged with two or more offenses joinable under subsection (a) his timely motion to join them for trial must be granted unless the court determines that because the prosecutor does
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not have sufficient evidence to warrant trying some of the offenses at that time or if, for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to make this motion constitutes a waiver of any right of joinder of offenses joinable under subsection (a) with which the defendant knew he was charged.

(2) A defendant who has been tried for one offense may thereafter move to dismiss a charge of a joinable offense. The motion to dismiss must be made prior to the second trial, and must be granted unless:

a. A motion for joinder of these offenses was previously denied, or
b. The court finds that the right of joinder has been waived, or
c. The court finds that because the prosecutor did not have sufficient evidence to warrant trying this offense at the time of the first trial, or because of some other reason, the ends of justice would be defeated if the motion were granted.

(3) The right to joinder under this subsection is not applicable when the defendant has pleaded guilty or no contest to the previous charge.

(1973, c. 1286, s. 1; 1975, c. 166, ss. 19, 27.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, inserted "or for trial" near the beginning of the first sentence of subsection (a) and substituted "prosecutor" for "solicitor" in subdivision (2) of subsection (b) and in subdivisions (1) and (2) of subsection (c).

I. GENERAL CONSIDERATION.

In General. —

In accord with 1st paragraph in original. See State v. Branch, 288 N.C. 514, 220 S.E.2d 495 (1975), decided under former § 15-152.

The trial judge may consolidate for trial two or more indictments in which the defendant is charged with crimes of the same class and the crimes are so connected in time or place that evidence at the trial of one indictment will be competent at the trial of the other. State v. Davis, 289 N.C. 500, 223 S.E.2d 296 (1976).

Consolidation of cases for trial is generally proper when the offenses charged are of the same class and are so connected in time and place that evidence at trial upon one indictment would be competent and admissible on the other. State v. Taylor, 289 N.C. 223, 221 S.E.2d 359 (1976); State v. Brower, 289 N.C. 644, 224 S.E.2d 551 (1976); State v. Phifer, 290 N.C. 208, 225 S.E.2d 786 (1976), cert. denied, U.S., 97 S. Ct. 1160, 51 L. Ed. 2d 573 (1977); State v. Smith, 291 N.C. 505, 231 S.E.2d 663 (1977).

Two acts constituting essential parts of a single transaction may be charged together as a single offense, and defendant is not entitled to complain that only one offense was charged even though each act would have been ground for a separate charge. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

The trial judge may, in his discretion, order the consolidation for trial of two or more indictments in which the defendant is charged with crimes of the same class when the crimes are so connected in time or place that evidence at trial of one of the indictments will be competent and admissible at the trial of the others. State v. Spaulding, 288 N.C. 397, 219 S.E.2d 178 (1975), death sentence vacated, U.S., 96 S. Ct. 3210, 49 L. Ed. 2d 1210 (1976).

Where there are two indictments in which both defendants are charged with the same crimes, then they may be consolidated for trial in the discretion of the court. State v. Mitchell, 288 N.C. 360, 219 S.E.2d 332 (1975), death sentence vacated, U.S., 96 S. Ct. 3209, 49 L. Ed. 2d 1210 (1976).

Ordinarily, unless it is shown that irreparable prejudice will result therefrom, consolidation for trial rather than multiple individual trials is appropriate when two or more persons are indicted for the same criminal offense. State v. Autry, 27 N.C. App. 639, 219 S.E.2d 795 (1975); State v. Johnson, 29 N.C. App. 534, 225 S.E.2d 113 (1976).

Consolidation Is within Discretion, etc. —

The motion to consolidate is addressed to the sound discretion of the trial judge and his ruling will not be disturbed absent a showing of abuse of discretion. State v. Davis, 289 N.C. 500, 223 S.E.2d 296 (1976).

Whether defendants jointly indicted will be tried jointly or separately is in the sound discretion of the trial court, and, in the absence of a showing that a joint trial had deprived the defendant of a fair trial, the exercise of the court's discretion will not be disturbed upon appeal. State v. Alford, 289 N.C. 372, 222 S.E.2d 222 (1976); State v. Brower, 289 N.C. 644, 224 S.E.2d 551 (1976); 291 N.C. 275, 229 S.E.2d 921 (1976).

The question of consolidation of indictments against defendants charged with committing similar offenses at the same time and place is addressed to the sound discretion of the trial court. State v. Samuel, 27 N.C. App. 562, 219 S.E.2d 526 (1975).

Motion for consolidation of cases for trial is

Whether defendants charged with committing identical offenses at the same time and place should be jointly or separately tried is within the sound discretion of the trial court, and in the absence of a showing that a joint trial deprived a defendant of a fair trial, the exercise of the court’s discretion will not be disturbed on appeal. State v. Greene, 30 N.C. App. 507, 227 S.E.2d 154 (1976).

Ordinarily, motions to consolidate cases for trial are within the sound discretion of the trial judge. State v. Smith, 291 N.C. 505, 231 S.E.2d 663 (1977); State v. Foster, 33 N.C. App. 145, 234 S.E.2d 443 (1977).

Consolidation is a discretionary matter with the trial judge. State v. Irick, 291 N.C. 480, 231 S.E.2d 833 (1977).

Exercise of Discretion by Court.

In ruling upon a motion for consolidation of charges, the trial judge should consider whether the accused can fairly be tried upon more than one charge at the same trial. State v. Davis, 289 N.C. 500, 223 S.E.2d 296 (1976).

Exercise of discretion by the trial judge in consolidating cases for trial will not be disturbed absent a showing that defendant has been deprived of a fair trial by the order of consolidation. State v. Taylor, 289 N.C. 223, 221 S.E.2d 359 (1976); State v. Phifer, 290 N.C. 203, 225 S.E.2d 786 (1976), cert. denied, U.S., 97 S. Ct. 1160, 51 L. Ed. 2d 573 (1977).

If consolidation of charges hinders or deprives the accused of his ability to present his defense, the cases should not be consolidated. State v. Davis, 289 N.C. 500, 223 S.E.2d 296 (1976).

Defendant’s unsupported statement of possible prejudice is not sufficient to show abuse of discretion on the part of the trial judge in allowing a motion to consolidate charges for trial. State v. Davis, 289 N.C. 500, 223 S.E.2d 296 (1976).

The right or propriety of a severance rests on circumstances showing that a joint trial would be prejudicial and unfair, and in the absence of showing that defendant has been deprived of a fair trial, the exercise of the court’s discretion will not be disturbed. State v. Foster, 33 N.C. App. 145, 234 S.E.2d 443 (1977).

The trial court may in its discretion order a joinder of defendants for trial as provided in subsection (b) unless there is a showing that a joint trial would be prejudicial and unfair, i.e., the existence of antagonistic defenses, or the admission of evidence which would be excluded on a separate trial, or the exclusion of evidence which would be admitted. State v. Foster, 33 N.C. App. 145, 234 S.E.2d 443 (1977).

Joinder of defendants may not be permitted where such joinder would not promote a fair determination of the guilt or innocence of one or more of the defendants. State v. Slade, 291 N.C. 275, 229 S.E.2d 921 (1976).

Consolidation Proper without Formal Written Motion. — Even in the absence of any formal written motion, the trial judge may direct that criminal cases be consolidated for trial where proper grounds for joinder exist and when to do so will promote the ends of justice and facilitate proper disposition of the cases on the docket before him. State v. Cottingham, 30 N.C. App. 67, 226 S.E.2d 387 (1976); State v. Pevia, 30 N.C. App. 79, 226 S.E.2d 394 (1976).

When Written Motion Required. — The district attorney’s motion under § 15A-926(b), made at the beginning of trial, comes within the purview of § 15A-951(a) and is not required to be in writing. The language in § 15A-926(b), which states, “Upon written motion of the district attorney,” applies only in those instances in which joinder of defendants is requested prior to trial. State v. Slade, 291 N.C. 275, 229 S.E.2d 921 (1976).


II. ILLUSTRATIVE CASES.

A. Joinder of Offenses.

In a prosecution for felonious sale and delivery of marijuana, and felonious possession of marijuana with intent to sell, the fact that the State included in the same count as a single offense both sale and delivery, even though the two acts could have been charged as separate offenses, was not prejudicial to the defendant. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

A “driving under the influence” misdemeanor charge and a manslaughter felony charge were based on the same transaction within the meaning of § 7A-271(a)(3), and therefore the superior court had jurisdiction of both charges and had the right to proceed to the trial on the misdemeanor charge under the joinder exception of § 7A-271, the “original jurisdiction” of the district court having been lost after nolle prosequi was entered as to the misdemeanor in that court. State v. Karbas, 28 N.C. App. 372, 221 S.E.2d 98, cert. denied, 289 N.C. 618, 223 S.E.2d 394 (1976).

Separate Charges of First-Degree Murder. — Defendant’s unsupported contention that he was prejudiced by the consolidation for trial of separate charges of first-degree murder because without the consolidation he would have had the election of testifying in one case without being forced to testify in the other was not sufficient to show abuse of discretion by the trial judge
where the charged crimes were continuing criminal acts which permit the admission in evidence of each in the trial of the other. State v. Davis, 289 N.C. 500, 223 S.E.2d 296 (1976).

Separate Burglaries. — Where both burglaries and the confrontation with the police occurred within a two-hour time span, all the alleged offenses occurred in and around the same subdivision and the evidence indicated a common plan to burglarize homes of the neighborhood and escape by means of a stolen vehicle parked nearby, no showing has been made that a severance was necessary to insure a fair determination by the jury on each charge. State v. Madden, 292 N.C. 114, 232 S.E.2d 656 (1977).

B. Joinder of Defendants for Trial.

Consolidation of Indictments Charging Defendants with Murder, etc.

There was no error in the denial of the motion of codefendant for a separate trial where the two defendants were duly charged in separate indictments with the same crime, the State proceeded upon the theory that the murder, with which they were charged, was committed in the course of a robbery committed by them jointly, their defenses were not antagonistic, each testified in support of their joint alibi and neither, in his testimony or other evidence, attempted to incriminate the other defendant. State v. Madden, 292 N.C. 114, 232 S.E.2d 656 (1977).

Where the three defendants were charged with and tried for a single, identical crime, the murder of the trooper, the theory of the prosecution in each case was that the three defendants, jointly, and pursuant to a common plan, robbed the bank, and, while fleeing from the scene of the robbery with its proceeds, shot and killed the trooper, and nothing whatever in the record indicated the slightest prejudice to the right of any of the defendants to a fair trial by reason of the consolidation of the cases per se, there was no error in consolidating the three cases for trial under subsection (b)(2). State v. Squire, 292 N.C. 494, 234 S.E.2d 563 (1977).

§ 15A-927. Severance of offenses; objection to joinder of defendants for trial.

Prejudice to Defendant Shown. — Trial court’s denial of defendant’s motion for separate trial so prejudiced his defense as to amount to a denial of due process and his right to confrontation where defendant was precluded under the circumstances of the joint trial from introducing evidence of codefendant’s out-of-court statement, which would have strengthened defendant’s alibi defense. State v. Alford, 289 N.C. 372, 222 S.E.2d 222 (1976).


§ 15A-928. Allegation and proof of previous convictions in superior court.


The effect of subsection (c) is not to deprive the defendant of a jury trial. It merely allows defendant, by judicially admitting his prior convictions, to preclude the State from adducing evidence of them and to require the judge to submit the case to the jury without reference to them and as if previous convictions were not an element of the offense. State v. Smith, 291 N.C. 438, 230 S.E.2d 644 (1976).


Relevance of Evidence of Previous Conviction. — When evidence of the previous conviction is introduced it is relevant only to the issue whether defendant has previously been convicted of an offense identical to the substantive offense charged, and the judge must charge the jury that they shall not consider such a prior conviction in passing upon his guilt or innocence of the primary charge. State v. Smith, 291 N.C. 438, 230 S.E.2d 644 (1976).

Standard of Proof. — Where the defendant denies the previous conviction the State must prove this element of the offense charged
§ 15A-932. Dismissal with leave when defendant fails to appear and cannot be readily found. — (a) When a defendant fails to appear at any criminal proceeding at which his attendance is required and the prosecutor believes that the defendant cannot be readily found, the prosecutor may enter a dismissal with leave for nonappearance under this section.

(b) Dismissal with leave for nonappearance results in removal of the case from the docket of the court, but all process outstanding retains its validity, and all necessary actions to apprehend the defendant, investigate the case, or otherwise further its prosecution may be taken, including the issuance of nontestimonial identification orders, search warrants, new process, initiation of extradition proceedings, and the like.

(c) The prosecutor may enter the dismissal with leave for nonappearance orally in open court or by filing the dismissal in writing with the clerk. If the dismissal for nonappearance is entered orally, the clerk must note the nature of the dismissal in the case records.

(d) Upon apprehension of the defendant, or in the discretion of the prosecutor when he believes apprehension is imminent, the prosecutor may reinstitute the proceedings by filing written notice with the clerk. (1977, c. 777, s. 1.)

Editor's Note. — Session Laws 1977, c. 777, s. 2, makes this section effective Oct. 1, 1977.

§§ 15A-933 to 15A-940: Reserved for future codification purposes.

ARTICLE 51. 
Arraignment. 

§ 15A-941. Arraignment before judge.

Constitutionality. — The fact that under this section the district attorney reads the charges or fairly summarizes them to the defendant before the jury is not a violation of defendant's right to due process and equal protection as required by the Constitutions of the State of North Carolina and the United States.

§ 15A-943. Arraignment in superior court — required calendaring.

(c) Notwithstanding the provisions of subsection (a) of this section, in any county where as many as three simultaneous sessions of superior court, whether criminal, civil, or mixed, are regularly scheduled, the prosecutor may calendar arraignments in any of the criminal or mixed sessions, at least every other week, upon any day or days of a session, and jury cases may be calendared for trial in any other court at which criminal cases may be heard, upon such days. (1973, c. 1286, s. 1; 1975, c. 471.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subsection (c). As the rest of section was not changed by the amendment, only subsection (c) is set out.

§ 15A-951. Motions in general; definition, service, and filing.

The right to a speedy trial is necessarily relative, for inherent in every criminal prosecution is the probability of delay. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976).

In a prosecution for felonious sale and delivery of marijuana and felonious possession of marijuana with intent to sell, defendant was not denied his right to a speedy trial by a preindictment delay of four and one-half months, where the delay was necessary to protect an undercover investigation, and defendant failed to show that any evidence was lost as a result of the delay which would have been helpful to his defense. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

The right to a speedy trial is an integral part of the fundamental law of this State. State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976).

Undue delay which is arbitrary and oppressive or the result of deliberate prosecution efforts "to hamper the defense" violates the constitutional right to a speedy trial. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976).

The burden is on an accused who asserts the denial of his right to a speedy trial to show that the delay was due to the neglect or willfulness of the prosecution. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976); State v. Dietz, 289 N.C. 488, 223 S.E.2d 357 (1976); 31 N.C. App. 193, 228 S.E.2d 768 (1977).

Where the record indicates that the delay in the prosecution of a case was due to congested criminal dockets, good-faith efforts to obtain custody of absent co-defendants and understandable difficulty in locating out-of-state witnesses, one of whom was a fugitive from justice, an 11-month delay was not unreasonable and the delay itself was not prejudicial to defendant in preparing and presenting his defense. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976).

Interrelated factors to be considered in determining whether a defendant has been denied his constitutional right to a speedy trial are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) prejudice to defendant resulting from the delay. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976).

The question whether a defendant has been denied a speedy trial must be answered in light of the facts in the particular case. State v. Smith, 289 N.C. 143, 221 S.E.2d 247 (1976).

Whether a speedy trial is afforded must be determined in the light of the circumstances of each particular case. In the absence of a statutory standard, what is a fair and reasonable time is within the discretion of the court. State v. Artis, 31 N.C. App. 193, 228 S.E.2d 768 (1976).

Neither the Constitution nor the legislature has attempted to fix the exact time within which a trial must be had. State v. Artis, 31 N.C. App. 193, 228 S.E.2d 768 (1976).

The congestion of criminal court dockets has consistently been recognized as a valid justification for delay in bringing an accused to
§ 15A-955. Motion to dismiss — grounds applicable to indictments.

Motion Subject to § 15A-952(c). — A motion to dismiss or quash an indictment because of irregularity in the selection of the grand jury subject to the time limitation of § 15A-952(c). State v. Duncan, 30 N.C. App. 112, 226 S.E.2d 182, cert. denied, 290 N.C. 779, 229 S.E.2d 34 (1976).


§ 15A-957. Motion for change of venue.

Section Not Restricted to Media Inspired Prejudice. — This section, which requires a change of venue or a special venire panel where prejudice is so great as to prevent a fair trial, is not restricted to media inspired prejudice. State v. Boykin, 291 N.C. 264, 229 S.E.2d 914 (1976).

Word-of-Mouth Publicity. — Motions under this section on grounds of unfavorable, prejudicial publicity may be based on word-of-mouth publicity. There is no requirement that the publicity originate in the media. State v. Boykin, 291 N.C. 264, 229 S.E.2d 914 (1976).

Burden of Showing Prejudice on Defendant. — The burden of showing "so great a prejudice against the defendant that he cannot obtain a fair and impartial trial" falls on the defendant. State v. Boykin, 291 N.C. 264, 229 S.E.2d 914 (1976).

Discretion of Trial Judge. — A motion for change of venue is addressed to the sound discretion of the trial judge and his ruling will not be overturned in the absence of an abuse of discretion. State v. Alford, 289 N.C. 372, 222 S.E.2d 222 (1976).

Motion for change of venue or for a special venire from another county on grounds of the prominence of the victim and inflammatory publicity is addressed to the sound discretion of the trial judge, and an abuse of discretion must be shown before there is any error. State v. Harrill, 289 N.C. 186, 221 S.E.2d 325, death sentence vacated, U.S. , 96 S. Ct. 83212, 49 L. Ed. 2d 1211 (1976).

A motion for change of venue or for a special venire panel is addressed to the sound discretion of the trial judge, and abuse of discretion must be shown before there is any error. State v. Boykin, 291 N.C. 264, 229 S.E.2d 914 (1976).

A motion for change of venue on the grounds of local prejudice because of pretrial publicity is addressed to the sole discretion of the trial judge and a manifest abuse of discretion must be shown before there is any error. State v. Jackson, 30 N.C. App. 187, 226 S.E.2d 543 (1976).

Abuse of Discretion. — If, under the evidence presented, there is a reasonable likelihood that a fair trial cannot be had, it is an abuse of discretion to fail to grant a change of venue or a special venire panel. State v. Boykin, 291 N.C. 264, 229 S.E.2d 914 (1976).

No Prejudice Shown. — Defendant's motion for change of venue in a prosecution for first-degree murder was properly denied where, with the exception of the coverage of defendants' arrest, the newspaper articles alleged to be prejudicial were of a very general nature and likely to be found in any jurisdiction to which the trial might be moved, the coverage of the arrest indicated only that defendants were charged with a crime and in no way intimidated defendants were guilty, and the record did not indicate that any prospective jurors had read or been influenced by the articles. State v. Alford, 289 N.C. 372, 222 S.E.2d 222 (1976).

In a trial for first-degree murder, where the accounts carried by the local news media did not appear to have been beyond the bounds of propriety or to have been inflammatory, the prominence of the victim did not seem to have unfairly affected the trial, and defendant failed to include in the record the voir dire examination of the jury, thereby failing to disclose that the defendant exhausted his peremptory challenges, that he had to accept any juror objectionable to him or even that any juror had prior knowledge or opinion as to this case, there was no abuse of discretion by the trial judge in denying defendant's motion for change of venue or for special venire. State v. Harrill, 289 N.C. 186, 221 S.E.2d 325, death sentence vacated, U.S. , 96 S. Ct. 83212, 49 L. Ed. 2d 1211 (1976).

Where the evidence tended to show that the sole newspaper article was confined primarily to a history of prior proceedings involving defendant, and that the "spot" newscast from a television station was critical of law enforcement officers for their handling of the case, the trial court correctly found that defendant had failed to show that he was
§ 15A-958. Motion for a special venire from another county.

Word-of-Mouth Publicity. — Motions under this section on grounds of unfavorable, prejudicial publicity may be based on word-of-mouth publicity. There is no requirement that the publicity originate in the media. State v. Boykin, 291 N.C. 264, 229 S.E.2d 914 (1976).

Discretion of Trial Judge. — Motion for change of venue or for a special venire from another county on grounds of the prominence of the victim and inflammatory publicity is addressed to the sound discretion of the trial judge, and abuse of discretion must be shown before there is any error. State v. Harrill, 289 N.C. 186, 221 S.E.2d 325, death sentence vacated, U.S., 96 S. Ct. 3212, 49 L. Ed. 2d 1211 (1976).


Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 25, effective July 1, 1978, will rewrite the catchline of this section to read "Notice of defense of insanity; pretrial determination of insanity," and will add a new subsection (c) to read as follows:

"(c) Upon motion of the defendant and with the consent of the State the court may conduct a hearing prior to the trial with regard to the defense of insanity at the time of the offense. If the court determines that the defendant has a valid defense of insanity with regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a finding to that effect. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.


§ 15A-975. Motion to suppress evidence in superior court prior to trial and during trial.

To challenge the admissibility of in-court identification testimony defendant is required to interpose at least a general objection when such evidence is offered in addition to filing a pretrial motion to suppress evidence. State v. Wilson, 289 N.C. 531, 223 S.E.2d 311 (1976).

A pretrial motion to suppress identification evidence which the trial judge has not heard and ordinarily will not hear until it is offered at trial will not suffice to challenge the admissibility of in-court identification testimony. State v. Wilson, 289 N.C. 531, 223 S.E.2d 311 (1976).

§ 15A-977. Motion to suppress evidence in superior court; procedure.

Constitutionality. — This section does no more than shift to the defendant the burden of going forward with evidence when the State's warrants appear to be regular. The State still has the burden of proving that the evidence was lawfully obtained. Accordingly, this section is constitutional. State v. Gibson, 32 N.C. App. 584, 233 S.E.2d 84 (1977).

Subsection (a) requires an affidavit, but requiring the affidavit does not amount to compelling defendant to be a witness against himself in a criminal case in violation of the Fifth Amendment of the United States Constitution and North Carolina Const., Art. I, § 28. State v. Gibson, 32 N.C. App. 584, 233 S.E.2d 84 (1977).

Subsection (a) does not violate the Code of Professional Responsibility, Canon 4; it does not require an attorney to reveal information told to him in confidence by his client. The decision to file the affidavit and attempt to suppress the evidence remains with the defendant. If he consents to disclosure, Canon 4 is not violated. State v. Gibson, 32 N.C. App. 584, 233 S.E.2d 84 (1977).

And does not conflict with § 8-54 which says that a defendant is a competent witness in a criminal trial only if he takes the stand "at his own request." State v. Gibson, 32 N.C. App. 584, 233 S.E.2d 84 (1977).


§ 15A-979. Motion to suppress evidence in superior and district court; orders of suppression; effects of orders and of failure to make motion.


§ 15A-1001. No proceedings when defendant mentally incapacitated; exception.

Editor's Note. — For article entitled, "Review of the Presentence Diagnostic Study Procedure in North Carolina," see 8 N.C. Cent. J.L. 17 (1976).

§ 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders. — (a) The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion shall detail the specific conduct that leads the moving party to question the defendant’s capacity to proceed.

(b) When the capacity of the defendant to proceed is questioned, the court:

(1) May appoint one or more impartial medical experts to examine the defendant and return a written report describing the present state of the defendant’s mental health. Reports so prepared are admissible at the hearing and the court may call any expert so appointed to testify at the hearing. In addition, any expert so appointed may be called to testify at the hearing by the court at the request of either party.

(2) May commit the defendant to a State mental health facility for observation and treatment for the period necessary to determine the defendant’s capacity to proceed. In no event may the period exceed 60 days. The superintendent of the facility must direct his report on the defendant’s condition to the defense attorney and to the clerk of superior court, who must bring it to the attention of the court. The report is admissible at the hearing.

a. If the report indicates that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122 of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or in the county in which the defendant is hospitalized.

b. If the report indicates that the defendant has capacity to proceed, the clerk must direct the sheriff to return him to the county.

(3) Must hold a hearing to determine the defendant’s capacity to proceed. If examination is ordered pursuant to subdivision (1) or (2), the hearing must be held after the examination. Reasonable notice must be given to the defendant and to the prosecutor and the State and the defendant may introduce evidence.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the question of the capacity of the defendant to proceed.

(d) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether the defendant has or lacks capacity to proceed. A copy of the full report shall be forwarded to defense counsel, or to the defendant if he is not represented by counsel. A copy of the covering statement shall be forwarded to the district attorney. Until such report becomes a public record, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be
revealed except as directed by the court. Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence. (1973, c. 1286, s. 1; 1975, c. 166, ss. 20, 27; 1977, cc. 25, 860.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted “prosecutor” for “solicitor” in subsection (a) and in the third sentence of subdivision (3) of subsection (b). The amendment also substituted “involuntary civil commitment under Chapter 122 of the General Statutes” for “judicial hospitalization” near the beginning of paragraph a of subdivision (2) of subsection (b).

The first 1977 amendment, effective July 1, 1977, added subsection (d).

The second 1977 amendment, effective Oct. 1, 1977, in subsection (a), inserted “on motion” in the first sentence, deleted “on its own motion” from the end of the first sentence, and added the second sentence.


Waiver of Hearing Right. — While this section requires the court to hold a hearing to determine defendant’s capacity to proceed if the question is raised, a defendant may waive the benefit of this section’s provisions by express consent, failure to assert it in apt time or by conduct inconsistent with a purpose to insist upon it. State v. Young, 291 N.C. 562, 231 S.E.2d 577 (1977).

Where neither defendant nor defense counsel questioned the correctness of the diagnostic finding that defendant was competent to stand trial, understood the charges and was able to cooperate with his attorney, neither objected to the failure to hold the hearing, and when arraigned, defendant entered a plea of not guilty and did not raise the defense of insanity, defendant’s statutory right, under subsection (b)(3) to a hearing subsequent to his commitment, was waived by his failure to assert that right. State v. Young, 291 N.C. 562, 231 S.E.2d 577 (1977).

Where the record showed that the report of the examining psychiatrist was to the effect that the defendant did have the requisite mental capacity to plead to the indictment and to stand trial and nothing in the record indicated that before going to trial the defendant requested a hearing or otherwise indicated any adherence to his initial contention of lack of mental capacity, defendant waived his right to a hearing under subsection (b)(8). State v. Dollar, 292 N.C. 344, 233 S.E.2d 521 (1977).

Rules as to Competency of Evidence Relaxed in Hearing. — In a hearing before the judge on a motion under this section, the ordinary rules as to the competency of evidence applied in a trial before a jury are to some extent relaxed, for the reason that the judge with knowledge of the law is able to eliminate from the testimony he hears that which is immaterial and incompetent, and consider only that which tends properly to prove the facts to be found. State v. Willard, 292 N.C. 567, 234 S.E.2d 587 (1977).

§ 15A-1003. Referral of incapable defendant for civil commitment proceedings. — (a) If a defendant is found to be incapable of proceeding, the court must enter an order directing the initiation of proceedings for involuntary civil commitment, and the court’s order is authority for a magistrate or clerk to order a law-enforcement officer to take the defendant into custody for examination by a qualified physician under G.S. 122-58.3(b), or for processing as an emergency case under G.S. 122-58.18.

(b) The court may make appropriate orders for the temporary detention of the defendant pending that proceeding.

(c) Evidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings. (1973, c. 1286, s. 1; 1975, c. 166, s. 20.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted “involuntary civil commitment” for “judicial hospitalization” in subsections (a) and (c) and substituted the language beginning “authority for a magistrate” for “a sufficient basis for the initiation of those proceedings” at the end of subsection (a).

§ 15A-1004. Orders for safeguarding of defendant and return for trial.
(2) If the defendant is not placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, appropriate orders may include any of the procedures, orders, and conditions provided in Article 26 of this Chapter, Bail, specifically including the power to place the defendant in the custody of a designated person or organization agreeing to supervise him.
(3) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released.
(4) If the defendant is placed in the custody of a hospital or institution pursuant to petitions for involuntary civil commitment, or if the defendant is placed in the custody of another person pursuant to subsection (b), the orders of the trial court must require that the hospital, institution, or individual report the condition of the defendant to the clerk at the same times that reports on the condition of the defendant-respondent are required under Chapter 122 of the General Statutes, Article 5A (Involuntary Commitment), or more frequently if the court requires, and immediately if the defendant gains capacity to proceed. The order must also require the report to state the likelihood of the defendant’s gaining capacity to proceed, to the extent that the hospital, institution, or individual is capable of making such a judgment.
(1975, c. 166, s. 20.)

Editor’s Note. — The 1975 amendment, effective Sept. 1, 1975, substituted “involuntary civil commitment” for “judicial hospitalization” near the beginning of subsections (b), (c) and (d) and substituted the language beginning “at the same times” and ending “(Involuntary Commitment)” for “annually” in the first sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsections (b), (c) and (d) are set out.

ARTICLE 57.

Pleas.

§ 15A-1011. Pleas in district and superior courts; waiver of appearance. —
(a) A defendant may plead not guilty, guilty, or no contest “(nolo contendere).” A plea may be received only from the defendant himself in open court except when:
(1) The defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer; or
(2) There is a waiver of arraignment and a filing of a written plea of not guilty under G.S. 15A-945; or
(3) In misdemeanor cases there is a written waiver of appearance submitted with the approval of the presiding judge; or
(4) Written pleas in traffic cases are authorized under G.S. 7A-146(8); or
(5) The defendant executes a waiver and plea of not guilty as provided in G.S. 15A-1011(d).
(6) The defendant, before a magistrate or clerk of court, enters a written appearance, waiver of trial and plea of guilty and at the same time makes restitution in a case wherein the sole allegation is a violation of G.S. 14-107, the amount of the check is three hundred dollars ($300.00) or less, and the warrant does not charge a fourth or subsequent violation of this statute.
(b) A defendant may plead no contest only with the consent of the prosecutor and the presiding judge.
(c) Upon entry of a plea of guilty or no contest or after conviction on a plea
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of not guilty, the defendant may request permission to enter a plea of guilty or no contest as to other crimes with which he is charged in the same or another judicial district. A defendant may not enter any plea to crimes charged in another judicial district unless the district attorney of that district consents in writing to the entry of such plea. The prosecutor or his representative may appear in person or by filing an affidavit as to the nature of the evidence gathered as to these other crimes. Entry of a plea under this subsection constitutes a waiver of venue. A superior court is granted jurisdiction to accept the plea, upon an appropriate indictment or information, even though the case may otherwise be within the exclusive original jurisdiction of the district court. A district court may accept pleas under this section only in cases within the original jurisdiction of the district court.

(e) In the event the judge shall permit the procedure set forth in the foregoing subsection (d), the State may offer evidence and the defendant may offer evidence, with right of cross-examination of witnesses, and the other procedures, including the right of the prosecutor to dismiss the charges, shall be the same as in any other criminal case, except for the absence of defendant. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; c. 626, s. 1.)

Editor's Note. — The first 1975 amendment, effective Sept. 1, 1975, substituted “prosecutor” for “solicitor” and “district attorney” for “district solicitor” in subsections (b), (c) and (e). The second 1975 amendment, effective Sept. 1, 1975, added subdivision (6) to subsection (a). As subsection (d) was not changed by the amendment, it is not set out.

ARTICLE 58.

Procedures Relating to Guilty Pleas in Superior Court.

§ 15A-1021. Plea conference; improper pressure prohibited; submission of arrangement to judge; restitution and reparation as part of plea arrangement agreement, etc. — (a) In superior court, the prosecution and the defense may discuss the possibility that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses, the solicitor will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular sentence. If the defendant is represented by counsel in the discussions the defendant need not be present. The trial judge may participate in the discussions.

(b) No person representing the State or any of its political subdivisions may bring improper pressure upon a defendant to induce a plea of guilty or no contest.

(c) If the parties have reached a proposed plea arrangement in which the prosecutor has agreed to recommend a particular sentence, they may, with the permission of the trial judge, advise the judge of the terms of the arrangement and the reasons therefor in advance of the time for tender of the plea. The proposed plea arrangement may include a provision for the defendant to make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the defendant. The judge may indicate to the parties whether he will concur in the proposed disposition. The judge may withdraw his concurrence if he learns of information not consistent with the representations made to him.

(d) When restitution or reparation by the defendant is a part of the plea arrangement agreement, if the judge concurs in the proposed disposition he may order that restitution or reparation be made pursuant to the provisions of G.S. 15-199(10), or pursuant to the provisions of G.S. 15-197.1. If an active sentence is imposed other than by the provisions of G.S. 15-197.1, the court may order that the defendant make restitution or reparation out of any earnings gained by the defendant if he attains work release privileges under the provisions of

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§ 15A-1023. Action by judge in plea arrangements relating to sentence; no approval required when arrangement does not relate to sentence.

(b) Before accepting a plea pursuant to a plea arrangement in which the prosecutor has agreed to recommend a particular sentence, the judge must advise the parties whether he approves the arrangement and will dispose of the case accordingly. If the judge rejects the arrangement, he must so inform the parties, refuse to accept the defendant's plea of guilty or no contest, and advise the defendant personally that neither the State nor the defendant is bound by the rejected arrangement. The judge must advise the parties of the reasons he rejected the arrangement and afford them an opportunity to modify the arrangement accordingly. Upon rejection of the plea arrangement by the judge the defendant is entitled to a continuance until the next session of court. A decision by the judge disapproving a plea arrangement is not subject to appeal.

(1975, c. 166, s. 27; 1977, c. 186.)

Editor's Note. — Session Laws 1975, c. 166, s. 27, substituted "prosecutor" for "solicitor." The 1977 amendment added the fourth sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

Applicability of Subsection (b). — The unambiguous language of subsection (b) makes it clear that its provisions are activated when the trial judge rejects a negotiated plea arrangement before actual arrangement of defendant and before the introduction of evidence. State v. Williams, 291 N.C. 442, 230 S.E.2d 515 (1976).

§ 15A-1024. Withdrawal of guilty plea when sentence not in accord with plea arrangement.

Applicability of Section. — The unambiguous language of this section discloses that it applies in cases in which the trial judge does not reject a plea arrangement when it is presented to him but hears the evidence and at the time for sentencing determines that a sentence different from that provided for in the plea arrangement must be imposed. State v. Williams, 291 N.C. 442, 230 S.E.2d 515 (1976).

There is no conflict in the language of this section and § 15A-1023 requiring that they be harmonized or construed. Rather, it clearly appears that the legislature intended that these separate statutes be independent and apply to entirely different, carefully delineated factual situations. State v. Williams, 291 N.C. 442, 230 S.E.2d 515 (1976).

§ 15A-1025. Plea discussion and arrangement inadmissible.

Discussion between Defendant and Arresting Officer. — This section is not applicable where the only evidence of plea negotiation concerns a discussion between defendant and an arresting officer. State v. Lewis, 32 N.C. App. 298, 231 S.E.2d 693 (1977).

§ 15A-1026. Record of proceedings. — A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest and of an preliminary consideration of a plea arrangement by the judge pursuant to G.S. 15A-1021(c) must be made and preserved. This record must include the judge’s advice to the defendant, and his inquiries of the defendant, defense counsel, and the prosecutor, and any responses. If the plea arrangement has been reduced to writing, it must be made a part of the record; otherwise the judge must require that the terms of the arrangement be stated for the record and that the assent of the defendant, his counsel, and the prosecutor be recorded. (1978, c. 1286, s. 1; 1975, c. 166, s. 2; 1975, 2nd Sess., c. 983, s. 144.)

Editor’s Note. — The 1975 amendment substituted “prosecutor” for “solicitor” in the second and third sentences of the section.

The 1975, 2nd Sess., amendment, effective July 1, 1976, substituted “preserved” for “transcribed” at the end of the first sentence.

§ 15A-1027. Limitation on collateral attack on conviction. — Noncompliance with the procedures of this Article may not be a basis for review of a conviction after the appeal period for the conviction has expired, unless the review is expressly authorized by G.S. 15-217. (1973, c. 1286, s. 1; 1975, c. 166, s. 21.)

Editor’s Note. — The 1975 amendment, effective Sept. 1, 1975, deleted “required” preceding “expressly authorized” near the end of the section.

§§ 15A-1028 to 15A-1030: Reserved for future codification purposes.
§ 15A-1031. Custody and restraint of defendant and witnesses. — A trial judge may order a defendant or witness subjected to physical restraint in the courtroom when the judge finds the restraint to be reasonably necessary to maintain order, prevent the defendant's escape, or provide for the safety of persons. If the judge orders a defendant or witness restrained, he must:

(1) Enter in the record out of the presence of the jury and in the presence of the person to be restrained and his counsel, if any, the reasons for his action; and

(2) Give the restrained person an opportunity to object; and

(3) Unless the defendant or his attorney objects, instruct the jurors that the restraint is not to be considered in weighing evidence or determining the issue of guilt.

If the restrained person controverts the stated reasons for restraint, the judge must conduct a hearing and make findings of fact. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section is based almost entirely on A.B.A. Project on Standards for Criminal Justice, Standards Relating to Trial by Jury § 4.1(c) (1968) (hereinafter cited as A.B.A. Standards, Trial by Jury).

Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1032. Removal of disruptive defendant. — (a) A trial judge, after warning a defendant whose conduct is disrupting his trial, may order the defendant removed from the trial if he continues conduct which is so disruptive that the trial cannot proceed in an orderly manner. When practicable, the judge's warning and order for removal must be issued out of the presence of the jury.

(b) If the judge orders a defendant removed from the courtroom, he must:

(1) Enter in the record the reasons for his action; and

(2) Instruct the jurors that the removal is not to be considered in weighing evidence or determining the issue of guilt.

A defendant removed from the courtroom must be given the opportunity of learning of the trial proceedings through his counsel at reasonable intervals as directed by the court and must be given opportunity to return to the courtroom during the trial upon assurance of his good behavior. (1977, c. 711, s. 1.)
§ 15A-1033

The primary basis for this section comes from A.B.A. Project on Standards for Criminal Justice, Standards Relating to the Function of the Trial Judge § 6.8 (1972) (provisions on courtroom disruption approved in 1971) (hereinafter cited as A.B.A. Standards, Function of the Trial Judge). The warning requirement in subsection (a) is suggested in the commentary to the A.B.A. Standards, and the Commission originated the provision that the warning and order for removal occur out of the jury's presence if practicable.

The provisions of subsection (b) as to recordation and jury instruction were added by the Commission to parallel those in G.S. 15A-1031. The remainder of subsection (b) is based on A.B.A. Standards, Function of the Trial Judge § 6.8, though the Commission has omitted the explicit statement that "removal is preferable to gagging or shackling the disruptive defendant." The Commission agrees in general with this policy, but has been reluctant to put merely precatory instructions into statutory text. The Commission was of the opinion that judges would consider the applicable A.B.A. Standards in exercising their discretion.

A more substantive change has been made by the Commission as to the defendant's opportunity to return to the courtroom following his removal. The Commission deleted the specification that the opportunity should be "continuing" and further omitted this sentence found in the A.B.A. Standards: "The removed defendant should be summoned to the courtroom at appropriate intervals, with the offer to permit him to remain repeated in open court each time."

§ 15A-1033. Removal of disruptive witnesses and spectators. — The judge in his discretion may order any person other than a defendant removed from a courtroom when his conduct disrupts the conduct of the trial. (1977, c. 711, s. 1.)

§ 15A-1034. Controlling access to the courtroom. — (a) The presiding judge may impose reasonable limitations on access to the courtroom when necessary to ensure the orderliness of courtroom proceedings or the safety of persons present.

(b) The judge may order that all persons entering or any person present and choosing to remain in the courtroom be searched for weapons or devices that could be used to disrupt or impede the proceedings and may require that belongings carried by persons entering the courtroom be inspected. An order under this subsection must be entered on the record. (1977, c. 711, s. 1.)

§ 15A-1035. Other powers. — In addition to the use of the powers provided in this Article, a presiding judge may maintain courtroom order through the use of his contempt powers as provided in Chapter 5A, Contempt, and through the use of other inherent powers of the court. (1977, c. 711, s. 1.)
§ 15A-1036 to 15A-1039: Reserved for future codification purposes.

ARTICLE 61.
Granting of Immunity to Witnesses.

§ 15A-1054. Charge reductions or sentence concessions in consideration of truthful testimony.

Testimony Properly Allowed. — The district attorney's failure to disclose to defense counsel an agreement with a State witness under this section did not warrant suppression of the witness's testimony where the trial judge granted a recess as required by this section, and the record showed that defense counsel had known of the agreement for over three weeks. State v. Cousins, 289 N.C. 540, 223 S.E.2d 338 (1976). Stated in State v. Hopper, 292 N.C. 580, 234 S.W.2d 580 (1977).

§ 15A-1055. Evidence of grant of immunity or testimonial arrangement may be fully developed; impact may be argued to the jury.

No Prejudicial Error Shown. — Trial judge's refusal to inform the jury of an agreement between the district attorney and a State witness under § 15A-1054 was not prejudicial error where the jury was fully informed of the agreement prior to the time it began deliberations by trial judge's instructions following the testimony, and by defense counsel's cross-examination of the witness concerning promises made to him. State v. Cousins, 289 N.C. 540, 223 S.E.2d 338 (1976). Stated in State v. Hopper, 292 N.C. 580, 234 S.E.2d 580 (1977).

§§ 15A-1056 to 15A-1060: Reserved for future codification purposes.

ARTICLE 62.
Mistrial.

OFFICIAL COMMENTARY

The Commission's original impulse was to draft a comprehensive article detailing all of the various situations in which a mistrial may be granted or must be granted. After struggling unsuccessfully with several drafts utilizing this approach, the Commission abandoned the attempt. The major problem was that there are stringent constitutional limitations on when a mistrial may be granted without the consent, or on motion, of the defendant. See, e.g., Illinois v. Sommerville, 410 U.S. 458 (1973).

In seeking a more general codification of the rules that must govern the granting of mistrials, the Commission used as a model an earlier draft of the material now published in National Conference of Commissioners on Uniform State Laws, Uniform Rules of Criminal Procedure, Rule 541 (1974) (hereinafter cited as Uniform Rules). This Article does not purport to be exclusive in its coverage, and there are other sections in the Commission's proposal which specifically deal with the granting of mistrials in particular circumstances. See, e.g., G.S. 15A-1224 (death or disability of trial judge) and G.S. 15A-1235(d) (deadlocked jury).
§ 15A-1061. Mistrial for prejudice to defendant. — Upon motion of a defendant or with his concurrence the judge may declare a mistrial at any time during the trial. The judge must declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case. If there are two or more defendants, the mistrial may not be declared as to a defendant who does not make or join in the motion. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

With only minor changes of wording this section reflects the substance of Uniform Rules, Rule 541(a).

Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."
Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1062. Mistrial for prejudice to the State. — Upon motion of the State, the judge may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct resulting in substantial and irreparable prejudice to the State's case and the misconduct was by a juror or the defendant, his lawyer, or someone acting at the behest of the defendant or his lawyer. If there are two or more defendants, the mistrial may not be declared as to a defendant who does not join in the motion of the State if:
(1) Neither he, his lawyer, nor a person acting at his or his lawyer's behest participated in the misconduct; or
(2) The State's case is not substantially and irreparably prejudiced as to him. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section is based upon Uniform Rules, Rule 541(b). The major substantive change is to add the misconduct of a juror to the grounds for which the State may secure a mistrial on its own motion — provided the prejudice was substantial and irreparable.

§ 15A-1063. Mistrial for impossibility of proceeding. — Upon motion of a party or upon his own motion, a judge may declare a mistrial if:
(1) It is impossible for the trial to proceed in conformity with law; or
(2) It appears there is no reasonable probability of the jury's agreement upon a verdict. (1977, c. 711, s. 1.)
This section is based upon Uniform Rules, Rule 541(c). The Commission deleted, upon a divided vote, a discretionary ground for mistrial if the poll of the jury indicated there was not unanimous concurrence with the verdict returned. G.S. 15A-1238 states that the judge should direct the jury to retire for further deliberations in this instance, and the Commission saw no necessity to write in a special discretionary right to a mistrial. The defendant would always have the privilege under G.S. 15A-1061 to move for a discretionary mistrial if he thought the circumstances revealed by the poll of the jury were substantially prejudicial to him. The State would have a right to request a mistrial if the prejudice to it were tied to misconduct of a juror — under the Commission's version of G.S. 15A-1062. If the prejudice were so total as to make it "impossible" for the trial to proceed "in conformity with law," then either party or the judge on his own motion could trigger the mistrial under subdivision (1) of this section — provided this would be constitutional.

In its deliberations the Commission was furnished the following draftsman's comment with this section: "The language in subparagraph (1) is intended to cover the limited number of situations in which a judge may grant a mistrial without consent of the defendant because of the impossibility of proceeding with the trial. It covers the case in which a juror dies or becomes disabled to continue, and there is no alternate or else deliberations have already begun. It also covers the situation in which it becomes physically impossible for the trial to proceed — such as may be caused by fire, flood, or other catastrophe. . . . (This subparagraph gives) the judge as broad and flexible a power as possible in impossibility cases consistent with the constitutional rulings concerning former jeopardy."

§ 15A-1064. Mistrial; finding of facts required. — Before granting a mistrial, the judge must make finding of facts with respect to the grounds for the mistrial and insert the findings in the record of the case. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This provision will be important when the rule against prior jeopardy prohibits retrial unless the mistrial is upon certain recognized grounds or unless the defendant requests or acquiesces in the mistrial. If the defendant requests or acquiesces in the mistrial, that finding alone should suffice.

§ 15A-1065. Procedure following mistrial — When a mistrial is ordered, the judge must direct that the case be retained for trial or such other proceedings as may be proper. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The statute on which this section is based, Kan. Stat. Ann. § 22-3428, added a provision requiring "that the defendant be held in custody pending such further proceedings, unless he is released pursuant to the terms of an appearance bond." The Commission thought the matter was already covered by Article 26, Bail, and deleted this portion.

§§ 15A-1066 to 15A-1070: Reserved for future codification purposes.

ARTICLE 63.

§§ 15A-1071 to 15A-1080: Reserved for future codification purposes.
§ 15A-1081 to 15A-1100: Reserved for future codification purposes.

SUBCHAPTER XI. TRIAL PROCEDURE IN DISTRICT COURT.

ARTICLE 65.

In General.
§ 15A-1101. Applicability of superior court procedure. — Trial procedure in the district court is in accordance with the provisions of Subchapter XII, Trial in Superior Court, except for provisions:
(1) Relating to jury trial.
(2) Requiring recordation of proceedings unless they specify their applicability to the district court.
(3) That specify their applicability to superior court. (1977, c. 711, s. 1.)

Editor’s Note. — Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, ‘Parole’ shall not apply to persons sentenced before July 1, 1978.”
Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”
Session Laws 1977, c. 711, s. 36, contains a severability clause.
The “Official Comments” under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§§ 15A-1102 to 15A-1110: Reserved for future codification purposes.

ARTICLES 66 THROUGH 70.


SUBCHAPTER XII. TRIAL PROCEDURE IN SUPERIOR COURT.

ARTICLE 71.

Right to Trial by Jury.
§ 15A-1201. Right to trial by jury. — In all criminal cases the defendant has the right to be tried by a jury of 12 whose verdict must be unanimous. In the district court the judge is the finder of fact in criminal cases, but the defendant has the right to appeal for trial de novo in superior court as provided in G.S. 15A-1481. In superior court all criminal trials in which the defendant enters a plea of not guilty must be tried before a jury. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section preserves the existing law. The Commission briefly considered possible changes that would apparently require amendment of the Constitution of North Carolina, such as providing for trial to the court upon waiver of jury trial, less than unanimous verdicts, and fewer than 12 jurors in certain classes of cases, but decided against recommending such changes.
Editor’s Note. — Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, “Parole” shall not apply to persons sentenced before July 1, 1978.”

Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The “Official Comments” under this Article are reprinted from the Legislative Program and Report of the Criminal Commission to the 1977 General Assembly.

§ 15A-1202 to 15A-1210: Reserved for future codification purposes.

ARTICLE 72.
Selecting and Impaneling the Jury.

OFFICIAL COMMENTARY

One of the models used in the initial drafts of this article was American Law Institute, Code of Criminal Procedure, Chapter 13 (Proposed Final Draft 1930), but the material went through so many revisions that it can be said essentially to originate with the Commission.

§ 15A-1211. Selection procedure generally; role of judge; challenge to the panel; authority of judge to excuse jurors. — (a) The provisions of Chapter 9 of the General Statutes, Jurors, pertinent to criminal cases apply except when this Chapter specifically provides a different procedure.

(b) The trial judge must decide all challenges to the panel and all questions concerning the competency of jurors.

(c) The State or the defendant may challenge the jury panel. A challenge to the panel:

(1) May be made only on the ground that the jurors were not selected or drawn according to law.

(2) Must be in writing.

(3) Must specify the facts constituting the ground of challenge.

(4) Must be made and decided before any juror is examined.

If a challenge to the panel is sustained, the judge must discharge the panel.

(d) The judge may excuse a juror without challenge by any party if he determines that grounds for challenge for cause are present. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The challenge procedure set out in this section also applies when the challenge is to the panel from which grand jurors were drawn. See G.S. 15A-622(a) as amended by the Commission’s bill.

Editor’s Note. — Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a
§ 15A-1212. Grounds for challenge for cause. — A challenge for cause to an individual juror may be made by any party on the ground that the juror:

1. Does not have the qualifications required by G.S. 9-3.
2. Is incapable by reason of mental or physical infirmity of rendering jury service.
3. Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant.
4. Has been or is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.
5. Is related by blood or marriage within the sixth degree to the defendant or the victim of the crime.
6. Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant.
7. Is presently charged with a felony.
8. As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina.
9. For any other cause is unable to render a fair and impartial verdict.

(1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

To the extent possible the Commission has attempted to restate in this Article the rules governing selecting and impaneling the jury in a criminal case. This section incorporates the disqualifications set out in G.S. 9-3 and adds a number of additional grounds for challenge for cause. The Commission's bill amends G.S. 9-3 to add as a qualification for jury service that the person be able to hear and understand the English language.

Subdivisions (3) and (4) supersede G.S. 9-15(c), which the Commission's bill amends to apply to civil cases only.

Subdivision (5) modifies North Carolina case law, which makes kinship within the ninth degree-by-blood — a basis for challenge. The addition of kinship to the victim of the crime as a ground for challenge is new.

Subdivision (6) is perhaps the part that most radically changes existing case law. Now a party must show that a juror has formed an opinion which is adverse to the party before challenging the juror for cause. The Commission was opposed to this requirement, and therefore prohibits a party from eliciting the information, as it believes the opinion should not be expressed in the hearing of other prospective jurors.

Subdivision (8) is primarily intended to codify the rule of Witherspoon v. Illinois, 391 U.S. 510 (1968), but the Commission broadened the provision to apply generally rather than only to capital cases. It determined that in other situations certain jurors might, regardless of the circumstances, refuse to vote for conviction.

§ 15A-1213. Informing prospective jurors of case. — Prior to selection of jurors, the judge must identify the parties and their counsel and briefly inform the prospective jurors, as to each defendant, of the charge, the date of the alleged offense, the name of any victim alleged in the pleading, the defendant's plea to the charge, and any affirmative defense of which the defendant has given pretrial notice as required by Article 52, Motions Practice. The judge may not read the pleadings to the jury. (1977, c. 711, s. 1.)
§ 15A-1214. Selection of jurors; procedure. — (a) The clerk, under the supervision of the presiding judge, must call jurors from the panel by a system of random selection which precludes advance knowledge of the identity of the next juror to be called. When a juror is called and he is assigned to the jury box, he retains the seat assigned until excused.

(b) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-1213. He may briefly question prospective jurors individually or as a group concerning general fitness and competency to determine whether there is cause why they should not serve as jurors in the case.

(c) The prosecutor and the defense counsel, or the defendant if not represented by counsel, may personally question prospective jurors individually concerning their fitness and competency to serve as jurors in the case to determine whether there is a basis for a challenge for cause or whether to exercise a peremptory challenge. The prosecution or defense is not foreclosed from asking a question merely because the court has previously asked the same or similar question.

(d) The prosecutor must conduct his examination of the first 12 jurors seated and make his challenges for cause and exercise his peremptory challenges. If the judge allows a challenge for cause, or if a peremptory challenge is exercised, the clerk must immediately call a replacement into the box. When the prosecutor is satisfied with the 12 in the box, they must then be tendered to the defendant. Until the prosecutor indicates his satisfaction, he may make a challenge for cause or exercise a peremptory challenge to strike any juror, whether an original or replacement juror.

(e) Each defendant must then conduct his examination of the jurors tendered him, making his challenges for cause and his peremptory challenges. If a juror is excused, no replacement may be called until all defendants have indicated satisfaction with those remaining, at which time the clerk must call replacements for the jurors excused. The judge in his discretion must determine order of examination among multiple defendants.

(f) Upon the calling of replacement jurors, the prosecutor must examine the replacement jurors and indicate satisfaction with a completed panel of 12 before the replacement jurors are tendered to a defendant. Only replacement jurors may be examined and challenged. This procedure is repeated until all parties have accepted 12 jurors.

(g) If at any time after a juror has been accepted by a party, and before the jury is impaneled, it is discovered that the juror has made an incorrect statement during voir dire or that some other good reason exists:

(1) The judge may examine, or permit counsel to examine, the juror to determine whether there is a basis for challenge for cause.

(2) If the judge determines there is a basis for challenge for cause, he must excuse the juror or sustain any challenge for cause that has been made.

(3) If the judge determines there is no basis for challenge for cause, any party who has not exhausted his peremptory challenges may challenge the juror.
Any replacement juror called is subject to examination, challenge for cause, and peremptory challenge as any other unaccepted juror.

(h) In order for a defendant to seek reversal of the case on appeal on the ground that the judge refused to allow a challenge made for cause, he must have:
(1) Exhausted the peremptory challenges available to him;
(2) Renewed his challenge as provided in subsection (i) of this section; and
(3) Had challenges previously denied as to the juror in question.

(i) A party who has exhausted his peremptory challenges may move orally or in writing to renew a challenge for cause previously denied if the party either:
(1) Had peremptorily challenged the juror; or
(2) States in the motion that he would have challenged that juror peremptorily had his challenges not been exhausted.

The judge may reconsider his denial of the challenge for cause, reconsidering facts and arguments previously adduced or taking cognizance of additional facts and arguments presented. If upon reconsideration the judge determines that the juror should have been excused for cause, he must allow the party an additional peremptory challenge.

(j) In capital cases the trial judge for good cause shown may direct that jurors be selected one at a time, in which case each juror must first be passed by the State. These jurors may be sequestered before and after selection. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

In comparing notes, members of the Commission discovered that procedures for selecting jurors varies from district to district, and decided there would be a virtue in spelling out a uniform system. The Commission recognized that absolute uniformity would not be possible because of differences in size of caseloads, physical facilities, and the like. Some counties use a jury pool; others do not. For this reason the Commission deliberately refrained from attempting to draft any definition of the jury “panel.”

The Commission considered an alternative draft to subsections (e) and (f) in which the defense would be required to examine replacement jurors and tender a full panel of 12 back to the State, but chose the procedure in the proposed bill by a divided vote. Experienced defense attorneys on the Commission differed as to which of the two procedures they preferred.

Existing law requires that a party must not only exhaust his peremptory challenges but must also attempt to challenge one more juror in order to preserve his right to appeal. The Commission thought this to be an extremely undesirable requirement since, in most cases, the juror attempted to be challenged would remain on the jury. Therefore, the Commission devised the new procedure set out in subsection (i) to allow renewal of a challenge in writing so the juror would not be aware of it, and further provided for restoration of a previously used challenge if there are grounds for reconsideration. In this latter event the challenge would be to some other juror — an attempt to exercise the peremptory challenge which the party asserts should be restored to him. In most cases it is assumed the judge will deny restoration of the challenge, and the party will then be able to appeal the judge’s action in refusing to allow the prior challenge for cause. If, or course, the judge does grant the additional challenge, then the party will have no basis for appeal as to that particular challenge. See subsection (h).

The Commission visualizes that the written renewal of challenge may be made by a simple form showing the name of the juror as to whom the challenge for cause was denied, and containing space for the party to set out briefly the basis for the challenge.

Another innovation is the procedure in subsection (g) which allows renewal of challenge up to the time the jury is impaneled if it is discovered that a juror made an incorrect statement during voir dire. After the jury is impaneled, of course, the issue is escalated to whether to declare a mistrial or not.

While the Commission did not intend in subsection (j) to authorize individual selection of jurors in every capital case, an obvious illustration of “good cause” for such selection would exist when pretrial publicity required individual examination of jurors in order not to expose the remainder of the panel to the prior knowledge of the juror being questioned. The
reference to sequestration was included to make sure that the judge’s powers are spelled out for highly sensitive cases, but it should be noted that G.S. 15A-1236(b) gives the judge plenary authority as to sequestration.

§ 15A-1215. Alternate jurors. — The judge may permit the seating of one or more alternate jurors. Alternate jurors must be sworn and seated near the jury with equal opportunity to see and hear the proceedings. They must attend the trial at all times with the jury, and obey all orders and admonitions of the judge. When the jurors are ordered kept together, the alternate jurors must be kept with them. If before final submission of the case to the jury, any juror dies, becomes incapacitated or disqualified, or is discharged for any other reason, an alternate juror becomes a juror, in the order in which selected, and serves in all respects as those selected on the regular trial panel. Alternate jurors receive the same compensation as other jurors and, unless they become jurors, must be discharged upon the final submission of the case to the jury. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The Commission determined that it would be preferable to restate the procedure concerning alternate jurors in this Article rather than to continue allowing G.S. 9-18 to apply to all cases. As has been noted previously, the Commission’s bill restricts G.S. 9-18 to civil cases. The only changes of importance are those effected in other sections: limiting peremptory challenges to one per alternate juror (G.S. 15A-1213) and selection of alternate jurors before the act of impaneling the jury (G.S. 15A-1216).

§ 15A-1216. Impaneling jury. — After all jurors, including alternate jurors, have been selected, the clerk impanels the jury by instructing them as follows: “Members of the jury, you have been sworn and are now impaneled to try the issue in the case of State of North Carolina versus .............. You will sit together, hear the evidence, and render your verdict accordingly.” (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Impaneling the jury is an especially critical stage in criminal cases as jeopardy attaches at this point. The Commission believed that there should be no doubt concerning the procedure, and therefore drafted this section.

Given variance of customs in different districts, members of the Commission were not certain of all points of the customary procedure to mark the impaneling of the jury — for example, whether accomplished by the judge or the clerk — but Commission members did seem positive that the panel as such takes no additional oath.

The Commission believes it would be desirable for a parallel statute to be enacted applying to the process of impaneling the jury in civil cases, perhaps to be codified in Chapter 9 of the General Statutes, but the Commission did not submit such a draft as this exceeds the scope of its mandate.

§ 15A-1217. Number of peremptory challenges. — (a) Capital cases.
   (1) Each defendant is allowed 14 challenges.
   (2) The State is allowed 14 challenges for each defendant.
(b) Noncapital cases.
   (1) Each defendant is allowed six challenges.
   (2) The State is allowed six challenges for each defendant.
(c) Each party is entitled to one peremptory challenge for each alternate juror in addition to any unused challenges. (1977, c. 711, s. 1.)
The Commission recommends repeal of G.S. 9-21 and placement of the substance of that section here. It also recommends amendment of G.S. 9-18 on alternate jurors to make that section apply only to civil cases.

In equalizing the number of peremptory challenges granted each side, the Commission is following the lead of the National Conference of Commissioners on Uniform State Laws. Uniform Rules, Rule 512(d). Accord, National Advisory Commission on Criminal Justice Standards and Goals, Report on the Courts, Standard 4.13 (1973). Giving an equal number of challenges to each side is the practice in most states. A.B.A. Standards, Trial by Jury, Commentary to § 2.6, at 75. See also Fed. Rules Crim. Proc. 24(b) (as amended effective August 1, 1976).

Subsection (c) makes a substantive change in that it provides for one peremptory challenge for each alternate juror rather than the two challenges allowed by G.S. 9-18.

§§ 15A-1218 to 15A-1220: Reserved for future codification purposes.

ARTICLE 73.
Criminal Jury Trial in Superior Court.

OFFICIAL COMMENTARY

The Commission decided to codify to a fairly large extent the procedures applicable to criminal jury trial, though it is obvious that many matters not specifically covered will continue to be governed by common law or tradition. In searching for drafting models, the Commission did not find any single satisfactory source, and has employed a wide variety of sources — and, additionally, has drafted several sections from scratch. In all events, this article went through a large number of drafts, and all sections were changed in the course of successive meetings. Because of the numerous changes and many drafts it may not always be possible to pinpoint the source of a particular provision in the ensuing commentary. Citation of source, however, will be made when available and still pertinent to the statute in its final form.

§ 15A-1221. Order of proceedings in jury trial. — The order of a jury trial, in general, is as follows:
(1) The defendant must be arraigned and must have his plea recorded, out of the presence of the prospective jurors, unless he has waived arraignment under G.S. 15A-945.
(2) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-12138.
(3) The jury must be sworn, selected and impaneled in accordance with Article 72, Selecting and Impaneling the Jury.
(4) Each party must be given the opportunity to make a brief opening statement, but the defendant may reserve his opening statement.
(5) The State must offer evidence.
(6) The defendant may offer evidence and, if he has reserved his opening statement, may precede his evidence with that statement.
(7) The State and the defendant may then offer successive rebuttals as provided in G.S. 15A-1226.
(8) At the conclusion of the evidence, the parties may make arguments to the jury in accordance with the provisions of G.S. 15A-1230.
(9) The judge must deliver a charge to the jury in accordance with the provisions of G.S. 15A-1231 and 15A-1232.
(10) The jury must retire to deliberate, and alternate jurors who have not been seated must be excused as provided in G.S. 15A-1215. (1977, c. 711, s. 1.)
§ 15A-1222. Expression of opinion prohibited. — The judge may not express during any stage of the trial, any opinion in the presence of the jury on any question of fact to be decided by the jury. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section codifies the traditional North Carolina position requiring strict neutrality on the part of the trial judge. Compare A.B.A. Standards, Function of the Trial Judge § 5.6. A related section dealing with judicial comment on the verdict is G.S. 15A-1289.

§ 15A-1223. Disqualification of judge. — (a) A judge on his own motion may disqualify himself from presiding over a criminal trial or other criminal proceeding.

(b) A judge, on motion of the State or the defendant, must disqualify himself from presiding over a criminal trial or other criminal proceeding if he is:

(1) Prejudiced against the moving party or in favor of the adverse party; or

(2) A witness for or against one of the parties in the case; or

(3) Closely related to the defendant by blood or marriage; or

(4) For any other reason unable to perform the duties required of him in an impartial manner.

(c) A motion to disqualify must be in writing and must be accompanied by one
or more affidavits setting forth facts relied upon to show the grounds for disqualification.

(d) A motion to disqualify a judge must be filed no less than five days before the time the case is called for trial unless good cause is shown for failure to file within that time. Good cause includes the discovery of facts constituting grounds for disqualification less than five days before the case is called for trial. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY


The Commission directed that the commentary indicate that the rules of evidence applicable to jury trials should not apply in the hearing on disqualification of a judge, so that affidavits otherwise reliable should not be excluded from consideration by virtue of the hearsay rule.

As to the judge's duty to recuse himself when he has any doubt as to his ability to preside impartially or whenever his impartiality can be reasonably questioned, see A.B.A. Standards, Function of the Trial Judge § 1.7.

§ 15A-1224. Death or disability of trial judge. — (a) If by reason of sickness or other disability a judge before whom the defendant is being tried is unable to continue presiding over the trial without the necessity of a continuance, he may in his discretion order a mistrial.

(b) If by reason of absence, death, sickness, or other disability, the judge before whom the defendant is being or has been tried is unable to perform the duties required of him before entry of judgment, and has not ordered a mistrial, any other judge assigned to the court may perform those duties, but if the other judge is satisfied that he cannot perform those duties because he did not preside at an earlier stage of the proceedings or for any other reason, he must order a mistrial. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section is a fairly elaborate expansion of A.B.A. Standards, Trial by Jury § 4.3. Compare Uniform Rules, Rule 741(e) and (f).

§ 15A-1225. Exclusion of witnesses. — Upon motion of a party the judge may order all or some of the witnesses other than the defendant to remain outside of the courtroom until called to testify, except when a minor child is called as a witness the parent or guardian may be present while the child is testifying even though his parent or guardian is to be called subsequently. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The Commission considered several different approaches to this section. One draft simply made the matter of exclusion discretionary with the trial judge. Another draft went into detail as to the witness the prosecutor would be allowed to retain in the courtroom, defining him as the key investigating officer in the case. In the interest of simplicity of administration, the Commission settled upon the formulation set out in its proposed bill.
§ 15A-1226. Rebuttal evidence; additional evidence. — (a) Each party has the right to introduce rebuttal evidence concerning matters elicited in the evidence in chief of another party. The judge may permit a party to offer new evidence during rebuttal which could have been offered in the party's case in chief or during a previous rebuttal, but if new evidence is allowed, the other party must be permitted further rebuttal.

(b) The judge in his discretion may permit any party to introduce additional evidence at any time prior to verdict. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The source of this section is N.Y. Crim. Proc. Law § 260.30, paragraph 7.

§ 15A-1227. Motion for dismissal. — (a) A motion for dismissal for insufficiency of the evidence to sustain a conviction may be made at the following times:

1. Upon close of the State's evidence.
2. Upon close of all the evidence.
3. After return of a verdict of guilty and before entry of judgment.
4. After discharge of the jury without a verdict and before the end of the session.

(b) Failure to make the motion at the close of the State's evidence or after all the evidence is not a bar to making the motion at a later time as provided in subsection (a).

(c) The judge must rule on a motion to dismiss for insufficiency of the evidence before the trial may proceed.

(d) The sufficiency of all evidence introduced in a criminal case is reviewable on appeal without regard to whether a motion has been made during trial, as provided in G.S. 15A-1446(d)(5). (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsection (b) is new and changes a rule which the Commission believes has little utility.

The Commission believes the practice of reserving decision on a motion is little followed at present in North Carolina — and ought not to be encouraged. It therefore amended a draft provision based on the procedure of another jurisdiction, authorizing reservation of decision on the motion to dismiss, to bar such a procedure. This decision is reflected in subsection (c). Compare A.B.A. Standards, Trial by Jury § 4.5.

Subsection (d) will allow appeal whether or not a motion has been made or renewed, and thus constitutes a change in the law. The phrase "all evidence" in that subsection, however, indicates that the reviewing court must consider the evidence of the defendant as well as that of the State in determining the question of sufficiency. In this respect the subsection represents a continuation of the rule presently followed by the Supreme Court of North Carolina.

§ 15A-1228. Notes by the jury. — Jurors may make notes and take them into the jury room during their deliberations. Upon objection of any party, the judge must instruct the jurors that notes may not be taken. (1977, c. 711, s. 1.)
§ 15A-1229. View by jury. — (a) The trial judge in his discretion may permit a jury view. If a view is ordered, the judge must order the jury to be conducted to the place in question in the custody of an officer. The officer must be instructed to permit no person to communicate with the jury on any subject connected with the trial, except as provided in subsection (b), nor to do so himself, and to return the jurors to the courtroom without unnecessary delay or at a specified time. The judge, prosecutor, and counsel for the defendant must be present at the view by the jury. The defendant is entitled to be present at the view by the jury.

(b) A judge in his discretion may permit a witness under oath to testify at the site of the jury view and point out objects and physical characteristics material to his testimony. The testimony must be recorded. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The provision authorizing the taking of testimony at the scene of the view by the jury is an innovation. Although the defendant has a constitutional right to be present, it is believed that he can waive this right even if testimony is taken at the place of the view — so long as the defendant’s counsel is there to cross-examine as appropriate and otherwise represent the defendant’s interests.

§ 15A-1230. Limitations on argument to the jury. — (a) During a closing argument to the jury an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record except for matters concerning which the court may take judicial notice. An attorney may, however, on the basis of his analysis of the evidence, argue any position or conclusion with respect to a matter in issue.

(b) Length, number, and order of arguments allotted to the parties are governed by G.S. 84-14. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Although this section does no more than codify provisions that have long been in the case law and codes of ethics, it nevertheless engendered lengthy debate within the Commission. An original draft more closely modeled on A.B.A. Standards, Function of the Trial Judge § 5.10, was modified to reflect certain language in North Carolina State Bar, Code of Professional Responsibility, DR7-106.

§ 15A-1231. Jury instructions. — (a) At the close of the evidence or at an earlier time directed by the judge, any party may tender written instructions. A party tendering instructions must furnish copies to the other parties at the time he tenders them to the judge.

(b) On request of either party, the judge must, before the arguments to the jury, hold a recorded conference on instructions out of the presence of the jury. At the conference the judge must inform the parties of the offenses, lesser included offenses, and affirmative defenses on which he will charge the jury and must inform them of what, if any, parts of tendered instructions will be given.
§ 15A-1232. Jury instructions; explanation of law; opinion prohibited. — In instructing the jury, the judge must declare and explain the law arising on the evidence. He is not required to state the evidence except to the extent necessary to explain the application of the law to the evidence. He must not express an opinion whether a fact has been proved. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section restates the substance of G.S. 1-180, which is to be repealed under the Commission’s proposal. The Commission found to be unnecessary the proviso in G.S. 1-180 requiring the judge to “give equal stress to the State and defendant in a criminal action” because this is a duty imposed on the judge by general requirements of fairness to the parties; it is not necessary that it be explicitly stated.

§ 15A-1233. Review of testimony; use of evidence by the jury. — (a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The judge in his discretion, after notice to the prosecutor and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. In his discretion the judge may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) Upon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to conduct any experiments with the exhibit. (1977, c. 711, s. 1.)
§ 15A-1234. Additional instructions. — (a) After the jury retires for deliberation, the judge may give appropriate additional instructions to:
(1) Respond to an inquiry of the jury made in open court; or
(2) Correct or withdraw an erroneous instruction; or
(3) Clarify an ambiguous instruction; or
(4) Instruct the jury on a point of law which should have been covered in the original instructions.
(b) At any time the judge gives additional instructions, he may also give or repeat other instructions to avoid giving undue prominence to the additional instructions.
(c) Before the judge gives additional instructions, he must inform the parties generally of the instructions he intends to give and afford them an opportunity to be heard. The parties upon request must be permitted additional argument to the jury if the additional instructions change, by restriction or enlargement, the permissible verdicts of the jury. Otherwise, the allowance of additional argument is within the discretion of the judge.
(d) All additional instructions must be given in open court and must be made a part of the record. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section is based upon A.B.A. Standards, Trial by Jury § 5.3.

§ 15A-1235. Length of deliberations; deadlocked jury. — (a) Before the jury retires for deliberation, the judge must give an instruction which informs the jury that in order to return a verdict, all 12 jurors must agree to a verdict of guilty or not guilty.
(b) Before the jury retires for deliberation, the judge may give an instruction which informs the jury that:
(1) Jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;
(2) Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;
(3) In the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous; and
(4) No juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.
(c) If it appears to the judge that the jury has been unable to agree, the judge may require the jury to continue its deliberations and may give or repeat the instructions provided in subsections (a) and (b). The judge may not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals.
(d) If it appears that there is no reasonable possibility of agreement, the judge may declare a mistrial and discharge the jury. (1977, c. 711, s. 1.)
The Commission considered three possible approaches to the deadlocked jury:

(1) the "weak" charge set out in the A.B.A. Standards;
(2) the "strong" Allen charge traditionally used in the federal courts; and
(3) the even stronger charges authorized under North Carolina case law.

After much discussion, the Commission approved this section, which in its essentials follows A.B.A. Standards, Trial by Jury § 5.4. The Commission deleted from its draft a provision previously sanctioned under North Carolina case law which would have authorized the judge to inform the jurors that if they do not agree upon a verdict another jury may be called upon to try the case.

The four subdivisions of subsection (b) are linked together with the conjunction "and." This reflects the Commission's view that whenever the judge gives any of the instructions authorized by subsection (b), he must give all of them.

Subsection (c) requires that the instructions to a deadlocked jury must contain all the provisions of subsections (a) and (b).

§ 15A-1236. Admonitions to jurors; regulation and separation of jurors. — (a) The judge at appropriate times must admonish the jurors that it is their duty:

(1) Not to talk among themselves about the case except in the jury room after their deliberations have begun;
(2) Not to talk to anyone else, or to allow anyone else to talk with them or in their presence about the case and that they must report to the judge immediately the attempt of anyone to communicate with them about the case;
(3) Not to form an opinion about the guilt or innocence of the defendant, or express any opinion about the case;
(4) To avoid reading, watching, or listening to accounts of the trial; and
(5) Not to talk during trial to parties, witnesses, or counsel.

The judge may also admonish them with respect to other matters which he considers appropriate.

(b) The judge in his discretion may direct that the jurors be sequestered.

(c) If the jurors are committed to the charge of an officer, he must be sworn by the clerk to keep the jurors together and not to permit any person to speak or otherwise communicate with them on any subject connected with the trial nor to do so himself, and to return the jurors to the courtroom as directed by the judge. (1977, c. 711, s. 1.)

§ 15A-1237. Verdict. — (a) The verdict must be in writing, signed by the foreman, and made a part of the record of the case.

(b) The verdict must be unanimous, and must be returned by the jury in open court.
(c) If the jurors find the defendant not guilty on the ground that he was insane at the time of the commission of the offense charged, their verdict must so state.

(d) If there are two or more defendants, the jury must return a separate verdict with respect to each defendant. If the jury agrees upon a verdict for one defendant but not another, it must return that verdict upon which it agrees.

(e) If there are two or more offenses for which the jury could return a verdict, it may return a verdict with respect to any offense, including a lesser included offense on which the judge charged, as to which it agrees. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The provision in subsection (a) requiring written verdicts is new. It is contemplated that the jury will be given a verdict form setting out the permissible verdicts recited by the judge in his instructions. This procedure should cure a great many defects that occur when the foreman of the jury inadvertently omits some essential element of a verdict in stating it orally.

The provision in subsection (c) is also new, but thought to be quite desirable by the Commission.

§ 15A-1240. Impeachment of the verdict. — (a) Upon an inquiry into the validity of a verdict, no evidence may be received to show the effect of any statement, conduct, event, or condition upon the mind of a juror or concerning the mental processes by which the verdict was determined.
§ 15A-1241 (b) The limitations in subsection (a) do not bar evidence concerning whether the verdict was reached by lot.

(c) After the jury has dispersed, the testimony of a juror may be received to impeach the verdict of the jury on which he served, subject to the limitations in subsection (a), only when it concerns:

(1) Matters not in evidence which came to the attention of one or more jurors under circumstances which would violate the defendant's constitutional right to confront the witnesses against him; or

(2) Bribery, intimidation, or attempted bribery or intimidation of a juror.

(1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsections (a), (b), and (c) are based on A.B.A. Standards, Trial by Jury § 5.7. Subsections (a) and (b) are almost identical to the wording of the A.B.A. Standard, but subsection (c) is somewhat more restrictive. As the A.B.A. commentary indicates, this is a most troublesome area. The traditional rule has been to disallow almost all attempts by a juror to impeach his verdict because to do otherwise would place the finality of verdicts in great jeopardy and subject jurors after the close of the case to intense pressures to come forward and impeach their verdicts.

It is noteworthy that this section is silent on impeaching verdicts by means other than the testimony of the juror himself.

With respect to subsection (d), see North Carolina State Bar, Code of Professional Responsibility, DR7-109D(e), (f), and (g).

§ 15A-1241. Record of proceedings. — (a) The trial judge must require that the reporter make a true, complete, and accurate record of all statements from the bench and all other proceedings except:

(1) Selection of the jury in noncapital cases;

(2) Opening statements and final arguments of counsel to the jury; and

(3) Arguments of counsel on questions of law.

(b) Upon motion of any party or on the judge's own motion, proceedings excepted under subdivisions (1) and (2) of subsection (a) must be recorded. The motion for recordation of jury arguments must be made before the commencement of any argument and if one argument is recorded all must be. Upon suggestion of improper argument, when no recordation has been requested or ordered, the judge in his discretion may require the remainder to be recorded.

(c) When a party makes an objection to unrecorded statements or other conduct in the presence of the jury, upon motion of either party the judge must reconstruct for the record, as accurately as possible, the matter to which objection was made.

(d) The trial judge may review the accuracy of the reporter's record of the proceedings, but may not make substantive changes in the transcript concerning his charge, rulings, and comments without notice to the State, the defense, and the reporter. When any correction of a transcript is ordered made by a judge, each party is entitled to receive, upon request, a copy of the transcript indicating the text as submitted by the reporter and as changed by the judge. Upon motion of any party, the judge must afford the parties a hearing upon any change ordered by the judge. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Although none of the provisions of this section have been spelled out in statutes before, the Commission had no special difficulty except with subsection (d). The Commission initially considered in the event of a dispute as to a transcript that a party should be allowed to submit the raw transcript of a challenged part of the record to the appellate court as an
§ 15A-1242. Defendant's election to represent himself at trial. — A
defendant may be permitted at his election to proceed in the trial of his case
without the assistance of counsel only after the trial judge makes thorough
inquiry and is satisfied that the defendant:

(1) Has been clearly advised of his right to the assistance of counsel,
including his right to the assignment of counsel when he is so entitled;
(2) Understands and appreciates the consequences of this decision; and
(3) Comprehends the nature of the charges and proceedings and the range
of permissible punishments. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section is based upon A.B.A. Standards, Function of the Trial Judge § 6.6.
After adoption of this section by the Commission the Supreme Court of the United
States decided Faretta v. California, 422 U.S. 806 (1975), holding that a person has a constitutional
right to refuse counsel and represent himself.

As written, the section does not conflict with Faretta, as the case stresses that the waiver of
counsel must be knowing and intelligent. The case does require that the judge exercise his
discretion to allow self-representation, however, once he finds that the criteria for waiver have
been met.

§ 15A-1243. Standby counsel for defendant representing himself. — When
a defendant has elected to proceed without the assistance of counsel, the trial
judge in his discretion may appoint standby counsel to assist the defendant when
called upon and to bring to the judge's attention matters favorable to the
defendant upon which the judge should rule upon his own motion. (1977, c. 711,
s. 1.)

OFFICIAL COMMENTARY

This section is based upon A.B.A. Standards, Function of the Trial Judge § 6.7.
It should be noted that the Commission's bill proposes amendments to G.S. 7A-452 to provide
for compensation of standby counsel.

§§ 15A-1244 to 15A-1250: Reserved for future codification purposes.

ARTICLE 74.


ARTICLE 75.

§§ 15A-1261 to 15A-1280: Reserved for future codification purposes.
This Subchapter attempts to gather in one place many of the provisions relating to sentencing and correctional procedures which previously were scattered among Chapter 15, Chapter 148 and case law. In addition it makes some substantial modification in current law or practice. Although in many provisions there is no longer any substantial identity between the two, this Subchapter used as a starting point the sentencing provisions of the Study Draft of the Federal Criminal Code. It might be helpful to point out some of the approaches incorporated in that federal study draft which were rejected by the Commission. Among these are the possibility of unconditional discharge of a person who had been convicted of an offense, a requirement that to place a defendant in prison rather than on probation required an affirmative finding of particular reasons by the court, the prohibition of a suspended sentence at the time probation was imposed and the use instead of a hearing to determine whether imprisonment should be imposed in case of a probation violation, and very substantial (as much as five years) mandatory parole as part of the sentence to imprisonment.

This Subchapter does not attempt to deal with "sentencing" that occurs without a judgment, particularly the matters of continuing prayer for judgment or the entry of a pre-judgment conditional discharge under G.S. 90-96. Although unrelated to sentencing, it was felt that provisions for commitment of persons found not guilty by reason of insanity appropriately could be located here as a "disposition of defendants."

**OFFICIAL COMMENTARY**

**ARTICLE 78.**

Order of Commitment to Imprisonment.

§ 15A-1301. Order of commitment to imprisonment when not otherwise specified. — When a judicial official orders that a defendant be imprisoned he must issue an appropriate written commitment order. (1977, c. 711, s. 1.)

**OFFICIAL COMMENTARY**

This section provides a blanket authorization for the preparation of orders of commitment when there is no other specific authorization. Specific provision for pretrial commitment is contained in G.S. 15A-521. G.S. 15A-1353 provides for the commitment of convicted defendants. This general provision would provide authority for commitment orders in connection with imprisonment for contempt and other instances when no specific provision is made.

Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or
§ 15A-1302 amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§§ 15A-1302 to 15A-1310: Reserved for future codification purposes.

ARTICLE 79.

§§ 15A-1311 to 15A-1320: Reserved for future codification purposes.

ARTICLE 80.

Defendants Found Not Guilty by Reason of Insanity.

§ 15A-1321. Civil commitment of defendants found not guilty by reason of insanity. — When a defendant charged with a crime is found not guilty by reason of insanity by jury verdict or upon motion pursuant to G.S. 15A-959(c), the trial court, upon such additional hearing as it determines to be necessary, may direct that there be civil proceedings to determine whether the person should be involuntarily committed pursuant to Article 5A of Chapter 122 of the General Statutes. The trial judge may issue an order in the same manner, upon the same grounds, and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122-58.3 or G.S. 122-58.18. Proceedings thereafter are in accordance with Article 5A, of Chapter 122 of the General Statutes. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

At the same time that recent constitutional decisions have focused on the commitment for incapacity of persons charged with crimes, parallel developments in the area of purely civil commitment have resulted in substantially modified and improved civil commitment procedure. This Article will take advantage of that new procedure.

There are three occasions for the consideration of standards of mental competency, each to be measured by a different test. Thus, in chronological order, the first test relates to the person's mental capacity to commit the crime, that is whether he has sufficient understanding and competency for society to hold him accountable for his acts. The second time at which a question of mental capacity is raised is when the trial occurs. The entirely different question then is whether the person has sufficient competency and understanding to participate in the trial and understand the significance of the events. For a person to have been found not guilty by reason of insanity, he must have failed the first test and passed the second test. At this juncture, society is faced with an individual who has been determined not responsible for a crime, but who is competent for some purposes. There must then be a determination whether that person is mentally incompetent and dangerous so that he must be committed on a basis unrelated to the fact that he has been accused of a crime and found not guilty. This is the third occasion.

Since the individual has been found not guilty of the crime, he is free from the criminal charge and is free to go if no other procedures are initiated. This Article provides that if it does appear to the judge that there is a question as to whether the person is mentally ill and dangerous, he may take the initial steps required to begin the standard procedures for determining whether or not a person should be civilly committed in accordance with the normal civil commitment procedure.
Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 84, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1322. Temporary restraint. — If the judge finds that there are reasonable grounds to believe that the defendant-respondent is mentally ill, as defined in G.S. 122-36, and is imminently dangerous to himself or others, and the judge determines upon appropriate findings of fact that it is appropriate to proceed under the provisions of this Article, he may order that the respondent be held under appropriate restraint pending proceedings under G.S. 15A-1321.

§§ 15A-1323 to 15A-1330: Reserved for future codification purposes.

ARTICLE 81.

OFFICIAL COMMENTARY

This Article collects various provisions that apply to sentencing without regard to the nature of the sentence.

§ 15A-1331. Authorized sentences; conviction. — (a) The criminal judgment entered against a person in either district or superior court may, unless the offense for which his guilt has been established is a capital offense, or unless a statute otherwise specifically provides, include a sentence in accordance with the provision of this Article to one or a combination of the following alternatives:

(1) Probation as authorized by Article 82, Probation, or a term of imprisonment as authorized by Article 88, Imprisonment; or

(2) A fine as authorized by Article 84, Fines; or

(3) Other punishment authorized or required by law.

(b) For the purpose of imposing sentence, a person has been convicted when he has been adjudged guilty or has entered a plea of guilty or no contest. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section collects in one place the possible sentence alternatives available upon conviction, but is intended to have no substantive impact. For example, if a provision defining an offense provided only a fine upon conviction, this section would not override it and permit improvement as well.
Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."
Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."
Session Laws 1977, c. 711, s. 36, contains a severability clause.
The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1332. Presentence reports. — (a) Presentence Reports Generally. — To obtain a presentence report, the court may order either a presentence investigation as provided in subsection (b) or a presentence commitment for study as provided in subsection (c).

(b) Presentence Investigation. — The court may order a probation officer to make a presentence investigation of any defendant. The court may order the investigation only after conviction unless the defendant moves for an earlier presentence investigation. A motion for an earlier presentence investigation may be addressed only to the judge of the session of court for which the defendant's case is calendared or, if the case has not been calendared, to a resident superior court judge if the case is in the jurisdiction of the superior court or to the chief district court judge if the case is in the jurisdiction of the district court. When the court orders a presentence investigation, the probation officer must promptly investigate all circumstances relevant to sentencing and submit either a written report or an oral report either on the record or with defense counsel and the prosecutor present. The report may include sentence recommendations only if such recommendations are requested by the court.

(c) Presentence Commitment for Study. — When the court desires more detailed information as a basis for determining the sentence to be imposed than can be provided by a presentence investigation, the court may, after conviction of a crime or crimes for which the defendant may be imprisoned for more than six months, and with the consent of the defendant, commit him for study to the Department of Correction for the shortest period necessary to complete the study, not to exceed 90 days. The period of commitment must end when the study is completed, and may not exceed 90 days. The Department must conduct a complete study of a defendant committed to it under this subsection, inquiring into such matters as the defendant's previous delinquency or criminal experience, his social background, his capabilities, his mental, emotional and physical health, and the availability of resources or programs appropriate to the defendant. Upon completion of the study or the end of the 90-day period, whichever occurs first, the Department of Correction must release the defendant to the sheriff of the county in which his case is docketed. The Department must forward the study to the clerk in that county including whatever recommendations the Department believes will be helpful to a proper resolution of the case. When a defendant is returned from a presentence commitment for study, the conditions of pretrial release which obtained for the defendant before the commitment continue until judgment is entered, unless the conditions are modified under the provisions of G.S. 15A-534(e). (1977, c. 711, s. 1.)
This section provides for two kinds of presentence reports: A presentence report rendered by a probation officer, (referred to in this Article as a "presentence investigation") and a presentence in-custody study of the defendant by the Department of Correction (referred to in this Article as a "presentence commitment for study"). The provisions in subsection (b) on presentence investigation by a probation officer are substantially similar to present law, except this subsection makes presentence reports entirely discretionary with the judge, and permits the investigation only after guilt has been established, unless the defendant moves for an earlier presentence investigation. The Commission was concerned about the outcome of the trial being affected by the gathering of evidence which, although inadmissible, might still be influential. Since the defendant in many cases, however, might be interested in obtaining sentencing as soon as possible following determination of guilt, the defendant should have the option of having the presentence report available immediately upon conviction if he so desires.

As a further safeguard, any presentence report must be known, or capable of being known, to the defendant or his lawyer. Thus, there can be no off-the-record oral report to the judge out of the presence of the defense counsel and district attorney. Subsection (c) is also similar to the provisions in present law except for the restriction that the presentence commitment for study be used only with the consent of the defendant. The Commission felt that the possibility of depriving the defendant of his liberty for a substantial period in a case in which he might be expected to be placed on probation was a possibility which should be avoided; therefore the procedure was made available only if the defendant consents.

§ 15A-1333. Availability of presentence report. — (a) Presentence Reports Not Public Records. — A written presentence report and the record of an oral presentence report are not public records and may not be made available to any person except as provided in this section.

(b) Access to Reports. — The defendant, his counsel, the prosecutor, or the court may have access at any reasonable time to a written presentence report or to any record of an oral presentence report.

(c) Expunging Reports. — On motion of the defendant, the court in its discretion may order a written presentence report or the record of an oral presentence report expunged from the court record. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section is aimed at forbidding any use of the presentence report except in connection with the case for which it was made. Under subsection (b) only the defendant, his counsel, the prosecutor, or the court may obtain access to the report and the court may later expunge any report if the defendant seeks such expunction.

§ 15A-1334. The sentencing hearing. — (a) Time of Hearing. — Unless the defendant waives the hearing, the court must hold a hearing on the sentence. Either the defendant or the State may, upon a showing which the judge determines to be good cause, obtain a continuance of the sentencing hearing.

(b) Proceeding at Hearing. — The defendant at the hearing may make a statement in his own behalf. The defendant and prosecutor may present witnesses and arguments on facts relevant to the sentencing decision and may cross-examine the other party's witnesses. No person other than the defendant, his counsel, the prosecutor, and one making a presentence report may comment to the court on sentencing unless called as a witness by the defendant, the prosecutor, or the court. Formal rules of evidence do not apply at the hearing.

(c) Sentence Hearing in Other District. — The judge who orders a presentence report may, in his discretion, direct that the sentencing hearing be held before him in another county or another judicial district during or after the session in which the defendant was convicted. If sentence is imposed in a county other than
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the one where the defendant was convicted, the clerk of the county where sentence is imposed must forward the records of the sentencing proceeding to the clerk of the county of conviction.

(d) Sentencing in capital cases shall be as set out in [G.S. 15A-2000 through 15A-2003]. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Primarily, this section codifies common law and constitutional provisions. It is not intended to require that the sentencing hearing be distinct from the trial itself. Under this section a sentencing hearing may be held immediately upon the return of the verdict or other determination of guilt. Subsection (b) contains a provision prohibiting in-court comments on sentencing by anyone other than one called as a witness. This was aimed at deterring incidents which sometimes occur in the more informal setting of a sentencing hearing. Subsection (c) presents the innovation of a sentencing hearing in a district other than the one where the trial was held, but only in cases in which the judge has ordered a presentence report.

§ 15A-1335. Resentencing after appellate review. — When a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section embodies generally the rule of North Carolina v. Pearce, 395 U.S. 711 (1969), but does not allow a more severe sentence even if intervening factors would argue for a more severe sentence, as the Pearce decision permits. The Commission felt that the circumstances under which this exception to the rule would apply are so rare as to not merit the difficulty of drafting an intelligible statement of the exception.

§§ 15A-1336 to 15A-1340: Reserved for future codification purposes.

ARTICLE 82.

Probation.

OFFICIAL COMMENTARY

This Article consolidates the various provisions on probation.

§ 15A-1341. Probation generally. — (a) Use of Probation. — A person who has been convicted of any noncapital criminal offense not punishable by a minimum term of life imprisonment may be placed on probation as provided in this Article.

(b) Supervised and Unsupervised Probation. — The court may place a person on supervised or unsupervised probation. A person on unsupervised probation is subject to all incidents of probation except supervision by a probation officer.

(c) Election to Serve Sentence. — Any person placed on probation may at any time during the probationary period elect to serve his suspended sentence of imprisonment in lieu of the remainder of his probation. (1977, c. 711, s. 1.)

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§ 15A-1342. OFFICIAL COMMENTARY

Subsection (a) contains an exhortation to judges first to consider placing convicted defendants on probation. The reminder is intended to be precatory and to provide no grounds for appeal by a person who is given a sentence of imprisonment. Subsection (b) specifies both supervised and unsupervised probation. These two categories replace the present probation and release on suspended sentence; in this Article unsupervised probation is the equivalent of the present release on suspended sentence without probation. The Commission felt that any convicted person should be able to choose to serve a sentence rather than probation, and thus drafted subsection (c).

Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1342. Incidents of probation. — (a) Period. — The court may place an offender on probation for a maximum of five years. The probation remains conditional and subject to revocation during the period of probation imposed, unless terminated as provided in subsection (b) or G.S. 15A-1341(c).

(b) Early Termination. — The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) if warranted by the conduct of the defendant and the ends of justice.

(c) Conditions; Suspended Sentence. — When the court places an offender on probation, it must determine conditions of probation as provided in G.S. 15A-1343. In addition, it must impose a suspended sentence of imprisonment, determined as provided in Article 88, Imprisonment, which may be activated upon violation of conditions of probation.

(d) Mandatory Review of Probation. — Each probation officer must bring all probationers assigned to him before a court with jurisdiction to review the probation when the probationer has served three years of a probationary period greater than three years. The court must review the case file of probationer so brought before it and determine whether to terminate his probation.

(e) Out-of-State Supervision. — Probationers are subject to out-of-state supervision under the provisions of G.S. 148-65.1.

(f) Appeal from Judgment of Probation. — A defendant may seek post-trial relief from a judgment which includes probation notwithstanding the authority of the court to modify or revoke the probation.

(g) Invalid Conditions; Timing of Objection. — A court may not revoke probation for violation of an invalid condition. The failure of a defendant to object to a condition of probation at the time it is imposed does not constitute a waiver of the right to object at a later time to the condition.

(h) Limitation on Jurisdiction to Alter or Revoke Unsupervised Probation. — In the judgment placing a person on unsupervised probation, the judge may limit jurisdiction to alter or revoke the sentence under G.S. 15A-1344. When jurisdiction to alter or revoke is limited, the effect is as provided in G.S. 15A-1344(b). (1977, c. 711, s. 1.)
§ 15A-1343.

OFFICIAL COMMENTARY

Subsections (a) to (f) codify present law and practice. Subsection (g) seeks to make clear the resolution of the dilemma a defendant is placed in when he is placed on probation with invalid conditions. The defendant wishes to contest the conditions but is afraid that if he does so he will be given an active sentence. Subsection (g) makes it clear that he may accept the probation and still contest the validity of the condition if his probation is later sought to be revoked for its violation. Present law provides that alteration or revocation of probation is possible by any judge, but only a judge who enters the order may alter a suspended sentence without probation.

Subsection (h), coupled with the concomitant § 15A-1344 attempts to strike a balance between members of the Commission who felt that both supervised and unsupervised probation should be treated the same, and those who felt the traditional arrangement should be retained (because of the lack of knowledge about an unsupervised probationer available to anyone other than the sentencing judge). The compromise is that a judge placing a defendant on unsupervised probation may specify that only he is to be able to alter the unsupervised probation. In the absence of such specification, however, any judge may do so.

§ 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) Appropriate Conditions. — When placing a defendant on probation, the court may, as a condition of the probation, require that during the period of probation the defendant comply with one or more of the following conditions:

1. Not commit any criminal offense.
2. Work faithfully at suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment.
3. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
4. Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on probation.
5. Support his dependents and meet other family responsibilities.
6. Make restitution or reparation for loss or injury resulting from the crime for which the defendant is convicted. When restitution or reparation is a condition of the sentence, the amount must be limited to that supported by the evidence. The court may direct a probation officer to fix the manner of performing the restitution or reparation.
7. Pay a fine authorized by Article 84, Fines.
8. Refrain from possessing a firearm or destructive device or other dangerous weapon unless granted written permission by the court or the probation officer.
9. Report to a probation officer at reasonable times and in a reasonable manner, as directed by the court or the probation officer.
10. Permit the probation officer to visit him at reasonable times at his home or elsewhere.
11. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
12. Answer all reasonable inquiries by the probation officer and obtain prior approval from the probation officer for any change in address or employment.
13. Promptly notify the probation officer of any change in address or employment.
14. Pay court costs and costs for appointed counsel or public defender to represent him in the case in which he was convicted.
15. Submit at reasonable times to warrantless searches by a probation officer of his person, and of his vehicle and premises while he is present, for purposes reasonably related to his probation supervision. The court
may not require as a condition of probation that the probationer submit to any other search that would otherwise be unlawful.

(16) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(17) Satisfy any other conditions reasonably related to his rehabilitation.

(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. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section specifies a number of conditions of probation, primarily ones that will be used fairly frequently, that may be imposed. The list is meant neither to be exclusive nor to suggest that these conditions should be imposed in all cases. Of the conditions listed the one that caused the greatest difficulty was number 15, dealing with searches. An initial determination of the Commission was to prohibit submission to search as a condition of probation. The present provision is one that attempts to respond to those who felt that the ability to search a probationer was an essential element of successful probation. It includes two important limits: (1) only a probation officer, and not a law-enforcement officer, may search the probationer under this condition, and (2) the search may be only for purposes reasonably related to the probation supervision.

§ 15A-1344. Response to violations; alteration and revocation. — (a) Authority to Alter or Revoke. — Except as provided in subsection (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. The district attorney of the district in which probation was imposed must be given reasonable notice if the hearing is to be held in any other district.

(b) Limits on Jurisdiction to Alter or Revoke Unsupervised Probation. — If the sentencing judge has entered an order to limit jurisdiction to consider a sentence of unsupervised probation under G.S. 15A-1342(h), a sentence of unsupervised probation may be reduced, terminated, continued, extended, modified, or revoked only by the sentencing judge or, if the sentence was sentenced.

(c) Procedure on Altering or Revoking Probation; Returning Probationer to District Where Sentenced. — When a judge reduces, terminates, extends, modifies, or revokes probation outside the county where the judgment was entered, the clerk must send a copy of the order and any other records to the court where probation was originally imposed. A court on its own motion may return the probationer to the district where probation was imposed or where the probationer resides for reduction, termination, continuation, extension, modification, or revocation of probation.

(d) Extension and Modification; Response to Violations. — At any time prior to the expiration or termination of the probation period, the court may after notice and hearing and for good cause shown extend the period of probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions of probation. The hearing may be held in the absence of the defendant, if he fails to appear for the hearing after a reasonable effort to notify him. If a defendant violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue him on probation, with or without modifying the
conditions, may place the defendant on special probation as provided in subsection (e), or, if continuation, modification, or special probation is not appropriate, may revoke the probation and activate the suspended sentence imposed at the time of initial sentencing. The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence. A sentence activated upon revocation of probation commences on the day probation is revoked and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period unless the revoking judge specifies that it is to run consecutively with the other period.

(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 consecutive or nonconsecutive, at whatever time or intervals within the period of probation the court determines. If imprisonment is for consecutive periods, the confinement may be in either the custody of the Department of Correction or a local confinement facility. Nonconsecutive periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. 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 the maximum penalty allowed by law for the offense, whichever is less. 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.

(f) Revocation after Period of Probation. — The court may revoke probation after the expiration of the period of probation if:

(1) Before the expiration of the period of probation the State has filed a written motion with the clerk indicating its intent to conduct a revocation hearing; and

(2) The court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Except for subsection (b), discussed in the commentary to G.S. 15A-1342, the first several subsections codify present law and practice. Subsection (e) permits the imposition of special probation, of the same kind that may be imposed in sentencing in the first instance under § 15A-1351(a), following a probation violation.

Subsection (f) provides that probation can be revoked and the probationer made to serve a period of active imprisonment even after the period of probation has expired if a violation occurred during the period and if the court was unable to bring the probationer before it in order to revoke at that time.

§ 15A-1345. Arrest and hearing on probation violation. — (a) Arrest for Violation of Probation. — A probationer is subject to arrest for violation of conditions of probation upon either an order for arrest issued by the court or upon the written request of a probation officer, accompanied by a written statement signed by the probation officer that the probationer has violated specified conditions of his probation. However, a probation revocation hearing under subsection (e) may be held without first arresting the probationer.

(b) Bail Following Arrest for Probation Violation. — If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534.
(c) When Preliminary Hearing on Probation Violation Required. — Unless the hearing required by subsection (e) is first held or the probationer waives the hearing, a preliminary hearing on probation violation must be held within five working days of an arrest of a probationer to determine whether there is probable cause to believe that he violated a condition of probation. Otherwise, the probationer must be released four working days after his arrest to continue on probation pending a hearing.

(d) Procedure for Preliminary Hearing on Probation Violation. — The preliminary hearing on probation violation must be conducted by a judge who is sitting in the county where the probationer was arrested or where probation was imposed. If no judge is sitting in the county where the hearing would otherwise be held, the hearing may be held anywhere in the judicial district. The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. At the hearing the probationer may appear and speak in his own behalf, may present relevant information, and may, on request, personally question adverse informants unless the court finds good cause for not allowing confrontation. Formal rules of evidence do not apply at the hearing. If probable cause is found or if the probable cause hearing is waived, the probationer may be held for a revocation hearing, subject to release under the provisions of subsection (b). If the hearing is held and probable cause is not found, the probationer must be released to continue on probation.

(e) Revocation Hearing. — Before revoking or extending probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation and must make findings to support the decision and a summary record of the proceedings. The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. The notice, unless waived by the probationer, must be given at least 24 hours before the hearing. At the hearing, evidence against the probationer must be disclosed to him, and the probationer may appear and speak in his own behalf, may present relevant information, and may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation. The probationer is entitled to be represented by counsel at the hearing and, if indigent, to have counsel appointed. Formal rules of evidence do not apply at the hearing, but the record or recollection of evidence or testimony introduced at the preliminary hearing on probation violation are inadmissible as evidence at the revocation hearing. When the violation alleged is the nonpayment of fine or costs, the issues and procedures at the hearing include those specified in G.S. 15A-1864 for response to nonpayment of fine.

(1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section also codifies present law and practice. Subsections (c) and (d) in particular respond primarily to the dictates of Gagnon v. Scarpelli, 411 U.S. 778 (1973) which applies the due process requirements first stated in Morrissey v. Brewer, 408 U.S. 471 (1972) to probation revocation. An important point to notice is that the provisions permit the consolidation of the preliminary hearing on revocation and the revocation hearing if the revocation hearing is held within four working days of the probationer's arrest. The preliminary hearing on a probation violation may, of course, be omitted if the probationer is not taken into custody before his revocation hearing, since the preliminary hearing serves roughly the same purpose as the appearance before a magistrate following a conventional arrest for a crime. In granting entitlement to the probationer to representation by counsel at the revocation hearing, subsection (e) goes beyond the Supreme Court requirement and beyond the present requirements of G.S. 7A-451 which provides counsel only "if confinement is likely to be adjudged."
§ 15A-1346. Commencement of probation; multiple sentence. — (a) Commencement of Probation. — Except as provided in subsection (b), a period of probation commences on the day it is imposed and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period.

(b) Consecutive and Concurrent Sentences. — If a period of probation is being imposed at the same time a period of imprisonment is being imposed or if it is being imposed on a person already subject to an undischarged term of imprisonment, the period of probation may run either concurrently or consecutively with the term of imprisonment, as determined by the court. If not specified, it runs concurrently. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Probation would be stayed pending appeal under the proposed G.S. 15A-1451(a)(4), although under subsection (a) it would start on imposition of sentence. Subsection (b) clarifies the point that a probationary sentence may be imposed to run consecutively after a period of active imprisonment for a different crime.

§ 15A-1347. Appeal from revocation of probation or imposition of special probation upon violation. — When a district court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, the defendant may appeal to the superior court for a de novo revocation hearing. At the hearing the probationer has all rights and the court has all authority they have in a revocation hearing held before the superior court in the first instance. Appeals from lower courts to the superior courts from judgments revoking probation may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special superior court judge residing in the district. When a superior court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, either in the first instance or upon a de novo hearing after appeal from a district court, the defendant may appeal under G.S. 7A-27. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section carries forward present law, except that under present law, upon appeal to superior court from a revocation violation occurred, must simply affirm the response to the violation occurred, must simply affirm the response to the revocation imposed by the lower court judge. This section intends that the superior court judge at the hearing have complete freedom if he finds a revocation; even if the lower court judge revoked the probation, the superior court judge may instead continue the probationer on probation or alter the terms of his probation.

§§ 15A-1348 to 15A-1350: Reserved for future codification purposes.

ARTICLE 83.

Imprisonment.

§ 15A-1351. Sentence of imprisonment; incidents; special probation. — (a) The judge may sentence a defendant convicted of an offense for which the maximum penalty does not exceed 10 years 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. 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 the maximum penalty allowed by law for the offense, whichever is less, and no confinement other than an activated suspended sentence may be required beyond two years of conviction. 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 period of probation, including the period of imprisonment required for special probation, may not exceed five years. The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences.

(b) A sentence to imprisonment must impose maximum term and may impose a minimum term. The judgment may state the minimum term or may state that a term constitutes both the minimum and maximum terms. If the judgment states no minimum term, the defendant becomes eligible for parole in accordance with G.S. 15A-1371(a).

(c) Reduction of Minimum. — A superior court judge, or any district court judge if the offender is serving a sentence imposed in district court, sitting or resident in the district where the offender was sentenced may remove or reduce an imposed minimum term at any time upon motion of the Department of Correction and Parole Commission. When the Department of Correction moves that a minimum sentence be removed or reduced, it must send a copy of the motion to the district attorney in the district where the defendant was convicted.

(d) Alternative to Minimum Term. — In lieu of imposing a minimum term, the court may recommend to the Parole Commission a minimum period of imprisonment the offender should serve before being granted parole. The recommendation has the effect provided in G.S. 15A-1371(c).

(e) Youthful Offenders. — If an offender is under the age of 21 years at the time of conviction, the court may sentence the offender as a youthful offender under the provisions of Article 3A of Chapter 148 of the General Statutes.

(f) Work Release. — The sentencing court may recommend that the sentenced offender be granted work release as authorized in G.S. 148-38.1. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The idea of subsection (a), similar to G.S. 15-197.1, is to permit a "taste of jail" to the convicted offender without subjecting him to a full term of imprisonment. A number of points about this provision are worthy of note: the judgment may designate that the active time be served either in the Department of Correction or in a local jail; the active time can be either consecutive or nonconsecutive (that is, the judge may direct that the defendant serve a three weeks' imprisonment immediately after conviction or he may direct that the defendant serve 10 two-day weekends over a 10 week period); the total length of time that may be served is limited — only if the maximum allowable imprisonment for the offense is two years or more may the defender serve as much as six months in prison under special probation; otherwise he is limited to one fourth the maximum penalty allowed by law (in the case of the six-month misdemeanor, for example, the period of imprisonment under special probation would be limited to one and one-half months); no imprisonment as part of special probation may occur more than two years after a person's conviction (that is, one of the weekends in jail an offender is supposed to serve could not occur in February, 1980, if he were convicted in January, 1978); credit for time in confinement prior to conviction does not have to be credited to the
time of imprisonment under special probation — it may be credited instead to the suspended sentence.

Subsection (b) contemplates the end of “flat time”; every sentence either by the terms of the judgment or by operation of law will have a minimum and a maximum term (although the judgment could specify that the minimum and maximum are the same). An especially important point is that by operation of law if the judge specifies no minimum term and if no minimum term is required by law, the minimum will automatically be regarded as zero years (which means under the terms of G.S. 15A-1871 the prisoner would be eligible for parole immediately). The significance of the minimum is drastically altered from present law. Under present law a minimum term serves only to prevent parole of the person before he serves one fourth of that minimum term; its real effect under present law is to give authority to the Secretary of Correction to grant conditional release to the inmate during the period following service of the minimum term. That effect is totally obliterated by the provisions of this Subchapter. Instead, the minimum term serves as a much more substantial limit on the authority of the Parole Commission to parole a sentenced offender and the device of conditional release is abolished, an effect resulting from the provisions of G.S. 15A-1371(a). Since the minimum term of imprisonment is a more limiting factor, subsection (c) permits reduction of a minimum sentence. It is intended to be used when the Department of Correction has determined from its experience with an inmate that earlier release than that allowed by the minimum sentence would be appropriate. The requirement that a copy of the motion for reduction of a minimum sentence go to the district attorney is intended to deter abuses of the power.

Subsection (d) in conjunction with the provisions of G.S. 15A-1371(c), gives the judge a somewhat more flexible alternative to the imposition of a minimum sentence; he may recommend a minimum that the sentenced offender should serve before parole, but the Parole Commission may override that recommendation if, and only if, it makes a written statement of its reasons for doing so.

Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: “This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant’s guilt was established or when judgment was entered against him, except that the provisions of Article 85, ‘Parole’ shall not apply to persons sentenced before July 1, 1978.”

Session Laws 1977, c. 711, s. 34, provides: “All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose.”

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The “Official Comments” under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1352. Commitment to Department of Correction or local confinement facility. — A person sentenced to imprisonment for a felony or a misdemeanor under this Article or for nonpayment of a fine under Article 84, Fines, must be committed for the term designated by the court to the custody of the Department of Correction or to a local confinement facility. If the sentence imposed is for a period less than 180 days, the commitment must be to a facility other than one maintained by the Department of Correction. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section makes clear that a commitment is only to the custody of the Department of Corrections, not to any particular facility, including Central Prison, operated by that Department. It also provides that short sentences of imprisonment must be to local jails.

§ 15A-1353. Order of commitment when imprisonment imposed; release pending appeal. — (a) When a sentence includes a term or terms of imprisonment, the court must issue an order of commitment setting forth the judgment. Unless otherwise specified in the order of commitment, the date of the order is the date service of the sentence is to begin.
§ 15A-1354. Concurrent and consecutive terms of imprisonment. —  

(a) Authority of Court. — When multiple sentences of imprisonment are imposed on a person at the same time or when a term of imprisonment is imposed on a person who is already subject to an undischarged term of imprisonment, including a term of imprisonment in another jurisdiction, the sentences may run either concurrently or consecutively, as determined by the court. If not specified, sentences shall run concurrently.

(b) Effect of Consecutive Terms. — In determining the effect of consecutive sentences imposed under authority of this Article and the manner in which they will be served, the Department of Correction must treat the defendant as though he has been committed for a single term with the following incidents:

(1) The maximum prison sentence consists of the total of the maximum terms of the consecutive sentences; and

(2) The minimum term, if any, consists of the total of the minimum terms of the consecutive sentences. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section authorizes consecutive sentences primarily on minimum terms, in order to determine parole eligibility.
§ 15A-1355. Calculation of terms of imprisonment. — (a) Commencement of Sentence. — The commencement date of a sentence of imprisonment under authority of this Article is as provided in G.S. 15A-1358(a), except when the sentence is a consecutive sentence. When it is a consecutive sentence, it commences to run when the State has custody of the defendant following completion of the prior sentence.

(b) Credit. — To the extent that credit has not been given in the judgment or parole revocation order, the Department of Correction must give credit toward service of the maximum term and any minimum term of a sentence to imprisonment for:

(1) All time spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence or for all time spent in a mental institution following a civil commitment arising from the criminal proceedings; and

(2) All time spent in confinement in another jurisdiction as a result of conviction for an offense which is based on the same facts and which contains all the elements of the offense for which sentence is being served in this State or of a lesser included offense.

(c) Credit for Good Behavior. — The Department of Correction may give credit toward service of the maximum term and any minimum term of imprisonment for allowances of time as provided in rules and regulations made under G.S. 148-11 and G.S. 148-13. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsection (b) allows direct crediting by the Department of Correction for appropriate time which was not credited at judgment. Crediting by the judge is left to the provisions of Article 19A of General Statutes Chapter 15.

§§ 15A-1356 to 15A-1360: Reserved for future codification purposes.

ARTICLE 84.

Fines.

§ 15A-1361. Authorized fines. — A person who has been convicted of an offense may be ordered to pay a fine as provided by law. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section merely states that payment of a fine is an appropriate penalty when law otherwise provides for a fine as a punishment available for that offense.

Editor's Note. — Session Laws 1977, c. 711, s. 89, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.
§ 15A-1362. Imposition of fines. — (a) General Criteria. — In determining the method of payment of a fine, the court should consider the burden that payment will impose in view of the financial resources of the defendant. 

(b) Installment or Delayed Payments. — When a defendant is ordered to pay a fine, the court may provide for the payment to be made within a specified period of time or in specified installments. If no such provision is made a part of the sentence, the fine is payable forthwith.

(c) Nonpayment. — When a defendant is ordered, other than as a condition of probation, to pay a fine, costs, or both, the court may impose at the same time a sentence to be served in the event that the fine is not paid. The court also may impose an order that the defendant appear, if he fails to make the required payment, at a specified time to show cause why he should not be imprisoned. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsection (a) is a precatory provision urging that fines be tailored to the financial resources of the defendant and not be always imposed at the same amount for the same offense.

Subsection (b) specifically authorizes the practice of permitting installment payment of the fine or deferred payment of a fine, but only if such payment is specified in the judgment.

Subsection (c) specifically authorizes the suspended sentence to encourage payment of the fine. Although this section does not say so, it is intended that the suspended sentence is terminated upon payment of the fine unless the fine is merely one condition of a probationary sentence.

§ 15A-1363. Remission of a fine or costs. — A defendant who has been required to pay a fine or costs, including a requirement to pay fine or costs as a condition of probation, or a prosecutor, may at any time petition the sentencing court for a remission or revocation of the fine or costs or any unpaid portion of it. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or costs no longer exist, that it would otherwise be unjust to require payment, or that the proper administration of justice requires resolution of the case, the court may remit or revoke the fine or costs or the unpaid portion in whole or in part or may modify the method of payment. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section gives specific approval to the practice of removing or reducing an unpaid fine that is due. Three grounds for this act are stated: that the circumstances warranting imposition of the fine no longer exist; that to require payment would be unjust; or the proper administrator of justice declares resolution of the case. The first two grounds go to changed factual circumstances or changed ability of the defendant to pay. That last ground is aimed at the situation in which an unpaid fine will apparently go unpaid forever and the court wishes to close the case.

§ 15A-1364. Response to nonpayment. — (a) Response to Default. — When a defendant who has been required to pay a fine or costs or both defaults in payment or in any installment, the court, upon the motion of the prosecutor or upon its own motion, may require the defendant to appear and show cause why he should not be imprisoned or may rely upon a conditional show cause order
entered under G.S. 15A-1362(c). If the defendant fails to appear, an order for his arrest may be issued.

(b) Imprisonment; Criteria. — Following a requirement to show cause under subsection (a), unless the defendant shows inability to comply and that his nonpayment was not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, the court may order the suspended sentence, if any, activated, or, if the law provides no term of imprisonment for the offense for which the defendant was convicted or if no suspended sentence was imposed, the court may order the defendant imprisoned for a term not to exceed 30 days. The court, before activating a sentence of imprisonment, may reduce the sentence. The court may provide in its order that payment or satisfaction at any time of the fine and costs imposed by the court will entitled the defendant to his release from the imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.

(c) Modification of Fine or Costs. — If it appears that the default in the payment of a fine or costs is not attributable to failure on the defendant’s part to make a good faith effort to obtain the necessary funds for payment, the court may enter an order:

(1) Allowing the defendant additional time for payment; or
(2) Reducing the amount of the fine or costs or of each installment; or
(3) Revoking the fine or costs or the unpaid portion in whole or in part.

(d) Organizations. — When an organization is required to pay a fine or costs or both, it is the duty of the person or persons authorized to make disbursement of the assets of the organization to make payment from assets of the organization, and a failure to do so constitutes contempt of court. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section is intended to respond to the demands of Tate v. Short, 401 U.S. 395 (1970), holding unconstitutional the imprisonment of a defendant who does not pay his fine because he is unable to. When imprisonment is appropriate it is for the period specified in the suspended sentence. If there is no suspended sentence it is an automatic 30-day jail term. Even after being jailed, however, the defendant may be released if he pays the fine. Subsection (d) provides jailing of a corporate officer who refuses to pay a fine imposed against the corporation.

§ 15A-1365. Judgment for fines docketed; lien and execution. — When a defendant has defaulted in payment of a fine or costs, the judge may order that the judgment be docketed. Upon being docketed, the judgment becomes a lien on the real estate of the defendant in the same manner as do judgments in civil actions. Executions on docketed judgments may be stayed only when an appeal is taken and security is given as required in civil cases. If the judgment is affirmed on appeal to the appellate division, the clerk of the superior court, on receipt of the certificate from the appellate division, must issue execution on the judgment. No execution may issue if the defendant elects to serve the suspended sentence or, if no suspended sentence was imposed, a term of 30 days. (1977, c. 711, s. 1.)
§ 15A-1366 to 15A-1370: Reserved for future codification purposes.

ARTICLE 85.

Parole.

§ 15A-1371. Parole eligibility, consideration, and refusal. — (a) Eligibility. — Unless his sentence includes a minimum sentence, a prisoner serving a term other than life imprisonment or one included in a sentence of special probation imposed under authority of this Subchapter is eligible for release on parole at any time. A prisoner whose sentence includes a minimum term of imprisonment imposed under authority of this Subchapter is eligible for release on parole only upon completion of the service of that minimum term or one fifth of the maximum penalty allowed by law for the offense for which the prisoner is sentenced, whichever is less, less any credit allowed under G.S. 15A-1355(b) and (c). Under this section, when the maximum allowed by law for the offense is life imprisonment, one fifth of the maximum is calculated as 20 years. A prisoner whose sentence includes a minimum sentence imposed only because required by law is eligible for release upon completion of one fourth of the minimum time.

(b) Consideration for Parole. — The Parole Commission must consider the desirability of parole for each person sentenced for a maximum term of 18 months or longer:

(1) At least 60 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year; or

(2) At least 60 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must issue a formal order granting or denying parole. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted and must issue a formal order granting or denying parole at least once a year.

(c) Statement of Reasons for Release before Minimum. — If parole is granted before the expiration of a minimum period of imprisonment imposed by the court under G.S. 15A-1351(b) or recommended by the court under G.S. 15A-1351(d), the Commission must state in writing the reasons why the imposed or recommended minimum was not followed.

(d) Criteria. — The Parole Commission may refuse to release on parole a prisoner it is considering for parole if it believes:

(1) There is a substantial risk that he will not conform to reasonable conditions of parole; or

(2) His release at that time would unduly depreciate the seriousness of his crime or promote disrespect for law; or

(3) His continued correctional treatment, medical care, or vocational or...
other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date; or

(4) There is a substantial risk that he would engage in further criminal conduct.

(e) Refusal of Parole. — A prisoner who has been granted parole may elect to refuse parole and to serve the remainder of his term of imprisonment.

(f) Mandatory Parole at End of Felony Term. — No later than six months prior to completion of his maximum term, the Parole Commission must parole every person convicted of a felony and sentenced to a maximum term of not less than 18 months of imprisonment, unless:

(1) The person is to serve a period of probation following his imprisonment;
(2) The person has been reimprisoned following parole as provided in G.S. 15A-1873(e); or
(3) The Parole Commission finds facts demonstrating a strong likelihood that the health or safety of the person or public would be endangered by his release at that time.

(g) Automatic Parole in Absence of Finding. — A prisoner eligible for parole under subsection (a) and serving a sentence of not less than six months for a misdemeanor or serving a sentence not less than six months nor as great as 18 months for a felony must be released on parole when he completes service of one third of his maximum sentence unless the Parole Commission finds in writing that:

(1) There is a substantial risk that he will not conform to reasonable conditions of parole; or
(2) His release at that time would unduly depreciate the seriousness of his crime or promote disrespect for law; or
(3) His continued correctional treatment, medical care, or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date; or
(4) There is a substantial risk that he would engage in further criminal conduct.

If a prisoner is released on parole by operation of this subsection, the term of parole is the unserved portion of the sentence to imprisonment, and the conditions of parole, unless otherwise specified by the Parole Commission, are those authorized in G.S. 15A-1874(b)(4) through (10). (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsection (a) encompasses the important provision which gives the judge's minimum term considerably more bite than it has under present law. Unless the minimum term of imprisonment is particularly long, the Parole Commission must respect that minimum and the inmate cannot be paroled before that minimum is served. This subsection does place a limit on the effective minimum, however. If the minimum which the judge imposes is greater than one fifth of the maximum penalty allowed by law, then he is eligible for release when he has served one fifth of that maximum. Notice that the limit is based on the maximum penalty allowed by law and not on the maximum term which the judge actually imposes. The Commission wished to avoid the circumstance which occurs under present law in which the judge manipulates the length of the sentence imposed in order to affect the date for which the defendant is eligible for release on parole. This means that a judge if he wished could sentence a safecracker to a prison term of six to 10 years and the offender could not be released on parole until he had served the full six years, since six years is one fifth of the maximum penalty allowed by law. On the other hand, if a judge sentenced the offender to a term of nine to 10 years, the practical effect would be the same as the earlier example. Since the minimum term exceeded one fifth of the maximum allowed by law, he would continue to be eligible for release after serving six years.

Subsection (b) does two important things: (1) it requires annual review of each inmate's case as soon as he is eligible for parole and annually thereafter until he is released. The subsection does not, however, have anything to say about the procedure to be followed in this
consideration for parole. The subsection also requires that any time the Parole Commission is considering for release one who has served less than half the maximum term it must notify the district attorney in advance and he, in turn, may require that the consideration be made publicly. The Commission added this provision in an attempt to provide some assurance against the feeling sometimes expressed that parole is granted without adequate knowledge of the facts of the case.

Subsection (c) was discussed in the commentary on § 15A-1351(d). Subsection (d) states the reasons why parole may be denied, but it does not require a written finding or other written statement. The Commission believes that this list embodies all of the legitimate reasons for denying parole.

Subsection (e) grants the offender the same kind of election he has in the case of probation and fine.

Editor's Note. — Session Laws 1977, c. 711, s. 38, provides: 'The eligibility for parole and work release of prisoners not specified in G.S. 15A-1371(a) is determined by the law applicable prior to the effective date of this act. In applying G.S. 15A-1371(a) to sentences entered before the effective date of this act, a sentence to an absolute term of years, with no minimum, is regarded as having a minimum term equal to the absolute term."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, "Parole" shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1372. Length and effect of parole term. — (a) Minimum Term of Parole. — The term of parole for any person released from imprisonment may be no less than:

(1) One year, if the remainder of the maximum term of imprisonment is one year or more; or
(2) The remainder of the maximum term, if the remainder of the term of imprisonment is less than one year.

(b) Maximum Term of Parole. — The maximum term of parole is the lesser of the following:

(1) The remainder of the maximum term; or
(2) Five years when the maximum prison sentence imposed is greater than 20 years; or
(3) Three years when the maximum prison sentence imposed is greater than 10 years but no greater than 20 years; or
(4) Two years when the maximum prison sentence is imposed is not greater than 10 years.

(c) Termination of Sentence. — When a parolee completes his period of parole, the sentence or sentences from which he was paroled are terminated. (1977, c. 711, s. 1.)
§ 15A-1373. Incidents of parole. — (a) Conditionality of Parole. — Unless terminated sooner as provided in subsection (b), parole remains conditional and subject to revocation.

(b) Early Termination. — The Parole Commission may terminate a period of parole and discharge the parolee at any time after the expiration of one year of successful parole if warranted by the conduct of the parolee and the ends of justice.

(c) Modification of Conditions. — The Parole Commission may for good cause shown modify the conditions of parole at any time prior to the expiration or termination of the period for which the parole remains conditional.

(d) Effect of Violation. — If the parolee violates a condition at any time prior to the expiration or termination of the period, the Commission may continue him on the existing parole, with or without modifying the conditions, or, if continuation or modification is not appropriate, may revoke the parole as provided in G.S. 15A-1376 and reimprison the parolee for a term consistent with the following requirements:

1. The recommitment must be for the unserved portion of the maximum term of imprisonment imposed by the court under G.S. 15A-1351, or six months, whichever is greater.

2. The prisoner must be given credit against the term of recommitment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1376.

(e) Re-parole. — A prisoner who has been reimprisoned following parole may be re-paroled by the Parole Commission subject to the provisions which govern initial parole. In the event that a defendant serves the final six months of his maximum imprisonment as a result of being recommitted for violation of parole, he may not be required to serve a further period on parole.

(f) Timing of Revocation. — The Parole Commission may revoke parole for violation of a condition during the period of parole. The Commission also may revoke following the period of parole if:

1. Before the expiration of the period of parole, the Commission has recorded its intent to conduct a revocation hearing, and

2. The Commission finds that every reasonable effort has been made to notify the parolee and conduct the hearing earlier. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The Commission here declines to give to the parolee whose parole is revoked credit against the remainder of his sentence when he is reimprisoned for the period of time spent on parole prior to revocation. There is at least a minimum six months period on reimprisonment so that even if the parolee has very little time remaining on his active sentence, he still must serve six months in prison upon revocation. Under subsection (e) the recommitted parolee is still subject to the provisions of automatic parole at the end of his term unless he has served out the entire period of his imprisonment.

Subsection (f) provides for revocation and reimprisonment for a parolee after the period of parole if a parole violation occurred during the period of parole. This provision is aimed at the situation in which the violator is outside the jurisdiction and inaccessible earlier. As a precaution against abuse, the subsection requires that the intention to hold a revocation hearing be recorded prior to the expiration of the period of parole and requires a finding that every reasonable effort was made to conduct the hearing earlier.
§ 15A-1374. Conditions of parole. — (a) In General. — The Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(b) Appropriate Conditions. — As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

1. Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

2. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

3. Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

4. Support his dependents and meet other family responsibilities.

5. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

6. Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

7. Permit the parole officer to visit him at reasonable times at his home or elsewhere.

8. Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

9. Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

10. Promptly notify the parole officer of any change in address or employment.

11. Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful.

12. Satisfy other conditions reasonably related to his rehabilitation. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The provisions on conditions of parole are parallel to those on conditions of probation, including the provision on search. The search as a condition of parole may be made only by a parole officer.

§ 15A-1375. Commencement of parole; multiple sentences. — A period of parole commences on the day the prisoner is released from imprisonment. Periods of parole run concurrently with any federal or State prison, jail, probation, or parole term to which the defendant is subject during the period. (1977, c. 711, s. 1.)
§ 15A-1376. Arrest and hearing on parole violation. — (a) Arrest for Violation of Parole. — A parolee is subject to arrest for violation of conditions of parole only upon the issuance of an order of temporary or conditional revocation of parole by the Parole Commission. However, a parole revocation hearing under subsection (e) may be held without first arresting the parolee. (b) When and Where Preliminary Hearing on Parole Violation Required. — Unless the hearing required by subsection (e) is first held or the parolee waives the hearing, a preliminary hearing on parole violation must be held reasonably near the place of the alleged violation or arrest and within four working days of the arrest of a parolee to determine whether there is probable cause to believe that he violated a condition of parole. Otherwise, the parolee must be released four working days after his arrest to continue on parole pending a hearing. (c) Officers to Conduct Hearing. — The preliminary hearing on parole violation must be conducted by a judicial official, or by a hearing officer designated by the Parole Commission. No person employed by the Department of Correction may serve as a hearing officer at a hearing provided in this section unless he is a member of the Parole Commission or is employed solely as a hearing officer. (d) Procedure for Preliminary Hearing on Parole Violation. — The Department of Correction must give the parolee notice of the preliminary hearing and its purpose, including a statement of the violations alleged. At the hearing, the parolee may appear and speak in his own behalf, may present relevant information, and may, on request, personally question witnesses and adverse informants, unless the court finds good cause for not allowing confrontation. If the person holding the hearing determines there is probable cause to believe the parolee violated his parole, he must summarize the reasons for his determination and the evidence he relied on. Formal rules of evidence do not apply at the hearing. If probable cause is found, the parolee may be held in the custody of the Department of Correction to serve the appropriate term of imprisonment, subject to the outcome of a revocation hearing under subsection (e). (e) Revocation Hearing. — Before finally revoking parole, the Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The hearing is governed by the provisions of Article 3 of Chapter 150A of the General Statutes except: (1) The parolee is entitled to appear and speak in his own behalf and to confront and cross-examine adverse witnesses unless good cause is found for not allowing confrontation; and (2) The hearing examiner must meet the requirements of subsection (c). (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Like the parallel provisions on probation, this section carries forward existing law and practice and conforms procedure requirements for those demanded by the United States Supreme Court in Morrissey v. Brewer, 408 U.S. 471 (1972). The parolee's right to counsel is left to the provisions of G.S. 148-62.1. The provision of subsection (c) goes beyond the constitutional requirements and directs that the hearing examiner in any of the required hearings not be a person who holds some other job with the Department of Corrections which might be seen as creating a
kind of "conflict of interest." The only instance in which an employee of the Department of Corrections may be used as the hearing examiner is either if he is a member of the Parole Commission or if his sole job is being hearing examiner.

§ 15A-1377. Appeal from revocation of parole. — A person whose parole has been revoked may appeal the revocation under the provisions of Article 4 of Chapter 150A of the General Statutes. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Again, the Commission merely relies upon the provisions of the Administrative Procedure Act to guide appeal from a parole revocation.

§§ 15A-1378 to 15A-1380: Reserved for future codification purposes.

ARTICLE 86.

§§ 15A-1381 to 15A-1390: Reserved for future codification purposes.

ARTICLE 87.

§§ 15A-1391 to 15A-1400: Reserved for future codification purposes.

SUBCHAPTER XIV. CORRECTION OF ERRORS AND APPEAL.

ARTICLE 88.

Post-Trial Motions and Appeal.

§ 15A-1401. Post-trial motions and appeal. — Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

(1) Motion for appropriate relief, as provided in Article 89.

(2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.

(3) Appeal, as provided in Article 91. (1977, c. 711, s. 1.)

Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§§ 15A-1402 to 15A-1410: Reserved for future codification purposes.
§ 15A-1411. Motion for Appropriate Relief and Other Post-Trial Relief.

OFFICIAL COMMENTARY

The motion for appropriate relief provided in this Article provides a single, unified procedure for raising at the trial level errors which are asserted to have been made during the trial. We here provide a “motion in the cause” which may be used to seek any of the relief formerly available by motions in arrest of judgment, motions to set aside the verdict, motions for new trial, post-conviction proceedings, coram nobis and all other post-trial motions or procedures. Under this procedure no significance will attach to the name given a motion made at the end of the trial or after the trial, but rather the essential tasks will be to point out the error which is asserted to have been committed and to ask for relief appropriate to correct that error. To this end this Article lists errors which may be raised by motions made in the trial court, sets out the time limits for seeking particular types of relief by motion, and enumerates relief available.

One objective is the elimination of formal lists of motions to be recited at the end of the trial and to move more directly to the problem and its solution. This statute, designed to make the practice simple and eliminate traps for the unwary, appears more complicated in statutory statement than our former codifications. The reason is obvious. Where we may have provided before, for example, for a “motion for a new trial,” with a very simple statement in the statute, it was necessary to look to case law, other statutes, and in some instances the rules of civil procedure, for a more complete exposition of what those terms meant. These statutes are designed to substantially reduce that search and bring most of these ideas together in one place.

It should be noted that the “post trial motions” Article has been drawn with an eye to the “Appeals” Article which follows in Article 91. An attempt has been made to maximize the capability of correcting errors at trial level in order to avoid the necessity of appeal. On the other hand, when an error has been pointed out in the trial by appropriate objection, there has not been imposed a requirement for making formal motions after trial solely for the purpose of preserving the right to appeal.

As the phrase in the title, “and Other Post Trial Relief,” indicates, this “motion in the cause” also may be used for post-trial functions other than the correction of errors. For instance, a defendant who has served his sentence to confinement could, pursuant to § 15A-1415(d)(9) utilize this procedure to assert his right to release.

§ 15A-1411. Motion for appropriate relief. — (a) Relief from errors committed in the trial division, or other post-trial relief, may be sought by a motion for appropriate relief. Procedure for the making of the motion is as set out in G.S. 15A-1420.

(b) A motion for appropriate relief, whether made before or after the entry of judgment, is a motion in the original cause and not a new proceeding.

(c) The relief formerly available by motion in arrest of judgment, motion to set aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all other post-trial motions is available by motion for appropriate relief. The availability of relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section is designed to make clear that theimple motion in the original proceeding provided for here is available for assertion of the right to relief which formerly could have been rovided by any of a variety of procedures, as escribed in subsection (c). Of course it would be impossible to eliminate the writ of habeas corpus as the means of seeking relief where that writ is applicable. However, there should be substantial overlap in some areas and the system here, because of its simplicity, is likely to be the easier method of presenting an issue in many cases.
§ 15A-1412. Provisions of Article procedural. — The provision in this Article for the right to seek relief by motion for appropriate relief is procedural and is not determinative of the question of whether the moving party is entitled to the relief sought or to other appropriate relief. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section makes clear that this Article creates a procedural device by which asserted errors can be raised. That necessitates, at some points, the listing of errors which may be asserted at certain times. A casual reading might create the false impression that providing the procedural device for litigating the question in some way implies that there is a right to relief simply by reason of the error's assertion. Of course that is not true and the question of whether there was some error, and if so whether it warrants the relief sought, are questions to be determined on the merits, utilizing the procedural device provided here.

§ 15A-1413. Trial judges empowered to act. — (a) A motion for appropriate relief made pursuant to G.S. 15A-1415 may be heard and determined in the trial division by any judge who is empowered to act in criminal matters in the judicial district and trial division in which the judgment was entered.

(b) The judge who presided at the trial is empowered to act upon a motion for appropriate relief made pursuant to G.S. 15A-1414. He may act even though he is in another district or even though his commission has expired.

(c) When a motion for appropriate relief may be made before a judge who did not hear the case, he may, if it is practicable to do so, refer all or a part of the matter for decision to the judge who heard the case. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Most motions made at the end of trial will be heard by the judge who presided. As has been true in coram nobis, post-conviction proceedings and habeas corpus, matters which may be raised some time after the trial must in some instances be heard by a different judge, and appropriate authority is granted for that judge to act. However, it frequently will be preferable for the judge who heard the case to hear the motion because of the possibility of eliminating lengthy familiarization proceedings and papers. This section provides as fully as possible for that practice.

§ 15A-1414. Motion by defendant for appropriate relief made within 10 days after verdict. — (a) After the verdict but not more than 10 days after entry of judgment, the defendant by motion may seek appropriate relief for any error committed during or prior to the trial.

(b) Unless included in G.S. 15A-1415, all errors, including but not limited to the following, must be asserted within 10 days after entry of judgment:
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(1) Any error of law, including the following:
   a. The court erroneously failed to dismiss the charge prior to trial pursuant to G.S. 15A-954.
   b. The court’s ruling was contrary to law with regard to motions made before or during the trial, or with regard to the admission or exclusion of evidence.
   c. The evidence, at the close of all the evidence, was insufficient to justify submission of the case to the jury, whether or not a motion so asserting was made before verdict.
   d. The court erroneously instructed the jury.

(2) The verdict is contrary to the weight of the evidence.

(3) For any other cause the defendant did not receive a fair and impartial trial.

(c) The motion may be made and acted upon in the trial court whether or not notice of appeal has been given. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

As subsection (a) indicates, during the period beginning with the verdict and ending 10 days after the entry of the judgment, the defendant may utilize this motion procedure to seek relief from any error committed prior to or during the trial. Thus there is no limitation as to errors which may be asserted during that period of time. The listing of possible errors, in subsection (b), is designed as a helpful checklist but not in any sense as a limitation.

As subdivision (b)(1) indicates, the procedure may be used to correct errors of law. As subdivisions (b)(2) and (b)(3) indicate, the trial court’s discretionary authority is preserved in this revision.

G.S. 15A-1415 lists the errors which may be asserted by motion for appropriate relief after the expiration of the 10-day period. Of course they may also be raised before the expiration of the 10-day period, pursuant to this section.

Giving notice of appeal does not divest the jurisdiction of the trial court to act on a motion. G.S. 15A-1448, relating to appeals, provides that even though notice of appeal is given, the case is not sent forward until a later time, after any additional matters have been disposed of at the trial level. (It is possible that the disposition of the motion could make it desirable to withdraw the appeal.) See the more complete discussion in the Commentary at § 15A-1448.

§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict and without limitation as to time. — (a) At any time after verdict, the defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section.

(b) The following are the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment:

(1) The acts charged in the criminal pleading did not at the time they were committed constitute a violation of criminal law.

(2) The trial court lacked jurisdiction over the person of the defendant or over the subject matter.

(3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.

(4) The defendant was convicted or sentenced under a statute that was in violation of the Constitution of the United States or the Constitution of North Carolina.

(5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.

(6) Evidence is available which was unknown or unavailable to the defendant at the time of the trial, which could not with due diligence have been discovered or made available at that time, and which has a
direct and material bearing upon the guilt or innocence of the defendant.

(7) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant’s conviction or sentence, and retroactive application of the changed legal standard is required.

(8) The sentence imposed was unauthorized at the time imposed, exceeded the maximum authorized by law, was illegally imposed, or is otherwise invalid as a matter of law.

(9) The defendant is in confinement and is entitled to release because his sentence has been fully served. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

After the 10 days provided in § 15A-1414 have passed, use of the motion for appropriate relief to assert errors committed during or before the trial is limited to those listed in this section. (Of course these grounds may be asserted prior to the expiration of the 10-day period as well as after.)

The question faced by the Commission at this point was the identification of those errors in a trial which are so basic that one should be able to go back into the courts at any time, even many years after conviction, and seek relief. The resolution of this question requires the balancing of concepts of basic fairness with the desire for finality in criminal cases. The grounds stated here incorporate traditional notions of matters which may be asserted at a later time, together with several new items. It should also be taken into account with the latter consideration that additional finality has been added in § 15A-1419 by making it clear that there is but one chance to raise available matters after the case is over, and if there has been a previous assertion of the error, or opportunity to assert the error, by motion or appeal, a later motion may be denied on that basis.

The constitutional grounds have been familiar under our post conviction statutes (G.S. 15-217 et seq.). Familiar as well are the jurisdictional grounds and the fact that it is necessary in certain instances to make retroactive applications of changes in the law. (As mentioned above, this statute provides a procedural device to be used when other decisions or statutes impose the requirement of retroactivity, it does not create such a requirement.)

The provision in § 15A-1415(b)(6) making it possible to raise the question of newly discovered evidence without time limitation constitutes a change. G.S. 15-174 has provided that new trials will be granted in criminal cases under the same rules and regulations as new trials in civil cases. That clearly makes it possible to make a motion for new trial within 10 days after entry of judgment on the grounds of newly discovered evidence as is provided in the Rules of Civil Procedure in G.S. 1A-1, Rule 59(4). Less clear is the applicability of Rule 60 permitting relief from a final judgment within one year on the basis of newly discovered evidence. The Commission concluded that the better route was always to permit a hearing on the question and rely on a strict statement of the rule and the idea of “one chance to be heard” described above as fairer limitations than an arbitrary time limitation in criminal cases. Different considerations make the fixed time desirable in civil cases.

The “Motion for appropriate relief and other post trial relief” is not limited to the correction of error. It is a device which may be used for any additional matters which relate to the original case. That is reflected in the authorization to use this motion to raise the question of whether or not a sentence has been served or probation has been unlawfully revoked.

In the development of this section, the Commission consulted North Carolina case and statutory law and in addition received assistance from the Florida and New York criminal procedure revisions, as well as the American Bar Association Standards Relating to Post-Conviction Remedies.

§ 15A-1416. Motion by the State for appropriate relief. — (a) After the verdict but not more than 10 days after entry of judgment, the State by motion may seek appropriate relief for any error which it may assert upon appeal.

(b) At any time after verdict the State may make a motion for appropriate relief for:

(1) The imposition of sentence when prayer for judgment has been continued and grounds for the imposition of sentence are asserted.
§ 15A-1417

The initiation of any proceeding authorized under Article 82, Probation; Article 83, Imprisonment; and Article 84, Fines, with regard to the modification of sentences. The procedural provisions of those Articles are controlling. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsection (a) gives the State the right to raise by motion for appropriate relief matters which it is entitled to assert upon appeal. Compare § 15A-1445 relating to the State's right to appeal.

Subsection (b) reflects the fact that the motion for appropriate relief is available for any additional steps which are needed in a case. Thus the State is here authorized to utilize this procedure without limitation as to time, to seek imposition of sentence when prayer for judgment has been continued or when provision has been made in Article 81 for modification of sentences.

§ 15A-1417. Relief available. — (a) The following relief is available when the court grants a motion for appropriate relief:

1. New trial on all or any of the charges.
2. Dismissal of all or any of the charges.
3. The relief sought by the State pursuant to G.S. 15A-1416.
4. Any other appropriate relief.

(b) When relief is granted in the trial court and the offense is divided into degrees or necessarily includes lesser offenses, and the court is of the opinion that the evidence does not sustain the verdict but is sufficient to sustain a finding of guilty of a lesser degree or of a lesser offense necessarily included in the one charged, the court may, with consent of the State, accept a plea of guilty to the lesser degree or lesser offense.

(c) If resentencing is required, the trial division may enter an appropriate sentence. If a motion is granted in the appellate division and resentencing is required, the case must be remanded to the trial division for entry of a new sentence. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

As the general commentary at the beginning of this Article indicates, the emphasis is to be placed upon identifying the error sought to be corrected and the relief which is appropriate. Thus it will no longer be necessary to make a "motion for a new trial" in order to assert one ground for relief and to make a "motion in arrest of judgment" to assert another ground for relief. Using the name of a type of relief as the name of the motion, which in turn identifies the errors which may be asserted, imposes unnecessary complications and limitations. Here one motion, stating what is wrong and asking for the relief desired, will suffice.

The provisions in subsection (b) contemplate that there may be circumstances in which the trial court is of the opinion that the evidence was not sufficient to support the verdict, but would sustain a lower degree or a lesser included offense. The court could, of course, simply grant a new trial in accordance with § 15A-1414(b)(2) and § 15A-1417(a)(1), but it is possible that the necessity of a new trial may be avoided if a finding of the lesser degree or offense can be made on the facts already passed upon by the jury. The defendant, of course, would be prejudiced if the finding, submitted to the jury on the basis of the greater offense, were made sufficient in and of itself. Thus consent of the defendant is required, by a plea of guilty to the lesser degree or lesser offense.

The consent of the State is required. Subsection (c) grants the authority to appropriately modify the sentence when "appropriate relief" requires it.

§ 15A-1418. Motion for appropriate relief in the appellate division. — (a) When a case is in the appellate division for review, a motion for appropriate relief based upon grounds set out in G.S. 15A-1415 must be made in the appellate
division. For the purpose of this section a case is in the appellate division when the jurisdiction of the trial court has been divested as provided in G.S. 15A-1448, or when a petition for a writ of certiorari has been granted. When a petition for a writ of certiorari has been filed but not granted, a copy or written statement of any motion made in the trial court, and of any disposition of the motion, must be filed in the appellate division.

(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, or whether it is necessary to remand the case to the trial division for taking evidence or conducting other proceedings. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case.

(c) The order of remand must provide that the time periods for perfecting or proceeding with the appeal are tolled, and direct that the order of the trial division with regard to the motion be transmitted to the appellate division so that it may proceed with the appeal or enter an appropriate order terminating it. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

G.S. 15A-1415 contemplates that a number of items may be the subject of a motion for appropriate relief after the 10-day period following entry of judgment has elapsed. Examples would include rights arising by reason of later constitutional decisions in the Courts or the discovery of new evidence which meets the requirements of § 15A-1415(b)(6). Since “legal” grounds for relief can as well be decided by the appellate court as the trial court, it is appropriate to authorize the making of the motion in the appellate division. (This is contrary to present practice. See State v. Nance, 253 N.C. 424, 117 S.E.2d 8.) It is possible that some factual matters could be decided as well in the appellate division, but frequently they would require that the trial court hold an additional evidentiary hearing. Thus the appellate division is also given authority to remand the case to the trial division for a hearing. It is possible that the hearing could determine the disposition of the case and eliminate the necessity for going forward with the review.

It should be noted that in § 15A-1446 a number of items which formerly could be raised in the appellate court by “motion” now are simply listed as matters which can be raised on appeal even though they have not been brought to the attention of the trial court. For example, the insufficiency of the pleading presently may be raised in the appellate division by motion in arrest of judgment, without having been brought to the attention of the trial court. This revision would permit it to be asserted upon appeal, thus eliminating one procedural step. The existence of that authority to assert matters on appeal will mean that this section will be used primarily in asserting matters which have developed since the trial, rather than as a device for raising in the appellate court matters which were not brought to the attention of the trial judge.

§ 15A-1419. When motion for appropriate relief denied. — (a) The following are grounds for the denial of a motion for appropriate relief:

1. Upon a previous motion made pursuant to this Article, the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so. This subdivision does not apply to a motion based upon deprivation of the right to counsel at the trial or upon failure of the trial court to advise the defendant of such right. This subdivision does not apply when the previous motion was made within 10 days after entry of judgment.

2. The ground or issue underlying the motion was previously determined on the merits upon an appeal from the judgment or upon a previous motion or proceeding in the courts of this State or a federal court, unless since the time of such previous determination there has been a retroactively effective change in the law controlling such issue.
(3) Upon a previous appeal the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so.

(b) Although the court may deny the motion under any of the circumstances specified in this section, in the interest of justice and for good cause shown it may in its discretion grant the motion if it is otherwise meritorious. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

As indicated in the commentary to § 15A-1415, one of the interests in the balance in determining what motions may be made long after the trial is the interest in finality of criminal judgments. The balancing by the Commission included liberality in permitting matters to be raised at times subsequent to the trial, restricted by provisions that once a matter has been litigated or there has been opportunity to litigate a matter, there will not be a right to seek relief by additional motions at a later date. Thus this section provides, in short, that if a matter has been determined on the merits upon an appeal, or upon a post-trial motion or proceeding, there is not right to litigate the matter again in an additional motion for appropriate relief. Similarly, if there has been an opportunity to have the matter considered on a previous motion for appropriate relief or appeal the court may deny the motion for appropriate relief.

There are two exceptions to the rule with regard to the opportunity to present a matter on a previous motion for appropriate relief. The first is the rather obvious one of deprivation of the right to counsel. The other exception relates to a motion made within 10 days after the entry of judgment. The latter exception permits counsel who has moved in open court for a new trial or other relief to come back within 10 days and make additional motions for appropriate relief in the trial court, without being faced with a bar on the basis of not having raised the available grounds when he stood in open court and made his first motion.

Subsection (b) contains the customary provision for the court, in its discretion, to grant relief even though the right to relief is barred under the provisions of subsection (a).

Sections similar in import to these may be found in New York Criminal Procedure Law in §§ 440.10 and 440.20.

§ 15A-1420. Motion for appropriate relief; procedure. — (a) Form, Service, Filing. —
(1) A motion for appropriate relief must:
   a. Be made in writing unless it is made:
      1. In open court;
      2. Before the judge who presided at trial;
      3. Before the end of the session if made in superior court; and
      4. Within 10 days after entry of judgment;
   b. State the grounds for the motion; and
   c. Set forth the relief sought.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(b) Supporting Affidavits. —
(1) A motion for appropriate relief made after the entry of judgment must be supported by affidavit or other documentary evidence if based upon
the existence or occurrence of facts which are not ascertainable from
the records and any transcript of the case or which are not within the
knowledge of the judge who hears the motion.

(2) The opposing party may file affidavits or other documentary evidence.

(c) Hearings, Showing of Prejudice; Findings. —

(1) Any party is entitled to a hearing on questions of law or fact arising
from the motion and any supporting or opposing information presented
unless the court determines that the motion is without merit. The court
must determine, on the basis of these materials and the requirements
of this subsection, whether an evidentiary hearing is required to resolve
questions of fact.

(2) An evidentiary hearing is not required when the motion is made in the
trial court pursuant to G.S. 15A-1414, but the court may hold an
evidentiary hearing if it is appropriate to resolve questions of fact.

(3) The court must determine the motion without an evidentiary hearing
when the motion and supporting and opposing information present only
questions of law.

(4) If the court cannot rule upon the motion without the hearing of evidence,
it must conduct a hearing for the taking of evidence, and must make
findings of fact. The defendant has a right to be present at the
evidentiary hearing and to be represented by counsel. A waiver of the
right to be present must be in writing.

(5) If an evidentiary hearing is held, the moving party has the burden of
proving by a preponderance of the evidence every fact essential to
support the motion.

(6) A defendant who seeks relief by motion for appropriate relief must show
the existence of the asserted ground for relief. Relief must be denied
unless prejudice appears, in accordance with G.S. 15A-1443.

(7) The court must rule upon the motion and enter its order accordingly.
When the motion is based upon an asserted violation of the rights of
the defendant under the Constitution or laws or treaties of the United
States, the court must make and enter conclusions of law and a
statement of the reasons for its determination to the extent required,
taken with other records and transcripts in the case, to indicate
whether the defendant has had a full and fair hearing on the merits
of the grounds so asserted.

(d) Action on Court's Own Motion. — At any time that a defendant would be
entitled to relief by motion for appropriate relief, the court may grant such relief
upon its own motion. The court must cause appropriate notice to be given to the
parties. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This Article provides for motions for appropriate relief which may be made on two
essentially different occasions. There are the immediate motions made while the case is still
fresh and the trial judge is still available, and the later motion which may require a substantially
greater use of supporting documents or other evidence. This procedural section provides for
the formalities of making the oral motion and the written motion, notice, and hearing. It should
be noted that the subsections provide for two types of hearings. One is the hearing based upon
affidavits, transcripts, or the like, plus matters within the judge's knowledge, to comply with the
parties' entitlement to a hearing on questions of

law and fact. The other is an evidentiary hearing. G.S. 15A-1420(c)(3) provides that if the only
question is a question of law then the matter is
to be disposed of without an evidentiary hearing.
On the other hand, subdivision (4) makes it clear
that if it is necessary to take evidence the court
must hold an evidentiary hearing at which the
defendant has the right to be present and to be
represented by counsel, and the judge must
make findings of fact. Obviously, it is unlikely
that such an evidentiary hearing would be
necessary on the immediate post-trial motion,
made within 10 days as provided by § 15A-1414,
and that is reflected in subdivision (c)(2).

Pursuant to subsections (c)(5) and (6) the
moving party has the burden of proof, by a preponderance of evidence, with regard to facts essential to support the motion. The defendant must show the existence of the ground and substantial prejudice must appear. The definition of substantial prejudice is cross-referenced to § 15A-1443, in the Appeals Article, where the State rule on substantial prejudice and the federal constitutional error rule are set out.

The provisions of subsection (c)(7) require that when the motion is based upon an asserted violation of the rights of the defendant under the Constitution or laws or treaties of the United States, the court must make conclusions of law and a statement of reason for its determination. These requirements are imposed in order that properly made determinations in the State court will not fail in the federal courts because of the lack of a record indicating that there has been a full and fair hearing on the merits on these grounds. See Townsend v. Sain, 372 U.S. 293 and Title 28, U.S. Code, § 2254. Compare also New York Criminal Procedure Law, § 440.30.

§ 15A-1421. Indigent defendants. — The provisions of Chapter 7A of the General Statutes with regard to the appointment of counsel for indigent defendants are applicable to proceedings under this Article. The court also may make appropriate orders relieving indigent defendants of all or a portion of the costs of the proceedings. (1977, c. 711, s. 1.)

§ 15A-1422. Review upon appeal. — (a) The making of a motion for appropriate relief is not a prerequisite for asserting an error upon appeal.

(b) The grant or denial of relief sought pursuant to G.S. 15A-1414 is subject to appellate review only in an appeal regularly taken.

(c) The court's ruling on a motion for appropriate relief pursuant to G.S. 15A-1415 is subject to review:

(1) If the time for appeal from the conviction has not expired, by appeal.

(2) If an appeal is pending when the ruling is entered, in that appeal.

(3) If the time for appeal has expired and no appeal is pending, by writ of certiorari.

(d) There is no right to appeal from the denial of a motion for appropriate relief when the movant is entitled to a trial de novo upon appeal.

(e) When an error asserted upon appeal has also been the subject of a motion for appropriate relief, denial of the motion has no effect on the right to assert error upon appeal. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsection (a). The motions which may be made pursuant to § 15A-1414 incorporate the trial judge's “supervisory” right to order a new trial or other relief on the basis of unfairness to the defendant in the trial, and his authority to correct legal errors, both present in “new trials” under the present law. (G.S. 15-174 and Rules of Civil Procedure, G.S. 1A-1, Rule 59.) Under this section, if an error has been committed during the trial, appellate review is related directly to the error and is not dependent upon the reassertion of the error after trial by means of a post-verdict motion.

This section also reflects the somewhat different situation which exists with regard to motions made pursuant to § 15A-1415. That section provides for matters which may be asserted, even for the first time, beyond the 10-day period after entry of judgment, as well as before the expiration of that time. Thus, if those matters are raised in sufficient time to be reviewed in connection with an appeal, the statute permits the alleged error in denial of relief to be asserted in the appeal. If the ruling on the motion is made after the time for appeal has expired and there is no appeal pending, review is discretionary, by means of petition for a writ of certiorari.

Subsection (d) provides the obvious rule that although post-trial motions may be made in the district court, there is no need for appellate review of those motions if the movant is entitled to a trial de novo upon appeal.

The provisions of Chapter 7A have in §§ 7A-27, 7A-28 and 7A-31(a) limited review of post-conviction proceedings to review in the Court of Appeals, by certiorari. With the change in procedure here, and the limitations created to prevent repetitive motions, the limitation of the review to the Court of Appeals has been eliminated by concurrent amendments to the sections cited.
§§ 15A-1423 to 15A-1430: Reserved for future codification purposes.

ARTICLE 90.
Appeals from Magistrates and District Court Judges.

§ 15A-1431. Appeals by defendants from magistrate and district court judge; trial de novo. — (a) A defendant convicted before a magistrate may appeal for trial de novo before a district court judge without a jury.

(b) A defendant convicted in the district court before the judge may appeal to the superior court for trial de novo with a jury as provided by law.

(c) Within 10 days of entry of judgment, notice of appeal may be given orally in open court or in writing to the clerk. Within 10 days of entry of judgment, the defendant may withdraw his appeal and comply with the judgment. Upon expiration of the 10-day period, if an appeal has been entered and not withdrawn, the clerk must transfer the case to the appropriate court.

(d) A defendant convicted by a magistrate or district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance must be given by the defendant in person to the magistrate or judge who heard the case or, if he is not available, notice must be given:

(1) Before a magistrate in the county, in the case of appeals from the magistrate; or

(2) During an open session of district court in the judicial district, in the case of appeals from district court.

The magistrate or district court judge must review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid must be remitted to the defendant, but the judge, clerk or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

(e) Any order of pretrial release remains in effect pending appeal by the defendant unless the judge modifies the order.

(f) Appeal pursuant to this section stays the execution of portions of the judgment relating to fine and costs. Appeal stays portions of the judgment relating to confinement when the defendant has complied with conditions of pretrial release.

(g) The defendant may withdraw his appeal at any time prior to calendaring of the case for trial de novo. The case is then automatically remanded to the court from which the appeal was taken, for execution of the judgment. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section codifies the appeal from the magistrate to the district court judge for trial de novo and appeal from the district court judge to the superior court for trial de novo, and also deals with a problem which has recurred with some frequency. That problem has been presented by the defendant, not represented by counsel, who pays his fine and then wishes to appeal. When he secures counsel, he finds that he has lost his right to appeal by complying with the sentence. That is not true under this revision. It should be noted that although provision is made for remittance of a fine or costs, that may be delayed pending the determination of the appeal.

It also is made clear that the cut-off point for the right to withdraw an appeal is the time of calendaring of the case for trial de novo. If an appeal is taken to the superior court, the costs of that division will attach at the end of 10 days in accordance with G.S. 7A-304(b). Since remand to the original trial court is automatic when the appeal is withdrawn prior to calendaring of the appeal case for trial de novo, no conditions may be imposed on such a remand.
Editor's Note. — Session Laws 1977, c. 711, s. 89, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 84, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1432. Appeals by State from district court judge. — (a) Unless the rule against double jeopardy prohibits further prosecution, the State may appeal from the district court judge to the superior court:

(1) When there has been a decision or judgment dismissing criminal charges as to one or more counts.

(2) Upon the hearing of a motion for a new trial on the ground of newly discovered or newly available evidence but only on questions of law.

(b) When the State appeals pursuant to subsection (a) the appeal is by written motion specifying the basis of the appeal made within 10 days after the entry of the judgment in the district court. The motion must be filed with the clerk and a copy served upon the defendant.

(c) The motion may be heard by any judge of superior court having authority for the trial of criminal cases in the district. The State and the defendant are entitled to file briefs and are entitled to adequate time for their preparation, consonant with the expeditious handling of the appeal.

(d) If the superior court finds that a judgment, ruling, or order dismissing criminal charges in the district court was in error, it must reinstate the charges and remand the matter to district court for further proceedings. The defendant may appeal this order to the appellate division as in the case of other orders of the superior court.

(e) If the superior court finds that the order of the district court was correct, it must enter an order affirming the judgment of the district court. The State may appeal the order of the superior court to the appellate division upon certificate by the district attorney to the judge who affirmed the judgment that the appeal is not taken for the purpose of delay. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Although G.S. 15-179 has provided the right of the State to appeal to the superior court, procedure has never been provided. This section creates a simplified motion practice for the State's appeal in such circumstances. The right of the State to appeal is defined in the same manner as in G.S. 15A-1445. See the commentary to that section.

§§ 15A-1433 to 15A-1440: Reserved for future codification purposes.

ARTICLE 91.

Appeal to Appellate Division.

OFFICIAL COMMENTARY

Present provisions of Chapter 15 of the General Statutes, in Article 18, relating to criminal appeals, are very limited. In addition to those limited provisions other sources for rules
governing criminal appeals include the rules of the appellate division, and provisions of Chapter 7A of the General Statutes with regard to jurisdiction of the courts.

The attempt here is to bring together the items appropriately left to the criminal statutes relating to criminal appeals. There is one modification of Chapter 7A. This act does not infringe upon those areas which are appropriately within the rule-making power of the appellate division. Only very minor adjustment is required to coordinate the provisions of this act with the current revision of the appellate rules.

One of the assigned tasks of the Criminal Code Commission is that of codification. Thus, one of the objectives of this draft is to chart the course for the inexperienced. The Commission therefore has not hesitated to state those matters which are obvious to the well informed. This is particularly reflected in §15A-1442 relating to the grounds for the correction of error upon appeal.

§ 15A-1441. Correction of errors by appellate division. — Errors of law may be corrected upon appellate review as provided in this Article. (1977, c. 711, s. 1.)

Editor's Note. — Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by this act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

The "Official Comments" under this Article are reprinted from the Legislative Program and Report of the Criminal Code Commission to the 1977 General Assembly.

§ 15A-1442. Grounds for correction of error by appellate division. — The following constitute grounds for correction of errors by the appellate division.

(1) Lack of Jurisdiction. —
   a. The trial court lacked jurisdiction over the offense.
   b. The trial court did not have jurisdiction over the person of the defendant.

(2) Error in the Criminal Pleading. — Failure to charge a crime, in that:
   a. The criminal pleading charged acts which at the time they were committed did not constitute a violation of criminal law; or
   b. The pleading fails to state essential elements of an alleged violation as required by G.S. 15A-924(a)(5).

(3) Insufficiency of the Evidence. — The evidence was insufficient as a matter of law.

(4) Errors in Procedure. —
   a. There has been a denial of pretrial motions or relief to which the defendant is entitled, so as to affect the defendant's preparation or presentation of his defense, to his prejudice.
   b. There has been a denial of a trial motion or relief to which the defendant is entitled, to his prejudice.
   c. There has been error in the admission or exclusion of evidence, to the prejudice of the defendant.
   d. There has been error in the judge's instructions to the jury, to the prejudice of the defendant.
§ 15A-1443. Existence and showing of prejudice. — (a) A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises. The burden of showing such prejudice under this subsection is upon the defendant. Prejudice also exists in any instance in which it is deemed to exist as a matter of law or error is deemed reversible per se.

(b) A violation of the defendant’s rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless.

(c) A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section provides in subsection (a) a codification of existing definitions of substantial prejudice in North Carolina. See State v. Turner, 268 N.C. 225, 150 S.E.2d 406. Subsection (b) reflects the standard of substantial prejudice with regard to violation of the defendants rights under the Constitution of the United States, as set out in the case of Chapman v. California, 386 U.S. 18.

Subsection (c) is our first statutory codification of the “invited error rule.” Compare 28 U.S.C. 2111.

§ 15A-1444. When defendant may appeal; certiorari. — (a) A defendant who has entered a plea of not guilty to a criminal charge, and who has been found
guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.

(b) Procedures for appeal from the magistrate to the district court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(c) Procedures for appeal from the district court to the superior court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(d) Procedures for appeal to the appellate division are as provided in this Article, the rules of the appellate division, and Chapter 7A of the General Statutes. The appeal must be perfected and conducted in accordance with the requirements of those provisions.

(e) Except as provided in G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State.

(f) The ruling of the court upon a motion for appropriate relief is subject to review upon appeal or by writ of certiorari as provided in G.S. 15A-1422.

(g) Review by writ of certiorari is available when provided for by this Chapter, by other rules of law, or by rule of the appellate division. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsection (a) states the familiar rule of appellate practice that appeal, as a matter of right, is available when final judgment has been entered. (Entry of judgment is defined in G.S. 15A-101, by virtue of a concurrent amendment.)

A number of cross references are included in subsections (b), (c), (d) and (f) for the purpose of pointing out as well as locating other appellate rules, trial de novo in misdemeanor cases, and the rules with regard to appeal from motions for appropriate relief.

Subsection (e) carries forward the provisions of G.S. 15-180.2, a 1973 statute, which provides only discretionary review when a defendant has plead guilty or entered a plea of no contest. The exception relates to review of determinations on motions to suppress vital evidence.

As subsection (g) indicates, review by writ of certiorari is available. That discretionary review is necessarily controlled by the rules of the appellate division.

G.S. 15-179 has provided that the State may appeal in seven enumerated instances. These areas have imposed an effective limitation to appeal on matters of law. The statute here proposed is less complicated in statement and follows the federal revision (Title 18, U.S. Code, §3731) after the case of United States vs. Sisson, 399 U.S. 267. Appeals by the State have been few in number and it is not contemplated that this provision will substantially change that situation.

§ 15A-1445. Appeal by the State. — (a) Unless the rule against double jeopardy prohibits further prosecution, the State may appeal from the superior court to the appellate division:

(1) When there has been a decision or judgment dismissing criminal charges as to one or more counts.

(2) Upon the granting of a motion for a new trial on the ground of newly discovered or newly available evidence but only on questions of law.

(b) The State may appeal an order by the superior court granting a motion to suppress as provided in G.S. 15A-979. (1977, c. 711, s. 1.)

§ 15A-1446. Requisites for preserving the right to appellate review. — (a) Except as provided in subsection (d), error may not be asserted upon appellate review unless the error has been brought to the attention of the trial court by
appropriate and timely objection or motion. 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. Formal exceptions are not required, but when evidence is excluded a record must be made in the manner provided in G.S. 1A-1, Rule 43(c), in order to assert upon appeal error in the exclusion of that evidence.

(b) Failure to make an appropriate and timely motion or objection constitutes a waiver of the right to assert the alleged error upon appeal, but the appellate court may review such errors in the interest of justice if it determines it appropriate to do so.

(c) The making of post-trial motions is not a prerequisite to the assertion of error on appeal.

(d) Errors based upon any of the following grounds, which are asserted to have occurred, may be the subject of appellate review even though no objection, exception or motion has been made in the trial division.

1) Lack of jurisdiction of the trial court over the offense of which the defendant was convicted.
2) Lack of jurisdiction of the trial court over the person of the defendant.
3) The criminal pleading charged acts which, at the time they were committed, did not constitute a violation of criminal law.
4) The pleading fails to state essential elements of an alleged violation, as required by G.S. 15A-924(a)(5).
5) The evidence was insufficient as a matter of law.
6) The defendant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of North Carolina.
7) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.
8) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
9) Subsequent admission of evidence from a witness when there has been an improperly overruled objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified.
10) Subsequent admission of evidence involving a specified line of questioning when there has been an improperly overruled objection to the admission of evidence involving that line of questioning.
11) Questions propounded to a witness by the court or a juror.
12) Rulings and orders of the court, not directed to the admissibility of evidence during trial, when there has been no opportunity to make an objection or motion.
13) Error of law in the charge to the jury.
14) The court has expressed to the jury an opinion as to whether a fact is fully or sufficiently proved.
15) The defendant was not present at any proceeding at which his presence was required.
16) Error occurred in the entry of the plea.
17) The form of the verdict was erroneous.
18) The sentence imposed was unauthorized at the time imposed, exceeded the maximum authorized by law, was illegally imposed, or is otherwise invalid as a matter of law.
19) A significant change in law, either substantive or procedural, applies to the proceedings leading to the defendant’s conviction or sentence, and retroactive application of the changed legal standard is required.

(1977, c. 711, s. 1.)
A crucial item in any system of appellate procedure is the rule stating the requirements for "preserving the right to appeal." The steps to be taken in the trial level have evolved over the years from the original purpose, which was in effect a statement of "charges" against the judge for making an error, into what is now recognized as a need simply to bring the matter to the attention of the trial judge sufficiently to permit him to correct the error. Thus, the Rules of Civil Procedure in §1A-1, Rule 46, and the appellate rules (N.C. Appellate Rules, Rule 10(b)) make clear that formal "exceptions" are unnecessary and that no particular extra steps need be taken if an appropriate and timely objection has been made clear to the trial judge, at some time sufficiently close the the occurrence of the error to permit its correction. In addition to that notion, there is also the idea that there are certain errors that the defendant may appeal from whether or not he has given some signal that he thinks the judge has committed an error. On occasion this idea has appeared in the statement that certain errors need not be brought to the attention of the judge (as, for example, with regard to his charge). Sometimes that idea has been indicated by the straightforward statement that items were reviewable on appeal without the making of a motion, as was true of the 1967 statute which provided that the sufficiency of the evidence of the State was reviewable upon an appeal without the making of a motion for nonsuit (G.S. 15-173.1). Another form which this idea has taken is permitting a motion to be made in the appellate courts. Thus permitting in the appellate court a motion in arrest of judgment, based, for example, upon a defect in the pleading, is simply another way of stating that during the appeal the sufficiency of the pleadings may be raised even though no question has been raised in that regard in the trial court. This act undertakes to unify those devices and simply states that certain listed items may be raised on appeal whether or not objection, exception, or motion has been made in the trial court. Other errors must be appropriately brought to the attention of the trial court as provided in subsection (a).

Each of the listed items represents a judgment by the Commission that an error of the type listed requires no special notice at the trial level. Most have in the past been so reviewable by one of the devices mentioned above.

Subsection (a) of this section is similar in basic import to G.S. 1A-1, Rule 46, of the Rules of Civil Procedure. It provides essentially that any timely objection or motion is sufficient and no particular formality is required to preserve the right to assert an alleged error upon appeal if that has been done.

Subsection (b) states the corollary that failure to make such timely motion or objection constitutes a waiver of the right to assert the alleged error upon appeal (but of course the court is granted the authority to review such errors in the interest of justice).

Subsection (c) is a duplicate of §15A-1422(e) and restates the idea that post-trial motions are not steps for the preservation of the right to appellate review, but rather are means of correcting errors at the trial level.

Subsection (d) contains a listing of errors which may be asserted upon appeal even if no objection, motion or exception was made in the trial court at the time the error is asserted to have been committed.

§ 15A-1447. Relief available upon appeal. — (a) If the appellate court finds that there has been reversible error which denied the defendant a fair trial conducted in accordance with law, it must grant the defendant a new trial.

(b) If the appellate court finds that the facts charged in a pleading were not at the time charged a crime, the judgment must be reversed and the charge must be dismissed.

(c) If the appellate court finds that the evidence with regard to a charge is insufficient as a matter of law, the judgment must be reversed and the charge must be dismissed unless there is evidence to support a lesser included offense. In that case the court may remand for trial on the lesser offense.

(d) If the appellate court affirms only some of the charges, or if it finds error relating only to the sentence, it may direct the return of the case to the trial court for the imposition of an appropriate sentence.

(e) If the appellate court affirms one or more of the charges, but not all of them, and makes a finding that the sentence is sustained by the charge or charges which are affirmed and is appropriate, the court may affirm the sentence.
§ 15A-1448

(f) If the appellate court finds that there is an error with regard to the sentence which may be corrected without returning the case to the trial division for that purpose, it may direct the entry of the appropriate sentence.

(g) If the appellate court finds that there has been reversible error and the rule against double jeopardy prohibits further prosecution, it must dismiss the charges with prejudice. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section provides a self explanatory listing of the various types of relief which are available upon appeal, including new trial, dismissal and further action with regard to the sentence. The Commission views this largely as a part of its codification function. The utility of such a listing would appear to be obvious when read in light of the Rules of Appellate Procedure which provide in Rule 28(b)(4) that the appellant’s brief should contain “a short conclusion stating the precise relief sought.”

§ 15A-1448. Procedures for appeal. — (a) Time for Entry of Appeal, Jurisdiction over the Case. —

(1) A case remains open for the taking of an appeal to the appellate division for a period of 10 days after the entry of judgment.

(2) When a motion for appropriate relief is made during the 10-day period, the case remains open for the taking of an appeal until the expiration of 10 days after the court has ruled on the motion.

(3) The jurisdiction of the trial court with regard to the case is divested, except as to actions authorized by G.S. 15A-1453, when notice of appeal has been given and

a. The period described in (1) and (2) has expired; or

b. No motion for appropriate relief is pending and the parties file written consent that the case be transferred immediately to the appellate division; or

c. Thirty days after the making of a motion for appropriate relief there has been no ruling and the appealing party files with the clerk a written request that the case be transferred immediately to the appellate division.

(4) For the purpose of computing time limitations for settling of the record on appeal, docketing the appeal, or other steps in the appellate process, the appeal is considered as “taken” on the date the jurisdiction of the trial court is divested under subdivision (3), or the date a transcript is delivered to the clerk of court, whichever is later.

(5) The right to appeal is not waived by withdrawal of an appeal if the appeal is reentered within the time specified in (1) and (2).

(6) The right to appeal is not waived by compliance with all or a portion of the judgment imposed. If the defendant appeals, the court may enter appropriate orders remitting any fines or costs which have been paid. The court may delay the remission pending the determination of the appeal.

(b) How and When Appeal of Right Taken. —

(1) Oral notice of appeal may be given in open court:

a. At the time final judgment is entered; or

b. When the court rules upon a post-verdict motion for appropriate relief, if appeal is then available.

(2) Written notice of appeal may be filed with the clerk after final judgment and before the time for taking an appeal has expired.

(c) Certiorari. — Petitions for writs of certiorari are governed by rules of the appellate division. (1977, c. 711, s. 1.)
Most procedure for the appeal itself will be as provided in the rules of appellate procedure and not in statutory law. However, one appropriate area for statutory regulation is the question timing of the taking of an appeal, for that relates to activity which must be conducted in the trial division.

Problems have arisen in the processing of appeals when post-trial motions are pending. The system here proposed by the Commission provides the usual (for North Carolina) 10-day period for taking an appeal, and provides that if a post-trial motion is made within 10 days after the trial there will be a period of not less than 10 days after the ruling on the motion in which to take an appeal. This is in accord with the North Carolina Rules of Appellate Procedure with regard to civil cases under Rule 8, but such an extension has not been incorporated in those rules with regard to criminal cases in Appellate Rule 4.

The Commission proposes a further modification. If giving notice of appeal of the case "divests the trial court of jurisdiction" (see State v. Grundler and State v. Jelly, 251 NC 177, 111 S.E.2d 1) giving notice of appeal must wait until the determination of any post-trial motion. Instead the Commission proposes a system which permits the defendant to give his notice of appeal, and yet retains the case in the trial court for the full 10-day period. This will insure a period during which matters may, if possible, be corrected at the trial level, without problem as to the timely notice of appeal. In addition to the full 10-day period, the right of the trial court to act in a case is extended for the period of time that a motion for appropriate relief is pending in the trial court. (§15A-1448(a) (2).)

If no motion for relief is pending and the parties wish to expedite the processing of the appeal, they may pursuant to G.S. 15A-1448(a)(3)b file written consent that the case be transferred immediately to the appellate division without waiting for the 10 days to run. Similarly, if a motion for appropriate relief has been made, 30 days have passed, and no ruling has been made on the motion, the appealing party may file a written request that the case be transferred immediately to the appellate division. Of course the trial court would have no power to act once the case was transferred.

The appellant has free choice during the 10-day period. Thus, if appeal is entered and withdrawn, it may be entered again if time remains. To the same end, the statute provides that compliance with all or a portion of the judgment does not waive the right to appeal. There is provision for remitting fines which have been paid, but, in order to simplify collection and remittance procedures, the remittance may be delayed until the appeal is determined. The free right to enter appeal, withdraw it and reenter it, or to comply with a portion of the judgment and then enter the appeal are substantially more important in civil cases than in criminal cases.

The litigants are frequently less sophisticated and the consequences of an unknowing waiver may be substantially more severe than loss of monetary damages or property rights.

Subsection (b) provides for oral notice of appeal in open court, and written notice of appeal to be filed with the clerk. No effort is made here to specify additional steps and the formalities of the filed notice. The contents of the notice of appeal, service of copies on other parties, and other procedural details with regard to the notice of appeal are left to the rules of the appellate division, which should be consulted.

§ 15A-1449. Security for costs not required.— In criminal cases no security for costs is required upon appeal to the appellate division. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

The Commission here proposes that the requirement for security for costs in criminal appeals be eliminated. Since indigent defendants are not required to post security for costs, it would appear probable that this security is being required of defendants who are likely to pay and is not being required of defendants who are likely not to be able to pay the costs.

§ 15A-1450. Withdrawal of appeal.— An appeal may be withdrawn by filing with the clerk of superior court a written notice of the withdrawal, signed by the defendant and, if he has counsel, his attorney. The clerk must forward a copy of the notice to the clerk of the appellate division in which the case is pending. The appellate division may enter an appropriate order with regard to the costs of the appeal. (1977, c. 711, s. 1.)
This section provides a simplified means of withdrawal of an appeal. The notice is given to the Clerk of Superior Court. It is then the responsibility of the Clerk of Superior Court to notify the appellate division if the case has gone forward. No limitations are placed upon the right to withdraw the appeal other than that the notice, which must be written, must be signed by defendant and his counsel if he is represented, and of course, he may be ordered to pay costs. If the appeal is withdrawn, it is no longer pending and the stay pursuant to G.S. 15A-1451 is terminated.

§ 15A-1451. Stay of sentence; bail; no stay when State appeals. — (a) When a defendant has given notice of appeal:
   (1) Payment of costs is stayed.
   (2) Payment of a fine is stayed.
   (3) Confinement is stayed only when the defendant has been released pursuant to Article 26, Bail.
   (4) Probation or special probation is stayed.
   (b) The effect of dismissal of charges is not stayed by an appeal by the State, and the defendant is free from such charges unless they are subsequently reinstated as a result of the determination upon appeal. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section carries forward in more detail the comments of present G.S. 15-184 with regard to stay of costs and sentence when an appeal has been taken. Subsection (b) makes clear that if the State appeals from the dismissal of charges, the effect of the dismissal is not stayed during the pendency of the appeal. The defendant is free of the charge unless the State prevails upon the appeal and has the charges reinstated pursuant to the directive of the appellate division.

§ 15A-1452. Execution of sentence upon determination of appeal; compliance with directive of appellate court. — (a) If an appeal is withdrawn, the clerk of superior court must enter an order reflecting that fact and directing compliance with the judgment.
   (b) If the appellate division affirms the judgment in whole or in part, the clerk of superior court must file the directive of the appellate division and order compliance with its terms.
   (c) If the appellate division orders a new trial or directs other relief or proceedings, the clerk must file the directive of the appellate court and bring the directive to the attention of the district attorney or the court for compliance with the directive. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section recodifies and makes a more complete statement of the concepts of present G.S. 15-186.

§ 15A-1453. Ancillary actions during appeal. — (a) While an appeal is pending in the appellate division, the court in which the defendant was convicted has continuing authority to act with regard to the defendant’s release pursuant to Article 26, Bail.
   (b) The appropriate court of the appellate division may direct that additional steps be taken in the trial court while the appeal is pending, including but not limited to:
§ 15A-1454

Appointment of counsel.
(2) Hearings with regard to matters relating to the appeal.
(3) Taking evidence or conducting other proceedings relating to motions for appropriate relief made in the appellate division, as provided in G.S. 15A-1418. (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

This section provides for actions which necessarily must be taken at the trial level while an appeal is pending. Subsection (a) provides that the trial court may act with regard to bail without directive from the appellate division. As to other matters, the appellate division may direct additional steps in the trial court. Of particular note is subdivision (b)(3) which expressly authorizes the direction of hearings or other proceedings relating to motions for appropriate relief which now may be made in the appellate division in accordance with G.S. 15A-1418. See the commentary to that section.

ARTICLES 92 TO 99.

§§ 15A-1454 TO 15A-1999: RESERVED FOR FUTURE CODIFICATION PURPOSES.

SUBCHAPTER XV. CAPITAL PUNISHMENT.

ARTICLE 100.

Capital Punishment.

§ 15A-2000. Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence. — (a) Separate Proceedings on Issue of Penalty. — (1) Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one which may be punishable by death.
(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which he was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.
(3) In the proceeding there shall not be any requirement to resubmit evidence presented during the guilt determination phase of the case, unless a new jury is impaneled, but all such evidence is competent for the jury’s consideration in passing on punishment. Evidence may be presented as to any matter that the court deems relevant to sentence, and may include matters relating to any of the aggravating or
mitigating circumstances enumerated in subsections (e) and (f). Any evidence which the court deems to have probative value may be received.

(4) The State and the defendant or his counsel shall be permitted to present argument for or against sentence of death. The defendant or defendant's counsel shall have the right to the last argument.

(b) Sentence Recommendation by the Jury. — Instructions determined by the trial judge to be warranted by the evidence shall be given by the court in its charge to the jury prior to its deliberation in determining sentence. In all cases in which the death penalty may be authorized, the judge shall include in his instructions to the jury that it must consider any aggravating circumstance or circumstances or mitigating circumstance or circumstances from the lists provided in subsections (e) and (f) which may be supported by the evidence, and shall furnish to the jury a written list of issues relating to such aggravating or mitigating circumstance or circumstances.

After hearing the evidence, argument of counsel, and instructions of the court, the jury shall deliberate and render a sentence recommendation to the court, based upon the following matters:

(1) Whether any sufficient aggravating circumstance or circumstances as enumerated in subsection (e) exist;

(2) Whether any sufficient mitigating circumstance or circumstances as enumerated in subsection (f), which outweigh the aggravating circumstance or circumstances found, exist; and

(3) Based on these considerations, whether the defendant should be sentenced to death or to imprisonment in the State's prison for life.

The sentence recommendation must be agreed upon by a unanimous vote of the 12 jurors. Upon delivery of the sentence recommendation by the foreman of the jury, the jury shall be individually polled to establish whether each juror concurs and agrees to the sentence recommendation returned.

If the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment; provided, however, that the judge shall in no instance impose the death penalty when the jury cannot agree unanimously to its sentence recommendation.

(c) Findings in Support of Sentence of Death. — When the jury recommends a sentence of death, the foreman of the jury shall sign a writing on behalf of the jury which writing shall show:

(1) The statutory aggravating circumstance or circumstances which the jury finds beyond a reasonable doubt; and

(2) That the statutory aggravating circumstance or circumstances found by the jury are sufficiently substantial to call for the imposition of the death penalty; and,

(3) That the mitigating circumstance or circumstances are insufficient to outweigh the aggravating circumstance or circumstances found.

(d) Review of Judgment and Sentence. —

(1) The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of North Carolina pursuant to procedures established by the Rules of Appellate Procedure. In its review, the Supreme Court shall consider the punishment imposed as well as any errors assigned on appeal.

(2) The sentence of death shall be overturned and a sentence of life imprisonment imposed in lieu thereof by the Supreme Court upon a finding that the record does not support the jury's findings of any aggravating circumstance or circumstances upon which the sentencing court based its sentence of death, or upon a finding that the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, or upon a finding that the sentence of death is
excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The Supreme Court may suspend consideration of death penalty cases until such time as the court determines it is prepared to make the comparisons required under the provisions of this section.

(3) If the sentence of death and the judgment of the trial court are reversed on appeal for error in the post-verdict sentencing proceeding, the Supreme Court shall order that a new sentencing hearing be conducted in conformity with the procedures of this Article.

(e) Aggravating Circumstances. — Aggravating circumstances which may be considered shall be limited to the following:

(1) The capital felony was committed by a person lawfully incarcerated.
(2) The defendant had been previously convicted of another capital felony.
(3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person.
(4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
(5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.
(6) The capital felony was committed for pecuniary gain.
(7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
(8) The capital felony was committed against a law-enforcement officer, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duty.
(9) The capital felony was especially heinous, atrocious, or cruel.
(10) 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.

(f) Mitigating Circumstances. — Mitigating circumstances which may be considered shall include, but not be limited to, the following:

(1) The defendant has no significant history of prior criminal activity.
(2) The capital felony was committed while the defendant was under the influence of mental or emotional disturbance.
(3) The victim was a voluntary participant in the defendant’s homicidal conduct or consented to the homicidal act.
(4) The defendant was an accomplice in or accessory to the capital felony committed by another person and his participation was relatively minor.
(5) The defendant acted under duress or under the domination of another person.
(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired.
(7) The age of the defendant at the time of the crime.
(8) The defendant aided in the apprehension of another capital felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
(9) Any other circumstance arising from the evidence which the jury deems to have mitigating value. (1977, c. 406, s. 2.)
§ 15A-2001. Capital offenses; plea of guilty. — Any person who has been indicted for an offense punishable by death may enter a plea of guilty at any time after his indictment, and the judge of the superior court having jurisdiction may sentence such person to life imprisonment or to death pursuant to the procedures of G.S. 15A-2000. Before sentencing the defendant, the presiding judge shall impanel a jury for the limited purpose of hearing evidence and determining a sentence recommendation as to the appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where the defendant pleads guilty shall be determined under the same procedure of G.S. 15A-2000 applicable to defendants who have been tried and found guilty by a jury. (1977, c. 406, s. 2.)

§ 15A-2002. Capital offenses; jury verdict and sentence. — If the recommendation of the jury is that the defendant be sentenced to death, the judge shall impose a sentence of death in accordance with the provisions of Chapter 15, Article 19 of the General Statutes. If the recommendation of the jury is that the defendant be imprisoned for life in the State's prison, the judge shall impose a sentence of imprisonment for life in the State's prison. (1977, c. 406, s. 2.)

§ 15A-2003. Disability of trial judge. — In the event that the trial judge shall become disabled or unable to conduct the sentencing proceeding provided in this Article, the Chief Justice shall designate a judge to conduct such proceeding. (1977, c. 406, s. 2.)
Chapter 17.
Habeas Corpus.

ARTICLE 1.
Constitutional Provisions.

§ 17-1. Remedy without delay for restraint of liberty.

Waiver. — A defendant may waive the benefit of this article by express consent. Failure to assert it in apt time or by conduct inconsistent with a purpose to insist upon it. State v. Parks, 290 N.C. 748, 228 S.E.2d 248 (1976).

ARTICLE 2.
Application.

§ 17-4. When application denied.

Administrative Discretion. — The difficult problems of when a person should be released and under what circumstances turn on analysis of internal correctional policy, and rightfully lie within the sole administrative jurisdiction of State governmental departments, and are not, barring a clear instance of constitutional infirmity, subjects appropriate for judicial scrutiny. In re Imprisonment of Stevens, 28 N.C. App. 471, 221 S.E.2d 839 (1976).

In practical terms, the questions of grade of conduct, privileges, disciplinary action and commendations are strictly administrative and not judicial matters. In re Imprisonment of Stevens, 28 N.C. App. 471, 221 S.E.2d 839 (1976).

§ 17-5. By whom application is made.


§ 17-6. To judge of appellate division or superior court in writing.


ARTICLE 6.
Proceedings and Judgment.

§ 17-33. When party discharged.

Administrative Discretion. — Where defendant, a youthful offender, was unsatisfied with an essentially administrative determination whereby his correctional status was affected adversely, diminishing his prospect for an early release, standing by itself, raises no habeas corpus question. In re Imprisonment of Stevens, 28 N.C. App. 471, 221 S.E.2d 839 (1976).

In practical terms, the questions of grade of conduct, privileges, disciplinary action and commendations are strictly administrative and not judicial matters. In re Imprisonment of Stevens, 28 N.C. App. 471, 221 S.E.2d 839 (1976).
§ 17-35. When the party bailed or remanded.

Judge May Admit to Bail. —
A prisoner may be admitted to bail in a habeas corpus proceeding if the trial judge determines that the prisoner is so entitled. State v. Parks, 290 N.C. 748, 228 S.E.2d 248 (1976).
§ 17A-3. North Carolina Criminal Justice Training and Standards Council established; members; terms; vacancies. — (a) There is hereby established the North Carolina Criminal Justice Training and Standards Council, hereinafter called "the Council" in the Executive Office of the Governor (or the Department of Justice). The Council shall be composed of 21 members as follows:

(1) Sheriffs. — Five sheriffs or other individuals serving in sheriffs' departments, one of whom shall be selected by the North State Law Enforcement Officers Association and four selected by the North Carolina Sheriffs' Association.

(2) Police Officers. — Five police chiefs or other individuals serving in police departments, one of whom shall be selected by the North State Law Enforcement Officers Association and four selected by the North Carolina Association of Police Executives.

(3) Departments. — A representative of the Department of Justice to be selected by the Attorney General; a representative of the Department of Crime Control and Public Safety to be selected by the Secretary of the Department; a representative for the correctional system to be selected by the Governor; a representative for the court system to be selected by the Chief Justice.

(4) At-Large Groups and Ex Officio Members. — Three members at large to be selected by the Governor. The Director of the Institute of Government and the Director of Law-Enforcement Training in the Department of Community Colleges, the Director of Criminal Justice Programs at East Carolina University and the Director of Criminal Justice Programs of North Carolina University at Charlotte, who shall be permanent members of the Council.

(b) The members shall be appointed for staggered terms and the initial appointments shall be made prior to September 1, 1971, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a), one member from subdivision (2) of subsection (a), one from subdivision (3) representing the Department of Crime Control and Public Safety, one from subdivision (3) representing the court system, and one from subdivision (4) appointed by the Governor.

For the terms of two years: two members from subdivision (1) of subsection (a), two members from subdivision (2) of subsection (a), one from subdivision (3) representing the Department of Justice, and one from subdivision (4) appointed by the Governor.

For the terms of three years: two members from subdivision (1) of subsection (a), two members from subdivision (2) of subsection (a), one member from subdivision (3) representing the correctional system, and one from subdivision (4) appointed by the Governor.

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

The Director of the Institute of Government, the Director of Law-Enforcement Training of the Department of Community Colleges, the Directors of Criminal Justice Programs at East Carolina University and the
§ 17A-6. Powers of council; appointment of director. — (a) In addition to powers conferred upon the Council elsewhere in this Chapter, the Council shall have the power to:

(1) Promulgate rules and regulations for the administration of this Chapter including the authority to require the submission of reports and information by criminal justice agencies and departments within this State relevant to employment, education and training.

(2) Establish minimum educational and training standards for employment as a criminal justice officer: (i) in temporary or probationary status, and (ii) in permanent positions.

(3) Certify persons as being qualified under the provisions of this Chapter to be criminal justice officers.

(4) Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of criminal justice training schools and programs or courses of instruction.

(5) To establish minimum standards and levels of education or equivalent experience for all criminal justice instructors, teachers or professors.

(6) Conduct and stimulate research by public and private agencies which shall be designed to improve education and training in the administration of criminal justice.

(7) Make recommendations concerning any matters within its purview pursuant to this Chapter.

(8) Repealed by Session Laws 1975, c. 372, s. 2.

(9) Appoint such advisory committees as it may deem necessary.

(10) Make such evaluations as may be necessary to determine if governmental units are complying with the provisions of this Chapter.

(11) Adopt and amend bylaws, consistent with law, for its internal management and control.

(12) Enter into contracts and do such things as may be necessary and incidental to the administration of its authority pursuant to this Chapter.

(b) The Attorney General shall appoint a director from a list of three names recommended to him by the Council. If, in the opinion of the Attorney General, none of the three persons recommended have the necessary qualifications for the position of director, the Council shall submit another list of three names, from which the Attorney General shall appoint a director. The director shall be responsible to and shall serve at the pleasure of the Attorney General. (1971, c. 963, s. 6; 1975, c. 372, s. 2.)
Editor's Note. — The 1975 amendment substituted the provision codified as subsection (b) in the section as set out above for former subdivision (8), which authorized the Council to employ a director and other personnel. Because the new provision, enacted as a revised subdivision (8), does not follow either logically or grammatically the introductory language of the section, the codifiers have designated the original provisions of this section as subsection (a), treated former subdivision (8) as repealed, and designated the new subdivision added by the 1975 act as subsection (b).
§ 17B-1. Definitions. — As used in this Chapter, unless the context otherwise requires:

"Campus" means that Center property located in Salemburg, North Carolina. "Center" means the North Carolina Criminal Justice Education and Training System Center.

"Center property" means property that is owned or leased in whole or in part by the State of North Carolina and which is subject to the general management and control of the Department of Justice and is located in Salemburg, North Carolina.


"Criminal justice agencies" means the State and local law-enforcement agencies, the State and local police traffic service agencies, the State correctional agencies, the jails and other correctional agencies maintained by local governments, and the courts of the State.

"Department" means the Department of Justice. (1973, c. 749; 1977, c. 831, s. 1.)

Editor’s Note. — The 1977 amendment the introductory language and added the substituted “this Chapter” for “this Article” in the definitions of “campus” and “center property.”

§ 17B-3.1. Application of State highway and motor vehicles laws at Center. — (a) Except as otherwise provided in this section, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of vehicles thereon are applicable to all streets, alleys, driveways, and parking lots on Center property. Nothing in this section modifies any rights of ownership or control of Center property, now or hereafter vested in the State of North Carolina ex rel., Department of Justice.

(b) The Council may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of vehicles and other modes of conveyance on the campus. In fixing speed limits, the Council is not subject to G.S. 20-141(f) or (g), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the Council. The Council may not regulate traffic on streets open to the public as of right, except as specifically provided in this section.

(c) The Council may by ordinance provide for the registration of vehicles maintained or operated on the campus by any student, faculty member, or employee of the Center, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered vehicle on the campus when the vehicle is required by the ordinance to be registered.

(d) The Council may by ordinance set aside parking lots on the campus for use by students, faculty, and employees of the Center and members of the general public attending schools, conferences, or meetings at the Center, visiting or making use of any Center facilities, or attending to official business with the Center. The Council may issue permits to park in these lots and may charge a fee therefor. The Council may also by ordinance make it unlawful for any person
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to park a vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle.

(e) The Council may by ordinance provide for the issuance of stickers, decals, permits or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of such stickers, decals, permits or other indicia.

(f) Violation of an ordinance adopted under any portion of this section is a misdemeanor punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days, in the discretion of the court. An ordinance may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor.

(g) An ordinance adopted under any portion of this section may provide that a violation will subject the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses committed by the person charged. The Council may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt. The Council may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or has committed repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the Center.

(h) An ordinance adopted under this section may provide that any vehicle illegally parked may be removed to a storage area, in which case the person so removing the vehicle shall be deemed a legal possessor within the meaning of G.S. 44A-2(d).

(i) Evidence that a vehicle was found parked or unattended in violation of a council ordinance is prima facie evidence that the vehicle was parked by:

1. The person holding a Center parking permit for the vehicle; or
2. If no Center parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the Center pursuant to subsection (c); or
3. If no Center parking permit has been issued for the vehicle and the vehicle is not registered with the Center, the person in whose name it is registered with the North Carolina Department of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subsection applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the Council. G.S. 20-162.1 does not apply to such actions or proceedings.

(j) The Council shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(k) All ordinances adopted under this section shall be recorded in the minutes of the Council and copies thereof shall be filed in the offices of the North Carolina Attorney General and the Secretary of State. The Council shall provide for printing and distributing copies of its traffic and parking ordinances.

(l) All moneys received pursuant to this section shall be placed in a trust account and may be used for any of the following purposes:

1. To defray the cost of administering and enforcing ordinances adopted under this section;
2. To develop, maintain, and supervise parking areas and facilities;
3. Other purposes related to parking, traffic, and transportation on the campus. (1977, c. 831, s. 2.)
§ 17B-4. North Carolina Criminal Justice Education and Training System Council — organization. — (a) Membership. — The North Carolina Criminal Justice Education and Training System Council shall be composed of 41 members as follows:

(1) Four representatives of sheriffs' departments, one of whom shall be selected by the North State Law Enforcement Officers' Association and three selected by the North Carolina Sheriffs' Association.

(2) Four representatives of police departments, one of whom shall be selected by the North State Law Enforcement Officers' Association and three selected by the North Carolina Association of Police Executives.

(3) Two county commissioners selected by the North Carolina Association of County Commissioners.

(4) Two mayors selected by the North Carolina League of Municipalities.

(5) One criminal justice educator selected by the North Carolina Association of Criminal Justice Education.

(6) One law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association.

(7) Five civilian members at large to be selected by the Governor from the general private sector.

(8) One superior court judge, one district court judge and one district attorney of the General Court of Justice, each of these individuals to be selected by the members of their respective groups in general meeting assembled.

(9) The Attorney General, the Director of the Administrative Office of the Courts, the Secretary of Correction, the Director of Prisons, the Director of Jail and Detention Services, the Director of Adult Probation and Parole, the Director of Youth Development, the Director of the State Bureau of Investigation, the Secretary of Crime Control and Public Safety, the Commander of the State Highway Patrol, the Executive Director of the Wildlife Resources Commission, the Commissioner of Commercial and Sports Fisheries, the Chairman of the State Board of Alcoholic Control, the Coordinator of the Governor's Highway Safety Program, the President of Community Colleges of the Department of Education, and the Director of the Institute of Government, all of whom shall serve ex officio.

(10) One member of the North Carolina Senate to be appointed by the Lieutenant Governor; one member of the North Carolina House of Representatives to be appointed by the Speaker of the House; and one member from the public at large to be selected by the Attorney General. The initial appointments shall be made prior to July 1, 1975 and the term of successors shall begin on July 1 of each year thereafter.

(1975, c. 227; e#658r'ss. 1, 2; 1977, c. 70s. 31.)

Editor's Note. — The first 1975 amendment, in subdivision (9) of subsection (a), inserted "Director of Prisons" preceding "the Director of Jail and Detention Services" and substituted "Director of Adult Probation and Parole, the Director of Youth Development" for "Secretary of Correction, the Secretary of Correction, the Secretary of Correction and "Commissioner of Commercial and Sports Fisheries" for "Secretary of Natural and Economic Resources."

The second 1975 amendment substituted "41 members" for "38 members" in the introductory paragraph of subsection (a) and added subdivision (10) of subsection (a).

The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Commissioner of Motor Vehicles" near the middle of subdivision (9) of subsection (a).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As the rest of the section was not changed by the amendments, only subsection (a) is set out.
Chapter 18A.  
Regulation of Intoxicating Liquors.

Article 1.  
General Provisions.

Sec.
18A-3. Manufacture, sale, etc., forbidden except as expressly authorized.

Article 2.  
A.B.C. Boards and Enforcement.

18A-17. Powers and duties of county boards.

Part 2. Enforcement.
18A-21. Seizure of liquor, equipment, materials, and conveyance; arrests; sale of property.
18A-22. Law-enforcement officers to search for and seize distilleries; confiscation; disposal of property.

Article 3.  
Sale, Consumption, Possession and Transportation of Alcoholic Beverages.

18A-27. Transportation of up to 20 liters of fortified wine.
18A-28. Transportation of up to 20 liters of alcoholic beverages.
18A-30. Possession and consumption of alcoholic beverages at designated places.
18A-31. Permits for social establishments, restaurants, etc.
18A-31.1. Permits to keep and use alcoholic beverages for culinary purposes.
18A-32. Transportation, possession, and sale at installations operated by or for armed forces.

Article 4.  
Malt Beverages and Wine.

Part 1. Retail Sales and Personal Use.
18A-34. Prohibited acts of licensees; wine and malt beverage purchases limited as to quantity.

Sec.
18A-35. Transportation and possession of malt beverages and unfortified wine; out-of-state purchases.
18A-35.1. Storage, possession and consumption of malt beverages and unfortified wine.

Part 1A. Commercial Wineries.

Part 2. Permits.
18A-37. Permit and license required.
18A-41. Permits for commercial transportation of malt beverages and wine (fortified and unfortified).
18A-42. Salesman’s permit.
18A-42.1. Special permit; inheritance; bankruptcy; confiscation; individuals and governmental agencies.
18A-43. Revocation or suspension of permit.
18A-44.1. Location of hearing.

18A-47. Wine regulations.
18A-50. Breweries forbidden to coerce or persuade wholesalers to violate Chapter or unjustly cancel contracts or franchises; prima facie evidence of franchise; injunctions; revocation or suspension of licenses and permits.

Article 5.  
Elections.

18A-52. Malt beverage and unfortified wine elections in counties or municipalities.

Article 6.  
Miscellaneous Provisions.
18A-54. Power of Governor to prohibit all sales during an emergency.
18A-56. Violation a misdemeanor.
§ 18A-1. Purpose of Chapter.


§ 18A-2. Definitions. — When used in this Chapter:

(2) "Fortified wines" shall mean any wine made by fermentation from grapes, fruits, berries, rice or honey to which nothing but pure brandy has been added, which brandy is made from the same type of grape, fruit, berry, rice or honey that is contained in the base wine to which it is added, and having an alcoholic content of over fourteen percent (14%) and not more than twenty-one percent (21%) of absolute alcohol reckoned by volume; and is approved by the State Board of Alcoholic Control as to identity, quality, and purity as provided in this Chapter.

(8a) The term "passenger area of a motor vehicle" shall mean that area designed for the seating of the driver and passengers as well as any area that can be within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatch-back or similar vehicle, that area to the rear of the last back seat shall not constitute part of the passenger area.

(1975, c. 329; c. 411, s. 2.)

Editor's Note. — The first 1975 amendment added subdivision (8a).

The second 1975 amendment inserted the references to honey near the beginning of subdivision (2) and made other minor changes in wording in subdivision (2).

§ 18A-3. Manufacture, sale, etc., forbidden except as expressly authorized.

— (a) No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, purchase, or possess any intoxicating liquor except as authorized in this Chapter or in Chapter 105, Article 2C.

(b) No person who does not have an appropriate permit and license (as defined in this Chapter) shall have any intoxicating liquor mailed or shipped to him from outside this State. (1923, c. 1, s. 2; C. S., s. 3411(b); 1971, c. 872, s. 1; 1975, c. 654, s. 4.)

Editor's Note. — The 1975 amendment added "or in Chapter 105, Article 2C" at the end of subsection (a).


§ 18A-7. Keeping liquor for sale; evidence. — (a) It is unlawful for any person, firm, association or corporation, by whatever name called, to have or keep in possession for the purpose of sale, except as authorized by law, any intoxicating liquors; and proof of any one of the following facts shall constitute prima facie evidence of a violation of this section:

(1) The possession of a license from the government of the United States to sell or manufacture spirituous liquors; or

(2) The possession of more than four liters of spirituous liquors at any one time, whether in one or more places; or

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§ 18A-15. Powers and authority of State Board. — The State Board of Alcoholic Control shall have power and authority as follows:

(1) In conjunction with the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety, to see that all the laws relating to the sale and control of intoxicating liquor are observed and performed.

(2) To audit and examine the accounts, records, books, and papers relating to the operation of county and municipal stores or to have the same audited.

(3) a. To fix the retail price of each bottle of alcoholic beverages sold in the county and municipal A.B.C. stores at such levels as shall promote the temperate use of these beverages and as may facilitate policing, which price shall be uniform throughout the State;

b. To compute the taxes levied by G.S. 105-113.93 and 105-113.94 on the retail prices of spirituous liquors so fixed;

c. To add to said retail price:

   1. An amount equal to three and one-half percent (3 1/2%) of said retail price of spirituous liquors; and

   2. One cent (1¢) per bottle on each bottle of alcoholic beverages containing fifty milliliters or less sold in said county and municipal A.B.C. stores and five cents (5¢) per bottle on each bottle of alcoholic beverages containing more than fifty milliliters sold in said stores; the sum of the retail price plus the foregoing additions thereto being the established price for
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each such bottle of alcoholic beverages. The foregoing additions to retail price shall not be subject to the tax levied by G.S. 105-113.93 and 105-113.94. The clear proceeds of the three and one-half percent (3½%) addition to the retail price of spirituous liquors shall be retained by the respective county or municipal A.B.C. boards in the same manner as other profits derived from the sale of spirituous liquors. The clear proceeds of the one cent (1¢) and five cents (5¢) per bottle addition to retail price shall be remitted to the county commissioners of the county in which such additions to retail price were collected, accompanied by forms or reports to be prescribed and furnished by the State Board of Alcoholic Control, which remittances shall be spent in the discretion of the county commissioners only for projects for construction, maintenance and operation of facilities for education, research, treatment or rehabilitation of alcoholics. In connection with such projects and programs, the county commissioners, or such agencies as are by them designated, shall also have the authority to use said funds to purchase or lease real and personal property, and to renovate, remodel, furnish and equip buildings as and when required for the operation of such projects and programs. The funds may also be used for programs of education and research on problems of alcoholism and the treatment and rehabilitation of alcoholics. The county commissioners are hereby empowered to spend the funds for a project not located in the county but which benefits the citizens of the county. The Department of Human Resources and the State Department of Public Instruction are hereby empowered to enact guidelines for the expenditure of such funds by county commissioners and the county commissioners may expend the funds pursuant to those guidelines. Reports and remittances of the aforesaid additions to retail price shall be made monthly by the local boards on or before the fifteenth day of the next succeeding month.

d. To determine the total prices of all such alcoholic beverages, which total price shall be the sum of the established price plus the taxes levied by G.S. 105-113.93 and 105-113.94, and to notify the stores periodically of such prices.

(4) To remove any member, or members, of county and municipal boards whenever in the opinion of the State Board such member, or members, of the county or municipal board, or boards, may be unfit to serve thereon.

(5) To test any and all alcoholic beverages that may be sold, or proposed to be sold, to the county or municipal stores, and to install and operate such apparatus, laboratories, or other means or instrumentalities and employ to operate the same such experts, technicians, employees and laborers as may be necessary to operate the same, in accordance with the opinion of the Board. In lieu of establishing and operating laboratories as above directed, the Board may, with the approval of the Governor and the Commissioner of Agriculture, arrange with the State Chemist to furnish such information and advice and to perform such analyses and other laboratory services as the Board may consider necessary, or they may, if they deem advisable, cause such tests to be made otherwise.

(6) To supervise purchasing by the county and municipal boards when the State Board is of the opinion that it is advisable for it to exercise such
power in order to carry into effect the purpose and intent of this Chapter, with full power to disapprove any such purchase. At all times it shall have the right to inspect all invoices, papers, books, and records in the county or municipal stores or boards relating to purchases.

(7) To exercise the power to approve or disapprove in its discretion all regulations adopted by the several county and municipal stores for the operation of said stores and the enforcement of alcoholic beverage control laws which may be in violation of the terms or spirit of this Chapter.

(8) To require that a sufficient amount be so allocated as to insure adequate enforcement; the amount shall in no instance be less than five percent (5%) nor more than ten percent (10%) of the net profits arising from the sale of alcoholic beverages.

(9) To remove, in case of violation of the terms or spirit of this Chapter, officers employed, elected, or appointed in the several counties and municipalities where stores may be operated.

(10) To approve or disapprove, in its discretion, the opening and location of county and municipal stores; provided that in the location of control stores in any county in which a majority of the votes have been cast for liquor control stores, no store or stores shall be located in any community or town in which a majority of the votes cast were against control; provided further, however, that stores may be located in such communities and towns if and when as many as twenty percent (20%) of the qualified voters therein by petition, at any time after 18 months since the last election on such question, have requested the location of such a store or stores in such communities or towns and the State Board has found, upon due investigation after receipt of such petition, that a majority of the qualified electors in such community or town are at the time such investigation is made in favor of establishing such store or stores. Each county and municipality that may be entitled to operate stores for the sale of alcoholic beverages shall be entitled to operate at least one store for such purpose. No additional stores in each of said counties and municipalities shall be opened until and unless their opening and their place of location shall first be approved by the State Board, which at any time may withdraw its approval of the operation of any additional county or municipal store when the store is not operated efficiently and in accordance with the alcoholic beverage control laws and all valid regulations prescribed therefor, or whenever, in the opinion of the State Board, the operation of any county or municipal store shall be inimical to the morals or welfare of the community in which it is operated or for such other cause, or causes, as may appear to the State Board sufficient to warrant the closing of any county or municipal store.

(11) To require the use of a uniform accounting system in the operation of all county and municipal stores hereunder and to provide in said system for the keeping therein and the record of all such information as may, in the opinion of the said State Board, be necessary or useful in its auditing of the affairs of the said county and municipal stores, as well as in the study of such problems and subjects as may be studied by said State Board in the performance of its duties.

(12) To grant, to refuse to grant, or to revoke permits for any person, firm, or corporation to do business in North Carolina in selling alcoholic beverages to or for the use of any county or municipal store and to provide and to require that such information be furnished by such person, firm, or corporation as a condition precedent to the granting of such permit, or permits, and to require the furnishing of such data
and information as it may desire during the life of such permit, or
permits, and for the purpose of determining whether such permit, or
permits, shall be continued, revoked, or regranted after expiration
dates. No permit, however, shall be granted by the State Board to any
person, firm, or corporation when the State Board has reason sufficient
unto itself to believe that such person, firm, or corporation has
furnished to it any false or inaccurate information or is not fully,
frankly, and honestly cooperating with the State Board, the Alcohol
Law Enforcement Division, and the several county and municipal
boards in observing and performing all liquor laws that may now or
hereafter be in force in this State, or whenever the Board shall be of
opinion that such permit ought not to be granted or continued for any
cause. Upon the granting of a permit in accordance with this Chapter,
the State Board of Alcoholic Control shall notify the county sheriff and
county tax collector, and if applicable, the city chief of police and city
tax collector, as well as the county alcoholic beverage control officer,
whenever an alcoholic beverage control permit of any type is issued
within the respective county and/or city.

(13) On or before June 30, 1975, and thereafter to provide for the receipt,
storage and distribution of spirituous liquors by negotiated contract or
by use of the procedures for purchase and contract of property by State
agencies with a privately-owned warehouse in the Raleigh area or,
alternatively and by the same procedure, with privately-owned
warehouses in the several regions of the State which in the discretion
of the Board would promote efficient distribution of spirituous liquors
to the local boards of alcoholic control and maintain control of such
beverages and the Board’s supervision thereof. The State Board of
Alcoholic Control shall provide for such warehousing and distribution
through contracts or subleases with independent contractors, except
that the State Board shall have the power and authority to operate such
warehouses on an interim emergency or temporary basis pursuant to
a change in independent operator or for some condition substantially
impeding distribution of spirituous liquors from the warehouse. The
Board shall prescribe such rules and regulations as they deem
necessary for the receipt, storage and distribution of such beverages
and violation of such rules and regulations shall be grounds for
termination of a contract upon reasonable notice by the Board. The
contract or contracts entered into pursuant to this subdivision shall
provide for an annual audited financial statement, shall provide that
the records of the warehouse or warehouses be available for inspection
at all times by the State Board of Alcoholic Control and the Department
of Revenue and shall provide that the accounts of the warehouse or
warehouses regarding the receipt, storage and distribution of
spirituous liquors be subject to audit by the State Auditor.

(14) To adopt, amend, or repeal reasonable rules and regulations for the
purpose of carrying out the provisions of this Chapter, but not
inconsistent herewith, which rules and regulations shall become
effective when filed as provided by law.

(15) To appoint or commission one or more hearing officers who shall have
the full authority to make investigations, hold hearings, and make
findings of fact. Upon the approval by the State Board of the findings
and orders of suspension or revocation of the permit of any licensee
made and entered by any such hearing officer, the findings of such
hearing officer shall be deemed to be the findings and the order of the
Board.
(16) The Board is authorized to dispose of damaged liquors belonging to the Board by selling it to public or private hospitals to be used only for medicinal purposes, or by sale to military installations or by destroying such liquors as the Board may deem best. Sale shall be by:
   a. Advertisement for sealed bids;
   b. Negotiated offer, advertisement, and upset bids;
   c. Public auction; or
d. Exchange.
   Complete detailed records of such disposal shall be maintained by the Board showing the brand, amount and disposition. Any funds derived from such liquors shall be paid into the warehouse bailment fund.

(17) To provide for the storage and transportation of alcoholic beverages for special occasions for a period of 48 hours prior to and following a special occasion by regulation and by the issuance of permits needed for control of such storage and transportation; provided, however, the transportation of alcoholic beverages shall be limited to 20 liters at any one time.

The State Board shall have all other powers which may be reasonably implied from the granting of express powers herein named, together with such other powers as may be incidental to, or convenient for, carrying out and performing the powers and duties herein given to the Board. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6.)

Editor's Note. —
The first 1975 amendment added the fifth sentence in paragraph c 2 of subdivision (3).

The second 1975 amendment substituted “spirituous liquors” for “alcoholic beverages” throughout subdivision (13).

The third 1975 amendment, effective July 1, 1975, added subdivision (17).

The first 1977 amendment, effective April 1, 1977, added “In conjunction with the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety” at the beginning of subdivision (1), inserted “the Alcohol Law Enforcement Division” near the middle of the second sentence of subdivision (12), and rewrote subdivision (15), which formerly read “To appoint or commission A.B.C. officers, hearing officers, and other enforcement personnel authorized by Part 2 of this Article.”

The second 1977 amendment, effective Jan. 1, 1978, substituted “fifty milliliters” for “two ounces” in two places in the first sentence of paragraph c 2 of subdivision (3) and substituted “twenty liters” for “five gallons” in subdivision (17).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

Section 105-113.94, referred to in subdivision (3), was repealed by Session Laws 1975, c. 53, s. 3.


The purpose of an administrative investigation is to protect the public; therefore, the public’s interest in applying more relaxed criteria for administrative investigations is greater than the regulated person’s, firm’s or corporation’s right to privacy. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

The Board of Alcoholic Control is not required to have evidence that petitioner has violated its rules and regulations before it undertakes an investigation of him. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

An administrative agency, in this case the Board of Alcoholic Control, is empowered to conduct inquiries to whatever extent is reasonably necessary to make the power of investigation effective. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

An administrative agency, in this case the Board of Alcoholic Control, is empowered to conduct inquiries to whatever extent is reasonably necessary to make the power of investigation effective. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

Subsection (12) requires the Board of Alcoholic Control to give notice and an opportunity to be heard to the applicant or permittee before a permit is refused or revoked for failure to produce records as ordered by the Board. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

A license to engage in a business or practice a profession is a property right that cannot be suspended or revoked without due process of law. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

Construction of Regulations Issued under Subdivision (14). — The board’s regulations issued under authority of subsection (14) are not criminal statutes to be strictly construed. They are civil regulations to be reasonably interpreted so as to accomplish the legitimate purposes for which they are issued. Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

§ 18A-16. County boards of alcoholic control.


§ 18A-17. Powers and duties of county boards. — The said county boards shall each have the following powers and duties:

(17) To permit the installation in A.B.C. stores of containers by which customers may make contributions to the Alcoholism Research Fund established by G.S. 122-121.

(1977, c. 618.)

Local Modification. — Alamance, Dare, Lenoir, New Hanover and Rockingham, as to subdivision (14): 1977, c. 606; Wilson County A.B.C. Board, as to subdivision (14): 1975, c. 774; City of Cherryville, as to subdivision (14): 1975, c. 114.

Editor’s Note. —

The 1977 amendment added subdivision (17).


(b) After deducting the amount required to be expended for enforcement, education and rehabilitation, as herein provided, and retaining sufficient and proper working capital, the amount to be determined by the board, and except as hereinbefore provided in Chapters 493 and 418 of the Public Laws of 1935, the entire net profits derived from any stores shall be paid quarterly to the general fund of each respective county wherein county stores are operated. (1937, c. 49, ss. 20, 21; c. 411; 1971, c. 872, s. 1; 1975, c. 411, s. 3.)

Editor’s Note. — The 1975 amendment inserted “education and rehabilitation” near the beginning of subsection (b).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (17) are set out.


§ 18A-19. Department of Crime Control and Public Safety, Alcohol Law Enforcement Division — responsibilities. — (a) The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety shall have the responsibility to enforce the provisions of this Chapter and Article 5 of Chapter 90 in controlling the sale, purchase, transporting, manufacture and possession of intoxicating liquors and controlled substances in the State, to perform
investigatory and other duties, as directed by the Secretary of Crime Control and Public Safety, as may be required for the enforcement of the rules and regulations of the State Board of Alcoholic Control, and to perform such other duties as may be assigned by the Secretary of Crime Control and Public Safety or the Governor, as provided in Article 5A of Chapter 143B.

(b) The Secretary of Crime Control and Public Safety shall have the power and authority to appoint or commission Alcohol Law Enforcement Agents (previously referred to as State A.B.C. Officers) and other enforcement personnel authorized under Part 2 of this Article, and to appoint a "Director of the Alcohol Law Enforcement Division," who shall be in charge of the Alcohol Law Enforcement Division.

(c) The Secretary of Crime Control and Public Safety may commission as alcohol law enforcement agents such regular employees of the State Board of Alcoholic Control as the Secretary of Crime Control and Public Safety designates for the purpose of enforcing the provisions of this Chapter.

(d) Any person commissioned as an alcohol law enforcement agent shall have statewide jurisdiction. Such officers shall have the same powers and authorities as law-enforcement officers generally and may arrest as authorized in G.S. 15A-401.

Before any person commissioned as an alcohol law enforcement agent shall exercise any power of arrest under this Chapter, he shall take the oath required of public officers before an officer authorized to administer oaths.

(e) All alcohol law enforcement agents shall have authority to investigate the operation of the licensed premises of all persons licensed under this Chapter, to examine the books and records of such licensee, to procure evidence with respect to violations of this Chapter or any rules and regulations adopted thereunder, and to perform such other duties as prescribed by law or regulation. Alcohol law enforcement agents shall have the right to enter any licensed premises in the State in the performance of their duty, at any hour of the day or night. Refusal by a permittee or by any employee of a permittee to permit such officers to enter the premises shall be cause for revocation or suspension of the permit of the permittee.

(f) Notices, orders, or demands issued by the State Board of Alcoholic Control for the surrender of permits may be served and executed by alcohol law enforcement agents, and these officers, while serving and executing such notices, orders, or demands, shall have all the power and authority possessed by law-enforcement officers when serving and executing a warrant charging a violation of the criminal laws of the State. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, ss. 11, 14; c. 1251, s. 4; 1951, c. 1056, s. 1; c. 1186, ss. 1, 2; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1961, c. 645; 1963, c. 426, ss. 1, 2, 4, 5, 12; 1967, c. 868; 1971, c. 872, s. 1; 1977, c. 70, s. 17.)

Cross Reference. — As to transfer of the State Board of Alcoholic Control Enforcement Division to the Department of Crime Control and Public Safety, see § 143A-293.

Editor's Note. — The 1977 amendment, effective April 1, 1977, rewrote this section.


(c) A city or county board of alcoholic control may provide by resolution that persons who serve as volunteer A.B.C. officers at the request of the chief A.B.C. officer and under his authority, while undergoing official training and while performing duties on behalf of the city or county A.B.C. Board pursuant to orders or instructions of said chief A.B.C. officer shall be entitled to benefits under the North Carolina Workmen's Compensation Act and to any fringe
§ 18A-21. Seizure of liquor, equipment, materials, and conveyance; arrests; sale of property. — (a) When any officer of the law shall discover any person in the act of transporting, in violation of law, intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, in any vehicle, motor vehicle, water or aircraft, or other conveyance, it shall be his duty to seize any and all intoxicating liquor, and any and all equipment or materials designed or intended for use in the manufacture of intoxicating liquor, found therein being transported contrary to law. Whenever intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, transported or possessed illegally, is seized by an officer, he shall take possession of the vehicle, motor vehicle, water or aircraft, or any other conveyance, and shall arrest any person in charge thereof. (Provided, that the transportation of the legal amount of alcoholic beverages in the passenger area of a motor vehicle with the cap or seal on the container or containers open or broken shall not be ground for confiscation of the motor vehicle.) The officer shall at once proceed against the person arrested in any court having competent jurisdiction; but the vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. All liquor and all equipment and materials seized under this section shall be held by the officer seizing same and shall, upon the acquittal of the person so charged, be returned to the established owner, except that any nontaxpaid liquor shall be destroyed. In the event of conviction or default of appearance of the person charged, or in event no criminal proceedings are initiated, the liquor, equipment, and materials shall be disposed of as provided in G.S. 18A-24. Provided, that any taxpaid spirituous liquor so seized shall within 10 days be turned over to the board of county commissioners, which shall within 90 days from the receipt thereof either turn it over to hospitals for medicinal purposes or sell it to alcoholic beverage control stores within the State of North Carolina (the proceeds of such sale being placed in the school fund of the county in which such seizure was made) or destroy it. Any malt beverages

Editor's Note. —
The 1977 amendment added subsection (c).
As the rest of the section was not changed by the amendment, only subsection (c) is set out.

This Section and § 18A-19 Read Together. —
This section and § 18A-19 are aimed at a similar problem. Analogous in function, they are to be construed cumulatively as part of a regulatory package although not necessarily in pari materia. Greensboro Elks Lodge v. North Carolina Bd. of Alcoholic Control, 27 N.C. App. 594, 220 S.E.2d 106 (1975), appeal dismissed, 289 N.C. 296, 222 S.E.2d 696 (1976).


Local law-enforcement officers are not required to request and obtain permission to enter the premises of an alcoholic beverage permittee before entering such premises for the purpose of checking for violations of the alcoholic beverage control laws under the authority of this section. Greensboro Elks Lodge v. North Carolina Bd. of Alcoholic Control, 27 N.C. App. 594, 220 S.E.2d 106 (1975), appeal dismissed, 289 N.C. 296, 222 S.E.2d 696 (1976).
seized for being transported or possessed illegally shall be destroyed. Any wine (fortified or unfortified) seized for being transported or possessed illegally shall be destroyed or sold pursuant to the provisions of G.S. 18A-42.1. In the event that any wine (fortified or unfortified) is sold by law enforcement officers pursuant to the provisions of G.S. 18A-42.1, any proceeds derived from such sales shall be paid over to the treasurer or the proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county.

(1977, c. 854, s. 2.)

Editor's Note. — The 1977 amendment, in subsection (a), rewrote the former eighth sentence, which read "Any malt beverages or wine (fortified or unfortified), so seized for being transported or possessed illegally, shall be destroyed," and added the ninth and tenth sentences. As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 18A-22. Law-enforcement officers to search for and seize distilleries; confiscation; disposal of property. — (a) It is the duty of all sheriffs, deputy sheriffs, municipal police, rural police, alcohol law enforcement agents and local A.B.C. officers, and other law-enforcement officers to search for and seize all equipment and materials used for the illegal manufacture of intoxicating liquor; and, except as provided in subsection (b), to retain the equipment and materials at the office of the law-enforcement agency making the seizure until disposed of by court order.

(1977, c. 70, s. 18.)

Editor's Note. — Session Laws 1977, c. 70, s. 34, contains a severability clause. As subsection (b) was not changed by the amendment, it is not set out.


ARTICLE 3.

Sale, Consumption, Possession and Transportation of Alcoholic Beverages.

§ 18A-26. Transportation of alcoholic beverages. — (a) A person may transport, not for sale or barter, not more than four liters of alcoholic beverages, except as authorized by permit, to and from any place in the State; but if the cap or seal on the container or containers has been opened or broken, it shall be unlawful to transport the same in the passenger area of any motor vehicle.

It shall be unlawful for any person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b to transport alcoholic beverages except when the vehicle is actually transporting a bona fide paying passenger who is the actual owner of the alcoholic beverages being transported. Alcoholic beverages owned and possessed by each passenger shall be transported in the manner and amount authorized by this section, provided that the provisions of G.S. 20-16(a)(8) shall not apply to a person convicted under this section. The transportation of up to four liters of alcoholic beverages shall not be ground for confiscation of the motor vehicle.

(b) A person may purchase legally outside of this State and bring into the
State for his own personal use not more than four liters of alcoholic beverage. Provided, that the container or containers of said alcoholic beverages are maintained within any vehicle as regulated and provided for in this Chapter. (1928, c. 1, s. 25; C. S., s. 3411(y); 1937, c. 49, ss. 14, 16; c. 411; 1967, c. 222, ss. 1, 7; c. 1256, s. 3; 1969, c. 598, ss. 2, 3; c. 1018; 1971, c. 872, s. 1; 1977, c. 176, s. 1; c. 586.)

Editor's Note. — The first 1977 amendment, effective Jan. 1, 1978, substituted “four liters” for “one gallon” in two places in subsection (a) and near the beginning of subsection (b). The second 1977 amendment substituted “G.S. 20-4.01(27)b” for “G.S. 20-38(20)(b)” in the first sentence of the second paragraph of subsection (a).

Constitutionality. — There exists a “reasonable basis” for distinguishing transportation of alcoholic beverages in a for-hire passenger vehicle from other modes of transportation. This section is not unconstitutional on its face or as applied to defendants. State v. Terry, 30 N.C. App. 372, 226 S.E.2d 846 (1976).

§ 18A-27. Transportation of up to 20 liters of fortified wine. — (a) Whenever any person desires to purchase or transport more than four liters but not exceeding 20 liters of fortified wine at one time (from an A.B.C. store or any retail permittee), he shall first obtain a “purchase-transportation permit” from the chairman of the local A.B.C. board, a member of the local board, or the general manager or supervisor of the local board of alcoholic control. No permit shall be issued by any authorized person to:

1) Persons not of good character; or
2) Persons not sufficiently identified, if unknown to the issuing person; or
3) Persons known or shown to be alcoholics or bootleggers.

(b) The permit shall be signed by the person authorized to issue same and it shall authorize the purchaser named therein to purchase and transport the quantity of fortified wine therein indicated not to exceed 20 liters. The permit shall be issued by means of a printed form with at least two carbon copies of the same, and on the face of the permit shall appear the following information:

1) Name and address of purchaser;
2) The name and location of the place where purchase is to be made;
3) Date issued and expiration date;
4) Destination;
5) Signature of person issuing the permit;
6) A statement that the permit is valid for only one purchase on the date shown and that the permit must accompany the merchandise during transit and both the merchandise and the permit must be exhibited by purchaser to any law-enforcement officer upon request.

(e) Permits to be used shall be in the form substantially as follows:

ALCOHOLIC BEVERAGE CONTROL BOARD

County

Date, North Carolina

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PURCHASE-TRANSPORTATION PERMIT

(not to exceed 20 liters)

Name of Purchaser

Address

Name of Store

Address of Store

Destination
Route to Be Used .................................................................
Signed .................................................................
(Person authorized to issue)
Board Member

Note: This permit is valid for only one purchase and it shall expire at 6:00 P.M. of the date shown above. Special Note: This permit must accompany the merchandise while in transit. Both the merchandise and the permit must be exhibited to any law-enforcement officer upon request. (1971, c. 872, s. 1; 1977, c. 176, ss. 1, 2.)

Editor's Note. — The 1977 amendment substituted "four liters" for "one gallon" in the first sentence of subsection (a) and "twenty liters" for "five gallons" in the first sentence of subsection (a), the first sentence of subsection (b), and in the permit form set out in subsection (e).

As the rest of the section was not changed by the amendment, only subsections (a), (b) and (e) are set out.

§ 18A-28. Transportation of up to 20 liters of alcoholic beverages. — (a) It shall be lawful to purchase, possess, and transport up to 20 liters of alcoholic beverages in containers not smaller than 750 milliliters from a county or municipal A.B.C. store to a named destination within the county or counties adjacent thereto; provided, the purchaser has in his possession a "purchase-transportation permit" and complies strictly with the provisions of this section, and provided further that said alcoholic beverages are not being transported for the purpose of sale and that the cap or seal on the container or containers of said alcoholic beverages has not been opened or broken.

(b) Whenever any person desires to purchase or transport more than four liters of alcoholic beverages at one time, he shall first obtain a purchase-transportation permit from the chairman of the local board, a member of the local board, or the general manager or supervisor of the local board of alcoholic control. No permit shall be issued by any authorized person to:

(1) Persons not of good character;
(2) Persons not sufficiently identified, if unknown to the issuing person; or
(3) Persons known or shown to be alcoholics or bootleggers.

(c) The permit shall be signed by the person authorized to issue it, and it shall authorize the purchaser named therein to purchase and transport the quantity of alcoholic beverages therein indicated not to exceed 20 liters. The permit shall be issued by means of a printed form with at least two carbon copies. On the face of the permit shall appear the following information:

(1) Name and address of purchaser;
(2) The name and location of the place where purchase is to be made;
(3) Date issued and expiration date;
(4) Destination;
(5) Signature of person issuing the permit;
(6) A statement that the permit is valid for only one purchase on the date shown and that the permit must accompany the merchandise during transit and both the merchandise and the permit must be exhibited by purchaser to any law-enforcement officer upon request.

(d) The permit herein authorized shall be valid for only one purchase, and it shall expire at 9:30 P.M. of the date shown thereon. No purchase based on this permit shall be made from any A.B.C. store except the store named on the permit. One copy of the permit shall be retained by the permittee. The permit shall authorize the permittee to transport the alcoholic beverages from the place of purchase to the destination indicated thereon. The permit must accompany the merchandise during transit and both the merchandise and the permit must be exhibited to any law-enforcement officer upon request.

(e) The chairman or any member of a local county or municipal board or the
general manager or supervisor of a local alcoholic control board is authorized to issue purchase-transportation permits. Provided further, that the manager and the assistant manager of any alcoholic control store may issue such permits if authorized in writing by the chairman of said board to do so.

(f) Permits to be used shall be in the form substantially as follows:

**ALCOHOLIC BEVERAGE CONTROL BOARD**

<table>
<thead>
<tr>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Carolina</td>
</tr>
<tr>
<td>Date</td>
</tr>
<tr>
<td>19</td>
</tr>
</tbody>
</table>

**PURCHASE-TRANSPORTATION PERMIT**

(not to exceed 20 liters)

Name of Purchaser ....................................................
Address .................................................................
A.B.C. Store No. ......................................................
Address of the Store ............................................... Destination ..........................................................
Route to Be Used ....................................................
Signed .................................................................
(Person authorized to issue)
Board Member

Note: This permit is valid for only one purchase and it shall expire at 9:30 P.M. of the date shown above. Special Note: This permit must accompany the merchandise while in transit. Both the merchandise and the permit must be exhibited to any law-enforcement officer upon request.

(g) Repealed by Session Laws 1973, c. 819, s. 1. (1969, c. 617, s. 1; 1971, c. 872, s. 1; 1973, c. 94; c. 819, s. 1; 1975, c. 622, ss. 1-4; 1977, c. 176, ss. 1, 2, 4.)

Editor's Note. — The 1975 amendment inserted "or counties adjacent thereto" near the middle of subsection (a), substituted "9:30 P.M." for "6:00 P.M." in the first sentence of subsection (d) and in the first note to the form of permit in subsection (f) and added the second sentence of subsection (e). The 1977 amendment, effective Jan. 1, 1978, substituted "twenty liters" for "five gallons" near the beginning of subsection (a), at the end of the first sentence of subsection (c) and in the permit form set out in subsection (f), substituted "seven hundred fifty milliliters" for "one-fifth gallon" near the beginning of subsection (a), and substituted "four liters" for "one gallon" in the first sentence of subsection (b).

§ 18A-29. Commercial transportation of spirituous liquors. — (a) The willful transportation of spirituous liquors within, into, or through the State of North Carolina in quantities in excess of four liters (or 20 liters with a permit) is prohibited except for delivery to federal reservations to which has been ceded exclusive jurisdiction by the State of North Carolina, for delivery to an A.B.C. store or board, or for transport through this State to another state. The State Board of Alcoholic Beverage Control may adopt further regulations governing the transportation of spirituous liquors within, into, and through the State of North Carolina for delivery to a federal reservation, A.B.C. stores or boards, or in transit through this State to another state, as it may deem necessary to confine such transportation to legitimate purposes, and may issue transportation permits in accordance with such regulations.

(b) Before any person shall transport over the roads and highways of this State any spirituous liquors in excess of four liters (or 20 liters with a permit) within, into, or through the State of North Carolina for delivery to a federal reservation exercising exclusive jurisdiction, or in transit through this State to
another state, he shall post with the State Board of Alcoholic Beverage Control a bond with surety approved by the Board, payable to the State of North Carolina in the penal sum of one thousand dollars ($1,000), running in the name of the State of North Carolina, conditioned that such person will not unlawfully transport or deliver any spirituous liquors within, into, or through the State of North Carolina. In case of conviction, the forfeiture shall be paid to the school fund of the county in which the seizure is made, and any such county shall have the right to sue for the same. When such spirituous liquors are desired to be transported within, into, or through the State of North Carolina, the transportation shall be engaged in only under the following conditions:

(1) Statement as to Bond and Bill of Lading Required. — There shall accompany such spirituous liquors a statement signed by the Chairman of the State Board of Alcoholic Beverage Control showing that the bond hereinbefore required has been furnished and approved. There shall accompany such spirituous liquors at all times during transportation a bill of lading or other memorandum of shipment signed by the consignor showing an exact description of the spirituous liquors being transported, the name and address of the consignee, and the route to be traveled by the vehicle while in the State of North Carolina; this route must be substantially the most direct route from the consignor's place of business to the place of business of the consignee.

(2) Route Stated in Bill of Lading to Be Followed. — Vehicles transporting spirituous liquors shall not substantially vary from the route specified in the bill of lading or other memorandum of shipment.

(3) Names of True Consignor and Consignee Must Appear. — The name of the consignor on any such bill of lading or other memorandum of shipment shall be the name of the true consignor of the spirituous liquors being transported, and such consignor shall be only a person who has a legal right to make such shipment. The name of the consignee on any such bill of lading or memorandum of shipment shall be the name of the true consignee of the spirituous liquors being transported and who had previously authorized in writing the shipment of the spirituous liquors being transported and who has a legal right to receive such spirituous liquors at the point of destination shown on the bill of lading or other memorandum of shipment.

(4) Officers May Require Driver to Exhibit Papers. — The driver or any person in charge of any vehicle so transporting such spirituous liquors shall, when required by any sheriff, deputy sheriff, or other peace officer having the power to make arrests, exhibit to such officer such papers or documents required by this law to accompany such shipment.

(c) Notwithstanding any provision of law contained in this Chapter or in Article 2C of Chapter 105 of the General Statutes, spirituous liquors may be imported into North Carolina under United States customs bonds and may be held in North Carolina in United States customs bonded warehouses. Spirituous liquors may be removed from any such United States customs bonded warehouse, wherever situated within the State, to any other such warehouse located in the State and be held in the State. Such spirituous liquors so imported or removed to such warehouses in North Carolina shall be released from customs bonds in North Carolina only on permits issued by the State Board of Alcoholic Control for delivery to ocean-going vessels which ply the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively, when delivered to officers or agents of such vessels for use or consumption on such vessels. Provided, the Board shall have the authority to issue permits as referred to in this subsection and shall have the power and authority to promulgate rules and regulations to control the release of said spirituous liquors from United States customs bonded warehouses and the

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§ 18A-30. Possession and consumption of alcoholic beverages at designated places. — It shall be lawful in any county or municipality of this State for any person who is at least 21 years of age to possess, for lawful purposes, alcoholic beverages in quantities not in excess of four liters, unless otherwise authorized, provided that these alcoholic beverages are obtained from an authorized alcoholic beverage control store within this State or from a lawful source outside this State, and provided that said alcoholic beverages are possessed for a purpose other than for sale or barter, and provided that said alcoholic beverages are purchased, possessed, and consumed in accordance with this and other applicable sections of this Chapter, including the following:

(2) Social Establishments. — Any person, association, or corporation may furnish facilities located on its premises, which facilities shall not be open to the general public, for the storage of alcoholic beverages for its bona fide members, in quantities not in excess of four liters for each member, unless otherwise authorized, and for consumption by its members and their guests, but subject to the following conditions:
   a. The establishment is organized and operated solely for purposes of a social, recreational, patriotic, or fraternal nature; and
   b. It has a valid permit from the State Board of Alcoholic Control for this purpose; and
   c. The alcoholic beverages are stored in individual lockers and the name of the beverage owner shall be clearly displayed on both the locker and the bottle or bottles; and
   d. Any alcoholic beverage stored in any locker is for the exclusive use of the member and his guests and not to be sold or distributed to any other person.

(3) Special Occasions. — Alcoholic beverages in quantities in excess of four liters may be possessed by a person on a special occasion, subject to the rules and regulations adopted by the State Board of Alcoholic Control, not for sale or barter, for the use and consumption of himself and his guests, when he meets one or more of the following requirements:
   a. He is using his personal residence or premises under his exclusive control, or
   b. He is using a facility, as a member, as defined in subdivision (2) of this section, and said facility has a valid permit from the State Board of Alcoholic Control for this purpose; or
   c. He is using a commercial establishment or any part thereof for a private meeting or party limited in attendance to members or guests of a particular person, group, association, or organization, and said commercial establishment has obtained a permit from the State Board of Alcoholic Control for this purpose.

(1977, c. 176, s. 1.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, substituted "four liters" for "one gallon" in the introductory language and in subdivisions (2) and (3).
§ 18A-31. Permits for social establishments, restaurants, etc. — (a) Permits. — Any person, association, or corporation making application for a permit under this Article shall file said application and appropriate fee with the State Board of Alcoholic Control, and said Board shall have the exclusive authority, not inconsistent herewith, in issuing any permit, or in renewing, suspending, or revoking any temporary or annual permit. The additional provisions relating to said permits are as follows:

1. Said Board may issue temporary permits where application in proper form has been received, with applicable fees, which shall be valid for 90 days, unless sooner suspended or revoked. No applicant or permittee shall be entitled to any hearing with reference to the issuance, suspension, or revocation of any temporary permit.

2. Any temporary or annual permit shall be suspended or revoked by said Board, upon the suspension or revocation of any other permit or license by the State Board of Alcoholic Control, pursuant to any other section of this Chapter.

3. All annual permits issued under this section shall be valid until May 1, 1968, unless sooner suspended or revoked, and thereafter all annual permits shall be valid for one year, renewable on May 1, 1968, and annually thereafter, unless sooner suspended or revoked. A permit for the possession of alcoholic beverages at a special occasion may be limited to a single 48-hour period by the State ABC Board.

4. Any person, association, or corporation shall promptly surrender any permit issued hereunder upon request of said Board.

5. Before exercising any privilege granted hereunder, and immediately upon the receipt of any temporary or annual permit, said person, association, or corporation receiving the same shall keep conspicuously displayed said permit and in addition shall post a notice or notices, approved by said Board, designating the type of permit that is applicable to the premises. The Board shall approve and designate the type of signs, notices, and exhibits that may be displayed or used on any premises.

6. All permits shall be the property of the State Board of Alcoholic Control, and no permit shall be transferable. Upon the termination of any business, or upon a change of ownership or control, all permits issued hereunder shall be immediately surrendered to said Board.

7. All permits shall be issued for a designated location, a separate permit being required for each separate location of any business.

8. Said Board shall not refuse the issuance of any permit to any person, firm, or corporation who shall comply with the provisions of this Chapter, and the issuance of a permit shall not be arbitrary in any case, but issuance of a permit shall be mandatory to any person, firm, or corporation complying with the provisions of this Chapter.

(b) Fees. — Applications for permits shall be accompanied by appropriate fees, payable to the State Board of Alcoholic Control, which shall not be refundable in case a permit is refused, suspended, or revoked. No additional fees or licenses shall be collected by any county or municipality under this section, and the fees received by the State Board of Alcoholic Control shall be deposited with the State Treasurer of North Carolina, as in the case of any other permit fees collected by said Board. No additional charge shall be imposed for any temporary permit. The schedule of fees for the original permit is as follows:

1. Two hundred dollars ($200.00) for a social establishment as defined in G.S. 18A-30(2);
§ 18A-31.1 1977 CUMULATIVE SUPPLEMENT § 18A-32

(2) Two hundred dollars ($200.00) for a commercial establishment as defined in G.S. 18A-30(3);
(3) One hundred dollars ($100.00) for a restaurant as defined in G.S. 18A-30(4) having a seating capacity of less than 50;
(4) Two hundred dollars ($200.00) for a restaurant as defined in G.S. 18A-30(4) having a seating capacity of 50 or more;
(5) Three hundred dollars ($300.00) for any establishment which obtains permits having two or more of the foregoing schedules for the same premises;
(5a) Twenty-five dollars ($25.00) for a permit for the possession of alcoholic beverages at a special occasion if the permit is not valid for more than 48 hours;
(6) The annual renewal fees for such permits shall be twenty-five percent (25%) of the original permit as herein set forth.

(1977, c. 668, ss. 1, 2.)

Editor's Note. — The 1977 amendment added the second sentence of subdivision (a)(3) and added subdivision (b)(5a).

As the rest of the section was not changed by the amendment, only subsections (a) and (b) are set out.

§ 18A-31.1. Permits to keep and use alcoholic beverages for culinary purposes. — (a) Notwithstanding the provisions of G.S. 18A-30, the State A.B.C. Board may grant to restaurants holding a Grade A rating from the Commissioner for Health Services [Department of Human Resources], a permit which will enable them to keep in the kitchen of the restaurant, alcoholic beverages for culinary purposes only, provided each such restaurant regularly serves foods in which such beverages are used, and provided that these alcoholic beverages are obtained from a lawful source within the State. The State A.B.C. Board may adopt, amend or repeal such regulations as it may deem necessary to carry out the purpose of this section as provided in G.S. 18A-43, and shall require the permittee to retain all receipts and records of alcoholic beverages purchased with the quantities purchased not exceeding a reasonable amount for culinary purpose intended herein. No more than 12 liters of alcoholic beverages may be possessed by any restaurant, and it shall be kept in the kitchen or storage area. Nothing contained in this section shall be construed to permit the sale of Irish coffee or any other beverage containing any spirituous liquor whatsoever.

(b) Application for a culinary permit shall be accompanied with a fee of fifty dollars ($50.00) which shall not be refundable in case a permit is refused, suspended, or revoked. No additional fees or licenses shall be collected by any county or municipality under this section, and the fees collected by the State A.B.C. Board shall be deposited with the State Treasurer of North Carolina. The annual renewal fee for such permit shall be twenty-five percent (25%) of the original permit. (1975, c. 680; 1977, c. 176, s. 5.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, substituted "twelve liters" for "three gallons" in the third sentence of subsection (a).

§ 18A-32. Transportation, possession, and sale at installations operated by or for armed forces. — Alcoholic beverages in quantities in excess of four liters may be purchased by, transported to, possessed and sold by any open mess or officers' club at any installation located in any county in this State where alcoholic beverages may be legally sold or possessed, which installation is operated by or for any of the armed forces of the United States and where the possession, dispensing, and sale of such alcoholic beverages is under the control and supervision of the department of the armed forces concerned; provided, however, that all such alcoholic beverages transported, possessed, dispensed,
or sold pursuant to this section on the premises of any such installation shall be purchased at the retail alcoholic beverage control store of the county in which such installation is located at the full retail price prevailing at the time of such purchase. Transportation permits may be issued by the State Board of Alcoholic Beverage Control under regulations adopted pursuant to G.S. 18A-29 for the transportation of alcoholic beverages in excess of four liters from the alcoholic beverage control store of the county in which such installation is located for delivery to the responsible officer of such installation operated by or for any of the armed forces of the United States. The provisions of this section shall not be construed as to affect the source, or place of purchase, or the price paid for alcoholic beverages purchased, possessed, sold, and dispensed by or at any open mess or officers' club or other facility located at or maintained at or by any of the armed forces of the United States at any place where jurisdiction has been ceded to or taken by the United States government. (1955, c. 1211; 1971, c. 872, s. 1; 1977, c. 176, s. 1.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, substituted "four liters" for "one gallon" near the beginning of the first sentence and near the middle of the second sentence.

ARTICLE 4.
Malt Beverages and Wine.

Part 1. Retail Sales and Personal Use.

§ 18A-34. Prohibited acts of licensees; wine and malt beverage purchases limited as to quantity.

(d) No retailer shall sell or deliver to any one person at any one time more than 80 liters of malt beverages, other than draft malt beverages in kegs. Nor may more than 20 liters of unfortified wine nor more than four liters of fortified wine be sold at any one time to any one person, except as authorized by permit. (1943, c. 400, s. 6; 1945, c. 708, s. 6; c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, ss. 13, 15; c. 1251, s. 3; 1957, c. 1048; 1959, c. 745, s. 2; 1963, c. 426, ss. 6, 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 30; c. 1295; c. 1452, s. 4; 1977, c. 176, ss. 1-3.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, in subsection (d), substituted "eighty liters" for "20 gallons" in the first sentence and "twenty liters" for "five gallons" and "four liters" for "one gallon" in the second sentence. As the rest of the section was not changed by the amendment, only subsection (d) is set out.

Evidence Sufficient to Find Improper Entertainment. — There was ample, competent, material and substantial evidence to support the factual finding issued under authority of subsection (a)(4) that petitioner did permit improper entertainment, conduct and practices upon the licensed premises "by allowing dancing where the dancing girl exposed her pubic area to customers." Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

§ 18A-35. Transportation and possession of malt beverages and unfortified wine; out-of-state purchases. — (a) Except as otherwise provided in this Chapter, the purchase, transportation, and possession of malt beverages and unfortified wine by individuals 18 years of age or older for their own use are permitted without restriction or regulation. Provided, the local government units of the State shall have, and they are hereby vested with, full power and authority to regulate the consumption of malt beverages or unfortified wines on property owned or occupied by the local government unit.

(b) Whenever any person desires to purchase more than 20 liters but not
§ 18A-35.1 1977 CUMULATIVE SUPPLEMENT § 18A-35.1

exceeding 80 liters of unfortified wine at one time, he shall first obtain a purchase-transportation permit from the chairman of the local board, a member of the local board, or the general manager or supervisor of the local board of alcoholic control. No permit shall be issued by any authorized person to:

(1) Persons not of good character; or
(2) Persons not sufficiently identified, if unknown to the issuing person; or
(3) Persons known or shown to be alcoholics or bootleggers.

(c) The permit shall be signed by the person authorized to issue same and it shall authorize the purchaser named therein to purchase the quantity of unfortified wine therein indicated not to exceed 80 liters. The permit shall be issued by means of a printed form with at least two carbon copies of the same.

On the face of the permit shall appear the following information:

(1) Name and address of purchaser;
(2) The name and location of the place where purchase is to be made;
(3) Date issued and expiration date;
(4) Destination;
(5) Signature of person issuing the permit;
(6) A statement that the permit is valid for only one purchase on the date shown and that the permit must accompany the merchandise while in transit and both the merchandise and the permit must be exhibited by purchaser to any law-enforcement officer upon request.

(f) Permits to be used shall be in the form substantially as follows:

ALCOHOLIC BEVERAGE CONTROL BOARD

PURCHASE-TRANSPORTATION PERMIT

(not to exceed 80 liters)

Name of Purchaser

Address

Name of Store Address of Store

Destination

Route to Be Used

Signed

(Person authorized to issue)

Board Member

Note: This permit is valid for only one purchase, and it shall expire at 6:00 P.M. of the date shown above. Special Note: This permit must accompany the merchandise during transit. Both the merchandise and the permit must be exhibited to any law-enforcement officer upon request.

(1977, c. 176, ss. 2, 3; c. 693.)

Editor’s Note. —
The first 1977 amendment, effective Jan. 1, 1978, substituted “twenty liters” for “five gallons” and “eighty liters” for “80 gallons” in the first sentence of subsection (b) and substituted “eighty liters” for “80 gallons” at the end of the first sentence of subsection (c) and in the permit form set out in subsection (f).

The second 1977 amendment added the second sentence of subsection (a).

As the rest of the section was not affected by the amendments, only subsections (a), (b), (c) and (f) are set out.


§ 18A-35.1. Storage, possession and consumption of malt beverages and unfortified wine. — Those beverages defined in G.S. 18A-2(5) and (14) may be possessed, consumed, and stored in those places listed in G.S. 18A-30(2) in the same manner and under the same terms and conditions as alcoholic beverages.

(1975, c. 700.)


(c) A commercial winery is authorized to grow crops, purchase crops and other materials, manufacture, possess and transport wine without limitation as to quantity except that any wine in transport shall be subject to the provisions of G.S. 18A-41.

(1975, c. 411, s. 6.)

Editor's Note. — The 1975 amendment substituted "G.S. 18A-41" for "subdivisions (1) through (4) of G.S. 18A-29(b)" in subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Part 2. Permits.

§ 18A-37. Permit and license required. — Malt beverages and wine (fortified and unfortified) may be manufactured, bottled or sold in this State only after the person desiring to engage in such activity has acquired an appropriate permit from the State Board of Alcoholic Control as provided in this Article, and has secured the license or licenses required by Article 2C, Subchapter I, Chapter 105 of the General Statutes.

Permits for salesmen for a wholesale distributor of malt beverages or wine (fortified or unfortified) and permits for the retail and wholesale sale of malt beverages and wine shall continue until voluntarily surrendered to the Board, or until suspended or revoked by the Board, or in the event of change of location, change of ownership, or death of the owner.

All other permits shall be for a period of one year unless sooner revoked or suspended and shall expire on April 30 of each year.

The State Board of Alcoholic Control shall arrange to computerize the files for permits as soon as feasible and once computerized shall retain a permanent number for each permit.

No permit issued under this Chapter shall be transferable. When the ownership of any business to which a permit has been issued changes by merger, consolidation or otherwise, the permit shall automatically be terminated and returned immediately to the State Board of Alcoholic Control.

A change in ownership does not occur simply from the exchange or sale of stock unless a stockholder acquires more than twenty-five percent (25%) of the stock and such acquiring stockholder has not previously held twenty-five percent (25%) of the stock of the corporation. (1971, c. 872, s. 1; 1975, c. 330, s. 1; c. 411, s. 4.)

Editor's Note. — The first 1975 amendment substituted "and" for "or" in the parenthesis near the beginning of the first paragraph, substituted "Article 2C, Subchapter I, Chapter 105 of the General Statutes" for "Article 2C of Chapter 105" at the end of the first paragraph, added the present second paragraph, inserted "other" and substituted "revoked or suspended" for "suspended or revoked" in the present third paragraph, deleted the former last paragraph, which made the provisions of this Article applicable to permits issued under Article 3 of this Chapter, and added the present last paragraph.

The second 1975 amendment added the last two paragraphs of the section.

§ 18A-38. Power of State Board of Alcoholic Control to issue permits. —

(a) The State Board of Alcoholic Control shall be referred to herein as "the Board." The Board shall have the sole power, in its discretion, to determine the fitness and qualifications of an applicant for a permit to sell, manufacture, or bottle malt beverages or wine (fortified and unfortified). With the assistance of
the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety, the Board shall inquire into the character of the applicant and the location, general appearance, and type of place or business of the applicant. The Board, in addition to all powers now conferred upon it by law, is hereby vested with additional powers to regulate the distribution and sale of wine (fortified and unfortified) and malt beverages as follows:

(1) Permits issued to wineries, importers and wholesalers shall be as follows:

a. Unfortified winery permits shall authorize the permittee to manufacture unfortified wines and to sell and deliver or ship the same in accordance with the regulations of the Board, in bottles or other closed containers to persons permitted under the provisions of this Chapter and Article 2C of Chapter 105 to sell at wholesale. A holder of an unfortified winery permit may sell unfortified wine to nonresident wholesalers when the purchase is not for resale in this State.

b. Fortified winery permits shall authorize the permittee to manufacture, purchase, import, and transport brandy and other ingredients and equipment used in the manufacture of fortified wines. A permittee holding a fortified winery permit may manufacture fortified wines and sell and deliver or ship the same in accordance with the regulations of the Board in bottles, or other permitted closed containers to persons authorized under the provisions of this Chapter to sell at wholesale. The permittee may also sell fortified wine to nonresident wholesalers when the purchase is not for resale in this State.

c. Limited Winery Permits. — A resident winery holding an unfortified winery permit may also obtain a limited winery permit from the State Board of Alcoholic Control provided that the winery produces its wines principally from honey, grapes or other fruit grown in North Carolina. A limited winery permit shall authorize the permittee to provide visitors with samples for tasting free of charge subject to the rules and regulations of the State Board of Alcoholic Control and the North Carolina Department of Revenue.

d. Wine importers permits authorize the permittee to import wines from outside the United States in bottles, or other closed containers to warehouse, and sell the same at wholesale for purposes of resale.

e. Wholesale unfortified wine permits authorize the permittee to acquire and receive delivery shipments of unfortified wine and to sell and deliver or ship the same in accordance with regulations of the Board, in bottles or other closed containers, approved by the Board, to persons licensed under the provisions of this Chapter to sell the same at wholesale or retail for purposes of resale. An unfortified wine wholesaler may furnish and sell unfortified wine to his employees subject to the regulations of the State A.B.C. Board and the North Carolina Department of Revenue.

f. Fortified wine wholesalers' permits shall authorize the permittee to possess, transport, warehouse and sell as a wholesaler, fortified wines in any county of the State provided such sales are to persons, firms or corporations that are licensed under the provisions of this Chapter and Chapter 105. A fortified wine wholesaler may furnish or sell fortified wine to his employees subject to the regulations of the State A.B.C. Board and the North Carolina Department of Revenue.

(2) Permits issued to brewers, bottlers, importers and wholesalers shall be as follows:
§ 18A-38  

a. Brewery permits shall authorize the permittee to manufacture malt beverages, and sell them in barrels, bottles, or other closed containers, only to persons permitted under the provisions of this Article and Chapter 105 to sell at wholesale. The sale of malt beverages to nonresident wholesalers is authorized when the purchase is not for resale in this State. The sale of malt, hops and other ingredients used in the manufacture of malt beverages is hereby permitted and allowed.

A resident manufacturer of malt beverages may furnish or sell packages not conforming to the manufacturer's marketing standards or marketable malt beverage products to its employees for the sole use of said employees and members of their families, provided that appropriate North Carolina taxes have been paid or will be paid on these beverages. A resident manufacturer also may give its products to its employees and to its bona fide guests for consumption on its premises. Any sale or gift made by said manufacturer under this section shall not be construed as a retail or wholesale sale under any other provision of this Chapter or Article 2C of Chapter 105.

A resident manufacturer of malt beverages holding a permit under this section may receive malt beverages that are manufactured by him at some point outside this State, but within the United States, for transshipment to dealers in other states.

b. Wholesale malt beverage permits authorize the permittee to acquire and receive deliveries and shipments of malt beverages and to sell and deliver or ship the same, in accordance with regulations of the Board, in barrels, bottles or other closed containers to persons licensed under the provisions of this Chapter to sell the same at wholesale or retail for purposes of resale. A malt beverage wholesaler may furnish or sell malt beverages to his employees for the sole use of said employees and members of their families, and, where the legal sale of such beverages is permitted, may furnish malt beverages to guests and nonpermit holders for promotional purposes, subject to regulations of the State A.B.C. Board.

c. Bottlers' permits shall authorize the permittee to acquire and receive deliveries and shipments of malt beverages or wine (fortified and unfortified), in bottles or other closed containers and to bottle, sell and deliver or ship the same in accordance with regulations of the Board to persons permitted under the provisions of this Chapter to sell the same at wholesale for the purpose of resale.

A holder of a bottler's permit may furnish or sell packages not conforming to the manufacturer's marketing standards to its employees for the sole use of said employees and members of their families, provided such bottlers furnish only such substandard packages on which the appropriate taxes have been paid or will be paid. Any sale made to any employee of said bottler under this section shall not be construed as a retail or wholesale sale under any other provisions of this Chapter or Article 2C of Chapter 105.

d. Malt beverage importers' permits authorize the permittee to import malt beverages from outside the United States in barrels, bottles, or other closed containers to warehouse and sell the same at wholesale for purposes of resale.

(b) The sale, distribution, soliciting orders for, or delivery of malt beverages or wine (fortified or unfortified) in this State without a permit shall be unlawful. The fact that any brewery or winery or any manufacturer or bottler of malt
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beverages or wine (fortified or unfortified) has applied for or obtained a permit under the provisions of this Article shall not be construed as domesticating said brewery, manufacturer, or bottler, and shall not be evidence for any other purpose that such brewery, manufacturer, or bottler is doing business in North Carolina.

(e) Permits issued for the retail sale of unfortified wine shall be of two kinds:

(1) "On-premises" permits shall be issued only to bona fide hotels, cafeterias, cafes, and restaurants which have a Grade A rating from the Commission for Health Services, and shall authorize the permittees to sell at retail unfortified wine, either separate or mixed with nonalcoholic beverages, for consumption on the premises designated in the permit, and to sell unfortified wine in original containers for consumption off the premises. Provided, no such permit shall be issued except to such hotels, cafeterias, cafes, and restaurants where prepared food is customarily sold and only to such as are permitted under the provisions of G.S. 105-62(a).

(2) "Off-premises" permits shall authorize the permittee to sell unfortified wine at retail for consumption off the premises designated in the permit, and all such sales shall be made in the immediate container in which the wine was purchased by the permittee.

(e1) Before the Board shall issue a permit to an applicant, it shall give notice of such application to the municipal governing authority of the incorporated city or town, or to the board of county commissioners, if the application be for a permit outside the boundaries of incorporated cities or towns. Such local government shall have the right to file written objections with the Board within 10 days after date of transmittal of such notice. Such objections shall include a statement of all facts upon which such objections are based, and upon request, the Board may, in its discretion, hold a formal hearing.

(f) In any county or municipality in which the operation of alcoholic beverage control stores is authorized by law, it shall be legal to sell fortified or unfortified wines for consumption on the premises in hotels and restaurants that have a Grade A rating from the Commission for Health Services, and it shall be legal to sell said wines in drugstores and grocery stores for off-premises consumption. Fortified wine sold for consumption on licensed premises may be sold either separate or mixed with nonalcoholic beverages. All sales of fortified wine shall be subject to the rules and regulations of the State ABC Board. In the event a Grade A restaurant with an "on premise" permit receives a Grade B sanitation rating, the establishment must stop selling "on premise" wine after 30 days until the Grade A is restored.

(g) Notwithstanding any provision of law contained in this Chapter or in Article 2C of Chapter 105 of the General Statutes, it shall be lawful for any wholesaler or retailer in possession of a valid permit issued by the State Board of Alcoholic Control to sell and deliver malt beverages and wine (both fortified and unfortified) for use or consumption by or on oceangoing vessels which ply the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively, when delivered to an officer or agent of such vessel. The State Board shall have authority to promulgate regulations and rules governing the sale and delivery of such malt beverages and wine including the authority to issue such permits as may be reasonably required by the State Board. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, added subsection (g).

The second 1975 amendment rewrote former subsection (b), which has been redesignated subdivision (2) of subsection (a) in the section as.
§ 18A-39. Application for permit; contents and fees. — (a) All resident bottlers, wineries, importers or manufacturers of malt beverages or wine (fortified or unfortified) and all resident wholesalers and retailers of malt beverages or wine (fortified or unfortified) shall file a written application for a permit with the State Board of Alcoholic Control, and in the application shall state under oath therein:

(1) The name and residence of the applicant and the length of his residence within the State of North Carolina;

(2) The particular place for which the license is desired, designating the same by street and number if practicable; if not, by such other apt description as definitely locates it; and the distance to the nearest church or public or private school from said place;

(3) The name of the owner of the premises upon which the business licensed is to be carried on, and, if the owner is not the applicant, that such applicant is the actual and bona fide lessee of the premises. However, if the permit is for the possession of alcoholic beverages at a special occasion and is valid for no more than 48 hours, in lieu of a statement that the applicant is a bona fide lessee the Board may require a written statement from the owner or person in control of the premises authorizing the applicant's use of the premises for the special occasion;

(4) That the place or building in which it is proposed to do business conforms to all laws of health and fire regulations applicable thereto, and is a safe and proper place or building;

(5) That the applicant intends to carry on the business authorized by the permit for himself or under his immediate supervision and direction;

(6) That the applicant has been a bona fide resident of this State for a period of at least one year immediately preceding the date of filing his application and that he is not less than 21 years of age; provided, that no provision of this Chapter or any rule or regulation adopted pursuant thereto shall be construed to prohibit a person who is 18 years of age or older from being a manager, employee or other person in charge of any establishment which has a license and permit for on- or off-premises sales of malt beverages or wine (fortified or unfortified);

(7) The place of birth of applicant and, if a naturalized citizen, when and where naturalized;

(8) That the applicant has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three years; that the applicant's citizenship has been restored by the court if he has been so deprived of it; that he has not,
within the two years next preceding the filing of the application, been adjudged guilty of violating the prohibition or liquor laws, either state or federal. It shall be within the discretion of the Board, after making investigation, to determine whether any person who has ever been convicted of, or entered a plea of guilty or nolo contendere to, a felony shall be deemed a suitable person to receive and hold a malt beverage or wine (fortified or unfortified) permit;

(9) That the applicant has not during the three years next preceding the date of said application had any permit issuable hereunder, or any license issued to him pursuant to the laws of this State or any other state to sell intoxicating liquors of any kind, revoked;

(10) That the applicant is not the holder of a federal special tax liquor stamp;

(11) If the applicant is a firm, association, or partnership, the application shall state the matters required in subdivisions (6), (7), (8), and (9), with respect to each of the members thereof, and each of said members must meet all the requirements in said subdivisions provided;

(12) If the applicant is a corporation, organized or authorized to do business in this State, the application shall state the matters required in subdivisions (7), (8) and (9), with respect to each of the officers and directors thereof, and any stockholder owning more than twenty-five percent (25%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation. Each of said persons must meet all the requirements in said subdivisions provided; provided, however, that the requirement of residence shall not apply to said officers, directors, and stockholders of such corporation; however, such requirement shall apply to any such officer, director or stockholder, agent, or employee who is also an officer, manager and in charge of the premises for which permit is applied, if the Board may, in its discretion, waive such requirement.

(b) The application must be verified by the affidavit of the applicant before a notary public or other person duly authorized by law to administer oaths. The foregoing provisions and requirements are mandatory prerequisites for issuance of a permit; if any applicant fails to qualify under the same, or if any false statement is knowingly made in any application, the permit shall be refused. If a permit is granted on any application containing a false statement knowingly made, it shall be revoked and the applicant upon conviction shall be guilty of a misdemeanor. In addition to the information furnished in any application, the Director of the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety shall make such additional and independent investigation of each applicant and of the place to be occupied, as deemed necessary or advisable.

(c) Every person applying to the State Board of Alcoholic Control for a permit to sell malt beverages or wine (fortified or unfortified) under the provisions of this section shall pay an application fee at the time of application according to the following schedule:

(1) For an application for a retail permit under the provisions of this section, a fee of fifty dollars ($50.00); provided, that if applications for malt beverage permit and a wine (fortified or unfortified) permit are filed at the same time for the same location, the total fee shall be fifty dollars ($50.00);

(2) For an application for a new permit under the provisions of this section by reason of the fact that a new manager has been assigned to an establishment for which a permit or permits are presently in effect, a fee of ten dollars ($10.00); provided, this fee shall not be payable if the new manager has within 30 days of the time of filing of the application held a permit as the manager of another establishment of the same person;
(3) For an application for a wholesale, importer, brewery, winery, and bottler permit under the provisions of this section, a fee of one hundred dollars ($100.00); provided, that if applications for a malt beverage permit and a wine (fortified or unfortified) permit are filed at the same time for the same location, the total fee shall be one hundred dollars ($100.00).

All fees required by this section shall be paid by check or money order made payable to the State Board of Alcoholic Control, and they shall be deposited by the State Board of Alcoholic Control with the State Treasurer.

The application of any person who fails to comply with the provisions of this section shall be refused, and if the permit has been granted, it shall be canceled.

Editor's Note. — The 1975 amendment corrected an error in the first 1973 amendatory act by substituting "or" for "of" following "Chapter" in the proviso to subdivision (6) of subsection (a). The first 1977 amendment, effective April 1, 1977, substituted "Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety" for "Enforcement Division" in the last sentence of subsection (b). The second 1977 amendment added the second sentence of subdivision (3) of subsection (a). The third 1977 amendment inserted "importers" near the beginning of subsection (a), and in subsection (c), inserted "retail" in subdivision (1), substituted "fifty dollars ($50.00)" for "twenty-five dollars ($25.00)" in two places in subdivision (1), and added subdivision (3).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 18A-40. Permits prohibited.

c) No retail malt beverage or wine (fortified or unfortified) on-premise permit shall be issued for any establishment within 15 meters of a church or a public soil unless the State Board of Alcoholic Control determines upon proper instigation and a hearing, if requested, that the establishment is a suitable and that the failure to issue a permit will result in undue hardship. (1971, c. 72, s. 1; 1977, c. 176, s. 8.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, substituted "fifteen" for "50 feet" in subsection (c). As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 18A-41. Permits for commercial transportation of malt beverages and wine (fortified and unfortified). — (a) Malt beverages and wine (fortified and unfortified) may be transported into, out of, or between points in this State by railroad companies, express companies, or steamboat companies engaged in public service as common carriers and having regularly established schedules of service upon condition that such companies shall keep accurate records of the charter and volume of such shipments and the character and number of packages or containers and shall keep records open at all times for inspection by the State Board of Alcoholic Control and alcoholic law enforcement agents, and upon notice that such common carriers shall make report of all shipments of such beverages into, out of, or between points in this State at such times and in such detail and form as may be required by the State Board of Alcoholic Control.

Malt beverages and wine (fortified and unfortified) may be transported into, out of, between points in this State over the public highways of this State by motor vehicles upon condition that every person intending to make such use of the highways of this State shall as a prerequisite thereto register such
intention with the State Board of Alcoholic Control in advance of such transportation, with notice of the kind and character of such products to be transported and the license and motor number of each motor vehicle intended to be used in such transportation. Upon the filing of such information, together with an agreement to comply with the provisions of this Chapter, the State Board of Alcoholic Control shall without charge therefor issue a numbered permit to each such owner or operator for each motor vehicle intended to be used for such transportation, which numbered permit shall be prominently displayed on the motor vehicle used in transporting malt beverages or wine (fortified and unfortified). Every person transporting such products over any of the public highways of this State shall during the entire time he is so engaged have in his possession an invoice or bill of sale or other record evidence showing the true name and address of the person from whom he has received such beverages, the character and contents of containers, the number of bottles, cases, or liters of such shipment, and the true name and address of every person to whom deliveries are to be made. The person transporting such beverages shall, at the request of any alcohol law enforcement agents, produce and offer for inspection said invoice or bill of sale or record evidence. If said person fails to produce an invoice or bill of sale or record evidence, or if when produced, the document fails to clearly and accurately disclose said information, the failure shall be prima facie evidence of the violation of this Article. Every person engaged in transporting such beverages over the public highways of this State shall keep accurate records of the character and volume of such shipments and the character and number of packages or containers, and shall keep records open at all times for inspection by the State Board of Alcoholic Control and alcohol law enforcement agents. Such person shall make report of all shipments of such beverages into, out of, or between points in this State at such times and in such detail and form as may be required by the State Board of Alcoholic Control.

The provisions of this section as to transportation of malt beverages and wine (fortified and unfortified) by motor vehicles over the public highways of this State shall in like manner apply to the owner or operator of any boat using the waters of the State for such transportation, and all of the provisions of this section with respect to permits for such transportation and reports to the State Board of Alcoholic Control by the operators of motor vehicles on public highways shall in like manner apply to the owner or operator of any boat using the waters of this State.

(1975, c. 411, s. 7; 1977, c. 70, s. 20; c. 176, s. 7.)

Editor's Note. — The 1975 amendment substituted “wine (fortified and unfortified)” for “unfortified wine” throughout subsection (a).

The first 1977 amendment, effective April 1, 1977, substituted “alcohol law enforcement agents” for “State A.B.C. officers” in three places in subsection (a).

The second 1977 amendment, effective Jan. 1, 1978, substituted “liters” for “gallons” near the middle of the second paragraph.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As subsections (b) and (c) were not changed by the amendments, they are not set out.

§ 18A-42. Salesman’s permit. — (a) Every salesman for a wholesale distributor of malt beverages or wine (fortified or unfortified) shall apply to the Board for a wholesale salesman's permit to sell such beverages. This shall be deemed to include salesmen stationed at the wholesaler’s warehouse as well as route salesmen who sell and deliver malt beverages or wine (fortified or unfortified) to retailers. All persons entering such employment after May 1, 1951, shall apply to the Board in like manner for a salesman’s permit. A salesman’s permit shall continue until voluntarily surrendered to the Board, or until suspended or revoked by the Board, or until the salesman ceases to be employed by the employer for whom he was working when he obtained his most recent permit.
(b) Such salesman shall be 21 years of age. No salesman’s permit shall be issued to any person who has been convicted within two years preceding the filing of his application of violating the State or federal liquor laws, or who has been convicted of, or entered a plea of guilty or nolo contendere to, a felony or of any crime involving moral turpitude within the past three years and without restoration of his citizenship by the court. No salesman’s permit shall be issued to any person whose permit or license issued to him pursuant to the laws of this State or any other state to sell intoxicating liquors of any kind has been revoked during the three years next preceding the date of application for a permit.

(1975, c. 330, s. 2; c. 411, s. 8.)

Editor’s Note. — The first 1975 amendment deleted “and shall renew the permit by May 1 of each succeeding year thereafter” following “such beverages” at the end of the first sentence, and added the last sentence, of subsection (a). The amendment directed that the new sentence be added “at the end of that section,” but it appears that the intention of the act was to add it at the end of subsection (a).

The second 1975 amendment deleted “and a citizen of the United States” at the end of the first sentence of subsection (b).

As the rest of the section was not changed by the amendments, only subsections (a) and (b) are set out.

§ 18A-42.1. Special permit; inheritance; bankruptcy; confiscation; individuals and governmental agencies. — Whenever any person not in possession of a permit for the sale of malt beverages or wine (fortified or unfortified), whether wholesale or retail, or any governmental agency, State or federal, shall legally come into possession and ownership of any quantity of tax paid intoxicating liquor, said person or agency may apply to the State Board of Alcoholic Control for a special permit authorizing the sale, or disposition otherwise, of said intoxicating liquor at a time and place, and pursuant to procedures, designated by the State Board; and the State Board shall have the authority to issue such permits.

By way of illustration, but not limitation, the State Board may issue permits for the disposition of intoxicating liquors by persons or governmental agencies gaining possession and ownership of same through inheritance, bankruptcy, confiscation and liens for nonpayment of taxes. (1977, c. 854, s. 1.)

Cross Reference. — As to the seizure of illegally transported or possessed liquor, see § 18A-21.

§ 18A-43. Revocation or suspension of permit.

(b) The Board may refuse to issue a new permit or may suspend or revoke any permit issued by it if in the discretion of the Board it is of the opinion that the applicant or permittee is not a suitable person to hold such permit or that the place occupied by the applicant or permittee is not a suitable place. In making its determination, the Board may consider the number already holding permits within the neighborhood, parking facilities and traffic conditions, the recommendations of governing body of the city or county in which the premises is located, reputation and criminal record of the applicant, and any other factors directly related to the suitability of the person and the premises.

(1977, c. 669, s. 1.)

Editor’s Note. — The 1977 amendment added the second sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

Judicial Review of Suspension of Permit. — Judicial review of an order of the State Board of Alcoholic Control suspending a retail beer
§ 18A-44.1. Location of hearing. — The hearing held by a hearing officer shall be held in the following localities: Ahoskie, Asheville, Charlotte, Elizabeth City, Fayetteville, Franklin, Goldsboro, Greensboro, Greenville, Hickory, Jacksonville, Kinston, New Bern, Raleigh, Statesville, Wilmington and Winston-Salem. Such hearing shall be held no more than 160 kilometers, as can reasonably be determined by the A.B.C. Board, from the county seat of the county in which any person whose property or rights are the subject matter of the hearing maintains his residence. In any case, the person whose property or rights are the subject of the hearing and the State Board may agree that the hearing is to be held in some other location. The location of hearings held under the authority of Chapter 18A shall be governed by this section, notwithstanding the provisions of the Administrative Procedure Act as contained in Chapter 150A... (1975, c. 825, s. 1; 1977, c. 176, s. 9.)

Editor's Note. — Session Laws 1975, c. 825, s. 2, makes the act effective July 1, 1975. The 1977 amendment, effective Jan. 1, 1978, substituted "160 kilometers" for "100 miles" in the second sentence.


§ 18A-47. Wine regulations. — (a) The State Board of Alcoholic Control is authorized and empowered:

(1) To adopt rules and regulations establishing standards of identity, quality, and purity for wines (fortified or unfortified). These standards shall be such as are deemed by said Board to best protect the public against wine containing deleterious, harmful, or impure substances or elements, or an improper balance of elements, and against spurious or imitation wines and wines unfit for beverage purposes.

(2) To test wines (fortified or unfortified) possessed or offered for sale or sold in this State and to make chemical or laboratory analyses of said wines or to determine in any other manner whether said wines meet the standards established by the Board.

(b) Except as otherwise provided by law, no wines (fortified or unfortified) shall be transported or sold in this State unless there be firmly fastened or impressed on the barrel, bottle, or other container in which the wine may be a written statement showing the alcoholic content thereof reckoned by volume. No such written statement shall be required for a glass in which wine is sold, either separate or mixed with nonalcoholic beverages, for consumption on licensed premises.

The possession, transportation, or sale of wines (fortified or unfortified) without such statement, or any misrepresentation made in any such statement, shall constitute a misdemeanor.

(c) Manufacturers, wineries, bottlers, and wholesalers, or any other persons selling wine (fortified or unfortified) for the purpose of resale, whether on their own account or for or on behalf of other persons, shall upon request of the State A.B.C. Board or the Director of the Alcohol Law Enforcement Division, furnish a verified statement of a laboratory analysis of any wine sold or offered for sale by such persons.

(e) The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety is authorized and empowered to test wines (fortified and unfortified) possessed or offered for sale or sold in this State and to make
chemical or laboratory analyses of said wines or to determine in any other manner whether said wines meet the standards established by the State Board of Alcoholic Control; to confiscate and destroy any wines (fortified or unfortified) not meeting said standards; to enter and inspect any premises upon which said wines (fortified or unfortified) are possessed or offered for sale; to examine any and all books, records, accounts, invoices, or other papers or data which in any way relate to the possession or sale of said wines. (1937, c. 335, s. 2; 1939, c. 158, s. 502; 1941, c. 339, s. 4; 1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1957, c. 1048; 1963, c. 426, s. 10; c. 460, s. 1; 1971, c. 872, s. 1; 1977, c. 70, ss. 20.1, 20.2, 20.3; c. 676, s. 3.)

Editor's Note. — The first 1977 amendment, effective April 1, 1977, eliminated, in subdivision (2) of subsection (a), provisions authorizing the Board to confiscate and destroy wines not meeting standards, to enter and inspect certain premises, and to examine certain books and records. In subsection (c), the amendment inserted "or the Director of the Alcohol Law Enforcement Division" near the end of the subsection. The amendment also added subsection (e).

The second 1977 amendment added the second sentence of the first paragraph of subsection (b). Session Laws 1977, c. 70, s. 34, contains a severability clause.

As subsection (d) was not changed by the amendments, it is not set out.

§ 18A-48. Standards for malt beverages. — (a) The State Board of Alcoholic Control is authorized to fix such standards for malt beverages as are determined by the Board to best protect the public against beverages containing deleterious, harmful, or impure substances or elements, or an improper balance of elements, and against spurious or imitation beverages unfit for human consumption. The State Board of Alcoholic Control and the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety are authorized to test malt beverages possessed or offered for sale in this State and to make chemical or laboratory analyses of such beverages or to determine in any other manner whether the beverages meet the standards established by the State Board of Alcoholic Control.

(b) The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety is authorized and empowered to confiscate and destroy any beverages not meeting the standards established by the State Board of Alcoholic Control; to enter and inspect any premises on which such beverages are possessed or offered for sale; to examine any and all books, records, accounts, invoices, or other papers or data which in any way relate to the possession or sale of such beverages; and to take all proper steps for the prosecution of persons violating the provisions of this section and for carrying out the provisions and intent thereof.

(c) The owner of malt beverages confiscated under this section shall be served with written notice to show cause within five days before the State Board of Alcoholic Control why the order should not be made permanent. No beverages may be destroyed until the order is final. The owner shall have the right to appeal from the ruling of the State Board of Alcoholic Control to the Superior Court Division of the General Court of Justice in the county in which the beverages were confiscated within 10 days from the final order of the State Board of Alcoholic Control.

(d) Manufacturers, bottlers, wholesalers, or any other persons selling malt beverages for the purpose of resale, whether on their own account or for or on behalf of other persons, shall, upon the request of the State A.B.C. Board or the Director of the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety furnish a verified statement of a laboratory analysis of any malt beverage sold or offered for sale by such persons. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, s. 14; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1963, c. 426, ss. 4, 5; 1971, c. 872, s. 1; 1977, c. 70, s. 20.4.)
§ 18A-50. Breweries forbidden to coerce or persuade wholesalers to violate Chapter or unjustly cancel contracts or franchises; prima facie evidence of franchise; injunctions; revocation or suspension of licenses and permits.

(d) The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety is empowered to investigate any violations of this section and to furnish to the prosecuting attorney of any court having jurisdiction of the offense information with respect to any violations of this section. The State Board of Alcoholic Control shall have the power to enforce conformance with the provisions of any injunction granted by the superior court under the terms of this section, and, if the court finds that there has been a violation of the provisions of any injunction granted by it, the Board may revoke or suspend the permit of any wholesaler and the permit of any brewery to ship malt beverages into the State of North Carolina. (1965, c. 1191; 1971, c. 872, s. 1; 1977, c. 70, s. 20.5.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety" for "State Board of Alcoholic Control" in the first sentence, and inserted "of Alcoholic Control" near the beginning of the second sentence of subsection (d).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

ARTICLE 5.
Elections.


§ 18A-52. Malt beverage and unfortified wine elections in counties or municipalities.

(k) For the purposes of this section a "restaurant" shall mean a business having a kitchen facility and a seating capacity of 36 persons or greater and which is engaged primarily and substantially in preparing and serving meals. Provided, that the State Board of Alcoholic Control shall have broad power to examine the type and nature of the business and the combination and location of separate or affiliated businesses at the same location to determine if the establishment is a bona fide restaurant.

(l) Notwithstanding any other provision of this Chapter, it shall be lawful to sell unfortified wine in those retail establishments described in G.S. 18A-88(f).

(1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, c. 33; 1977, c. 149, s. 1; c. 182, s. 2.)


Editor's Note. — The first 1977 amendment added subsection (k).

The second 1977 amendment added subsection (l).

Session Laws 1977, c. 149, s. 2, provides: "This act shall apply only to those counties or municipalities wherein elections are held under G.S. 18A-52 subsequent to the ratification of this act." The act was ratified April 4, 1977.

As the rest of the section was not changed by the amendments, only subsections (k) and (l) are set out.
ARTICLE 6.

Miscellaneous Provisions.

§ 18A-54. Power of Governor to prohibit all sales during an emergency.
— (a) When the Governor finds that a state of emergency, as defined in G.S. 14-288.1, exists anywhere within the State, he may order the closing of county and municipal alcoholic beverage control stores in all or any portion of the State for the period of the emergency. His order shall be directed to the Chairman of the State Board of Alcoholic Control and the Secretary of Crime Control and Public Safety. The express authority granted by this section is not intended to limit any other authority, express or implied, to order the closing of these stores. (1977, c. 70, s. 21.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, added "and the Secretary of Crime Control and Public Safety" at the end of the second sentence of subsection (a).

§ 18A-55. Books, records, reports. — All persons, possessing or offering for sale or reselling any intoxicating liquors shall keep clear, complete, and accurate records which will reveal the sources from which said liquor was acquired, the date of acquisition, and any other information that may be required to be preserved by rules and regulations of the State A.B.C. Board. All such persons shall freely permit alcohol law enforcement agents to enter and inspect the premises upon which liquor is possessed or offered for sale, to test and analyze any of such liquor, and to examine all books, records, accounts, invoices, or other papers or data relating to such liquor. (1971, c. 872, s. 1; 1977, c. 70, s. 21.1.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "alcohol law enforcement agents" for "representatives of the Board" near the beginning of the second sentence.

§ 18A-56. Violation a misdemeanor. — (a) Except as otherwise expressly provided, anyone who violates any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or by imprisonment, or by both fine and imprisonment, in the discretion of the court.

(c) If any permittee or licensee is convicted of violating any provisions of this Chapter the court (in addition to the criminal penalty thereof) may declare his permit and license revoked, and shall notify the State Board of Alcoholic Control thereof; and no permit or license shall thereafter be granted to the person so convicted within a period of three years thereafter. (1977, c. 18, ss. 1, 2.)

Editor's Note. — The 1977 amendment deleted "or any rule or regulation promulgated pursuant thereto" following "this Chapter" in subsection (a) and near the beginning of subsection (c).

Session Laws 1977, c. 150, corrected a spelling error in Session Laws 1977, c. 18, s. 3, by substituting "conviction" for "confiction." As the rest of the section was not changed by the amendment, only subsections (a) and (c) are set out.

Replacement Volume 1C of the General Statutes shall have the record of that violation expunged upon application to the court wherein the conviction was rendered."
Chapter 19.  
Offenses against Public Morals. 

Article 1.  
Abatement of Nuisances. 

§ 19-1. What are nuisances under this Chapter. — (a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of intoxicating liquors, illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance. 

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance. 

(c) The building, or place, or vehicle, or the ground itself, in or upon which a nuisance as defined in subsections (a) or (b) above is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (Pub. Loc. 1918, c. 761, s. 25; 1919, C.S., s. 8180; 1949, c. 1164; 1967, c. 142; 1971, c. 655; 1977, c. 819, ss. 1, 2.)

Editor's Note. — The 1977 amendment, effective Aug. 1, 1977, deleted “or” preceding “illegal possession or sale” and substituted “North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter” for “Uniform Narcotic Drug Act” in subsection (a) and inserted “or vehicle” in subsection (c).

§ 19-1.1. Definitions. — As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply: 

(1) “Knowledge” or “knowledge of such nuisance” means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, gambling, the illegal possession or sale of intoxicating liquor, the illegal possession or sale of narcotic drugs
as defined in the North Carolina Controlled Substances Act, or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:
(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
(b) Which depicts patently offensive representations of:
1. Ultimate sexual acts, normal or perverted, actual or simulated;
2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
3. Masochism or sadism; or
4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

(3) "Lewdness" is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

(4) "Matter" means a motion picture film or a publication or both.

(5) "Motion picture film" shall include any:
(a) Film or plate negative;
(b) Film or plate positive;
(c) Film designed to be projected on a screen for exhibition;
(d) Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;
(e) Video tape or any other medium used to electronically reproduce images on a screen.

(6) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(7) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself, but excluding a private dwelling place not used for a profit.

(8) "Publication" shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(9) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter. (1977, c. 819, s. 3.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-1.2. Types of nuisances. — The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;
§ 19-1.3. Personal property as a nuisance; knowledge of nuisance. — The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:
(1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;
(2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;
(3) All money or other valuable consideration received or used in gambling, prostitution, the illegal sale of intoxicating liquors or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding. (1977, c. 819, s. 3.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-1.4. Liability of successive owners for continuing nuisance. — After notice of a temporary restraining order, preliminary injunction, or permanent injunction, every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it. (1977, c. 819, s. 3.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-1.5. Abatement does not preclude action. — The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. (1977, c. 819, s. 3.)
§ 19-2: Repealed by Session Laws 1977, c. 819, s. 4, effective August 1, 1977.

Cross Reference. — For present provisions covering the subject matter of the repealed section, see §§ 19-2.1 to 19-2.5.

§ 19-2.1. Action for abatement; injunction. — Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney or the Attorney General, and no action shall be maintained against the public official for his official action. (1977, c. 819, s. 4.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-2.2. Pleadings; jurisdiction; venue; application for preliminary injunction. — The action, provided for in this Chapter, shall be brought in the superior court of the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a preliminary injunction may be made to the court in which the action is filed which court shall grant a hearing within 10 days after the filing of said application. (1977, c. 819, s. 4.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment. — Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary

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injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said Rule 4, delivery and posting. The officer serving such temporary restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect. (1977, c. 819, s. 4.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-2.4. Notice of hearing on preliminary injunction; consolidation. — A copy of the complaint, together with a notice of the time and place of the hearing of the application for a preliminary injunction, shall be served upon the defendant at least five days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in G.S. 19-2.3 in the case of a temporary restraining order. If the hearing is then continued at the instance of any defendant, the temporary restraining order may be continued as a matter of course until the hearing.

Before or after the commencement of the hearing of an application for a preliminary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the preliminary injunction; provided, however, the defendant shall be entitled to a jury trial if requested. (1977, c. 819, s. 4.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-2.5. Hearing on the preliminary injunction; issuance. — If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court, the court shall issue a preliminary injunction restraining the defendant and any other person from continuing the nuisance and effectually enjoining its use thereafter for the purpose of conducting any such nuisance. (1977, c. 819, s. 4.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.
§ 19-3. Priority of action; evidence. — (a) The action provided for in this Chapter shall be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions.

(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, the illegal possession or sale of intoxicating liquors, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance.

(c) At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. (Pub. Loc. 19138, c. 761, s. 27; 1919, c. 288; C. S., s. 3182; 1971, c. 528, s. 6; 1973, c. 47, s. 2; 1977, c. 819, s. 5.)

Editor's Note. — The 1977 amendment, effective Aug. 1, 1977, rewrote this section.

§ 19-5. Content of final judgment and order. — If the existence of a nuisance is admitted or established in an action as provided for in this Chapter an order of abatement shall be entered as a part of the judgment in the case, which judgment and order shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere within the jurisdiction of this State. Lewd matter, illegal intoxicating liquors, gambling paraphernalia, or substances proscribed under the North Carolina Controlled Substances Act shall be destroyed and not be sold.

Such order may also require the effectual closing of the place against its use thereafter for the purpose of conducting any such nuisance.

The provisions of this Article, relating to the closing of a place with respect to obscene or lewd matter, shall not apply in any order of the court to any theatre or motion picture establishment which does not, in the regular, predominant, and ordinary course of its business, show or demonstrate lewd films or motion pictures, as defined in this Article, but any such establishment may be permanently enjoined from showing such film judicially determined to be obscene hereunder and such film or motion picture shall be destroyed and all proceeds and moneys received therefrom, after the issuance of a preliminary injunction, forfeited. (Pub. Loc. 1913, c. 761, s. 29; 1919, c. 288; C. S., s. 3184; 1977, c. 819, s. 6.)

Editor's Note. — The 1977 amendment, effective Aug. 1, 1977, rewrote this section.

§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease. — Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings
brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney’s fees and court costs.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal intoxicating liquors or substances proscribed under the North Carolina Controlled Substances Act, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner. (Pub. Loc. 1913, c. 761, s. 30; 1919, c. 288; C. S., s. 3185; 1977, c. 819, s. 7.)

Editor’s Note. — The 1977 amendment, effective Aug. 1, 1977, rewrote this section.

§ 19-8. Costs. — The prevailing party shall be entitled to his costs. The court shall tax as part of the costs in any action brought hereunder such fee for the attorney prosecuting or defending the action or proceedings as may in the court’s discretion be reasonable remuneration for the services performed by such attorney. (Pub. Loc. 1913, c. 761, s. 32; 1919, c. 288; C. S., s. 3187; 1977, c. 819, s. 8.)

Editor’s Note. — The 1977 amendment, effective Aug. 1, 1977, added the present first sentence and inserted “or defending” in the present second sentence.

§ 19-8.1. Immunity. — The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, provided that such projectionist, usher, or ticket taker: (i) Has no financial interest in the place wherein he is so employed, and (ii) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under this Chapter, including pretrial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters. (1977, c. 819, s. 9.)

Editor’s Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-8.2. Right of entry. — Authorized representatives of the Commission for Health Services, any local health department or the Department of Human Resources, upon presenting appropriate credentials to the owner, operator, or agent in charge of a place described in G.S. 19-1.2, are authorized to enter without delay and at any reasonable time any such place in order to inspect and
investigate during the regular hours of operation of such place. (1977, c. 819, s. 9.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.

§ 19-8.3. Severability. — If any section, subsection, sentence, or clause of this Article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this Article. It is hereby declared that this Article would have been passed, and each section, sentence, or clause thereof, irrespective of the fact that any one or more sections, subsections, sentences or clauses might be adjudged to be unconstitutional, or for any other reason invalid. (1977, c. 819, s. 10.)

Editor's Note. — Session Laws 1977, c. 819, s. 11, makes this section effective Aug. 1, 1977.
Chapter 19A.

Protection of Animals.

Article 1.

Civil Remedy for Protection of Animals.

Sec. 19A-1. Definitions. — For the purposes of this Chapter [Article] the following definition of terms shall be applicable:

(1) The terms “animals” and “dumb animals” shall be held to include every useful living creature.

(2) The term “cruelty” shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such term shall not be construed to prohibit lawful taking or attempting to take game animals or birds as allowed by law, provided further that such term shall not include activities sponsored by agencies or institutions conducting biomedical research or training or for sport as provided by the laws of North Carolina.

(3) The term “person” as used herein shall be held to include any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals. (1969, c. 831.)

Editor's Note. — Pursuant to Session Laws 1975, c. 56, effective July 1, 1975, the former provisions of Chapter 19A have been designated Article 1 of that Chapter. The definitions in the above section are applicable only to Article 1.

Sec. 19A-2. Purpose. — It shall be the purpose of this Chapter [Article] to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any “person” as hereinbefore defined even though such person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal. (1969, c. 831.)

Sec. 19A-3. Preliminary injunction or restraining order. — Upon the filing of a verified complaint in superior court in the county in which cruelty to an animal has allegedly occurred, and upon petition for a preliminary injunction or temporary restraining order, the resident judge or any judge holding a regular or special session of court may in the court's discretion issue such preliminary injunction or temporary restraining order, the duration of which shall be 20 days. Such injunction or restraining order may in the discretion of the court issue without prior notice to any person named as a defendant in the verified complaint. 
§ 19A-4. Permanent injunction. — On the date specified in a preliminary injunction or temporary restraining order, which date shall not be later than 20 days from the issuance thereof, a resident superior court judge or a superior court judge holding a regular or special session of superior court in the county in which the action is brought shall determine the merits of the action by trial without jury, and upon hearing such evidence as may be presented, shall enter orders as he deems appropriate, including the issuance of a permanent injunction or final determination of the custody of the animal where appropriate. (1969, c. 831; 1971, c. 528, s. 10.)

§ 19A-5 to 19A-9: Reserved for future codification purposes.

ARTICLE 2.

Protection of Black Bears.

§ 19A-10. Unlawful to buy, sell or enclose (except as provided) black bear. — Except as otherwise provided in applicable statutes, it shall be unlawful for any person to buy or sell black bears or for any person, firm or corporation to possess or keep any black bear (Ursus americanus) in any enclosure, pen, cage, or other place or means of captivity except as hereinafter provided. (1975, c. 56, s. 1.)


Editor's Note. — Session Laws 1975, c. 56, s. 7, provides that the act shall become effective July 1, 1975.

Purpose of Section. — The purpose of this section is to provide for the protection of bears and to require that, when they are kept in captivity, adequate standards for their care and comfort be maintained. Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678, appeal dismissed, 290 N.C. 775, 229 S.E.2d 31 (1976).

§ 19A-11. Inapplicable to bona fide zoos, etc. — The provisions of this Article shall not apply to bona fide zoos which are operated by federal, State, or local governmental agencies, or to educational institutions in which black bears are kept or exhibited as part of a bona fide course of training or research in the natural sciences, or to black bears held without caging under conditions simulating a natural habitat, the development of which is in accord with plans and specifications developed by the holder and approved by the Wildlife Resources Commission. (1975, c. 56, s. 2.)

Constitutionality. — There is a rational basis for excepting bona fide zoos operated by governmental agencies from the provisions of the act so as to preclude a claim that the act denies plaintiff equal protection of the laws. Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678, appeal dismissed, 290 N.C. 775, 229 S.E.2d 31 (1976).

Purpose of Section. — The purpose of this section is to provide for the protection of bears and to require that, when they are kept in captivity, adequate standards for their care and comfort be maintained. Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678, appeal dismissed, 290 N.C. 775, 229 S.E.2d 31 (1976).
§ 19A-12. Possession of black bear on July 1, 1975; surrender of bear; modification of facilities; forfeiture. — Any person, firm or corporation in possession of a black bear on July 1, 1975, under an existing permit issued by the Wildlife Resources Commission, where the conditions under which such black bear is held are in violation of this Article, may immediately surrender such black bear and such permit to the Wildlife Resources Commission which shall compensate such person, firm or corporation in the amount actually paid for such bear not to exceed the sum of one hundred dollars ($100.00) for any one bear. In lieu of surrendering such black bear and such permit, any such person, firm or corporation may give immediately written notice to the Wildlife Resources Commission that plans and specifications for facilities to hold such bear without caging under conditions simulating a natural habitat will be submitted to the Commission for approval within 30 days thereafter. In the event such plans and specifications are not submitted within the time thus limited, or they are disapproved by the Commission, or the facilities are not completed in accordance therewith within 60 days after approval by the Commission, continued possession of a black bear by such person, firm or corporation after any of such events shall constitute a violation of the provisions of this Article, and any such black bear shall be forfeited to the Wildlife Resources Commission without compensation. (1975, c. 56, s. 3.)

Purpose of Section. — The purpose of this section is to provide for the protection of bears and to require that, when they are kept in captivity, adequate standards for their care and comfort be maintained. Cannady v. North Carolina Wildlife Resources Comm'n, 30 N.C. App. 247, 226 S.E.2d 678, appeal dismissed, 290 N.C. 775, 229 S.E.2d 31 (1976).

§ 19A-13. Violation of Article. — Violation of the provisions of this Article shall constitute a misdemeanor punishable by a fine of not less than five hundred dollars ($500.00) or by imprisonment for not less than 90 days. (1975, c. 56, s. 4.)


§ 19A-14. Enforcement of Article. — Law-enforcement officers of the Wildlife Resources Commission and all other peace officers are authorized and empowered to enforce the provisions of this Article. (1975, c. 56, s. 5.)

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Motor Vehicles.

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ARTICLE 1.

Division of Motor Vehicles.

§ 20-1. Division of Motor Vehicles of the Department of Transportation; powers and duties. — The Department of Motor Vehicles is hereby redesignated...
the Division of Motor Vehicles of the Department of Transportation. The Division of Motor Vehicles shall have the same powers and duties as were held by the Department of Motor Vehicles except as otherwise provided in this Article. All powers, duties and functions relating to the collection of motor fuel taxes and the collection of the gasoline and oil inspection taxes shall continue to be vested in and exercised by the Secretary of Revenue, and wherever it is now provided by law that reports shall be filed with the Secretary of Revenue, or Department of Revenue, as a basis for collecting the motor fuel or gasoline and oil inspection taxes, or enforcing any of the laws regarding the motor fuel or gasoline and oil inspection taxes, such reports shall continue to be made to the Department of Revenue and the Commissioner of Motor Vehicles shall make available to the Secretary of Revenue all information from files of the Division of Motor Vehicles which the Secretary of Revenue may request to enable him to better enforce the law with respect to the collection of such taxes. Nothing in this Article shall deprive the Utilities Commission of any of the duties or powers now vested in it with regard to the regulation of motor vehicle carriers. Articles 2 and 3 of Chapter 150A shall not apply to the Board of Transportation, the Division of Highways, and Division of Motor Vehicles. (1941, c. 36, s. 1; 1949, c. 1167; 1973, c. 476, s. 193; 1975, c. 716, s. 5; c. 863.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, rewrote this section so as to change the former Department of Motor Vehicles to the Division of Motor Vehicles of the Department of Transportation.

§ 20-2. Commissioner of Motor Vehicles. — The Division of Motor Vehicles shall be administered by the Commissioner of Motor Vehicles, who shall be appointed by and serve at the pleasure of the Secretary of the Department of Transportation. The Commissioner shall be paid an annual salary to be fixed by the Governor, with the approval of the Advisory Budget Commission and allowed his traveling expenses as allowed by law.

In any action proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proof of claim, warrants for collection, certificates of tax liability, executions, and other legal documents, may be signed and verified on behalf of the Commissioner of Motor Vehicles by the Assistant Commissioner of Motor Vehicles or by any director or assistant director of any section of the Division of Motor Vehicles or by any other agent or employee of the Division so authorized by the Commissioner of Motor Vehicles. (1941, c. 36, s. 2; 1945, c. 527; 1975, c. 476; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the first sentence of the first paragraph so as to provide for the appointment of the Commissioner by the Secretary of the Department of Transportation rather than by the Governor, substituted “and allowed his traveling expenses as allowed by law” for “payable in monthly installments, and shall likewise be allowed his traveling expenses when away from Raleigh on official business” at the end of the second sentence of the first paragraph and, in the second paragraph, inserted “of Motor Vehicles” following “Commissioner” in two places and substituted “section of the Division” for “Division of the Department of Motor Vehicles” and “employee of the Division” for “employee of the Department” near the end of the paragraph.
§ 20-3. Organization of Division. — The Commissioner, subject to the approval of the Secretary of the Department of Transportation, shall organize and administer the Division in such manner as he may deem necessary to conduct the work of the Division. (1941, c. 36, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section.

§ 20-3.1. Purchase of additional airplanes. — The Division of Motor Vehicles shall not purchase additional airplanes without the express authorization of the General Assembly. (1963, c. 911, s. 1½; 1971, c. 198; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-4. Clarification of conflicts as to transfer of functions. — In the event that there shall arise any conflict as to the transfer of any functions from the Department of Revenue to the Division of Motor Vehicles, the Governor of the State is hereby authorized to issue an executive order clarifying and making certain the issue thus arising. (1941, c. 36, s. 5; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-4.01. Definitions. — Unless the context otherwise requires, the following words and phrases, for the purpose of this Chapter, shall have the following meanings:

(3) Chauffeur. — Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives any motor vehicle when in use for the transportation of persons or property for compensation and the driver, other than the owner of a private hauler, of any property-hauling vehicle or combination of vehicles licensed for more than 30,000 pounds gross weight and the driver of any passenger-carrying vehicle of over nine-passenger capacity except the driver of a church bus, farm bus, school bus, or an activity bus for a nonprofit organization when such bus is being operated for a nonprofit purpose, who holds a valid operator's license. Those under 20 years of age must be certified and licensed to operate a North Carolina school bus.

(6) Division. — The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(20) Manufacturer's Certificate. — A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(23) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include bicycles with helper motors rated less than one brake horsepower which produce only ordinary pedaling speeds up to a maximum of 20 miles per hour.
(27) Passenger Vehicles. —
   a. Excursion passenger vehicles. — Vehicles transporting persons on sight-seeing or travel tours.
   b. For-hire passenger vehicles. — Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles (except those with wheelbases of 140 inches or more) operated by the owner where the cost of operation is shared by the passengers; vehicles (except those with wheelbases of 140 inches or more) operated by any bona fide employee for the transportation of other bona fide employees and himself to and from the place(s) of their regular employment and operated for compensation only for one round trip per day to and from the work location(s); vehicles transporting students for the public school system under contract with the State Board of Education; or vehicles leased to the United States of America or any of its agencies on a nonprofit basis.
   c. Common carriers of passengers. — Vehicles operated under a franchise certificate issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.
   d. Motorcycles. — Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and bicycles with helper motors rated less than one brake horsepower which produce only ordinary pedaling speeds up to a maximum of 20 miles per hour.
   e. U-drive-it passenger vehicles. — Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.
   f. Ambulances. — Vehicles equipped for transporting wounded, injured, or sick persons.
   g. Private passenger vehicles. — All other passenger vehicles not included in the above definitions.

(35) Residential District. — The territory prescribed as such by ordinance of the Department of Transportation.

(44) Special Mobile Equipment. — Every truck, truck-tractor, industrial truck, trailer, or semitrailer on which have been permanently attached cranes, mills, well-boring apparatus, ditch-digging apparatus, air compressors, electric welders, or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a nonhighway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by American Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders, and mills.
§ 20-4.2

although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed-mixing, grinding, or milling process.

(1975, cc. 94, 208; c. 716, s. 5; c. 743; c. 859, s. 1; 1977, c. 313; c. 464, s. 34.)

Editor's Note. — The first 1975 amendment, in subdivision (27), deleted "and" preceding "three-wheeled vehicles" in paragraph d and added at the end of paragraph d the language beginning "and bicycles with helper motors."

The second 1975 amendment substituted "30,000" for "26,000" near the middle of the first sentence of subdivision (3).

The third 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivisions (5) and (20).

The fourth 1975 amendment, effective July 1, 1975, inserted "industrial truck" near the beginning of the first section in subdivision (44).

The fifth 1975 amendment added the second sentence in subdivision (23).

The first 1977 amendment rewrote paragraph b of subdivision (27).

The second 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subsection (35).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (3), (6), (20), (23), (27), (35) and (44) are set out.

Operator, etc. — In a prosecution for driving under the influence and driving while license was revoked, evidence that defendant was seated behind the wheel of a car which had the motor running was sufficient to prove that defendant was the operator of the car under subdivision (25). State v. Turner, 29 N.C. App. 163, 223 S.E.2d 530 (1976).

"Public vehicular area" includes streets leading into privately owned trailer parks which rent, lease and sell individual lots. See opinion of Attorney General to Mr. Henry A. Harkey, Assistant District Attorney, 45 N.C.A.G. 284 (1976).

A bicycle is a vehicle, etc. — In accord with 1st paragraph in original. See Townsend v. Frye, 30 N.C. App. 634, 228 S.E.2d 56, cert. denied, 291 N.C. 178, 229 S.E.2d 689 (1976).


ARTICLE 1A.

Reciprocity Agreements as to Registration and Licensing.

§ 20-4.2. Definitions. — As used in this Article:

(3) "Division" means the Division of Motor Vehicles of North Carolina.

(5) "Properly registered," as applied to place of registration, means:

a. The jurisdiction where the person registering the vehicle has his legal residence, or

b. In the case of a commercial vehicle, including a leased vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business, and, the vehicle has been assigned to such place of business, or

c. In the case of a commercial vehicle, including leased vehicles, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

d. In case of doubt or dispute as to the proper place of registration of a vehicle, the Division shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected. (1961, c. 642, s. 1; 1975, c. 716, s. 5.)
§ 20-4.4. Authority for reciprocity agreements; provisions; reciprocity standards.

(b) When the Commissioner enters into a reciprocal registration agreement or arrangement with another jurisdiction which has a motor vehicle tax, license or fee which is not subject to waiver by a reciprocity agreement, the Commissioner is empowered and authorized to provide as a condition of the agreement or arrangement that owners of vehicles licensed in such other jurisdiction shall pay some equalizing tax or fee to the Division. The failure of any owner or operator of a vehicle to pay the taxes or fees provided in the agreement or arrangement shall prohibit them from receiving any benefits therefrom and they shall be required to register their vehicles and pay taxes as if there was no agreement or arrangement. (1961, c. 642, s. 1; 1971, c. 588; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" at the end of the first sentence of subsection (b).
§ 20-4.20. Division to transmit report to reciprocating state; suspension of license for noncompliance with citation issued by reciprocating state. — (a) Upon receipt of a report of noncompliance, the Division shall transmit a certified copy of such report to the official in charge of the issuance of licenses in the reciprocating state in which the nonresident resides or by which he is licensed.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsection (a).

ARTICLE 2.

Uniform Driver’s License Act.

§ 20-7. Operators' and chauffeurs' licenses; expiration; examinations; fees. — (a) Except as otherwise provided in G.S. 20-8, no person shall act as or operate a motor vehicle over any highway in this State as a chauffeur unless such person has first been licensed as a chauffeur by the Division under the provisions of this Article. Except as otherwise provided in G.S. 20-8, no person shall operate a motor vehicle over any highway in this State unless such person has first been licensed as an operator or a chauffeur by the Division under the provisions of this Article. Any person who takes up residence in this State on a permanent basis shall be exempt from the provisions of this subsection for a period of 30 days from the date that residence is established, provided he is properly licensed in the jurisdiction of which he is a former resident.

(1a) No operator's or chauffeur's license issued on or after January 1, 1978, shall authorize the licensee to operate a motorcycle unless the license has been appropriately endorsed by the Division to indicate that the licensee has passed special road and written (or oral) tests demonstrating competence to operate a motorcycle. Any person licensed prior to January 1, 1978, who has operated a motorcycle for at least two years prior to that date, will be exempt from the provisions of this subsection upon filing with the Division of Motor Vehicles an affidavit attesting to said two years' experience. This section shall not apply to motorcycles which are rated at 190 cc (cubic centimeter) or less.

(b) Every application for an operator's or chauffeur's license shall be made upon the approved form furnished by the Division.

(c) No person shall hereafter be issued an operator's license until it is determined that such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. In determining whether or not a person is physically and mentally capable of safely operating motor vehicles over the highways of the State, the Division shall require such person to demonstrate his capability by passing an examination, which may include road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Division may require. Provided, however, that persons 60 years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(d) The Division shall cause each person who has heretofore been issued an operator’s license to be examined or reexamined, as the case may be, to determine whether or not such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. Those persons found, as a result of such examination or reexamination, to be capable of safely operating motor vehicles over the highways of the State shall be reissued operators' licenses; and those persons found to be incapable of safely operating motor vehicles over the highways of the State shall not be reissued operators' licenses. The examination required by this subsection may include such road tests, oral and in the case of literate applicants written tests, and tests of vision,
as the Division may require and shall include such test as is necessary to assure that applicants recognize the "international symbol of access" for the handicapped (sign D9-6, Manual on Uniform Traffic Control Devices) and devices relative to handicapped drivers as set forth in Article 2A of this Chapter. The Division may once reissue operators' licenses without examination to licensed operators who have passed an operator's examination given by the Division subsequent to July 1, 1945, and prior to July 1, 1947. Provided, however, that persons 60 years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(e) The Division is hereby authorized to grant unlimited licenses or licenses containing such limitations as it may deem advisable. Such limitation or limitations shall be noted on the face of the license, and it shall be unlawful for the holder of a license so limited to operate a motor vehicle without complying with the limitations, and the operation of a motor vehicle without complying with the limitations by a person holding a license with such limitations shall be the equivalent of operating a motor vehicle without a chauffeur's or operator's license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either limited or unlimited, to any person deemed to be incapable of operating a motor vehicle with safety to himself and to the public: Provided, that nothing herein shall prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) The operators' licenses issued under this section shall automatically expire on the birthday of the licensee in the fourth year following the year of issuance; and no new license shall be issued to any operator after the expiration of his license until such operator has again passed the examination specified in this section. Any operator may at any time within 60 days prior to the expiration of his license apply for a new license and if the applicant meets the requirements of this Article, the Division shall issue a new license to him. A new license issued within 60 days prior to the expiration of an applicant's old license or within 12 months thereafter shall automatically expire four years from the date of the expiration of the applicant's old license.

Any person serving in the armed forces of the United States on active duty and holding a valid operator's license properly issued under this section and stationed outside the State of North Carolina may renew his license by making application to the Division by mail. Any other person, except a nonresident as defined in this Article, who holds a valid operator's license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Division by mail. For purposes of this section "temporarily" shall mean not less than 30 days continuous absence from North Carolina. In either case, the Division may waive the examination and color photograph ordinarily required for the renewal of an operator's license, and may impose in lieu thereof such conditions as it may deem appropriate to each particular application; provided that such license shall expire 30 days after licensee returns to North Carolina, and such license shall be designated as temporary.

Provided further, that no person who applies for the renewal of his operator's license shall be required to take a written examination or road test as a part of any such examination unless such person has been convicted of a traffic violation or had prayer for judgment continued with respect to any traffic violation within a four-year period immediately preceding the date of such person's renewal application or unless such person suffers from a mental or physical condition which impairs his ability to operate a motor vehicle.
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(g) Every chauffeur's license issued under this section shall automatically expire on the birthday of the licensee in the second year following the year of issuance and chauffeurs shall renew their licenses every two years after an examination which may include road tests, oral and, in the case of literate applicants, written tests, and tests of vision as the Division may require: Provided, that the Commissioner may, in proper cases, waive the examination required by this subsection: Provided, further, that no chauffeur's license issued hereunder shall expire in less than six months from the date of issuance.

Provided further, that no person who applies for the renewal of his chauffeur's license shall be required to take a written examination or road test as a part of any such examination unless such person has been convicted of a traffic violation or had prayer for judgment continued with respect to any traffic violation within a four-year period immediately preceding the date of such person's renewal application or unless such person suffers from a mental or physical condition which impairs his ability to operate a motor vehicle.

(h) Upon receipt of information that the physical or mental condition of any person has changed since his or her examination for an operator's or chauffeur's license and before a new examination is required by this section, the Division may, after 10 days' written notice, require such person to take another examination to determine his or her capability to operate safely motor vehicles over the highways of the State. If such person is found to be capable of safely operating vehicles over the highways of the State, license shall be reissued to him or her and no fee shall be collected by the Division for such examination and reissuance of license. If such person is found to be incapable of safely operating vehicles over the highways of the State, no license shall be issued or reissued to him or her unless such person shall subsequently pass an examination given by the Division.

(i) The fee for issuance or reissuance of an operator's license shall be four dollars ($4.00) and the fee for issuance or reissuance of a chauffeur's license shall be five dollars ($5.00).

(ii) Any person whose operator's or chauffeur's license or other privilege to operate a motor vehicle in this State has been suspended, canceled or revoked pursuant to the provisions of this Chapter shall pay a restoration fee of fifteen dollars ($15.00) to the Division prior to the issuance to such person of a new operator's or chauffeur's license or the restoration of such operator's or chauffeur's license or privilege; such restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law.

(j) The fees collected under this section and G.S. 20-14 shall be placed in the Highway Fund.

(l) Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain an operator's license under this Article may apply for a temporary learner's permit, and the Division shall issue such permit, entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of 18 months. The fee for issuance of a temporary learner's permit shall be two dollars ($2.00). Any such learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. Such person must, while operating a motor vehicle over the highways, be accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver.

The fee for the issuance of a renewal or a second temporary learner's permit shall be three dollars and twenty-five cents ($3.25).

(l-1) The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver training program as provided for in G.S. 20-88.1 even though the applicant has not yet reached the legal age to be eligible
for an operator's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a motor vehicle subject to the restrictions imposed by the Division. The restrictions which the Division may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(m) The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver-training program approved by the State Superintendent of Public Instruction even though the applicant has not yet reached the legal age to be eligible for an operator's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a motor vehicle subject to the restrictions imposed by the Division. The restrictions which the Division may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(n) Every operator's or chauffeur's license issued by the Division shall bear thereon the distinguishing number assigned to the licensee and color photograph of the licensee of a size approved by the Commissioner and shall contain the name, age, residence address and a brief description of the licensee, who, for the purpose of identification and as a condition precedent to the validity of the license, immediately upon receipt thereof, shall endorse his or her regular signature in ink upon the same in the space provided for that purpose unless a facsimile of his or her signature appears thereon; provided the requirement that a color photograph of the licensee appear on the license may be waived by the Commissioner upon satisfactory proof that the taking of such photograph violates the religious convictions of the licensee. Such license shall be carried by the licensee at all times while engaged in the operation of a motor vehicle. However, no person charged with failing to so carry such license shall be convicted, if he produces in court an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest.

(1975, c. 2162, s. 8.41; c. 295; c. 296; s. 2; c. 684; c. 716, s. 5; c. 841; c. 875, s. 4; c. 879, s. 46; 1977, c. 340, s. 3; c. 865, ss. 1, 3.)

Editor's Note. —

The first 1975 amendment, effective May 1, 1975, added the second paragraph of subsection (g). The first 1975 amendatory act originally provided that the act should expire June 1, 1977. It was amended by Session Laws 1977, c. 554, so as to delete the provision for expiration.

The second 1975 amendment, effective July 1, 1975, increased the restoration fee in subsection (i) from $10.00 to $15.00.

The third 1975 amendment, effective July 1, 1975, substituted "18 months" for "six months" at the end of the first and present third sentences of subsection (l), inserted the present second sentence of subsection (l), and substituted "second learner's" for "new" and inserted "may be" in the present third sentence of subsection (l). The amendment also added the second paragraphs of subsections (l) and (m).

The fourth 1975 amendment, effective July 1, 1975, increased the operator's and chauffeur's license fees in subsection (i) from $3.25 to $4.00 and from $4.75 to $5.00 respectively.

The fifth 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

The sixth 1975 amendment deleted in subsection (m) the second paragraph, which had been added by the third 1975 amendment and which read: "The fee for the issuance of a restricted instruction permit shall be two dollars ($2.00)."

The seventh 1975 amendment, effective July 1, 1975, rewrote subsection (j), which formerly provided that the fees should be placed in the "Operators' and Chauffeurs' License Fund" to be used for the administration of this section.

The eighth 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Assistant Director of the Budget" in subsection (j).

The first 1977 amendment added the language beginning "and shall include such test as is necessary" to the end of the third sentence of subsection (d).

The second 1977 amendment added subsection (a1).

Session Laws 1975, c. 162, s. 2, provides: "The
Department of Motor Vehicles shall monitor the occurrence of traffic violations within the State and submit yearly reports to the General Assembly. The effect of this act on the violation statistics of North Carolina drivers as of January 1, 1976, and each year thereafter shall be included in the yearly report to allow the objective evaluation of this act and its effect on North Carolina drivers."

Session Laws 1977, c. 6, amends Session Laws 1973, c. 1057, s. 3, so as to make the third 1973 amendment to this section permanent. Session Laws 1973, c. 1057, s. 3, as originally enacted provided that the act should expire June 1, 1977.

Only the subsections changed by the amendments are set out.

Firemen classified as “drivers” and other city employees operating motor vehicles, not exempt pursuant to § 20-8, should obtain a chauffeur’s license. See opinion of Attorney General to Mr. W. A. Watts, Charlotte Deputy City Attorney, 45 N.C.A.G. 192 (1976).


§ 20-7.1. Notification of change of address. — Whenever the holder of a license issued under the provisions of G.S. 20-7 changes his or her address as shown on such license, he or she shall notify the Division of Motor Vehicles of such change within 60 days after such address has been changed. (1975, c. 223, s. 1.)

Editor’s Note. — Session Laws 1975, c. 223, s. 2, makes the act effective July 1, 1975.


§ 20-8. Persons exempt from license. — The following are exempt from license hereunder:

(7) Any person who is at least 16 years of age and while operating a bicycle with a helper motor rated less than one brake horsepower which produces only ordinary pedaling speeds up to a maximum of 20 miles per hour. (19385; 1963, c. 1175; 1973, c. 1017; 1975, c. 859, s. 2.)

Editor’s Note. — The 1975 amendment added subdivision (7). As the rest of the section was not changed by the amendment, only the introductory language and subdivision (7) are set out.

§ 20-9. What persons shall not be licensed. — (a) An operator's license shall not be issued to any person under the age of 16 years, and no chauffeur's license shall be issued to any person under the age of 18 years.

(b) The Division shall not issue an operator's or chauffeur's license to any person whose license, either as operator or chauffeur, has been suspended or revoked during the period for which the license was suspended or revoked.

(c) The Division shall not issue an operator's or chauffeur's license to any person who is an habitual drunkard or is an habitual user of narcotic drugs or barbiturates, whether or not such use be in accordance with the prescription of a physician.

(d) No operator's or chauffeur's license shall be issued to any applicant who has been previously adjudged insane or an idiot, imbecile, or feebleminded, and who has not at the time of such application been restored to competency by judicial decree or released from a hospital for the insane or feebleminded upon a certificate of the superintendent that such person is competent, nor then unless the Division is satisfied that such person is competent to operate a motor vehicle with safety to persons and property.

(e) The Division shall not issue an operator’s or chauffeur’s license to any person when in the opinion of the Division such person is afflicted with or suffering from such physical or mental disability or disease as will serve to

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prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to understand highway warnings or direction signs.

(f) The Division shall not issue an operator’s or chauffeur’s license to any person whose license or driving privilege is in a state of suspension or revocation in any jurisdiction, if the acts or things upon which the suspension or revocation in such other jurisdiction was based would constitute lawful grounds for suspension or revocation in this State had those acts or things been done or committed in this State.

(g) The Division may issue an operator’s or chauffeur’s license to any applicant covered by subsection (e) of this section under the following conditions:

1. The Division may issue a license to any person who is afflicted with or suffering from physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Unless sooner revoked, suspended or cancelled, such license continues in force as long as the licensee presents to the Division one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six months intervals where in his opinion public safety demands. In no event shall a license issued pursuant to this section be valid beyond the birthday of the licensee in the fourth year following the year of issuance, at which time the license is subject to renewal.

2. The Division shall not issue a license pursuant to this section unless the applicant has submitted to a physical examination by a physician or surgeon duly licensed to practice medicine in this State and unless such examining physician or surgeon has completed and signed the certificate required by subdivision (1). Such certificate shall be devised by the Commissioner with the advice of qualified experts in the field of diagnosing and treating physical and mental disorders as he may select to assist him and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not it would be a hazard to public safety to permit the applicant to operate a motor vehicle, including, if such is the fact, the examining physician’s statement that the applicant is under medication and treatment and that such person’s physical or mental disability is controlled. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether a license should be issued to the applicant.

3. The Commissioner is not bound by the recommendation of the examining physician but shall give fair consideration to such recommendation in exercising his discretion in acting upon the application, the criterion being whether or not, upon all the evidence, it appears that it is safe to permit the applicant to operate a motor vehicle. The burden of proof of such fact is upon the applicant. In deciding whether to issue or deny a license, the Commissioner may be guided by opinion of experts in the field of diagnosing and treating the specific physical or mental disorder suffered by an applicant and such experts may be compensated for their services on an equitable basis. The Commissioner may also take into consideration any other factors which bear on the issue of public safety.

4. Whenever a license is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the applicant filed with the Division within 10 days after receipt of such denial. The reviewing board shall consist of the Commissioner or his authorized...
representative and four persons designated by the chairman of the Commission for Health Services. The persons designated by the chairman of the Commission for Health Services shall be either members of the Commission for Health Services or physicians duly licensed to practice medicine in this State. The members so designated by the chairman of the Commission for Health Services shall receive the same per diem and expenses as provided by law for members of the Commission for Health Services, which per diem and expenses shall be charged to the same appropriation as per diems and expenses for members of the Commission for Health Services. The Commissioner or his authorized representative, plus any two of the members designated by the chairman of the Commission for Health Services, constitute a quorum. The procedure for hearings authorized by this section shall be as follows:

a. Applicants shall be afforded an opportunity for hearing, after reasonable notice of not less than 10 days, before the review board established by subdivision (4). The notice shall be in writing and shall be delivered to the applicant in person or sent by certified mail, with return receipt requested. The notice shall state the time, place, and subject of the hearing.

b. The review board may compel the attendance of witnesses and the production of such books, records and papers as it desires at a hearing authorized by the section. Upon request of an applicant, a subpoena to compel the attendance of any witness or a subpoena duces tecum to compel the production of any books, records, or papers shall be issued by the board. Subpoenas shall be directed to the sheriff of the county where the witness resides or is found and shall be served and returned in the same manner as a subpoena in a criminal case. Fees of the sheriff and witnesses shall be the same as that allowed in the district court in cases before that court and shall be paid in the same manner as other expenses of the Division of Motor Vehicles are paid. In any case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the district court or superior court where such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, shall compel obedience or punish as for contempt.

c. A hearing may be continued upon motion of the applicant for good cause shown with approval of the board or upon order of the board.

d. The board shall pass upon the admissibility of evidence at a hearing but the applicant affected may at the time object to the board's ruling, and, if evidence offered by an applicant is rejected the party may proffer the evidence, and such proffer shall be made a part of the record. The board shall not be bound by common law or statutory rules of evidence which prevail in courts of law or equity and may admit and give probative value to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They may exclude incompetent, immaterial, irrelevant and unduly repetitious evidence. Uncontested facts may be stipulated by agreement between an applicant and the board and evidence relating thereto may be excluded. All evidence, including records and documents in the possession of the Division of Motor Vehicles or the board, of which the board desires to avail itself shall be made a part of the record. Documentary evidence may be received in the form of
copies or excerpts, or by incorporation by reference. The board shall prepare an official record, which shall include testimony and exhibits. A record of the testimony and other evidence submitted shall be taken, but it shall not be necessary to transcribe shorthand notes or electronic recordings unless requested for purposes of court review.

e. Every decision and order adverse to an applicant shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the board’s conclusions on each contested issue of fact. Counsel for applicant, or applicant, if he has no counsel, shall be notified of the board’s decision in person or by registered mail with return receipt requested. A copy of the board’s decision with accompanying findings and conclusions shall be delivered or mailed upon request to applicant’s attorney of record or to applicant, if he has no attorney.

f. Actions of the reviewing board are subject to judicial review as provided under Chapter 150A of the General Statutes.

g. Repealed by Session Laws 1977, c. 840.

h. All records and evidence collected and compiled by the Division and the reviewing board shall not be considered public records within the meaning of Chapter [section] 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. All information furnished by or on behalf of an applicant under this section shall be without prejudice and shall be for the use of the Division, the reviewing board or the court in administering this section and shall not be used in any manner as evidence, or for any other purposes in any trial, civil or criminal.

(h) The Division shall not issue an operator’s or chauffeur’s license to an applicant who is the holder of any license to drive issued by another state, district or territory of the United States and currently in force, unless the applicant surrenders such license or licenses; provided, this section shall not apply to nonresident military personnel or members of their household. (1935, c. 52, s. 4; 1951, c. 542, s. 3; 1953, c. 773; 1955, c. 1187, s. 7; 1967, cc. 961, 966; 1971, c. 152; c. 528, s. 11; 1973, cc. 135, 441; c. 476, s. 128; c. 1331, s. 3; 1975, c. 716, s. 5.)

Editor’s Note. —
The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.
The 1977 amendment repealed paragraph (g)(4), which read “An applicant or licensee who has been denied a license pursuant to a hearing before the board may not file a new application until the expiration of two years after the date of such denial by the board.”
Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the Superior Court of Wake County pursuant to § 150A-45 and may not obtain a hearing under § 20-25 in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

§ 20-11. Application of minors.— (a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for an operator's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a misdemeanor.

The Division shall not grant the application of any minor between the ages of 16 and 18 years for an operator's license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them.

(b) The Division may grant an application for a limited learner's permit of any minor under the age of 16, who otherwise meets the requirements of licensing under this section, when such application is signed by both the applicant and his or her parent or guardian or some other responsible adult with whom the applicant resides and is approved by the Division of Motor Vehicles. Such limited learner's permit shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of six months, while such minor is accompanied by a parent, guardian, or other person approved by the Division, who is licensed under this Chapter to operate a motor vehicle and who is actually occupying a seat beside the driver. Provided, however, a limited learner's permit as herein provided shall be issued only to those applicants who have reached the age of 15 years. In the event a minor who has been issued a limited learner's permit under this subsection operates a motor vehicle in violation of any provision herein, the permit shall be cancelled.

Provided a driver who holds a learner's permit only shall not be deemed a male operator under age 25 for the purpose of determining the insurance premium rate for persons insured under automobile property damage and bodily injury liability insurance policies.

(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid motor vehicle operator's license from his prior state of residence but has not completed a course in driver education which meets the requirements of this State, grant to such minor a temporary operator's permit under such terms and conditions as shall be deemed necessary by the Division to allow the minor to operate a motor vehicle in this State in order to obtain the driver education courses necessary for operator's license in North Carolina. Every application for a temporary operator's permit shall be made upon the approved form furnished by the Division. A temporary operator's permit issued pursuant to this section shall be subject to all provisions of law relating to operator's license. (1935, c. 52, s. 6; 1953, c. 355; 1955, c. 1187, s. 8; 1963, c. 968, ss. 2, 2A; 1965, c. 410, s. 3; c. 1171; 1967, c. 694; 1969, c. 37; 1973, c. 191, ss. 1, 2; c. 664, ss. 1, 2; 1975, c. 79; c. 716, s. 5.)

Editor's Note.— The first 1975 amendment added subsection (c).
§ 20-12.1. Giving instruction while under influence of alcohol or drugs. — 
(a) It shall be unlawful for any person who is under the influence of intoxicating 
liquer or who is under the influence of drugs to accompany or instruct another 
person as provided in G.S. 20-11 and G.S. 20-12 of this Article.
(b) Any person accompanying and instructing another person as provided in 
G.S. 20-11 and G.S. 20-12 of this Article shall be subject to the provisions of G.S. 
20-16.2 to the same intent and in the same manner as persons who drive or 
operate a motor vehicle and in addition shall be subject to the provisions of G.S. 
20-17(2). (1977, c. 116, ss. 1, 2.)

§ 20-13. Mandatory revocation of license of provisional licensee. — (a) The 
operator’s license of any person shall be suspended by the Division without 
preliminary hearing upon notice to the Division of such person’s conviction of 
a motor vehicle moving violation, as specified in subsection (b), committed while 
such person was still a provisional licensee. A provisional licensee is any licensee 
who has not attained his eighteenth birthday. A motor vehicle moving violation, 
as used herein, does not include any of those offenses for which no points under 
the point system may be assessed by specific reference in G.S. 20-16(c), nor does 
the term include those equipment violations specified in Part 9 of Article 3 of 
this Chapter.
(b) The basis for departmental action, and the period of suspension, shall be 
as follows:
(1) For conviction of a second motor vehicle moving violation, in any 
12-month period, 30 days;
(2) For conviction of a third such violation, in any 12-month period, three 
months;
(3) For conviction of a fourth such violation, in any 12-month period, one 
year.
After the expiration of six months of any suspension hereunder, the 
parent or someone standing in loco parentis of the provisional licensee 
may request a hearing for the purpose of obtaining a license upon a 
probationary status.
If such provisional licensee demonstrates to the Division that his 
conduct and attitude is such as to entitle him to favorable consideration, 
the Division may rescind the remainder of the suspension and allow 
such provisional licensee to operate motor vehicles under his provisional 
license in a probationary status. Such provisional licensee must agree 
in writing to accept such terms and conditions as the Division may see 
fit to impose during the term of probation.
(d) The suspension provided for in this section shall be in addition to any other 
remedies which the Division may have against a licensee under other provisions 
of law; however, when the license of any person is subject to suspension under 
this section and at the same time is also subject to suspension or revocation 
under other provisions of law, such suspensions or revocations shall run 
concurrently.
(f) Upon receipt of notice on conviction of a licensee’s first motor vehicle 
moving offense, committed while such licensee was a provisional licensee, the 
Division shall mail to the licensee at his last known address a letter of warning, 
but failure of the licensee to receive such letter of warning shall not prevent 
the suspension of his license under this section.
(1975, c. 716, s. 5.)

Editor’s Note. —
The 1975 amendment, effective July 1, 1975, 
substituted “Division” for “Department” in 
subsections (a), (b), (d) and (f). As the rest of the section was not changed by 
the amendment, only subsections (a), (b), (d) and 
(f) are set out.
§ 20-13.1. Revocation of license of provisional licensee upon conviction of moving violation in connection with accident resulting in personal injury or property damage. — The operator's license of a provisional licensee as defined in G.S. 20-13 may be suspended by the Division for a period of 60 days upon notice of such licensee's conviction of one motor vehicle moving violation in connection with a motor vehicle accident resulting in personal injury or property damage of more than three hundred dollars ($300.00). Upon suspending any license as herein provided, the Division shall immediately notify the licensee, in writing, and, upon the request of the licensee's parent or guardian or someone standing in loco parentis to the child, afford him an opportunity for a hearing as early as practical within 20 days after receipt of the request in the county wherein the licensee resides or at some other place mutually agreed upon. Upon such hearing, the duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant documents and may require reexamination. Upon such hearing, the Division may rescind, modify or affirm its order of suspension. (1967, c. 295, s. 2; 1971, c. 437; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-14. Duplicate licenses. — In the event that an operator's or chauffeur's license is lost or destroyed, or if it is necessary to change the name or address thereon, the person to whom the license is issued may, upon payment of a fee of one dollar ($1.00) and upon furnishing proof satisfactory to the Division that the license has been lost or destroyed, or that the person's name or address has been changed, obtain a duplicate or substitute license. (1935, c. 52, s. 9; 1943, c. 649, s. 2; 1969, c. 783, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-15. Authority of Division to cancel license. — (a) The Division shall have authority to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division. (1935, c. 52, s. 10; 1943, c. 649, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-16. Authority of Division to suspend license. — (a) The Division shall have authority to suspend the license of any operator or chauffeur with or without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) Has committed an offense for which mandatory revocation of license is required upon conviction;

(2) Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage, which accident is obviously the result of the negligence of such driver, and where such property damage has not been compensated for;
(3) Is an habitually reckless or negligent driver of a motor vehicle;
(4) Is incompetent to drive a motor vehicle;
(5) Has, under the provisions of subsection (c) of this section, within a
three-year period, accumulated 12 or more points, or eight or more
points in the three-year period immediately following the reinstatement
of a license which has been suspended or revoked because of a
conviction for one or more traffic offenses;
(6) Has made or permitted an unlawful or fraudulent use of such license
or a learner's permit, or has displayed or represented as his own, a
license or learner's permit not issued to him;
(7) Has committed an offense in another state, which if committed in this
State would be grounds for suspension or revocation;
(8) Has been convicted of illegal transportation of intoxicating liquors;
(9) Has, within a period of 12 months, been convicted of two or more charges
of speeding in excess of 55 and not more than 80 miles per hour, or of
one or more charges of reckless driving and one or more charges of
speeding in excess of 55 and not more than 80 miles per hour;
(10) Has been convicted of operating a motor vehicle at a speed in excess
of 75 miles per hour on a public road or highway where the maximum
speed is less than 70 miles per hour;
(10a) Has been convicted of operating a motor vehicle at a speed in excess
of 80 miles per hour on a public highway where the maximum speed
is 70 miles per hour; or
(11) Has been sentenced by a court of record and all or a part of the sentence
has been suspended and a condition of suspension of the sentence is
that the operator or chauffeur not operate a motor vehicle for a period
of time.

(b) Pending an appeal from a conviction of any violation of the motor vehicle
laws of this State, no driver's or chauffeur's license shall be suspended by the
Division of Motor Vehicles because of such conviction or because of evidence
of the commission of the offense for which the conviction has been had.

c) The Division shall maintain a record of convictions of every person licensed
or required to be licensed under the provisions of this Article as an operator or
chauffeur and shall enter therein records of all convictions of such persons for
any violation of the motor vehicle laws of this State and shall assign to the record
of such person, as of the date of commission for the offense, a number of points
for every such conviction in accordance with the following schedule of
convictions and points, except that points shall not be assessed for convictions
resulting in suspensions or revocations under other provisions of laws: Further,
any points heretofore charged for violation of the motor vehicle inspection laws
shall not be considered by the Division of Motor Vehicles as a basis for
suspension or revocation of operator's or chauffeur's license:

Schedule of Point Values

<table>
<thead>
<tr>
<th>Offense</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passing stopped school bus</td>
<td>5</td>
</tr>
<tr>
<td>Reckless driving</td>
<td>4</td>
</tr>
<tr>
<td>Hit and run, property damage only</td>
<td>4</td>
</tr>
<tr>
<td>Following too close</td>
<td>4</td>
</tr>
<tr>
<td>Driving on wrong side of road</td>
<td>4</td>
</tr>
<tr>
<td>Illegal passing</td>
<td>4</td>
</tr>
<tr>
<td>Running through stop sign</td>
<td>3</td>
</tr>
<tr>
<td>Speeding in excess of 55 miles per hour</td>
<td>3</td>
</tr>
<tr>
<td>Failing to yield right-of-way</td>
<td>3</td>
</tr>
<tr>
<td>Running through red light</td>
<td>3</td>
</tr>
</tbody>
</table>
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No operator's license or license expired more than one year .......................... 3
Failure to stop for siren .................................................................................. 3
Driving through safety zone ........................................................................... 3
No liability insurance ....................................................................................... 3
Failure to report accident where such report is required ......................... 3
Speeding in a school zone in excess of the posted school zone speed limit ......................................................................................................... 3
All other moving violations .............................................................................. 2

The [above] provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Public drunk within a vehicle
Possession of liquor
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever a licensee accumulates as many as four points hereunder, the Division shall mail a letter of warning to the licensee at his last known address, but failure to receive such warning letter shall not prevent a suspension under this subsection. Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any 10-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the operator's or chauffeur's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.
In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation.

(d) Upon suspending the license of any person as hereinbefore in this section authorized, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, unless a preliminary hearing was held before his license was suspended, as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the Division and the licensee agree that such hearing may be held in some other county, and such notice shall contain the provisions of this section printed thereon. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. (1935, c. 52, s. 11; 1947, c. 898, ss. 1, 2; c. 1067, s. 13; 1949, c. 378, ss. 1, 2; c. 1032, ss. 1, 2; 1953, c. 450; 1955, c. 1152, s. 15; c. 1187, ss. 9-12; 1957, c. 499, s. 1; 1959, c. 1242, ss. 1-2; 1961, c. 460, ss. 1, 2(a); 1963, c. 1115; 1965, c. 130; 1967, c. 16; 1971, c. 234, ss. 1, 2; c. 793, ss. 1, 2; c. 1198, ss. 1, 2; 1973, c. 16; c. 17, ss. 1, 2; 1975, c. 716, s. 5; 1977, c. 902, s. 1.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.
The 1977 amendment, effective July 1, 1977, added the listing for speeding in a school zone in excess of the posted school zone speed limit to the schedule of point values in subsection (c).

Power to suspend or revoke a driver's license, etc. —
Where the facts as found by the trial court are in exact conformity with the suspension provisions of subdivision (a)(5), the Department (now Division) has complete authority by law to suspend petitioner's license, and the superior court judge has no authority to substitute his discretion for that of the Department. In re Grubbs, 25 N.C. App. 232, 212 S.E.2d 414 (1975).

Provisions of Subsection (d), etc. —


§ 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding; limited driving permits for first offenders. — (a) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 30 days the license of any operator or chauffeur without preliminary hearing on receiving a record of such operator's or chauffeur's conviction of exceeding by more than 15 miles per hour the speed limit, either within or outside the corporate limits of a municipality, if such person was also driving at a speed in excess of 55 miles per hour at the time of the offense.

(b) (1) Upon a first conviction only of violating subsection (a), the trial judge may when feasible allow a limited driving privilege or license to the person convicted for proper purposes reasonably connected with the health, education and welfare of the person convicted and his family. For purposes of determining whether conviction is a first conviction, no prior offense occurring more than 10 years before the date of the current offense shall be considered. The judge may impose upon such limited driving privilege any restrictions as in his discretion are deemed advisable including, but not limited to, conditions of days, hours, types of vehicles, routes, geographical boundaries and specific purposes for which limited driving privilege is allowed. Any such limited driving privilege allowed and restrictions imposed thereon shall be specifically recorded in a written judgment which shall be as near as practical to that hereinafter set forth and shall be signed by the trial judge and shall be affixed with the seal of the court and shall be made a part of the records of the said court. A copy of said judgment shall be transmitted to the Division of Motor Vehicles along with any operator's or chauffeur's license in the possession of the person convicted and a notice of the conviction. Such permit issued hereunder shall be valid for such length of time as shall be set forth in the judgment of the trial judge. Such permit shall constitute a valid license to operate motor vehicles upon the streets and highways of this or any other state in accordance with the restrictions noted thereon and shall be subject to all provisions of law relating to operator's or chauffeur's license, not by their nature, rendered inapplicable.

(2) The judgment issued by the trial judge as herein permitted shall as near as practical be in form and content as follows:

IN THE GENERAL COURT
STATE OF NORTH CAROLINA
COUNTY OF .............
OF JUSTICE
RESTRICTED DRIVING PRIVILEGES

This cause coming on to be heard and being heard before the Honorable ............., Judge presiding, and it appearing to the court that the defendant, ............., has been convicted of the offense of excessive speeding in violation of G.S. 20-16.1(a), and it further appearing to the court that the defendant should be issued a restrictive driving license and is entitled to the issuance of a restrictive driving privilege under and by the authority of G.S. 20-16.1(b);

Now, therefore, it is ordered, adjudged and decreed that the defendant be allowed to operate a motor vehicle under the following conditions and under no other circumstances.

Name: .................................................................
Race: .................................................................
Sex: .................................................................
Height: ..............................................................
Weight: .............................................................
Color of Hair: ......................................................
Color of Eyes: .....................................................
Birth Date: .........................................................
Driver's License Number: ......................................
Signature of Licensee: ............................................

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Conditions of Restriction: ..........................................
Type of Vehicle: ..........................................
Geographic Restrictions: ..........................................
Hours of Restriction: ..........................................
Other Restrictions: ..........................................
This limited license shall be effective from .......... to .......... subject to further orders as the court in its discretion may deem necessary and proper.
This the .......... day of .........., 19......

(Judge Presiding)

(3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to the resident judge of the superior court of the district in which he resides for limited driving privileges hereinbefore defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge.

(4) Any violation of the restrictive driving privileges as set forth in the judgment of the trial judge allowing such privileges shall constitute the offense of driving while license has been suspended as set forth in G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge.

(5) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(c) Upon conviction of a similar second or subsequent offense which offense occurs within one year of the first or prior offense, the license of such operator or chauffeur shall be suspended for 60 days, provided such first or prior offense occurs subsequent to July 1, 1953.

(d) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 60 days the license of any operator or chauffeur without preliminary hearing on receiving a record of such operator’s or chauffeur’s conviction of having violated the laws against speeding described in subsection (a) and of having violated the laws against reckless driving on the same occasion as the speeding offense occurred.

(e) The provisions of this section shall not prevent the suspension or revocation of a license for a longer period of time where the same may be authorized by other provisions of law.

(f) Operators or chauffeurs whose licenses have been suspended under the provisions of this section shall not be required to maintain proof of financial responsibility upon reissuance of the license solely because of suspension pursuant to this section. (1953, c. 1223; 1955, c. 1187, s. 15; 1959, c. 1264, s. 4; 1965, c. 133; 1975, c. 716, s. 5; c. 763.)

Editor’s Note. — Session Laws 1975, c. 763, designated the former four paragraphs of this section as subsections (a), (d), (e) and (f) and added subsections (b) and (c).

Pursuant to Session Laws 1975, c. 716, s. 5, “Division” has been substituted for “Department” in subdivisions (a), (b) and (d) of this section as amended by Session Laws 1975, c. 763.

Allowance of Limited Driving Privilege. — Session Laws 1975, c. 763 applies to offenses committed before July 1, 1975, in which trial is held after July 1, 1975, and such defendants are eligible to receive a limited driving privilege if the trial judge, in his discretion, determines to allow it. Session Laws 1975, c. 763 does not apply to cases in which the offense occurred and final judgment was entered before July 1, 1975, with no appeal being taken and such persons are not eligible to receive a limited driving privilege. Session Laws 1975, c. 763 applies to offenses committed and tried in the inferior court prior to July 2, 1975, but which are pending appeal to the superior court on July 1, 1975, and such
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persons are eligible to receive a limited driving privilege if the superior court judge in his discretion, determines to allow it. Opinion of Attorney General to Honorable William H. McMillan, 45 N.C.A.G. 19 (1975).

Limited Driving Privilege May Not Be Extended to Cover Discretionary Revocation by Division. — Subsection (b) applies to offenses of speeding 71 mph. through 75 mph., speeds in excess of 75 mph. and speeds in excess of 80 mph. When a limited permit is issued pursuant to G.S. 20-16.1(b) by the court upon conviction or a plea of guilty to a speeding charge requiring a mandatory 30 day revocation and such speed is such as to give rise to a discretionary revocation by the Division of Motor Vehicles for a greater period, the limited driving privilege issued by the court may not be extended to cover the revocation by the Division of Motor Vehicles. Opinion of Attorney General to Mr. E. Burt Aycock, Jr., Assistant District Attorney, 45 N.C.A.G. 112 (1975).

§ 20-16.2. Mandatory revocation of license in event of refusal to submit to chemical tests.

(c) The arresting officer, in the presence of the person authorized to administer a chemical test, shall request that the person arrested submit to a test described in subsection (a). If the person arrested willfully refuses to submit to the chemical test designated by the arresting officer, none shall be given. However, upon the receipt of a sworn report of the arresting officer and the person authorized to administer a chemical test that the person arrested, after being advised of his rights as set forth in subsection (a), willfully refused to submit to the test upon the request of the officer, the Division shall revoke the driving privilege of the person arrested for a period of six months.

(d) Upon receipt of the sworn report required by G.S. 20-16.2(c) the Division shall immediately notify the arrested person that his license to drive is revoked immediately unless said person requests in writing within three days of receipt of notice of revocation a hearing. If at least three days prior to hearing, the licensee shall so request of the hearing officer, the hearing officer shall subpoena the arresting officer and any other witnesses requested by the licensee to personally appear and give testimony at the hearing. If such person requests in writing a hearing, he shall retain his license until after the hearing. The hearing shall be conducted in the county where the arrest was made under the same conditions as hearings are conducted under the provisions of G.S. 20-16(d) except that the scope of such hearing for the purpose of this section shall cover the issues of whether the law-enforcement officer had reasonable grounds to believe the person had been driving or operating a motor vehicle upon a highway or public vehicular area while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he willfully refused to submit to the test upon the request of the officer. Whether the person was informed of his rights under the provision of G.S. 20-16.2(a)(1), (2), (3), (4) shall be an issue. The Division shall order that the revocation either be rescinded or sustained. If the revocation is sustained, the person shall surrender his license immediately upon notification.

(e) If the revocation is sustained after such a hearing, the person whose driving privilege has been revoked, under the provisions of this section, shall have the right to file a petition in the superior court for a hearing de novo to review the action of the Division in the same manner and under the same conditions as is provided in G.S. 20-25.

(f) When it has been finally determined under the procedures of this section that a nonresident’s privilege to operate a motor vehicle in this State has been revoked, the Division shall give information in writing of the action taken to the motor vehicle administrator of the state of the person’s residence and of any state in which he has a license.

(i) Notwithstanding any other provision of this Chapter, a person, who is stopped, detained or questioned by a law-enforcement officer having reasonable grounds to believe that the person has been driving or operating a motor vehicle on a highway or public vehicular area while under the influence of intoxicating
liquor, may request and the law-enforcement officer shall cause the administration of the chemical tests provided for in this section prior to the person's arrest for violating any provision of G.S. 20-138. Prior to the administration of chemical tests under this subsection, the person who is stopped, detained or questioned shall sign a form, to be supplied by the Division, confirming his request. The tests provided for in this subsection shall be administered under the same conditions as are provided in this section for the administration of chemical tests after arrest. The results of the tests administered under this subsection may be used in evidence in the trial of a charge arising out of the occurrence. (1963, c. 966, s. 1; 1965, c. 1165; 1969, c. 1074, s. 1; 1971, c. 619, ss. 3-6; 1973, c. 206, ss. 1, 2; cc. 824, 914; 1975, c. 716, s. 5; 1977, c. 812.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (c), (d), (e) and (f).
The 1977 amendment, effective Oct. 1, 1977, added subsection (i).


Delay After Being Informed of Rights Held Refusal to Submit to Test. — Where the breathalyzer operator once fully informed petitioner of his rights with regard to the breath test, there was no obligation upon him to remind petitioner of the effect of his refusal to submit to the test, and petitioner's delay in taking the breathalyzer test, was at his own peril even though he stated that he was awaiting his attorney. Therefore, the trial court could properly find, that defendant had refused to submit to the breathalyzer test. Creech v. Alexander, 32 N.C. App. 139, 231 S.E.2d 36 (1977).

Admission of Test Results, etc. —
The failure of the State to establish that defendant was accorded the statutory right to have another test, in addition to the others which he was properly accorded, renders the results of the breathalyzer test inadmissible in evidence. State v. Fuller, 24 N.C. App. 38, 209 S.E.2d 805 (1974).


Defendant's Rights Not Denied. — Where defendant was fully and completely advised of his rights before a breathalyzer test was administered to him, the officer's error in stating that defendant could have a physician, registered nurse or a qualified technician or qualified person of his own choosing to administer the test under the direction of a law officer instead of stating that defendant could have a qualified person of his own choosing to administer a test or tests in addition to any administered at the direction of the law-enforcement officer did not deny defendant his rights. State v. Green, 27 N.C. App. 491, 219 S.E.2d 529 (1975).


§ 20-17. Mandatory revocation of license by Division. — The Division shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction for any of the following offenses when such conviction has become final:

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(11) Conviction of assault with a motor vehicle. (1935, c. 52, s. 12; 1947, c. 1067, s. 14; 1967, c. 1098, s. 2; 1971, c. 619, s. 7; 1973, c. 18, s. 1; c. 1081, s. 3; c. 1330, s. 2; 1975, c. 716, s. 5; c. 831.)
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Revocation of license of mental incompetents, alcoholics and habitual users of narcotic drugs. — (a) The Commissioner, upon receipt of notice that any person has been legally adjudicated incompetent or has been involuntarily admitted to an institution for the treatment of alcoholism or drug addiction, shall forthwith make inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle. Unless the Commissioner is satisfied that such person is competent to operate a motor vehicle with safety to persons and property, he shall revoke such person's driving privilege. Provided that if such person requests, in writing, a hearing, he shall retain his license until after the hearing, and if the revocation is sustained after such hearing, the person whose driving privilege has been revoked under the provisions of this section, shall have the right to a review by the review board as provided in G.S. 20-9(g)(4) upon written request filed with the Division.

(e) Notwithstanding the provisions of G.S. 8-53, 8-53.2, 122-8.1 and 122-8.2, the person or persons in charge of any institution as set out in subsection (a) hereinabove shall furnish such information as may be required for the effective enforcement of this section. Information furnished to the Division of Motor Vehicles as provided herein shall be confidential and the Commissioner of Motor Vehicles shall be subject to the same penalties and is granted the same protection as is the department, institution or individual furnishing such information. No criminal or civil action may be brought against any person or agency who shall provide or submit to the Commissioner of Motor Vehicles or his authorized agents the information as required herein.

(1975, c. 716, s. 5.)

Editor’s Note. —
The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the introductory paragraph in subdivision (5).

The second 1975 amendment, effective July 1, 1975, added subdivision (11).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (5) and (11) are set out.

Ministerial Duty. —
The revocation of a license by the Division of Motor Vehicles is nothing more than the performance of a ministerial duty by that administrative agency, and is in no sense a “judgment” that can preclude the superior court from acting on a petition filed in that court pursuant to the habitual offenders provisions of the General Statutes. In re Woods, 33 N.C. App. 86, 234 S.E.2d 45 (1977).

“Forthwith” does not mean, etc. —


A legitimate State interest may be rationally advanced by the classification drawn in this section, thus it does not deny equal protection of the laws to those involuntarily committed. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

To decide that those whose institutionalization was legally coerced present, as a class, significantly greater highway safety problems and thus require renewed scrutiny as to driving skills is, whatever its wisdom or efficacy or validity in a particular case, not irrational under the equal protection clause. Jones v. Penny, 387 F. Supp. 883 (M.D.N.C. 1974).

That North Carolina has not chosen in this section to include “all alcoholics and drug addicts” is not irrational. Jones v. Penny, 387 F. Supp. 883 (M.D.N.C. 1974).

This section fairly informs those it affects of the standard against which their conduct will be measured, and thus there is no constitutional infirmity presented. Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

The Phrase “Is Satisfied” in Subsection (a). — This section imparts an objective standard, and the phrase “is satisfied” refers to the conclusion the Commissioner reaches after his
§ 20-19. Period of suspension or revocation. — (a) When a license is suspended under subdivision (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months. 

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months. 

(d) When a license is revoked because of a second conviction for driving or operating a vehicle while under the influence of intoxicating liquor or while under the influence of an impairing drug, occurring within three years after a prior conviction, the period of revocation shall be four years; provided, that the Division may, after the expiration of two years, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past two years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs and upon such terms and conditions which the Division may see fit to impose for the balance of said period of revocation; provided, that as to a license which has been revoked because of a second conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which has not been restored, the Division may upon the application of the former licensee, and after the expiration of two years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past two years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs and upon such terms and conditions which the Division may see fit to impose for the balance of a four-year revocation period, which period shall be computed from the date of the original revocation.

(e) When a license is revoked because of a third or subsequent conviction for driving or operating a vehicle while under the influence of intoxicating liquor or while under the influence of an impairing drug, occurring within five years after a prior conviction, the period of revocation shall be permanent; provided, that the Division may, after the expiration of three years, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past three years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs; provided, that as to a license which has been revoked because of a third or subsequent conviction for driving under the
influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which license has not been restored, the Division may, upon application of the former licensee and after the expiration of three years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past three years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs. When a new license is issued under the provisions of this subsection, it may be issued upon such terms and conditions as the Division may see fit to impose. The terms and conditions imposed by the Division may not exceed a period of three years.

(1975, c. 716, s. 5.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (b), (d) and (e).

Conflict between § 20-227 and Subsection (e). — When in conflict or irreconcilable under the facts of a particular case, the five-year period of § 20-227 must prevail over the three-year provision under subsection (e) of this section. State v. Freedle, 30 N.C. App. 118, 226 S.E.2d 184, appeal dismissed, 290 N.C. 779, 229 S.E.2d 34 (1976), rehearing denied, 291 N.C. 325, 230 S.E.2d 678 (1976).


§ 20-20. Surrender of licenses. — Whenever any vehicle operator’s or chauffeur’s license issued by the Division is revoked or suspended under the terms of this Chapter, the licensee shall surrender to the Division all vehicle operator’s and chauffeur’s licenses and duplicates thereof issued to him by the Division which are in his possession. (1935, c. 52, s. 14; 1943, c. 649, s. 4; 1967, c. 280; 1969, c. 182; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in three places.

§ 20-22. Suspending privileges of nonresidents and reporting convictions. — (a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the Division in like manner and for like cause as an operator’s or chauffeur’s license issued hereunder may be suspended or revoked.

(b) The Division is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident. (1935, c. 52, s. 16; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.
§ 20-23. Suspending resident's license upon conviction in another state. — The Division is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction as defined in G.S. 20-24(c) of such person in another state of the offenses hereinafter enumerated which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur. The provisions of this section shall apply only for the offenses as set forth in G.S. 20-26(a). (1935, c. 52, s. 17; 1971, c. 486, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-23.1. Suspending or revoking operating privilege of person not holding license. — In any case where the Division would be authorized to suspend or revoke the license of a person but such person does not hold a license, the Division is authorized to suspend or revoke the operating privilege of such a person in like manner as it could suspend or revoke his license if such person held an operator's or chauffeur's license, and the provisions of this Chapter governing suspensions, revocations, issuance of a license, and driving after license suspended or revoked, shall apply in the discretion of the Division in the same manner as if the license has been suspended or revoked. (1955, c. 1187, s. 19; 1969, c. 186, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-23.2. Suspension of license for conviction of traffic offense in federal court. — Upon receipt of notice of conviction in any court of the federal government sitting in North Carolina of the offense of driving or operating a vehicle while under the influence of intoxicating liquor or while under the influence of an impairing drug as defined in G.S. 20-19(h), the Division is authorized to revoke the driving privilege of the person convicted in the same manner as if such conviction had occurred in a court of this State. Provided that this section shall apply only to offenses committed on highways in federal parks in this State. (1969, c. 988; 1971, c. 619, s. 11; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-24. When court to forward license to Division and report convictions. — (a) Whenever any person is convicted of any offense for which this Article makes mandatory the revocation of the operator's or chauffeur's license of such person by the Division, the court in which such conviction is had shall require the surrender to it of all operators' and chauffeurs' licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the Division within 30 days.

The clerks of court, assistant clerks of court and deputy clerks of court in which any person is convicted, and as a result thereof the revocation or suspension of the operator's or chauffeur's license of such person is required under the provisions of this Chapter, are hereby designated as agents of the Division of Motor Vehicles for the purpose of receiving all operators' and chauffeurs' licenses required to be surrendered under this section, and are
hereby authorized to and shall give to such licensee a dated receipt for any such license surrendered, such receipt to be upon such form as may be approved by the Commissioner of Motor Vehicles. The original of such receipt shall be mailed forthwith to the Driver License Section of the Division of Motor Vehicles together with the operator’s or chauffeur’s license. Any operator’s or chauffeur’s license which has been surrendered and for which a receipt has been issued as herein required shall be revoked or suspended as the case may be as of the date shown upon the receipt issued to such person.

(b) Every court having jurisdiction over offenses committed under this Article, or any other law of this State regulating the operation of motor vehicles on highways, shall forward to the Division a record of the conviction of any person in said court for a violation of any [of] said laws, and may recommend the suspension of the operator’s or chauffeur’s license of the person so convicted. Every court shall also forward to the Division a record of every conviction in which sentence is suspended on condition that the defendant not operate a motor vehicle for a period of time, and such report shall state the period of time for which such condition is imposed; provided that the punishment for the violation of this subsection shall be the same as provided in G.S. 20-7(o).

(c) For the purpose of this Article the term “conviction” shall mean a final conviction. Also, for the purposes of this Article a forfeiture of bail or collateral deposited to secure a defendant’s appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. Also, a defendant shall be treated for the purposes of this Article as having been convicted of any offense under this Chapter as to which he:

(1) Has been served with process under Article 17, Criminal Process, Chapter 15A of the General Statutes;
(2) Has failed to appear upon due call of the case; and
(3) Has failed within 90 days thereafter to submit himself to the jurisdiction of the court to answer the charge.

In addition to the foregoing provisions and for the purpose of this Article, a third or subsequent prayer for judgment continued within any five-year period shall be considered as a final conviction and to this end all orders entering prayer for judgments continued entered by the courts shall be reported to the Division of Motor Vehicles.

(d) After November 1, 1935, no operator’s or chauffeur’s license shall be suspended or revoked except in accordance with the provisions of this Article. (1935, c. 52, s. 18; 1949, c. 373, ss. 3, 4; 1955, c. 1187, s. 14; 1959, c. 47; 1965, c. 38; 1973, c. 19; 1975, cc. 46, 445; c. 716, s. 5; c. 871, s. 1.)

Editor’s Note. —
The first 1975 amendment, effective July 1, 1975, added “within 30 days” at the end of the first paragraph of subsection (a).
The second 1975 amendment, effective Oct. 1, 1975, added the third sentence, containing subdivisions (1) through (3), in subsection (c).
The third 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout subsections (a) and (b) and substituted “Driver License Section of the Division of Motor Vehicles” for “Driver License Division of the Department of Motor Vehicles” in the second sentence of the second paragraph of subsection (a). Pursuant to Session Laws 1975, c. 716, s. 5, “Division” has also been substituted for “Department” in the paragraph added to subsection (c) by the fourth 1975 amendment.
The fourth 1975 amendment added the last paragraph in subsection (c).

Session Laws 1975, c. 871, s. 2, provides: “This act shall become effective Jan. 1, 1976, and shall apply only to those prayers for judgment continued which are entered after the effective date of this act.”

§ 20-25. Right of appeal to court. — Any person denied a license or whose license has been canceled, suspended or revoked by the Division, except where such cancellation is mandatory under the provisions of this Article, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Article. (1935, c. 52, s. 19; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in two places.


A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the Superior Court of Wake County pursuant to § 150A-45 and may not obtain a hearing under the present section in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).


§ 20-26. Records; copies furnished. — (a) The Division shall keep a record of proceedings and orders pertaining to all operator's and chauffeur's licenses granted, refused, suspended or revoked. The Division shall keep records of convictions as defined in G.S. 20-24(c) occurring outside North Carolina only for the offenses of exceeding a stated speed limit of 55 miles per hour or more by more than 15 miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in prearranged speed competition, engaging willfully in speed competition, hit-and-run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of intoxicating liquors, and the offenses included in G.S. 20-17.

(b) The Division shall furnish certified copies of license records required to be kept by subsection (a) of this section to State, county, municipal and court officials of this State for official use only, without charge.

(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section to other persons, firms and corporations for uses other than official upon prepayment of the fee therefor, according to the following schedule:

(1) Limited extract copy of license record, for period up to three years ................................................................. $1.00
(2) Complete extract copy of license record ..................... 1.00
(3) Certified true copy of complete license record ............. 3.00

All fees received by the Division under the provisions of this subsection shall be paid into and become a part of the “Operator's and Chauffeur's License Fund.” (1935, c. 52, s. 20; 1961, c. 307; 1969, c. 783, s. 3; 1971, c. 486, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.

Accidents Are Not Required to Be Shown on Records. — See opinion of Attorney General to Mr. Fred Colquitt, Director, Driver's License Section, Department of Motor Vehicles, 45 N.C.A.G. 218 (1976).
§ 20-27. Availability of records. — All records of the Division pertaining to application and to operator’s and chauffeur’s license, except the confidential medical report referred to in G.S. 20-7, of the current or previous five years shall be open to public inspection at any reasonable time during office hours. (1935, c. 52, s. 21; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department.”

§ 20-28. Unlawful to drive while license suspended or revoked. — (a) Any person whose operator’s or chauffeur’s license has been suspended or revoked other than permanently, as provided in this Chapter, who shall drive any motor vehicle upon the highways of the State while such license is suspended or revoked shall be guilty of a misdemeanor and his license shall be suspended or revoked, as the case may be, for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense; provided, any person whose license has been permanently suspended or revoked under this section may apply for a new license after three years from the commencement of the permanent suspension or revocation. Upon the filing of such application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of suspension or revocation and that his conduct and attitude are such as to entitle him to favorable consideration.

Notwithstanding any other provisions of this section, in those cases of conviction of the offense provided in this section in which the judge and district attorney of the court wherein a conviction for violation of this section was obtained recommend in writing to the Division that the Division examine into the facts of the case and exercise discretion in suspending or revoking the driver’s license for the additional periods provided by this section, the Division shall conduct a hearing and may impose a lesser period of additional suspension or revocation than that provided in this section or may refrain from imposing any additional period. If the judge and district attorney hearing said case are not reasonably available to make or refuse such recommendation, then the judge and district attorney presiding and serving over the court of conviction may make the recommendation.

Upon conviction, a violator of this section shall be punished by a fine of not less than two hundred dollars ($200.00) or imprisonment in the discretion of the court not to exceed two years, or both; provided, however, the restoree of a suspended or revoked operator’s or chauffeur’s license who operates a motor vehicle upon the streets or highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without an operator’s license.

(1975, c. 716, s. 5.)

Editor’s Note. —
The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

Operation Must Have Occurred during, etc.


To convict for a violation of subsection (a), the State must prove: (1) the operation of a motor vehicle, (2) on a public highway, (3) while one’s operator’s license is suspended or revoked. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976).

A conviction under subsection (a) requires that the State prove beyond a reasonable doubt (1) the operation of a motor vehicle by a person (2) on a public highway (3) while his operator’s
license is suspended or revoked. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

**Offense Must Have Occurred upon, etc.** — In accord with original. See State v. Springs, 26 N.C. App. 757, 217 S.E.2d 200 (1975).

**Actual or Constructive Knowledge Required for Conviction.** — The legislature intended that there be actual or constructive knowledge of the suspension or revocation in order for there to be a conviction under this section. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

While a specific intent is not an element of the offense of operating a motor vehicle on a public highway while one's license is suspended or revoked, the burden is on the State to prove that defendant had knowledge at the time charged that his operator's license was suspended or revoked. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976).

**Mailing of Notice under § 20-48 Raises Prima Facie Presumption of Knowledge.** — For purposes of a conviction for driving while license is suspended or revoked, mailing of the notice under § 20-48 raises only a prima facie presumption that defendant received the notice and thereby acquired knowledge of the suspension or revocation. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

The State satisfies the burden of proving that defendant had knowledge at the time charged that his operator's license was suspended or revoked when, nothing else appearing, it has offered evidence of compliance with the notice requirements of § 20-48 because of the presumption that he received notice and had such knowledge. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976).

When Instructions as to Knowledge Required. — In a prosecution for violation of subsection (a) where the evidence for the State discloses that the division complied with the notice requirements of § 20-48: (1) Where there is no evidence that defendant did not receive the notice mailed by the division, it is not necessary for the trial court to charge on guilty knowledge; (2) where there is some evidence of failure of defendant to receive the notice or some other evidence sufficient to raise the issue, then the trial court must, in order to comply with § 1-180 and apply the law to the evidence, instruct the jury that guilty knowledge by the defendant is necessary to convict; and (3) where all the evidence indicates that defendant had no notice or knowledge of the suspension or revocation of license, a nonsuit should be granted. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976); State v. Hayes, 31 N.C. App. 121, 228 S.E.2d 460 (1976).

**Evidence Sufficient to Prove Defendant Was Operator.** — In a prosecution for driving under the influence and driving while license was revoked, evidence that defendant was seated behind the wheel of a car which had the motor running was sufficient to prove that defendant was the operator of the car under § 20-4.01(25). State v. Turner, 29 N.C. App. 163, 223 S.E.2d 530 (1976).


### § 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license; hearings upon recommendation of judge and district attorney. — (a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Division shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) hereof.

(b) When a driving privilege is subject to revocation under this section, the additional period of revocation shall be as follows:

1. A first such revocation shall be for one year;
2. A second such revocation shall be for two years; and
3. A third or subsequent such revocation shall be permanent.

(c) Any person whose driving privilege has been permanently revoked under this section may apply for a new license after three years from the commencement of the permanent revocation. Upon the filing of such application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of revocation and that his conduct and attitude are such as to entitle him to favorable consideration.

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§ 20-29. Surrender of license. — Any person operating or in charge of a motor vehicle, when requested by an officer in uniform, or, in the event of accident in which the vehicle which he is operating or in charge of shall be involved, when requested by any other person, who shall refuse to write his name for the purpose of identification or to give his name and address and the name and address of the owner of such vehicle, or who shall give a false name or address, or who shall refuse, on demand of such officer or such other person, to produce his license and exhibit same to such officer or such other person for the purpose of examination, or who shall refuse to surrender his license on demand of the Division, or fail to produce same when requested by a court of this State, shall be guilty of a misdemeanor and upon conviction shall be punished as provided in this Article. Pickup notices for operators' or chauffeurs' licenses or revocation or suspension of license notices and orders or demands issued by the Division for the surrender of such licenses may be served and executed by patrolmen or other peace officers, and such patrolmen and peace officers, while serving and executing such notices, orders and demands, shall have all the power and authority possessed by peace officers when serving and executing warrants charging violations of the criminal laws of the State. (1935, c. 52, s. 23; 1949, c. 583, s. 7; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in two places.

§ 20-30. Violations of license or learner's permit provisions. — It shall be unlawful for any person to commit any of the following acts:

(4) To fail or refuse to surrender to the Division upon demand any license or learner's permit or the badge of any chauffeur whose license or learner's permit has been suspended, canceled or revoked as provided by law.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 20-34.1. Unlawful to issue licenses for anything of value except prescribed fees. — It shall be unlawful for any employee of the Division of Motor Vehicles to charge or accept any money or other thing of value except the fees prescribed by law for the issuance of an operator’s or chauffeur’s license, and the fact that the license is not issued after said employee charges or accepts money or other thing of value shall not constitute a defense to a criminal action under this section. In a prosecution under this section it shall not be a defense to show that the person giving the money or other thing of value or the person receiving the license or intended to receive the same is entitled to a license under the Uniform Driver’s License Act. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the State’s prison for not more than five years or by a fine of not more than five thousand dollars ($5,000) or by both such fine and imprisonment. (1951, c. 211; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the first sentence.

§ 20-36. Ten-year-old convictions not considered. — No conviction of any violation of the motor vehicle laws shall be considered by the Division in determining whether any person’s driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of such conviction. (1971, c. 15; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department.”

ARTICLE 2A.

Afflicted, Disabled or Handicapped Persons.

§ 20-37.1. Motorized wheelchairs or similar vehicles. — Any afflicted or disabled person who is qualified to operate a motorized wheelchair or other similar vehicle not exceeding 1,000 pounds gross weight, may apply to the Division of Motor Vehicles for a special operator’s license and permanent registration plates. When it is made to appear to the satisfaction of the Division of Motor Vehicles that the applicant is qualified to operate such vehicle, and is dependent upon such vehicle as a means of conveyance or as a means of earning a livelihood, said Division shall, upon the payment of a license fee of one dollar ($1.00) for each such motor vehicle, issue to such applicant for his exclusive personal use a special vehicle operator’s license, which shall be renewed annually upon the payment of a fee of fifty cents (50¢), and permanent registration plates for such vehicle. The initial one dollar ($1.00) fee required by this section shall be in full payment of the permanent registration plates issued for such vehicle and such plates need not thereafter be renewed and such plates shall be valid only on the vehicle for which issued and then only while such vehicle is owned by the person to whom the plates were originally issued.

Any person other than the licensee who shall operate any motor vehicle equipped with any such special license plate as is authorized by this section shall be guilty of a misdemeanor and upon conviction subject to punishment in the discretion of the court. (1949, c. 143; 1975, c. 716, s. 5.)
§ 20-37.5. Handicapped — definition. — As used in this Article, handicapped shall mean:

(1) Any person who has an obvious physical disability that requires the use of a wheelchair, braces, walkers, or crutches, and those who have lost the use of one or both legs; or

(2) Any person who, as determined and certified by a physician, is severely restricted in mobility by a pulmonary or cardiovascular disability, arthritic condition, orthopedic or neurologic impairment. (1967, c. 296, s. 5; 1977, c. 340, s. 1.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 20-37.6. Handicapped — parking privileges. — (a) Any person who falls within the definition of handicapped as defined in G.S. 20-37.5 shall be allowed to park for unlimited periods in parking zones restricted as to length of time parking is permitted. This section shall have no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. As a condition to this privilege the vehicle shall display a distinguishing license plate or placard which shall be issued for vehicles registered to the disabled person. Such license plate shall be issued for the normal fee applicable to standard license plates, except that a person who qualifies for a license plate under this section and also qualifies as a disabled veteran under G.S. 20-81.4 shall be issued the license plate provided for herein free of charge.

(b) Any person who qualifies for issuance of a distinguishing license plate under subsection (a) may apply to the Division of Motor Vehicles for issuance of a distinguishing placard to be designed by the Division of Motor Vehicles, the State Vocational Rehabilitation Agency, and the Department of Insurance. Such placard shall be at least six inches by twelve inches in size, and shall display such information as the Division of Motor Vehicles deems necessary for enforcement purposes. Such placard may be used on vehicles transporting the disabled person to whom issued as hereinafter provided, in lieu of the distinguishing license plate issued pursuant to subsection (a). When the placard provided herein is displayed on the driver’s side dashboard of a vehicle, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (a) shall be applicable to such vehicle. The Division of Motor Vehicles shall establish procedures for the issuance of distinguishing placards, may charge a fee sufficient to pay the actual cost for issuance thereof and may issue two such placards to applicant upon request.

(c) Designation of parking spaces for the physically handicapped required in the North Carolina Building Code shall after July 1, 1977, be by the use of sign D9-6, Manual on Uniform Traffic Control Devices, provided nonconforming signs in use prior to July 1, 1977, shall not constitute a violation during the useful life thereof which may not be extended by other than normal maintenance. Designation of parking spaces for the physically handicapped in other areas, including public vehicular areas referenced in G.S. 20-4.01(82) shall be by the use of sign D9-6, Manual on Uniform Traffic Control Devices, provided nonconforming signs in use prior to ratification of this bill shall not constitute a violation during the useful life thereof which may not be extended by other than normal maintenance.
(d) It shall be unlawful to park or leave standing any vehicle in a space designated for physically handicapped persons when such vehicle does not display the distinguishing license plate or placard as provided in this section where appropriate aboveground signs or symbol and words giving notice thereof are erected marking the designated parking space. It shall be unlawful for any person not qualifying for the rights and privileges extended to handicapped persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate or placard issued pursuant to the provisions of this section. The punishment for violation of this section shall not exceed a fine of ten dollars ($10.00) and the prima facie rule of evidence set forth in G.S. 20-162.1 shall apply. (1971, ch. 374, s. 1; 1978, c. 340, s. 2.)

Editor's Note. — The 1977 amendment designated the former provisions of this section as subsection (a), and in that subsection, substituted "falls within the definition of handicapped as defined in G.S. 20-37.5" for "has lost the use of one or both legs or is so severely disabled as to be unable to walk without the aid of a mechanical device," deleted "the" preceding "length of time" in the first sentence and inserted "or placard" in the third sentence. The amendment also added subsections (b) through (d). Session Laws 1977, c. 340, s. 5, provides: "G.S. 20-37.7(d) shall become effective Jan. 1, 1978, and the remaining portion of this act shall become effective upon ratification [May 9, 1977]."

ARTICLE 2B. Special Identification Cards for Nonoperators.

§ 20-37.7. Special identification card. — (a) The Division of Motor Vehicles shall upon satisfactory proof of identification issue a special identification card to any person 16 years or older who is a resident of the State of North Carolina and for any reason does not possess a valid driver's license issued by the Division of Motor Vehicles.

(b) Every application for a special identification card shall be made upon the approved form furnished by the Division.

(f) The Division of Motor Vehicles shall maintain hard copies of applications and information pertaining to the recipients of a special identification card and such indices as deemed appropriate, but such information shall not be required to be computerized. The Division may promulgate any rules and regulations it deems necessary for the effective implementation of the provisions of this section.

(h) The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section. (1973, c. 438, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (b), (f) and (h). As the rest of the section was not changed by the amendment, only subsections (a), (b), (f) and (h) are set out.


Part 2. Authority and Duties of Commissioner and Division.

§ 20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal. — (a) The Commissioner is hereby vested with the power and is
charged with the duty of administering and enforcing the provisions of this Article and of all laws regulating the operation of vehicles or the use of the highways, the enforcement or administration of which is now or hereafter vested in the Division.

(b) The Commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this Article and any other laws the enforcement and administration of which are vested in the Division.

(c) The Commissioner is authorized to designate and appoint such agents, field deputies, and clerks as may be necessary to carry out the provisions of this Article.

(d) The Commissioner shall adopt an official seal for the use of the Division.

(1937, c. 407, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.

§ 20-42. Authority to administer oaths and certify copies of records. — (a) Officers and employees of the Division designated by the Commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall charge for the acknowledgment of signatures a fee according to the following schedule:

(1) One signature ......................................................... $1.00
(2) Two signatures ...................................................... 1.50
(3) Three or more signatures ................................. 2.00

Funds received under the provisions of this subsection shall be used to defray a part of the costs of distribution of license plates, registration certificates and certificates of title issued by the Division.

(b) The Commissioner and such officers of the Division as he may designate are hereby authorized to prepare under the seal of the Division and deliver upon request a certified copy of any record of the Division, charging a fee of one dollar ($1.00) for each document so certified, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. Provided that any copy of any record of the Division furnished to State, county, municipal and court officials of this State for official use shall be furnished without charge. (1937, c. 407, s. 7; 1955, c. 480; 1961, c. 861, s. 1; 1967, c. 691, s. 41; c. 1172; 1971, c. 749; 1975, c. 716, s. 5; 1977, c. 785.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.

The 1977 amendment, effective July 1, 1977, in subsection (a), increased the fee for acknowledgment of one signature from $.50 to $1.00, for acknowledgment of two signatures from $1.50 to $1.00, and for acknowledgment of three or more signatures from $1.00 to $2.00.

Admissibility of Division Records. — There is no error in allowing a properly certified copy of a record of the Division to be read into evidence by the district attorney, as opposed to having the document passed among the jurors. State v. Miller, 288 N.C. 582, 220 S.E.2d 326 (1975).

No Restriction on Signature Rule. — This section does not impose upon the general rule (that a stamped, printed or typewritten signature is a good signature), the restriction that the signature be made under the hand of the person making it. State v. Watts, 289 N.C. 445, 222 S.E.2d 389 (1976).

§ 20-43. Records of Division. — (a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours.

(b) The Commissioner, upon receipt of notification from another state or foreign country that a certificate of title issued by the Division has been surrendered by the owner in conformity with the laws of such other state or foreign country, may cancel and destroy such record of certificate of title. (1937, c. 407, s. 8; 1947, c. 219, s. 1; 1971, c. 1070, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (b).

§ 20-44. Authority to grant or refuse applications. — The Division shall examine and determine the genuineness, regularity and legality of every application for registration of a vehicle and for a certificate of title therefor, and of any other application lawfully made in the Division, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. (1937, c. 407, s. 9; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-45. Seizure of documents and plates. — The Division is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used. (1937, c. 407, s. 10; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-46. Distribution of synopsis of laws. — The Division may publish a synopsis or summary of the laws of this State regulating the operation of vehicles, and deliver to any person on request a copy thereof without charge. (1937, c. 407, s. 11; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-47. Division may summon witnesses and take testimony. — (a) The Commissioner and officers of the Division designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the Division. Such summons may require the production of relevant books, papers, or records. (1975, c. 716, s. 5.)
§ 20-48. Giving of notice. — (a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof. 

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested. (1937, c. 407, s. 13; 1955, c. 1187, s. 21; 1971, c. 1281, BRP Tova re. 920, 6.5, Cr LLG; S20.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, designated the former provisions of this section as subsection (a) and added subsection (b).

The second 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsection (a).

Provisions Satisfy Requirements, etc. — This section does afford the defendant procedural due process with respect to the manner of giving him notice of the revocation or suspension of his driving privileges. State v. Hayes, 31 N.C. App. 121, 228 S.E.2d 460 (1976).

Notice of Suspension, etc. - For purposes of a conviction for driving while license is suspended or revoked, mailing of the notice under this section raises only a prima facie presumption that defendant received the notice and thereby acquired knowledge of the suspension or revocation and defendant is not by this section denied the right to rebut the presumption. State v. Atwood, 290 N.C. 266, 225 S.E.2d 543 (1976).

The State satisfies the burden of proving that defendant had knowledge at the time charged that his operator’s license was suspended or revoked when, nothing else appearing, it has offered evidence of compliance with the notice requirements of this section because of the presumption that he received notice and had such knowledge. State v. Chester, 30 N.C. App. 224, 226 S.E.2d 524 (1976).

Full Signature and Notarization. — There is nothing in this section which requires that the certificate to prove that the notice of revocation was mailed in accordance with the statute contain the full signature of the employee making the certificate or that such certificate be notarized. State v. Johnson, 25 N.C. App. 630, 214 S.E.2d 278 (1975).

Initiated certificate lacking notary’s authentication meets all the requirements of this section and provides prima facie evidence of the genuineness of such certificate, the truth of the statements made in such certificate, and the official character of the person who purportedly initiated and executed it. State v. Johnson, 25 N.C. App. 630, 214 S.E.2d 278, cert. denied, 288 N.C. 247, 217 S.E.2d 671 (1975).


§ 20-49. Police authority of Division. — The Commissioner and such officers and inspectors of the Division as he shall designate and all members of the Highway Patrol shall have the power:

(9) For the purpose of determining compliance with the provisions of this Chapter, to inspect all files and records of the persons hereinafter designated and required to be kept under the provisions of this Chapter or of the registrations of the Division:
a. Persons dealing in or selling and buying new, used or junked motor vehicles and motor vehicle parts; and

b. Persons operating garages or other places where motor vehicles are repaired, dismantled, or stored. (1987, c. 407, s. 14; 1955, c. 554, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in subdivision (9).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (9) are set out.

Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-50. Owner to secure registration and certificate of title; temporary registration markers. — (a) Except as otherwise provided in this Article, every owner of a vehicle intended to be operated upon any highway of this State and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article: Provided that the Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. It is further provided that when the owner of a vehicle leases such vehicle to a carrier of passengers or property and it is actually used by such carrier in the operation of its business, the registration plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. Provided further that when the owner of a vehicle leases such vehicle to a farmer and it is actually used by such farmer in the operation of his farm, the registration plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require.

(b) The Division may upon receipt of proper application upon a form supplied by the Division and an accompanying fee of three dollars ($3.00) grant a 10-day temporary registration marker subject to the following limitations and conditions:

(1) Temporary 10-day registration markers shall be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.

(2) Temporary 10-day registration markers shall expire 10 days from the date of issuance.

(3) Temporary 10-day registration markers may be used only on the vehicle for which issued and may not be transferred, loaned or assigned to another.

(4) In the event a temporary 10-day registration marker is lost or stolen, notice shall be furnished to the Division.

(5) The Commissioner shall have the power to make such rules and regulations not inconsistent herewith as he shall deem necessary for the purpose of carrying out the provisions of this section.

(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 shall apply in like manner to temporary 10-day registration markers as is applicable to nontemporary plates not by their nature rendered inapplicable. (1937,
§ 20-52. Application for registration and certificate of title. — (a) Every owner of a vehicle subject to registration hereunder shall make application to the Division for the registration thereof and issuance of a certificate of title for such vehicle upon the appropriate form or forms furnished by the Division, and every such application shall bear the signature of the owner written with pen and ink, and said signature shall be acknowledged by the owner before a person authorized to administer oaths, and said application shall contain:

1. The name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation;
2. A description of the vehicle, including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the serial number of the vehicle, the engine and other identifying numbers of the vehicle and whether new or used, and if a new vehicle, the date of sale and actual date of delivery of vehicle by the manufacturer or dealer to the person intending to operate such vehicle;
3. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all lienholders in the order of their priority, and the amount, date and nature of the security agreement;
4. Such further information as may reasonably be required by the Division to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

(1975, c. 716, s. 5.)

§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.

(c) Upon sale of a new vehicle by a dealer to a consumer-purchaser, the dealer shall execute in the presence of a person authorized to administer oaths an assignment of the manufacturer's certificate of origin for the vehicle, including in such assignment the name and address of the transferee and no title to a new motor vehicle acquired by a dealer under the provisions of subsections (a) and (b) of this section shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee.

Any dealer transferring title to, or an interest in, a new vehicle shall deliver the manufacturer's certificate of origin duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the manufacturer's certificate of origin to the lienholder and the
lienholder shall forthwith forward the manufacturer's certificate of origin together with the transferee's application for certificate of title and necessary fees to the Division. Any person who delivers or accepts a manufacturer's certificate of origin assigned in blank shall be guilty of a misdemeanor. (1961, c. 835, s. 4; 1967, c. 868; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the second paragraph of subsection (c).

§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle. — (a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this State, the owner shall surrender to the Division all registration cards and certificates of title or other evidence of such foreign registration as may be in his possession or under his control, except as provided in subsection (b) hereof.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the Division in its discretion, and upon a proper showing, shall register said vehicle in this State but shall not issue a certificate of title for such vehicle.

(c), (d) Repealed by Session Laws 1965, c. 734, s. 2. (1937, c. 407, s. 18; 1949, c. 675; 1953, c. 853; 1957, c. 1355; 1965, c. 734, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsections (a) and (b).

§ 20-54. Authority for refusing registration or certificate of title. — The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the Division or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article;

2. That the Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having valid lien upon such vehicle;

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the introductory paragraph and in subdivisions (1) and (3).
§ 20-55. Examination of registration records and index of stolen and recovered vehicles. — The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and against the index of stolen and recovered motor vehicles required to be maintained by this Article. (1937, c. 407, s. 20; 1971, c. 1070, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-56. Registration indexes. — The Division shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of title, shall register the vehicle therein described and keep a record thereof as follows:

(4) In the discretion of the Division, in any other manner it may deem advisable. (1937, c. 407, s. 20½; 1949, c. 583, s. 5; 1971, c. 1070, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in subdivision (4).

§ 20-57. Division to issue certificate of title and registration card. — (a) The Division upon registering a vehicle shall issue a registration card and a certificate of title as separate documents.

(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for owner’s signature, the registration number assigned to the vehicle, and such description of the vehicle as determined by the Commissioner, provided that if there are more than two owners the Division may show only two owners on the registration card and indicate that additional owners exist by placing after the names listed “et al.” Upon application to the Division, the registered owner may acquire additional copies of the registration card at a fee of fifty cents (50¢) each.

(c) Every owner upon receipt of a registration card, shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or in the vehicle to which transfer is being effected, as provided by G.S. 20-64 at the time of its operation, and such registration card shall be displayed upon demand of any peace officer or any officer of the Division: Provided, however, any person charged with failing to so carry such registration card shall not be convicted if he produces in court a registration card theretofore issued to him and valid at the time of his arrest: Provided further, that in case of a transfer of a license plate from one vehicle to another under the provisions of G.S. 20-72, evidence of application for transfer shall be carried in the vehicle in lieu of the registration card.

(d) The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration card except the abbreviation “et al.” if such appears and in addition thereto the name of all owners, the date of issuance and all liens or encumbrances disclosed in the application for title. All such liens or encumbrances shall be shown in the order of their priority, according to the information contained in such application.
§ 20-58. The certificate of title shall also contain upon the reverse side form of assignment of title or interest and warranty thereof, with space for notation of liens and encumbrances upon such vehicle at the time of a transfer.

(f) Certificates of title upon which liens or encumbrances are shown shall be delivered or mailed by the Division to the holder of the first lien or encumbrance.

(g) Certificates of title shall bear thereon the seal of the Division.

(h) Certificates of title need not be renewed annually, but shall remain valid until canceled by the Division for cause or upon a transfer of any interest shown therein. (1937, c. 407, s. 21; 1943, c. 715; 1961, c. 360, s. 2; c. 835, s. 5; 1963, c. 552, s. 2; 1973, c. 72; c. 764, ss. 1-3; c. 1118; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.

§ 20-58. Perfection by indication of security interest on certificate of title. — Except as provided in G.S. 20-58.8, a security interest in a vehicle of a type for which a certificate of title is required shall be perfected only as hereinafter provided.

(2) If the vehicle is registered in this State, the application for notation of a security interest shall be in the form prescribed by the Division, signed by the debtor, and containing the amount, date and nature of the security agreement, and the name and address of the secured party from whom information concerning the security interest may be obtained. The application must be accompanied by the existing certificate of title unless it is in the possession of a prior secured party. If there is an existing certificate of title issued by this or any other jurisdiction in the possession of a prior secured party, the application for notation of the security interest shall in addition, contain the name and address of such prior secured party. (1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subdivision (2).

As subdivisions (1) and (3) were not changed by the amendment, they are not set out.

§ 20-58.1. Duty of the Division upon receipt of application for notation of security interest. — (a) Upon receipt of an application for notation of security interest, the required fee and accompanying documents required by G.S. 20-58, the Division, if it finds the application and accompanying documents in order, shall either endorse upon the certificate of title or issue a new certificate of title containing, the name and address of each secured party, the amount of each security interest, and the date of perfection of each security interest as determined by the Division. The Division shall deliver or mail the certificate to the first secured party named in it and shall also notify the new secured party that his security interest has been noted upon the certificate of title.

(b) If the certificate of title is in the possession of some prior secured party, the Division, when satisfied that the application is in order, shall procure the certificate of title from the secured party in whose possession it is being held, for the sole purpose of noting the new security interest. Upon request of the Division, a secured party in possession of a certificate of title shall forthwith deliver or mail the certificate of title to the Division. Such delivery of the
§ 20-58.2. Date of perfection. — If the application for notation of security interest with the required fee is delivered to the Division within 10 days after the date of the security agreement, the security interest is perfected as of that date. Otherwise, the security interest is perfected as of the date of delivery of the application to the Division. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department.

§ 20-58.3. Notation of assignment of security interest on certificate of title. — An assignee of a security interest may have the certificate of title endorsed or issued with the assignee named as the secured party, upon delivering to the Division on a form prescribed by the Division, with the required fee, an assignment by the secured party named in the certificate together with the certificate of title. The assignment must contain the address of the assignee from which information concerning the security interest may be obtained. If the certificate of title is in the possession of some other secured party the procedure prescribed by G.S. 20-58.1(b) shall be followed. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department.

§ 20-58.4. Release of security interest. — (a) Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of the secured party, the secured party shall within 10 days after demand and, in any event, within 30 days, execute a release of his security interest, in the space provided therefor on the certificate or as the Division prescribes, and mail or deliver the certificate and release to the next secured party named therein, or if none, to the owner or other person authorized to receive the certificate for the owner.

(b) Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of a prior secured party, the secured party whose security interest is satisfied shall within 10 days execute a release of his security interest in such form as the Division prescribes and mail or deliver the same to the owner or other person authorized to receive the same for the owner.

(c) An owner, upon securing the release of any security interest in a vehicle shown upon the certificate of title issued therefor, may exhibit the documents evidencing such release, signed by the person or persons making such release, and the certificate of title to the Division which shall, when satisfied as to the genuineness and regularity of the release, issue to the owner either a new certificate of title in proper form or an endorsement or rider attached thereto showing the release of the security interest.
(d) If an owner exhibits documents evidencing the release of a security interest as provided in subsection (c) of this section but is unable to furnish the certificate of title to the Division because it is in possession of a prior secured party, the Division, when satisfied as to the genuineness and regularity of the release, shall procure the certificate of title from the person in possession thereof for the sole purpose of noting thereon the release of the subsequent security interest, following which the Division shall return the certificate of title to the person from whom it was obtained and notify the owner that the release has been noted on the certificate of title.

(e) If it is impossible for the owner to secure from the secured party the release contemplated by this section, the owner may exhibit to the Division such evidence as may be available showing satisfaction or other discharge of the debt secured, together with a sworn affidavit by the owner that the debt has been satisfied, which the Division may treat as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least 15 days' notice of the pendency thereof shall be given to the secured party at his last known address by the Division by registered letter. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-58.6. Duty of secured party to disclose information. — A secured party named in a certificate of title shall, upon written request of the Division, the owner or another secured party named on the certificate, disclose information when called upon by such person, within 10 days after his lien shall have been paid and satisfied, and any person convicted under this section shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1937, c. 407, s. 25; 1947, c. 219, s. 3; 1961, c. 60, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-61. Owner dismantling or wrecking vehicle to return evidence of registration. — Any owner dismantling or wrecking any vehicle shall forward to the Division the certificate of title, registration card and other proof of ownership, and the registration plates last issued for such vehicle, unless such plates are to be transferred to another vehicle of the same owner. In that event, the plates shall be retained and preserved by the owner for transfer to such other vehicle. No person, firm or corporation shall dismantle or wreck any motor vehicle without first complying with the requirements of this section. The Commissioner upon receipt of certificate of title and notice from the owner thereof that a vehicle has been junked or dismantled may cancel and destroy such record of certificate of title. (1937, c. 407, s. 25; 1947, c. 219, s. 3; 1961, c. 360, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."
§ 20-62. Sale of motor vehicles to be dismantled. — Any owner who sells a motor vehicle as scrap or to be dismantled or destroyed shall assign the certificate of title thereto to the purchaser, and shall deliver such certificate so assigned to the Division with an application for a permit to dismantle such vehicle. The Division shall thereupon issue to the purchaser a permit to dismantle the same, which shall authorize such person to possess or transport such vehicle or to transfer ownership thereto by endorsement upon such permit. A certificate of title shall not again be issued for such motor vehicle in the event it is scrapped, dismantled, or destroyed. In any case, where the owner for any reason fails to send in title for a junked or dismantled vehicle, the Division shall have authority to take possession of such title for cancellation. (1937, c. 407, s. 26; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in three places.

§ 20-63. Registration plates to be furnished by the Division; requirements; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance. — (a) The Division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semitrailer and for every other motor vehicle. Registration plates issued by the Division under this Article shall be and remain the property of the State, and it shall be lawful for the Commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal disposition of the same. Whenever the Commissioner finds that any registration plate issued for any vehicle pursuant to the provisions of this Article has become illegible or is in such a condition that the numbers thereon may not be readily distinguished, he may require that such registration plate, and its companion when there are two registration plates, be surrendered to the Division. When said registration plate or plates are so surrendered to the Division, a new registration plate or plates shall be issued in lieu thereof without charge. The owner of any vehicle who receives notice to surrender illegible plate or plates on which the numbers are not readily distinguishable and who willfully refuses to surrender said plates to the Division shall be guilty of a misdemeanor.

(h) Commission Contracts for Issuance of Plates and Certificates. — All registration plates, registration certificates and certificates of title issued by the Division, outside of those issued from the Raleigh offices of the said Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Division shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of such distribution. Commission contracts entered into hereunder shall provide for the payment of compensation at a rate per registration plate as may be set by the General Assembly. Nothing contained in this subsection will allow or permit the
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operation of fewer outlets in any county in this State than are now being operated. (1937, c. 407, s. 27; 1943, c. 726; 1951, c. 102, ss. 1-3; 1955, c. 119, s. 1; 1961, c. 360, s. 4; c. 861, s. 2; 1963, c. 552, s. 6; c. 1071; 1965, c. 1088; 1969, c. 1140; 1971, c. 945; 1973, c. 629; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsections (a) and (h).

Session Laws 1975, 2nd Sess., c. 983, s. 93, effective July 1, 1976, provides: “G.S. 20-63(h) authorizes and directs the Division of Motor Vehicles insofar as practicable to enter into commission contracts with persons, firms, etc., in localities throughout North Carolina to issue registration plates, registration certificates and certificates of title at a rate per registration plate as may be set by the General Assembly. The commission contract rate for fiscal year 1976-77 shall be forty cents (40¢) per registration plate, and the rate shall remain the same until changed by the General Assembly.”

As the rest of the section was not changed by the amendment, only subsections (a) and (h) are set out.

§ 20-63.1. Division may cause plates to be reflectorized. — The Division of Motor Vehicles is hereby authorized to cause vehicle license plates for 1968 and future years to be completely treated with reflectorized materials designed to increase visibility and legibility of license plates at night. (1967, c. 8; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department.”

§ 20-64. Transfer of registration plates to another vehicle. — (a) Except as otherwise provided in this Article, registration plates shall be retained by the owner thereof upon disposition of the vehicle to which assigned, and may be assigned to another vehicle, belonging to such owner and of a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon proper application to the Division and payment of a transfer fee and such additional fees as may be due because the vehicle to which the plates are to be assigned requires a greater registration fee than that vehicle to which the license plates were last assigned. In cases where the plate is assigned to another vehicle belonging to such owner, and is not of a like vehicle category within the meaning of G.S. 20-87 and 20-88, the owner shall surrender the plate to the Division and receive therefor a plate of the proper category, and the unexpired portion of the fee originally paid by the owner for the plate so surrendered shall be a credit toward the fee charged for the new plate of the proper category. Provided, that the owner shall not be entitled to a cash refund when the registration fee for the vehicle to which the plates are to be assigned is less than the registration fee for that vehicle to which the license plates were last assigned. Provided, however, registration plates may not be transferred under this section after December 31 of the year for which issued. An owner assigning or transferring plates to another vehicle as provided herein shall be subject to the same assessments and penalties for use of the plates on another vehicle or for improper use of the plates, as he could have been for the use of the plates on the vehicle to which last assigned. Provided, however, that upon compliance with the requirements of this section, the registration plates of vehicles owned by and registered in the name of a corporation may be transferred and assigned to a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon the showing that the vehicle to which the transfer and assignment is to be made is owned by a corporation which is a wholly owned subsidiary of the corporation applying for such transfer and assignment.
§ 20-64.1 Revocation of license plates by Utilities Commission. — The license plates of any carrier of persons or property by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for willful violation of any provision of either the North Carolina Truck Act of 1947 or the Bus Act of 1949, or for the willful violation of any lawful rule or regulation made and promulgated by the North Carolina Utilities Commission under said acts. To that end said Commission shall have power upon complaint or upon its own motion, after notice and hearing under the rules of evidence prescribed in G.S. 62-18, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding 30 days, and it shall be the duty of the Division of Motor Vehicles to execute such orders made by the North Carolina Utilities Commission upon receipt of a certified copy of the same.

This section shall be in addition to and independent of other provisions of law for the enforcement of the motor carrier laws of this State. (1951, c. 1120; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the last sentence of the first paragraph.

§ 20-64.2. Permit for emergency use of registration plate. — The Commissioner may, if in his opinion it is equitable, grant to the licensee a special permit for the use of a registration plate on a vehicle other than the vehicle for which the plate was issued, when the vehicle for which such plate was issued is undergoing repairs in a regular repair shop or garage.

Application for such permit shall be made on forms provided by the Division and must show, in addition to such other information as may be required by the Commissioner, that an emergency exists which would warrant the issuance of such permit.

Such permit shall be evidenced by a certificate issued by the Commissioner and which shall show the time of issuance, the person to whom issued, the motor number, serial number or identification number of the vehicle on which such plate is to be used and shall be in the immediate possession of the person operating such vehicle at all times while operating the same. And such certificate shall be valid only so long as the vehicle for which the registration plate has been issued shall remain in the repair shop or garage but not to exceed a period of 20 days from its issuance. The person to whom the permit provided in this section is issued shall be liable for any additional license fees or penalties that might
§ 20-66. Renewal of registration; semipermanent plates issued; renewal sticker annually. — (a) Application for renewal of a vehicle registration shall be made by the owner upon proper application and by payment of the registration fee for such vehicle, as provided by law. The Division may receive and grant applications for renewal of registration at any time prior to expiration of registration.

(b) For the registration period beginning January 1, 1975, the Division, upon proper application for renewal of registration for private passenger motor vehicles, shall issue a new registration plate and registration card. For the registration period beginning January 1, 1976, and all subsequent registration periods, the Division, upon application for renewal of registration, shall, in lieu of a new registration plate, issue one or more stickers, tabs or other suitable devices denoting the registration period for which issued; provided that for the registration periods beginning January 1, 1978, and thereafter, the Division may, as it deems advisable in the discretion of the Commissioner, issue new registration plates together with such stickers, tabs or other devices; provided further, the provisions of this subsection shall not apply to special issue plates, including but not limited to official plates, legislator plates, horseless carriage plates, personalized registered plates, civil air patrol plates, amateur radio operator plates, national guard plates, and handicapped person plates.

(b1) For renewal periods beginning January 1, 1978, and thereafter, renewal registrations of private hauler trucks licensed for 4,000 pounds gross weight, motorcycles, U-drive-it passenger vehicles and trailers may be made by issuance of stickers, tabs, or other devices in lieu of new registration plates, or in combination with new registration plates, at the discretion of the Commissioner. Such stickers, tabs or other devices shall show the period of validity of registration. This provision shall not apply to trucks licensed as farm trucks, common carriers, for-hire trucks, rental trucks or contract carrier trucks.

(c) Stickers, tabs or other devices issued hereunder shall be displayed as prescribed by the Commissioner. Except where the physical differences between the stickers, tabs, or devices and registration plates by their nature render any provision of this Chapter inapplicable, all provisions of this Chapter relating to registration plates shall apply to stickers, tabs or devices.

(d) The Division may also provide for the issuance of license plates for motor vehicles with the dates of expiration thereof to vary from month to month so as to approximately equalize the number that expire during the year. (1937, c. 407, s. 30; 1955, c. 554, s. 3; 1973, c. 1389, s. 1; 1975, c. 716, s. 5; 1977, c. 387.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subsection (b1).
§ 20-67. Notice of change of address or name. — (a) Whenever any person, after making application for or obtaining the registration of a vehicle or a certificate of title, shall move from the address named in the application or shown upon a registration card or certificate of title, such person shall within 10 days thereafter notify the Division in writing of his old and new addresses.

(b) Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise, such person shall thereafter forward or cause to be forwarded to the Division the certificate of title and to make application for correction of the certificate on forms provided by the Division. (1937, c. 407, s. 31; 1955, c. 554, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (b).

§ 20-68. Replacement of lost or damaged certificates, cards and plates. — (a) In the event any registration card or registration plate is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the Division, shall immediately make application for and may obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the Division, upon the applicant's furnishing under oath information satisfactory to the Division and payment of required fee.

(b) If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the Division, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the Division. It shall be mailed to the first lienholder named in it or, if none, to the owner. The Division shall not issue a new certificate of title upon application made on a duplicate until 15 days after receipt of the application. A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the Division. (1987, c. 407, s. 32; 1961, c. 360, s. 7; c. 885, s. 7; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-69. Division authorized to assign new engine number. — The owner of a motor vehicle upon which the engine number or serial number has become illegible or has been removed or obliterated shall immediately make application to the Division for a new engine or serial number for such motor vehicle. The Division, when satisfied that the applicant is the lawful owner of the vehicle referred to in such application is hereby authorized to assign a new engine or serial number thereto, and shall require that such number, together with the name of this State, or a symbol indicating this State, be stamped upon the engine, or in the event such number is a serial number, then upon such portion of the motor vehicle as shall be designated by the Division. (1937, c. 407, s. 33; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."
§ 20-70. Division to be notified when another engine is installed or body changed. — (a) Whenever a motor vehicle registered hereunder is altered by the installation of another engine in place of an engine, the number of which is shown in the registration records, or the installation of another body in place of a body, the owner of such motor vehicle shall immediately give notice to the Division in writing on a form prepared by it, which shall state the number of the former engine and the number of the newly installed engine, the registration number of the motor vehicle, the name of the owner and any other information which the Division may require. Whenever another engine has been substituted as provided in this section, and the notice given as required hereunder, the Division shall insert the number of the newly installed engine upon the registration card and certificate of title issued for such motor vehicle.

(b) Whenever a new engine or serial number has been assigned to and stamped upon a motor vehicle as provided in § 20-69, or whenever a new engine has been installed or body changed as provided in this section, the Division shall require the owner to surrender to the Division the registration card and certificate of title previously issued for said vehicle. The Division shall also require the owner to make application for a duplicate registration card and a duplicate certificate of title showing the new motor or serial number thereon or new style of body, and upon receipt of such application and fee, as for any other duplicate title, the Division shall issue to said owner a duplicate registration and a duplicate certificate of title showing thereon the new number in place of the original number or the new style of body. (1937, c. 407, s. 34; 1943, c. 726; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-71. Altering or forging certificate of title, registration card or application, a felony; reproducing or possessing blank certificate of title. — (a) Any person who, with fraudulent intent, shall alter any certificate of title, registration card issued by the Division, or any application for a certificate of title or registration card, or forge or counterfeit any certificate of title or registration card purported to have been issued by the Division under the provisions of this Article, or who, with fraudulent intent, shall alter, falsify or forge any assignment thereof, or who shall hold or use any such certificate, registration card, or application, or assignment, knowing the same to have been altered, forged or falsified, shall be guilty of a felony and upon conviction thereof shall be punished in the discretion of the court.

(b) It shall be unlawful to reproduce by any means or possess a blank North Carolina motor vehicle certificate of title or facsimile thereof. The provisions of this subsection shall not apply to agents or employees of the Division while acting in the course and scope of their employment or any printing company or its employees while employed by the Division to print or reproduce such certificates of title while said company or its employees are acting within the scope of such employment. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) and not more than five hundred dollars ($500.00), imprisonment for not more than six months or both such fine and imprisonment. (1937, c. 407, s. 35; 1959, c. 1264, s. 2; 1971, c. 99; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.
§ 20-71.1. Registration evidence of ownership; ownership evidence of defendant's responsibility for conduct of operation.

But Defendant May Be Entitled, etc. — Where ownership of the vehicle involved in the injury complained of was insufficient to take the case to the jury under this section, the trial court's directed verdict in favor of defendant owner was harmless error where the evidence clearly established that the driver of the vehicle was on a purely personal mission at the time of the accident, thereby entitling defendant, without request, to a peremptory instruction on the issue of the owner's liability. Gwaltney v. Keaton, 29 N.C. App. 91, 223 S.E.2d 506 (1976).

Part 4. Transfer of Title or Interest.

§ 20-72. Transfer by owner. — (a) Whenever the owner of a registered vehicle transfers or assigns his title or interests thereto, he shall remove the license plates. The registration card and plates shall be forwarded to the Division unless the plates are to be transferred to another vehicle as provided in G.S. 20-64. If they are to be transferred to and used with another vehicle, then the endorsed registration card and the plates shall be retained and preserved by the owner. If such registration plates are to be transferred to and used with another vehicle, then the owner shall make application to the Division for assignment of the registration plates to such other vehicle under the provisions of G.S. 20-64. Such application shall be made within 20 days after the date on which such plates are last used on the vehicle to which theretofore assigned.

(b) In order to assign or transfer title or interest in any motor vehicle registered under the provisions of this Article, the owner shall execute in the presence of a person authorized to administer oaths an assignment and warranty of title on the reverse of the certificate of title in form approved by the Division, including in such assignment the name and address of the transferee; and no title to any motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee. The provisions of this section shall not apply to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any judicial sale.

Any person transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transfereor shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new title and necessary fees to the Division within 20 days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1.

(c) When the Division finds that any person other than the registered owner of a vehicle has in his possession a certificate of title to the vehicle on which there appears an endorsement of an assignment of title but there does not appear in the assignment any designation to show the name and address of the assignee or transferee, the Division shall be authorized and empowered to seize and hold said certificate of title until the assignor whose name appears in the assignment appears before the Division to complete the execution of the assignment or until evidence satisfactory to the Division is presented to the Division to show the name and address of the transferee. (1937, c. 407, s. 36; 1947, c. 219, ss. 4, 5; 1955, c. 554, ss. 3, 5; 1961, c. 360, s. 8; c. 835, s. 8; 1963, c. 552, ss. 3, 4; 1971, c. 678; 1973, c. 1095, s. 2; 1975, c. 716, s. 5.)
§ 20-73. New owner to secure new certificate of title. — The transferee, within 20 days after the purchase of any vehicle, shall present the certificate of title endorsed and assigned as hereinbefore provided, to the Division and make application for a new certificate of title for such vehicle except as otherwise permitted in G.S. 20-75 and 20-76. Any transferee willfully failing or refusing to make application for title shall be guilty of a misdemeanor. (1937, c. 407, s. 37; 1939, c. 275; 1947, c. 219, s. 6; 1961, c. 360, s. 9; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."
interest in the motor vehicle is obtained from the transferee in payment of the purchase price or otherwise, the dealer shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee’s application for new certificate of title and necessary fees to the Division within 20 days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1. (1937, c. 407, s. 39; 1961, c. 835, s. 9; 1963, c. 552, s. 5; 1967, c. 760; 1973, c. 1095, s. 3; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.

§ 20-76. Title lost or unlawfully detained; bond as condition to issuance of new certificate. — (a) Whenever the applicant for the registration of a vehicle or a new certificate of title thereto is unable to present a certificate of title thereto by reason of the same being lost or unlawfully detained by one in possession, or the same is otherwise not available, the Division is hereby authorized to receive such application and to examine into the circumstances of the case, and may require the filing of affidavits or other information; and when the Division is satisfied that the applicant is entitled thereto and that G.S. 20-72 has been complied with, it is hereby authorized to register such vehicle and issue a new registration card, registration plate or plates and certificates of title to the person entitled thereto, upon payment of proper fees.

(b) Whenever the applicant for a new certificate of title is unable to satisfy the Division that he is entitled thereto as provided in subsection (a) of this section, the applicant may nevertheless obtain issuance of a new certificate of title by filing a bond with the Division as a condition to the issuance thereof. The bond shall be in the form prescribed by the Division and shall be executed by the applicant. It shall be accompanied by the deposit of cash with the Division, be executed as surety by a person, firm or corporation authorized to conduct a surety business in this State or be in the nature of a real estate bond as described in G.S. 20-279.24(a). The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the Division and conditioned to indemnify any prior owner or lienholder, any subsequent purchaser of the vehicle or person acquiring any security interest therein, and their respective successors in interest, against any expense, loss or damage, reason of the issuance of the certificate of title to the vehicle or on account of any defect in or undisclosed security interest in the right, title and interest of the applicant in and to the vehicle. Any person damaged by issuance of the certificate of title shall have a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this State and the currently valid certificate of title is surrendered to the Division, unless the Division has been notified of the pendency of an action to recover on the bond. (1937, c. 407, s. 40; 1947, c. 219, s. 7; 1961, c. 360, s. 11; c. 835, s. 10; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.
§ 20-77. Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles. — (a) Whenever the title or interest of an owner in or to a vehicle shall pass to another by operation of law, as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall secure a new certificate of title upon proper application, payment of the fees provided by law, and presentation of the last certificate of title, if available and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of interest in or to chattels in such cases.

(b) In the event of transfer as upon inheritance, devise or bequest, the Division shall, upon a receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. If a decedent dies intestate and no administrator has qualified or the clerk of superior court has not issued a certificate of assignment as part of the widow's year's allowance, or if a decedent dies testate with a small estate and leaving a purported will, which, in the opinion of the clerk of superior court, does not justify the expense of probate and administration and probate and administration is not demanded by any interested party entitled by law to demand same, and provided that the purported will is filed in the public records of the office of the clerk of the superior court, the Division may upon affidavit executed by all heirs effect such transfer. The affidavit shall state the name of the decedent, date of death, that the decedent died intestate or testate and no administration is pending or expected, that all debts have been paid or that the proceeds from the transfer will be used for that purpose, the names, ages and relationship of all heirs and devisees (if there be a purported will), and the name and address of the transferee of the title. A surviving spouse may execute the affidavit and transfer the interest of the decedent's minor or incompetent children where such minor or incompetent does not have a guardian. A transfer under this subsection shall not affect the validity nor be in prejudice of any creditor's lien.

(c) Mechanic's or Storage Lien. — In any case where a vehicle is sold under a mechanic's or storage lien, or abandoned property, the Division shall be given a 20-day notice as provided in G.S. 20-114.

(d) An operator of a place of business for garaging, repairing, parking or storing vehicles for the public in which a vehicle remains unclaimed for 30 days, or the landowners upon whose property a motor vehicle has been abandoned for more than 60 days, shall, within five days after the expiration of that period, report the vehicle as unclaimed to the Division. Failure to make such report shall constitute a misdemeanor punishable by fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days, or both, in the discretion of the court.

Any vehicle which remains unclaimed after report is made to the Division may be sold by such operator or landowner in accordance with the provisions relating to the enforcement of liens and the application of proceeds of sale of Article 1 of Chapter 44A.

(e) Any person, who shall sell a vehicle to satisfy a mechanic's or storage lien or any person who shall sell a vehicle as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise by operation of law, shall remove any license plates attached thereto and return them to the Division. (1937, c. 407, s. 41; 1943, c. 726; 1945, cc. 289, 714; 1955, c. 296, s. 1; 1959, c. 1264, s. 3; 1961, c. 360, ss. 12, 13; 1967, c. 562, s. 8; 1971, cc. 230, 512, 876; 1973, c. 1386, ss. 1, 2; c. 1446, s. 21; 1975, c. 438, s. 2; c. 716, s. 5.)
§ 20-78. When Division to transfer registration and issue new certificate; recordation. — (a) The Division, upon receipt of a properly endorsed certificate of title, application for transfer thereof and payment of all proper fees, shall issue a new certificate of title as upon an original registration. The Division, upon receipt of an application for transfer of registration plates, together with payment of all proper fees, shall issue a new registration card transferring and assigning the registration plates and numbers thereon as upon an original assignment of registration plates.

(b) The Division shall maintain a record of certificates of title issued, maintaining at all times the records of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted.

(1937, c. 407, s. 42; 19438, c. 726; 1947, c. 219, s. 8; 1961, c. 360, s. 14; 1971, c. 1070, s. 4; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsections (a) and (b).

Part 5. Issuance of Special Plates.

§ 20-79. Registration by manufacturers and dealers. — (a) Every manufacturer of or dealer in motor vehicles, trailers or semitrailers shall apply to the Motor Vehicle Division for a license as such upon official forms and shall in his application give the name of the manufacturer or dealer and his bona fide address of each partner; if a corporation, the name of the corporation and the state of incorporation; the bona fide address of the place of business; whether a dealer in new vehicles or in used vehicles and shall state how long in business. Upon receipt of said application the Division shall upon the payment of fees as required by law issue a license to such applicant, together with number plates, which plates shall bear thereon a distinctive number, the name of this State, which may be abbreviated, the year for which issued, together with the word dealer or a distinguishing symbol indicating that such plate or plates are issued to a dealer. The plates so issued may during the calendar year for which issued be transferred from one vehicle to another owned and operated by such manufacturer or dealer. The license and plates issued under this section shall be in lieu of the registration of such vehicle.

Any person to whom license and number plates are issued under the provisions of this subsection upon discontinuing business as a dealer or manufacturer shall forthwith surrender to the Division license and all number plates so issued to him.

No person, firm, or corporation shall engage in the business of buying, selling, distributing or exchanging motor vehicles, trailers or semitrailers in this State unless he or it qualifies for and obtains the license required by this section.

Any person, firm, or corporation violating any provision of this subsection shall be guilty of a misdemeanor and for each offense shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000).
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(b) Every manufacturer of or dealer in motor vehicles shall obtain and have in his possession a certificate of title issued by the Division to such manufacturer or dealer of each vehicle owned and operated upon the highways by such manufacturer or dealer, except that a certificate of title shall not be required or issued for any new vehicle to be sold as such by a manufacturer or dealer prior to the sale of such vehicle by the manufacturer or dealer; and except that any dealer or any employee of any dealer may operate any motor vehicle, trailer or semitrailer, the property of the dealer, for the purpose of furthering the business interest of the dealer in the sale, demonstration and servicing of motor vehicles, trailers and semitrailers, of collecting accounts, contacting prospective customers and generally carrying out routine business necessary for conducting a general motor vehicle sales business: Provided, that no use shall be made of dealer's demonstration plates on vehicles operated in any other business dealers may be engaged in: Provided further, that dealers may allow the operation of motor vehicles owned by dealers and displaying dealer's demonstration plates in the personal use of persons other than those employed in the dealer's business: Provided further, that said persons shall, at all times while operating a motor vehicle under the provisions of this section, have in their possession a certificate on such form as approved by the Commissioner from the dealer, which shall be valid for not more than 96 hours.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (b).

§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates. — (a) The Division may, subject to the limitations and conditions hereinafter set forth, deliver temporary registration plates or markers designed by said Division to a dealer duly registered under the provisions of this Article who applies for at least 25 such plates or markers and who encloses with such application a fee of one dollar ($1.00) for each plate or marker for which application is made. Such application shall be made upon a form prescribed and furnished by the Division. Dealers, subject to the limitations and conditions hereinafter set forth, may issue such temporary registration plates or markers to owners of vehicles, provided that such owners shall comply with the pertinent provisions of this section.

(b) Every dealer who has made application for temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, and shall also maintain in permanent form a record of all temporary registration plates or markers issued by him, and in addition thereto, shall maintain in permanent form a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers that the Division may require. Each record shall be kept for a period of at least one year from the date of entry of such record. Every dealer shall allow full and free access to such records during regular business hours, to duly authorized representatives of the Division and to peace officers.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver with the registration plate or marker to the owner and shall on the day that he issued such plate or marker, send to the Division a copy of the temporary registration issuance.

(d) A dealer shall not issue, assign, transfer, or deliver temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle being sold by such dealer, nor shall a dealer issue a temporary
§ 20-79.2 GENERAL STATUTES OF NORTH CAROLINA § 20-79.2

registration plate or marker without first obtaining from said purchaser or owner a written application for the titling and registration of the purchased vehicle with the prescribed fees therefor, which application and fees the said dealer shall immediately forward to the Division by mail or messenger or by messenger to a local license agency; nor shall a dealer issue a temporary registration plate to anyone purchasing a vehicle that has unexpired registration plates, which registration plates are to be transferred to such purchaser; nor shall a dealer lend to anyone or use on any vehicle that he may own, temporary registration plates or markers: Provided that dealers are hereby authorized to issue temporary markers to nonresidents for the purpose of removing a vehicle purchased in this State, without collecting a registration fee or requiring an application for titling and registration. It shall be unlawful for any person to issue any temporary registration plate or marker containing any misstatement of fact or knowingly insert any false information upon the face thereof.

(e) Every dealer who issues temporary plates or markers shall insert clearly and indelibly on the face of each temporary registration plate or marker the make, motor and serial numbers of the vehicle for which issued and such other information as the Division may require.

(f) If the Division finds that the provisions of this section or the directions of the Division are not being complied with by the dealer, he may suspend, after a hearing, the right of a dealer to issue temporary registration plates or markers.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the annual registration plates from the Division: Provided, that if the annual registration plates are not received within 20 days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such 20-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 20 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (b), (c), (d), (e), (f), (g) and (h).

§ 20-79.2. Transporter registration. — (a) A person engaged in a business requiring the limited operation of motor vehicles to facilitate the manufacture or construction of cabs or bodies or the foreclosure or repossession of such motor vehicles may apply to the Commissioner for special registration to be issued to and used by such person upon the following conditions:

(1) Application for Registration. — Only one application shall be required from each person, and such application for registration under this section shall be filed with the Commissioner of Motor Vehicles in such form and detail as the Commissioner shall prescribe, setting forth:

a. The name and residence address of applicant; if an individual, the name under which he intends to conduct business; if a partnership,
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the name and residence address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and residence address of each of its officers.

b. The complete address or addresses of the place or places where the business is to be conducted.

c. Such further information as the Commissioner may require.

(2) Applications for registration under this section shall be verified by the applicant, and the Commissioner may require the applicant for registration to appear at such time and place as may be designated by the Commissioner for examination to enable him to determine the accuracy of the facts set forth in the written application, either for initial registration or renewal thereof.

(3) Fees. — The annual fee for such registration under this section or renewal thereof shall be nineteen dollars ($19.00), plus an annual fee of six dollars ($6.00) for each set of plates. The application for registration and number plates shall be accompanied by the required annual fee. There shall be no refund of registration fee or fees for number plates in the event of suspension, revocation or voluntary cancellation of registration. There shall be no quarterly reduction in fees under this section.

(4) Issuance of Certificate. — If the Commissioner approves the application, he shall issue a registration certificate in such form as he may prescribe. A registrant shall notify the Commissioner of any change of address of his place of business within 30 days after such change is made, and the Commissioner shall be authorized to cancel the registration upon failure to give such notice.

(5) Use. — Transporter number plates issued under this section may be transferred from vehicle to vehicle, but shall be used only for the limited operation of vehicles in connection with the manufacture or construction of cabs or bodies or with the foreclosure or repossession of vehicles owned or controlled by the registrant.

(6) Suspension, Revocation or Refusal to Issue or to Renew a Registration. — The Commissioner may deny the application of any person for registration under this section and may suspend or revoke a registration or refuse to issue a renewal thereof if he determines that such applicant or registrant has:

a. Made a material false statement in his application;

b. Used or permitted the use of number plates contrary to law;

c. Been guilty of fraud or fraudulent practices; or

d. Failed to comply with any of the rules and regulations of the Commissioner for the enforcement of this section or with any provisions of this Chapter applicable thereto.

(b) The Commissioner of Motor Vehicles may make all rules and regulations he may deem necessary for the proper administration of this section, particularly with regard to the requirements of evidence of financial responsibility of applicants for transporter plates. (1961, c. 360, s. 21; 1969, c. 600, s. 1; 1975, c. 222.)

Editor's Note. — The 1975 amendment inserted "the manufacture or construction of cabs or bodies or" following "facilitate" in the introductory paragraph, and "the manufacture or construction of cabs or bodies or with the" preceding "foreclosure" in subdivision (5), of subsection (a).

§ 20-79.3. Transporter registration — house trailer and mobile home movers. — Notwithstanding the provisions of G.S. 20-79.2 any person with
authority from the Utilities Commission to move house trailers or mobile homes
within this State may be issued "transporter plates" as provided in G.S. 20-79.2
upon application and payment of the fees prescribed under G.S. 20-79.2(a)(3).
Transporter plates issued pursuant to this section shall be used only on house
trailers or mobile homes while being towed by a properly licensed vehicle. (1977,
c. 304.)

§ 20-80. National guard plates. — The Commissioner shall cause to be made
each year a sufficient number of motor vehicle license plates to furnish each
member of the North Carolina national guard with one thereof, said license
plates to be in the same form and character as other license plates now or
hereafter authorized by law to be used upon private passenger vehicles
registered in this State, except that such license plates shall bear on the face
thereof the following words "National Guard." The said license plates shall be
issued only to members of the North Carolina national guard, and for which
license plates the Commissioner shall collect fees in an amount equal to the fees
collected for the licensing and registering of private vehicles not registered for
more than 4,000 pounds. The Adjutant General of North Carolina shall furnish
the Commissioner annually with an estimate of the number of such distinctive
plates required. In addition, the Adjutant General of North Carolina shall
furnish to the Commissioner each year, prior to the date that licenses are issued,
a list of the officers of the North Carolina national guard, which said list shall
contain the rank of each officer listed in the order of his seniority in the North
Carolina national guard, and the said license plates to be set aside for officer
personnel shall be numbered beginning with the number one and in numerical
sequence thereafter up to and including the number 1600, according to seniority,
the senior officer being issued the license bearing the numeral one. Enlisted
personnel applying for such distinctive plates shall present to the Division of
Motor Vehicles proof of membership in the North Carolina national guard by
means of certificate signed by the commanding officer of applicant on forms as
may be agreed upon by the Adjutant General of North Carolina and the Division
of Motor Vehicles. If a holder of such distinctive license plate shall be discharged
from the North Carolina national guard under other than honorable conditions,
he shall within 30 days exchange such distinctive plate for a standard plate.
(1937, c. 407, s. 44; 1941, c. 36; 1949, c. 1130, s. 7; 1955, c. 490; 1961, c. 360, s.
16; 1967, c. 700; 1973, c. 1432; 1975, c. 716, s. 5.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975,
substituted "Division" for "Department" in the
next-to-the-last sentence.

§ 20-81. Official license plates. — Official license plates issued to State
officials shall be subject to the same fees and transfer provisions as provided
in G.S. 20-87 and G.S. 20-64 respectively and shall be issued as follows:

(1) Senate and Congressional. — Official license plates issued to the United
States Senators shall bear the words "U.S. Senate," be numbered 1 and
2, and shall be issued on the basis of seniority. The official plates issued
to United States Congressmen shall bear the words "U.S. House" and
be numbered 1 through 11 and shall be issued on the basis of
congressional districts.

(2) North Carolina General Assembly. — Official plates issued to members
of the North Carolina State Senate or House of Representatives shall
bear the words "Senate" or "State House" followed by the Senator's
or Representative's assigned seat number.
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(3) Judicial. — Official plates issued to the judiciary shall be issued as follows:

a. Appellate division. — Official plates that shall be issued upon request to the Chief Justice and Associate Justices of the Supreme Court of North Carolina and the Chief Judge and Associate Judges of North Carolina Court of Appeals shall bear the letter "J" followed by numerical designation from 1 through 19. The Chief Justice upon request shall be issued the plate bearing number 1 and the remaining plates shall first be issued upon request to the Associate Justices on the basis of seniority. The Chief Judge shall be issued upon request the next such judicial plate and the remaining plates shall be issued upon request to the Associate Judges on the basis of seniority. Retired members of the Supreme Court and the Court of Appeals shall receive an official plate upon request similar in every respect to the plate issued to the regular justices and judges bearing the numerical designation of his or her position of seniority at the time of retirement except that the numerical designation shall be followed with the letter "X." Official plate J-20 may be issued upon request to the Director of the Administrative Office of the Courts.

b. Superior court. — Official plates shall be issued to the various senior resident judges of the superior court upon request and shall bear the letter "J" followed by a numerical designation equal to the sum of the numerical designation of their respective judicial districts plus 20. Where there is more than one resident judge of the superior court within a district, official plates shall upon request be issued to other resident judges serving within the district similar to the official plate to be issued upon request to the senior resident judge of the district except the numerical designation on each subsequent plate shall be followed by a letter of the alphabet beginning with the letter "A," which shall be indicative of the recipient's position as to seniority. Special judges and emergency judges of the superior court shall be issued an official plate bearing the letter "J" with a numerical designation as designated by the Administrative Office of the Courts with the approval of the Chief Justice of the Supreme Court of North Carolina. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter "X."

c. North Carolina district court judges. — An official plate shall be issued upon request to each chief judge of the district courts of North Carolina which shall bear the letter "J" followed by a numerical designation equal to the sum of the numerical designation of their respective judicial districts plus 100 and all other judges of the district courts serving within the same judicial district shall, upon request, be issued an official plate bearing the same letter and numerical designation as appears on the official plate issued to the chief district judge of the judicial district except that on each subsequent official plate issued within a district, the numerical designation shall be followed by a letter of the alphabet beginning with the letter "A" which shall be indicative of the recipient's position as to seniority. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter "X."

d. District attorneys. — Official plates shall be issued upon request to the various district attorneys which plates shall bear the letters
“DA” followed by a numerical designation indicative of their judicial district.

e. United States judges. — Official plates shall be issued upon request to Justices of the United States Supreme Court, Judges of the United States Circuit Court of Appeals and to the District Judges of the United States District Courts residing in North Carolina and shall bear the words “U.S. Judge” followed by a numerical designation beginning with the number “1” which shall be indicative of the judge’s seniority position as to the date he began continuous service as a United States Judge as designated by the Secretary of State. Retired judges and judges who have taken senior status shall be issued similar plates except that the numerical designation shall be based upon the date of such retirement or assumption of senior status and shall follow the numerical designation of active justices and judges.

f. United States attorneys. — Official plates shall be issued upon request to the United States Attorneys, which plates shall bear the letters, “U.S. Attorney”, followed by a numerical designation indicative of their district, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(4) Elective and Appointive. — Official plates issued to elective and appointive members of State government shall bear number designations beginning with number 1 which shall be assigned to the Governor of North Carolina and numbers following thereafter shall be issued to in the following order:

2. Lieutenant Governor of North Carolina.
4. President Pro Tempore of the Senate.
5. Secretary of State.
7. State Treasurer.
8. Superintendent of Public Instruction.
10. Commissioner of Agriculture.
12. Commissioner of Insurance.
14. Legislative Services Officer.
15. Secretary of Administration.
16. Secretary of Natural Resources and Community Development.
17. Secretary of Revenue.
18. Secretary of Human Resources.
19. Secretary of Commerce.
20. Secretary of the Department of Correction.
21. Secretary of Cultural Resources.
22. Secretary of Crime Control and Public Safety.
23-29. To be reserved for and assigned to members of the Governor’s staff at the direction of the Governor.
30. State Budget Officer.
31. State Personnel Director.
32-41. To be reserved for and assigned to nonlegislative members of the Advisory Budget Commission at the direction of the Governor.
42. Chairman, State Board of Education.
43. President, U. N. C. System.
44. Chairman, A.B.C. Board.
45. Member, A.B.C. Board.
46. Member, A.B.C. Board.
47. Assistant Commissioner of Agriculture.
48. Assistant Commissioner of Agriculture.
49. Deputy Secretary of State.
50. Deputy State Treasurer.
51. Assistant State Treasurer.
52. Deputy Commissioner, Department of Labor.
53. Chief Deputy, Department of Insurance.
54. Assistant Commissioner of Insurance.
55-65. Shall be reserved for and assigned to the Attorney General's deputies and assistants only. Specific number assignments shall be at the direction of the Attorney General.
66-88. Shall be reserved for and assigned upon request to nonlegislative members of the Board of Economic Development. Specific number assignments to such members shall be at the direction of the Governor.
89-96. Shall be reserved for and assigned upon request to nonlegislative members of the State Ports Authority. Specific number assignments to such members shall be at the direction of the Governor.
97-104. Shall be reserved for and assigned upon request to members of the Utilities Commission. Number 97 to be upon request assigned to the Chairman of the Utilities Commission with remaining numbers to be assigned upon request to the remaining members of the Utilities Commission on the basis of seniority.
105-109. Shall be reserved for and assigned upon request to members of the Parole Commission. Number 105 to be upon request assigned to the Chairman of the Parole Commission with remaining numbers to be assigned upon request to the remaining members of the Parole Commission on the basis of seniority.
110-200. Shall be reserved for and assigned upon request to members of State boards and commissions and State employees at the direction of the Governor.

(5) Department of Transportation. — Official plates shall be issued upon request to various members of the Divisions of the Department of Transportation which shall bear the letters "DOT" followed by a number designated from 1 through 85. Specific number assignments to members of the Divisions of the Department of Transportation shall be at the direction of the Governor.

License plates issued to State officials by the Division of Motor Vehicles of the Department of Transportation pursuant to this section shall be assessed a fee of ten dollars ($10.00), in addition to any fees charged under G.S. 20-87 and 20-88. These plates will be subject to the same transfer provisions as provided in G.S. 20-64.

The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the "Officials Registration Plate Fund." After deducting the cost of the plates, plus budgetary requirements for handling an issuance, to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plate shall be periodically transferred in accordance with G.S. 20-81.3(c). (1937, c. 407, s. 45; 1961, c. 360, s. 17; 1975, cc. 432, 865; 1977, c. 762, s. 1.)

Editor's Note. — Session Laws 1975, c. 432, ratified May 28, 1975, and effective Jan. 1, 1976, and Session Laws 1975, c. 865, ratified June 26, 1975, and effective July 1, 1975, rewrote this section, which formerly provided only that official license plates should be subject to the transfer provisions in § 20-64. The two 1975 acts were in conflict, and there was a possibility that 1975, and effective July 1, 1975, could have been interpreted as repealing c. 432, or that
§ 20-81.1. Special plates for amateur radio operators.

(b) Application for special registration plates shall be made on forms which shall be provided by the Division of Motor Vehicles and shall contain proof satisfactory to the Division that the applicant holds an unrevoked and unexpired official amateur radio license and shall state the call letters which have been assigned to the applicant. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) Special registration plates issued pursuant to this section shall be replaced annually to the same extent as regular registration plates are replaced. These plates shall be valid during the year for which issued. If the amateur radio license of a person holding a special plate issued pursuant to this section shall be cancelled or rescinded by the Federal Communications Commission, such person shall immediately return the special plates to the Division of Motor Vehicles.

(d) The provisions of this section shall apply to calendar years beginning after December 31, 1974. The Division of Motor Vehicles is authorized to, and shall, make such provisions prior to January 1, 1975, as are necessary for the issuance for the year 1975 of the special plates provided for in this section.

(e) The revenue derived from the additional fee for the amateur radio plates shall be placed in a separate fund designated the "Amateur Radio Registration Plate Fund." After deducting the cost of the plates, plus budgetary requirements for handling and issuance to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plates shall be periodically transferred to the Department of Transportation as provided in G.S. 20-81.3(c)(2). (1951, c. 1099; 1955, c. 291; 1961, c. 360, s. 18; 1971, c. 589, ss. 1, 2; c. 829, ss. 1, 2, 4; 1973, c. 507, s. 5; c. 1395, s. 1; 1975, c. 716, s. 5; 1977, c. 464, s. 34.)

Editor’s Note.—
The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsections (b), (c) and (d).

The 1977 amendment, effective July 1, 1977, substituted “Department of Transportation” for “Board of Transportation” in the second sentence of subsection (e).

As subsection (a) was not changed by the amendments, it is not set out.

§ 20-81.2. Special plates for historic vehicles. — Notwithstanding any other provisions of this Chapter, special license plates shall be issued upon application with respect to any motor vehicle of the age of 35 years or more from the date of manufacture. Such license plates shall be of the same colors as the regular license plates and shall be issued in a separate numerical series. On the plate there shall be printed the words “Antique Auto,” the license plate serial number, the words “North Carolina” or the letters “N.C.,” and the appropriate calendar year. In lieu of other registration fees, the annual license registration fee for such vehicle shall be six dollars ($6.00). All other provisions of this Chapter not inconsistent herewith shall be applicable to such motor vehicles.

Notwithstanding any other provisions of this Chapter, a special permanent license plate shall be issued upon application of the owner of any motor vehicle of the age of 50 years or older from the date of manufacture. On the plate there shall be printed the words “Horseless Carriage” in addition to the other requisites established by the Commissioner of Motor Vehicles. The sole fee for the issuance of this permanent license plate shall be fifteen dollars ($15.00). All
other provisions of this Chapter not inconsistent herewith shall be applicable to such motor vehicles.

The Commissioner of Motor Vehicles is hereby authorized to make such rules as, in his discretion, may seem necessary with respect to applications for special plates, time for making applications and other matters necessary for the efficient administration of this section. (1955, c. 1339; 1969, c. 600, s. 2; 1977, c. 572, ss. 1, 2.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, substituted "‘Antique Auto'" for "‘Horseless Carriage'" in the third sentence of the first paragraph and added the present second paragraph.

§ 20-81.3. Special personalized registration plates.

(b) An owner who desires personalized registration plates shall make application for such plates on forms which shall be provided by the Division of Motor Vehicles and pay the sum of ten dollars ($10.00) annually, which shall be in addition to the regular motor vehicle registration fee. Once an owner has obtained personalized plates, he, where possible, will have first priority on those plates for the following years provided he makes timely and appropriate application; provided, however, that the Commissioner shall not issue a personalized license plate pursuant to this section except upon written application therefor on a form furnished by the Commissioner in which the applicant certifies that his operator's or chauffeur's license has not been revoked or suspended under Article 2 of Chapter 20 of the General Statutes within two years prior to the date of the application; and provided, further, that any personalized license plate issued pursuant to this section shall be cancelled and recalled by the Commissioner and the application fee forfeited in the event that the Commissioner determines that a false application has been submitted.

(c) The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the "Personalized Registration Plate Fund." After deducting the cost of the plates, plus budgetary requirements for handling and issuance to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plates shall be periodically transferred as follows:

(1) One half to the account of the Department of Natural Resources and Community Development to aid in financing out-of-state advertising under the North Carolina program for the promotion of travel and industrial development in North Carolina.

(2) One half to the Department of Transportation to be used solely for the purpose of beautification of highways other than those designated as interstate. Such funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles.

(d) Repealed by Session Laws 1975, c. 716, s. 5, effective July 1, 1975.

(e) Special personalized registration plate shall mean any registration plate bearing any combination of letters or numerals, or both, other than that which the Division determines would normally be issued sequentially to an applicant for original or renewal vehicle registration.

(1975, c. 716, s. 5; 1977, c. 464, s. 3; c. 771, s. 4.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (b) and (e) and repealed subsection (d), which provided that the Governor's Advisory Committee on Beautification should act in an advisory capacity to the Board of Transportation and make recommendation concerning beautification of highways.

The first 1977 amendment, effective July 1, 1977, substituted "Department of
§ 20-81.4. Free registration plates to disabled veterans; special plates for former prisoners of war. — (a) From and after January 1, 1970, the North Carolina Division of Motor Vehicles shall provide and issue free of charge to each disabled veteran in this State registration and registration plates for either one automobile or one pickup truck, where a pickup truck is the disabled veteran’s only mode of transportation and is not used for hire, a disabled veteran being, for the purpose of this section, a veteran of World War I, World War II or Korean service or Vietnam service, having served in the military, naval, marines or air services of the United States, who is a resident of North Carolina and who is entitled to compensation under the laws administered by the Veterans Administration and who is rated as one hundred percent (100%) service-connected disabled or has suffered one or more of the following due to disability incurred in or aggravated by active military, naval, marine or air service of the United States during one or more conflicts:

1. Loss or permanent loss of use of one or both feet;
2. Loss or permanent loss of use of one or both hands;
3. Permanent impairment of vision of both eyes of the following status: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye.

(a1) From and after January 1, 1976, the North Carolina Division of Motor Vehicles shall provide and issue on a first-come first-serve basis to each ex-prisoner of war in this State registration and special P.O.W. registration plates for either one automobile or one pickup truck, where a pickup truck is the ex-prisoner of war’s only mode of transportation and is not used for hire, an ex-prisoner of war being, for the purpose of this subsection, an American service person captured and held prisoner by forces hostile to the United States while serving in the armed forces of the United States in World War I, World War II, Korean service or Vietnam service.

(b) The registration plates provided for by this section shall be red, white and blue with colors in such order as prescribed by the Division of Motor Vehicles.

(c1) The registration plate provided for by this section for ex-prisoners of war shall be issued at no additional fee and only upon proof as may be required by the Division of Motor Vehicles as to ex-prisoners of war’s status and proof of financial responsibility as required by the motor vehicle laws of North Carolina.

Editor’s Note. — The first 1975 amendment, effective Jan. 1, 1976, substituted “red, white and blue with colors in such order” for “in colors” in subsection (b).

The second 1975 amendment, effective July 1, 1975, added subsections (a1) and (c1).

The third 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsections (a), (a1), (b) and (c1).
§ 20-81.5. Civil Air Patrol plates. — (a) The Commissioner shall cause to be made each year sufficient number of automobile license plates to furnish each member of the North Carolina Wing of the Civil Air Patrol with not more than two thereof, said license plates to be in the same form and character as other license plates now or hereinafter authorized by law to be used upon private passenger vehicles registered in this State, except that such license plates shall bear on the face thereof the following: the words “North Carolina,” the year designation, and the words “Civil Air Patrol.” The said license plates shall be issued only to members of the North Carolina Wing of the Civil Air Patrol and for each license plate the Commissioner shall collect a fee of five dollars ($5.00) in addition to the fees in an amount equal to the fees collected for the licensing and registering of private vehicles. The Commander of the North Carolina Wing of the Civil Air Patrol shall furnish the Commissioner annually with a list of the number of such distinctive plates required accompanied by the five dollar ($5.00) fee referred to hereinafore and such list shall contain the rank of each officer listed in order of his seniority in the North Carolina Civil Air Patrol. The said license plates to be set aside for officer personnel shall be numbered beginning with the number 201 and running in numerical sequence thereafter up to and including the number 500, according to seniority; the senior officer being issued the plate bearing the number 201. Enlisted personnel, senior members and cadet members applying for such distinctive plates shall, upon application and payment of the required fee, receive such plates in numerical sequence beginning with the number 501. Applications for such distinctive license plates shall be on forms as may be agreed upon by the Wing Commander of the North Carolina Civil Air Patrol and the Division of Motor Vehicles. If a holder of such a distinctive license plate shall be discharged from the North Carolina Civil Air Patrol under other than honorable conditions, he shall within 30 days exchange such distinctive plate for a standard plate.

(b) The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the “Civil Air Patrol Registration Plate Fund.” After deducting the cost of the plates, plus budgetary requirements for handling and issuance to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plates shall be periodically transferred to the Department of Transportation as provided in G.S. 20-81.3(c)(2). (1971, c. 601; c. 829, s. 3; 1973, c. 52; c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 464, s. 34.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsection (a). The 1977 amendment, effective July 1, 1977, substituted “Department of Transportation” for “Board of Transportation” near the end of subsection (b).

§ 20-81.6. Special plates for Class D citizens radio station operators.

(b) Application for special registration plates shall be made on forms which shall be provided by the Division of Motor Vehicles and shall contain proof satisfactory to the Division that the applicant holds an unrevoked and unexpired official Class D citizens radio station license and shall state the call letters which have been assigned to the applicant. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) Special registration plates issued pursuant to this section shall be replaced annually to the same extent as regular registration plates are replaced. These plates shall be valid during the year for which issued. If the Class D citizens radio station license of a person holding a special plate issued pursuant to this section shall be cancelled or rescinded by the Federal Communications
§ 20-81.7. Special plates for members of fire departments and rescue squads. — (a) Every owner of a private passenger motor vehicle or pickup truck not exceeding a gross weight of 4,000 pounds, who is an active regular or volunteer member of a fire department or rescue squad, upon payment of registration and licensing fees for such vehicle as required by law and an additional fee of ten dollars ($10.00), shall be issued license plates of the same form and character as other license plates now or hereinafter authorized by law to be issued upon such vehicles except that such license plates shall in addition bear on the face thereof the following words: either "fireman"; "rescue squad" or "fireman-rescue squad."

(b) Application for special registration plates pursuant to this section shall be made on forms provided by the Division of Motor Vehicles and shall contain proof satisfactory to the Division that the applicant is an active regular or volunteer member of a fire department or rescue squad. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) The provisions of this section shall apply to calendar years beginning after December 31, 1977. The Division of Motor Vehicles is authorized to, and shall make such provisions prior to January 1, 1978, as are necessary for the issuance of the special plates provided for in this section. Registration plates issued pursuant to this section shall be replaced annually to the same extent as regular registration plates are replaced. (1977, c. 773.)

§ 20-82. Manufacturer or dealer to keep record of vehicles received or sold. — Every manufacturer or dealer shall keep a record of all vehicles received or sold containing such information regarding same as the Division may require. (1937, c. 407, s. 46; 1965, c. 106; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department" for "Division."
which registration is herein required is owned by the State or any department thereof, or by any county, township, city or town, or by any board of education, or by any orphanage or civil air patrol, or incorporated emergency rescue squad, shall collect one dollar ($1.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday School and church services and for no other purpose.

In lieu of the annual one dollar ($1.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles. The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of one dollar ($1.00) for each vehicle so registered and licensed.

The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.

The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of one dollar ($1.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial one dollar ($1.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.

The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of one dollar ($1.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.
In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of one dollar ($1.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to him pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy thereof shall be furnished to the registration division of the Division. Information as to the individual assignments of such registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that such reassignment shall be made to appear upon the index required herein within 20 days after such reassignment.

The Division of Motor Vehicles shall upon appropriate certification of financial responsibility issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services of the Department of Human Resources upon application and payment of a fee of one dollar ($1.00) for each plate, a permanent registration plate for vehicles registered to and operated by such sheltered workshops. The initial one dollar ($1.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.

On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove. (1937, c. 407, s. 48; 1939, c. 275; 1949, c. 583, s. 1; 1951, c. 388; 1958, c. 1264; 1955, c. 368, 382; 1967, c. 284; 1969, c. 800; 1971, c. 460, s. 1; 1975, c. 548; c. 716, s. 5; 1977, c. 370; setae

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added the seventh paragraph.

The second 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.

The 1977 amendment rewrote the third sentence of the second paragraph, which formerly read “Such plates shall not be subject to renewal and shall be valid only on the vehicle for which issued,” substituted “may be transferred as provided in G.S. 20-78 to replacement vehicles to be used” for “should be valid only on the vehicle for which issued and then only so long as the vehicle shall be operated” in the second sentence of the fourth paragraph, rewrote the second sentence of the fifth paragraph, which formerly read “Such registration plate shall be valid only for the vehicle for which issued and then only so long as the vehicle shall be operated as above described,” and substituted “may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used” for “shall be valid only when attached to the vehicle for which issued and then only so long as the vehicle is operated” in the second sentence of the seventh paragraph.
§ 20-84.1. Permanent plates for city buses. — The Division may for the license year 1950 and thereafter provide for a permanent registration and issue permanent registration plates for city buses and trackless trolleys when such buses and trolleys are operated under franchises authorizing the use of city streets, but no bus or trackless trolley shall be registered or licensed under this section if it is operated under a franchise authorizing an intercity operation. The permanent registration plates issued pursuant to the provisions of this section shall be of a distinctive color and shall bear thereon the word “permanent.” Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates as provided for in this section, the Division shall collect a fee of one dollar ($1.00) for each vehicle so registered and licensed. (1949, c. 583, s. 6; 1975, c. 716, s. 5; 1977, c. 370, s. 2.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in two places.

The 1977 amendment rewrote the third sentence, which formerly read “Such plates shall not be subject to renewal and shall be valid only on the vehicle for which issued.”

Part 6.1. Rental Vehicles.

§ 20-84.2. Definition; reciprocity; Commissioner’s powers.

(d) Upon payment by the owner of the prescribed fee, the Division shall issue registration certificates and plates for the percentage of vehicles determined by the Commissioner. Thereafter, all rental vehicles properly identified and licensed in any state, territory, province, country or the District of Columbia, and belonging to such owner, shall be permitted to operate in this State on an interstate or intrastate basis. (1959, c. 1066; 1971, c. 808; 1973, c. 1446, s. 23; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the first sentence of subsection (d).

The rest of the section was not changed by the amendment, only subsection (d) is set out.

Part 7. Title and Registration Fees.

§ 20-85. Schedule of fees. — There shall be paid to the Division for the issuance of certificates of title, transfer of registration and replacement of registration plates fees according to the following schedules:

1. Each application for certificate of title .................. $2.00
2. Each application for duplicate or corrected certificate of title .. 2.00
3. Each application of repossessor for certificate of title ........ 2.00
4. Each transfer of registration ............................. 2.00
5. Each set of replacement registration plates ................... 5.00
6. Each application for duplicate registration certificate .......... 5.00
7. Each application for recording supplementary lien .............. 2.00
8. Each application for removing a lien from a certificate of title . 2.00

(1937, c. 407, s. 49; 1943, c. 648; 1947, c. 219, s. 9; 1955, c. 554, s. 4; 1961, c. 360, s. 19; c. 835, s. 11; 1975, c. 430; c. 716, s. 5; c. 727; c. 875, s. 4; c. 879, s. 46.)

Editor’s Note. — The first 1975 amendment, effective July 1, 1975, increased the fees in subdivisions (1) through (5), (7) and (8) from $1.00 to $2.00.

The second 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the introductory paragraph.
The third 1975 amendment, effective July 1, 1975, increased the fee in subdivision (5) from $1.00 to $5.00.

The fourth 1975 amendment, effective July 1, 1975, deleted the former last sentence, which required fees collected under subdivisions (7) and (8) to be placed in a "Lien Recording Fund."

The fifth 1975 amendment substituted "Secretary of Administration" for "Assistant Director of the Budget" in the second paragraph.

§ 20-86.1. International Registration Plan. — (a) The registration fees required under this Article may be proportioned for vehicles which qualify and are licensed under the provisions of the International Registration Plan.

(b) Notwithstanding any other provisions of this Chapter, the Commissioner is hereby authorized to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of any agreement entered pursuant to the International Registration Plan. (1975, c. 767, s. 2.)

§ 20-87. Passenger vehicle registration fees. — There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(5) Private Passenger Vehicles. — There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than nine passengers $13.00
Private passenger vehicles over nine passengers $16.00

provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in subdivision (5).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (5) are set out.

§ 20-87.1. Reciprocity; passenger buses operated by common carrier of passengers. — (a) Passenger buses operated by any common carrier of passengers for use in intrastate or interstate commerce shall be extended full reciprocity and exempted from registration fees only in such instances where such common carriers of passengers have validly licensed in the State of North Carolina the average number of buses required to operate the total miles operated by it in and through the State during the preceding year. The average number of buses required will be determined by applying the average miles traveled of each bus owned by it into the total miles operated in North Carolina by such carrier during the preceding year. The Division may, in its discretion, verify the average number of buses required by the common carrier of passengers during the licensing year in and through the State. Upon payment by the common carrier of passengers of the prescribed fees or taxes, the Division shall issue registration certificates and license plates for the average number of buses required by such common carrier of passengers. Thereafter, all buses properly identified and licensed in any state, territory, province, county or the
District of Columbia, and used by such common carrier of passengers shall be permitted to operate on an interstate or intrastate basis.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a).

§ 20-88. Property-hauling vehicles. — (a) Determination of Weight. — For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of self-propelled property-carrying vehicles, fees according to the following classification and schedule and upon the following conditions:

SCHEDULE OF WEIGHTS AND RATES

<table>
<thead>
<tr>
<th>Rates Per Hundred Pound Gross Weight</th>
<th>Farmer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over 4,500 pounds</td>
<td>$0.20</td>
</tr>
<tr>
<td>4,501 to 8,500 pounds inclusive</td>
<td>.25</td>
</tr>
<tr>
<td>8,501 to 12,500 pounds inclusive</td>
<td>.32</td>
</tr>
<tr>
<td>12,501 to 16,500 pounds inclusive</td>
<td>.44</td>
</tr>
<tr>
<td>Over 16,500 pounds</td>
<td>.50</td>
</tr>
</tbody>
</table>

SCHEDULE OF WEIGHTS AND RATES

<table>
<thead>
<tr>
<th>Rates Per Hundred Pound Gross Weight</th>
<th>Private Hauler</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over 4,500 pounds</td>
<td>$0.40</td>
</tr>
<tr>
<td>4,501 to 8,500 pounds inclusive</td>
<td>.63</td>
</tr>
<tr>
<td>8,501 to 12,500 pounds inclusive</td>
<td>.88</td>
</tr>
<tr>
<td>12,501 to 16,500 pounds inclusive</td>
<td>1.00</td>
</tr>
</tbody>
</table>

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§ 20-88.1 COMMON CARRIER OF PROPERTY

<table>
<thead>
<tr>
<th>Weight Range</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over 4,500</td>
<td>$0.75</td>
</tr>
<tr>
<td>4,501 to 8,750 pounds inclusive</td>
<td>$0.75</td>
</tr>
<tr>
<td>8,501 to 12,500 pounds inclusive</td>
<td>$0.75</td>
</tr>
<tr>
<td>12,501 to 16,500 pounds inclusive</td>
<td>$0.75</td>
</tr>
<tr>
<td>Over 16,500 pounds</td>
<td>$0.75</td>
</tr>
</tbody>
</table>

(1) The minimum fee for a vehicle licensed under this subsection shall be twelve dollars and fifty cents ($12.50) at the farmer rate and sixteen dollars ($16.00) at the private hauler, contract carrier and common carrier rates.

(2) The term “farmer” as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant’s farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.

(4) “Farm products” means any food crop, cattle, hogs, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term “farm products” also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.

(5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of “farmer” plates, when vehicle bearing such plates shall be sold or transferred.

(6) There shall be paid to the Division annually as of the first of January, the following fees for “wreckers” as defined under G.S. 20-88(89): a wrecker fully equipped weighing 7,000 pounds or less, sixty-two dollars and fifty cents ($62.50); wreckers weighing in excess of 7,000 pounds shall pay one hundred twenty-five dollars ($125.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer’s license plate to tow a vehicle for a customer.

(c) There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of trailers or semitrailers, four dollars ($4.00) for any part of the license year for which said license is issued.

(1975, c. 716, s. 5; 1977, c. 638.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsections (b) and (c).

The 1977 amendment substituted “G.S. 20-4.01(50)” for “G.S. 20-38(39)” at the end of the second sentence of subsection (a) and added the third sentence of that subsection.

As the rest of the section was not changed by the amendments, only subsection (a), (b) and (c) are set out.
§ 20-91

the Division of Motor Vehicles, for which the registration tax is now being paid as provided in this Chapter, shall pay an annual registration tax of three dollars ($3.00) in addition to all other amounts provided in this Chapter. The revenue derived from the additional tax of three dollars ($3.00) shall be placed in a separate fund to finance a program of driver training and safety education at the public high schools of the State, and the amounts so collected shall be transferred periodically to the account of the State Board of Education. In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of the State for all persons of provisional license age. Such courses as shall be developed shall be made available to all physically and mentally qualified persons of provisional license age, including public school students, nonpublic school students and out-of-school youths under 18 years of age. In addition to the revenue derived from the annual additional registration tax of three dollars ($3.00), the State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds which may become available for its use for said purpose; provided that any program supported in whole or in part from the fund established herein shall include instructions as to rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles including but not limited to the “international symbol of accessibility” and symbols and devices as provided in Article 2A of this Chapter. (1957, c. 682, s. 1; 1965, c. 410, s. 1; 1975, c. 431; c. 716, s. 5; 1977, c. 340, s. 4; c. 1002.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, substituted “as provided in this Chapter, shall pay an annual registration tax of two dollars ($2.00) in addition to all other amounts provided in this Chapter” for “at the annual rate of ten dollars ($10.00) or more, shall pay an additional annual registration tax of one dollar ($1.00)” at the end of the first sentence. The amendment also substituted “two dollars ($2.00)” for “one dollar ($1.00)” in the second and last sentences.

§ 20-91. Records and reports required of franchise carriers. — (a) Every common carrier of passengers and common carrier of property shall keep a record of all business transacted and all revenue received on such forms as may be prescribed by or satisfactory to the Commissioner.

Any owner or lessee applying for proportional registration of vehicles shall maintain records of the total number of miles operated by such vehicles in all jurisdictions during the preceding year and the total number of miles operated in this State during the preceding year. As used in this section, “preceding year” shall mean a period of 12 consecutive months fixed by the Division, which is within 16 months immediately preceding the commencement of the registration or license year in which proportional registration is sought.

All records required by this section shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any owner or lessee failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.
All common carriers of passengers and common carriers of property shall, on or before the thirtieth day of each month, make a report to the Division of gross revenue earned and gross mileage operated during the month previous, in such manner as the Division may require and on such forms as the Division shall furnish. If reports are not filed by the thirtieth day of the month following the month for which the report is made, a penalty of five percent (5%) of gross receipts tax reported will be due. This five percent (5%) penalty must be paid in addition to the gross receipts tax and may not be claimed as a credit against the tag deposit. Provided that the Commissioner may, in his discretion, waive the five percent (5%) penalty upon proof by the carrier that late filing of report was due to extenuating circumstances beyond the control of the carrier.

It shall be the duty of the Commissioner, by competent auditors, to have the books and records of every common carrier of passengers and common carrier of property examined at least once each year to determine if such operators are keeping complete records as provided by this section of this Article, and to determine if correct reports have been made to the State Division of Motor Vehicles covering the total amount of tax liability of such operators.

If any carrier of passengers or property shall fail, neglect, or refuse to keep such records or to make such reports or pay tax due as required, and within the time provided in this Article, the Commissioner shall immediately inform himself as best he may as to all matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of the tax due the State from such delinquent operator for the period covering the delinquency, adding to the tax so determined and as a part thereof an amount equal to five percent (5%) of the tax, to be collected and paid. The said Commissioner shall proceed immediately to collect the tax including the additional five percent (5%). Any such carrier of passengers or property, having no records on the basis of which the Commissioner can determine the amount of the tax due by such carrier, shall be assessed on each vehicle at the rate applicable for contract carriers, and any bonds or deposits theretofore made shall be applied on such assessment and any further amount shall be collected as provided by law.

Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Commissioner of Motor Vehicles, any deputy, assistant, agent, clerk, other officer, employee, or former officer or employee, to divulge or make known in any manner the amount of gross revenue or tax paid by any common carrier of passengers or common carrier of property as set forth or disclosed in any report or return required in remitting said tax, or as otherwise disclosed. Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the Governor, Attorney General, Utilities Commission, or their or its duly authorized representatives; or the inspection by a legal representative of the State of the report or return of any common carrier of passengers or common carrier of property which shall bring an action to set aside or review the tax based thereon, or against which action or proceeding has been instituted to recover any tax or penalty imposed by this Article. Any person, officer, agent, clerk, employee, or former officer or employee violating the provisions of this section shall be guilty of a misdemeanor. Nothing in this subsection or in any other law shall prevent the exchange of information between the Division of Motor Vehicles and the Department of Revenue when such information is needed by either or both of said departments for the purposes of properly enforcing the laws with the administration of which either or both of said departments is charged. (1939, c. 275; 1945, c. 575, s. 3; 1947, c. 914, s. 2; 1951, c. 190, s. 1; c. 819, s. 1; 1955, c. 1318, s. 2; 1967, c. 1079, s. 2; 1975, c. 716, s. 5; c. 767, s. 3.)
§ 20-91.1. Taxes to be paid; suits for recovery of taxes.

Constitutionality. — The bar to suits created by this section is constitutional since the taxpayer is afforded an opportunity to be heard and is accorded due process. Cedar Creek Enterprises, Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

Applicability. — This section is applicable pursuant to § 20-96. Cedar Creek Enterprises, Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

§ 20-91.2. Overpayment of taxes to be refunded with interest.


§ 20-94. Partial payments. — In the purchase of licenses, where the gross amount of the license to any one owner amounts to more than four hundred dollars ($400.00), half of such payment may, if the Commissioner is satisfied of the financial responsibility of such owner, be deferred until June 1 in any calendar year upon the execution to the Commissioner of a draft upon any bank or trust company upon forms to be provided by the Commissioner in an amount equivalent to one half of such tax, plus a carrying charge of one half of one percent (½ of 1%); Provided, that any person using any tag so purchased after the first day of June in any such year without having first provided for the payment of such draft, shall be guilty of a misdemeanor. No further license plates shall be issued to any person executing such a draft after the due date of any such draft so long as such draft or any portion thereof remains unpaid. Any such draft being dishonored and not paid shall be subject to the penalties prescribed in G.S. 20-178 and shall be immediately turned over by the Commissioner to his duly authorized agents and/or the State Highway Patrol, to the end that this provision may be enforced. When the owner of the vehicles for which a draft has been given sells or transfers ownership to all vehicles covered by the draft, such draft shall become payable immediately; and such vehicles shall not be transferred by the Division until the draft has been paid. Any one owner whose gross license amounts to more than two hundred dollars ($200.00) but not more than four hundred dollars ($400.00) may also be permitted to sign a draft in accordance with the foregoing provisions of this section provided such owner makes application for the draft on or before February 1 during the license renewal period. (1937, c. 407, s. 58; 1943, c. 726; 1945, c. 49, ss. 1, 2; 1947, c. 219, s. 10; 1953, c. 192; 1967, c. 712; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the next-to-the-last sentence.
§ 20-96. Overloading.

Monetary Charge of Section Is "Tax"
Subject to § 20-91.1.— By using the word "tax" to include penalties, § 20-91.2 indicates that the monetary charge prescribed in this section is defined as a "tax" and is therefore subject to § 20-91.1. Cedar Creek Enterprises, Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

By labeling the required payment for overloading as an "additional tax," this section effectively defines the "penalties prescribed in G.S. 20-118" that must be paid upon a violation of this section as a "tax." Cedar Creek Enterprises, Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

The phrase "additional tax provided in this section when their vehicles are operated in excess of the licensed weight or . . . in excess of the maximum weight provided in G.S. 20-118" refers to the overloading charge set out in this section. Cedar Creek Enterprises, Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

§ 20-97. Taxes compensatory; no additional tax. — (a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon the use of any motor vehicle licensed by the State of North Carolina, except that cities and towns, other than the City of Charlotte and all incorporated cities and towns in the counties of Buncombe, Cumberland, Davidson, Johnston, Madison, McDowell, New Hanover, Pender, and Yancey, may levy not more than one dollar ($1.00) per year upon any such vehicle resident therein, and the City of Charlotte and all incorporated cities and towns in the counties of Buncombe, Cumberland, Davidson, Johnston, Madison, McDowell, New Hanover, Pender, and Yancey, may levy not more than five dollars ($5.00) per year upon any such vehicle resident therein: Provided, however, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab.

(c) In addition to the appropriation carried in the appropriations act there shall be appropriated to the Motor Vehicle Division the additional sum of fifteen thousand dollars ($15,000) from the State highway fund: Provided, that such additional sum shall be made available only in the event that the regular appropriation is insufficient and it shall be determined by the Director of the Budget that such additional amount is necessary to carry out the provisions of this Article. (1937, c. 407, s. 61; 1941, c. 36; 1943, c. 639, ss. 3, 4; 1975, c. 716, s. 5; 1977, c. 433, s. 1; c. 880, s. 1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (c).

The first 1977 amendment, in subsection (a), inserted "other than the City of Charlotte and all incorporated cities and towns in the counties of Buncombe, Cumberland, Davidson, Johnston, Madison, McDowell, New Hanover, Pender, Transylvania, and Yancey" and "and the City of Charlotte and all incorporated cities and towns in the counties of Buncombe, Cumberland, Davidson, Johnston, Madison, McDowell, New Hanover, Pender, Transylvania, and Yancey," substituted "five dollars ($5.00)" for "one dollar ($1.00)," and substituted "amounts hereinabove provided for" for "the one dollar ($1.00) per year, herein set forth."

The second 1977 amendment deleted "Transylvania" from the counties listed in the first sentence of subsection (a) as amended by the first 1977 amendment.

Session Laws 1977, c. 433, s. 2, as amended by Session Laws 1977, c. 880, s. 2, provides: "This act applies only to the City of Charlotte and to the incorporated cities and towns in the counties of Buncombe, Cumberland, Davidson, Johnston, Madison, McDowell, New Hanover, Pender, and Yancey."

As subsection (b) was not changed by the amendments, it is not set out.

When a Vehicle Is "Resident" in a Municipality. — The considerations
§ 20-102. Report of stolen and recovered motor vehicles. — Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall immediately report such theft to the Division. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the Division. (1937, c. 407, s. 66; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in two places.

§ 20-102.1. False report of theft or conversion a misdemeanor. — A person who knowingly makes to a peace officer or to the Division a false report of the theft or conversion of a motor vehicle shall be guilty of a misdemeanor, punishable within discretion of the court. (1968, c. 1083; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department.”

§ 20-103. Reports by owners of stolen and recovered vehicles. — The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the Division of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement. Every owner or other person who has given any such notice must notify the Division of the recovery of such vehicle. (1937, c. 407, s. 67; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in two places.
§ 20-104. Action by Division on report of stolen or embezzled vehicles. —
(a) The Division, upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided, shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported, and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered.

(b) The Division shall at least once each month compile and maintain at its headquarters office a list of all vehicles which have been stolen or embezzled as reported to it during the preceding month, and such lists shall be open to inspection by any peace officer or other persons interested in any such vehicle. (1937, c. 407, s. 68; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department.”

§ 20-108. Vehicles without manufacturer’s numbers. — Any person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, or has in his possession any motor vehicle, or engine or transmission removed from a motor vehicle, from which the manufacturer’s serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from the Division has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment, or both, in the discretion of the court. (1937, c. 407, s. 72; 1965, c. 621, s. 2; 1973, c. 1149, ss. 1, 2; 1975, c. 716, s. 5.)

Cross Reference. — For provision that § 14-160.1, relating to the alteration, destruction or removal of permanent identification marks from personal property, shall not affect this section, see § 14-160.1(d).

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department.”

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§ 20-109. Altering or changing engine or other numbers. — (a) It shall be unlawful and constitute a misdemeanor for:

1. Any person to willfully deface, destroy, remove, cover, or alter the manufacturer's serial number, transmission number, or engine number; or
2. Any vehicle owner to knowingly permit the defacing, removal, destroying, covering, or alteration of the serial number, transmission number, or engine number; or
3. Any person except a licensed vehicle manufacturer as authorized by law to place or stamp any serial number, transmission number, or engine number upon a vehicle, other than one assigned thereto by the Division; or
4. Any vehicle owner to knowingly permit the placing or stamping of any serial number or motor number upon a motor vehicle, except such numbers as assigned thereto by the Division.

A violation of this subsection shall be punishable by a fine or imprisonment not to exceed two years, or both, in the discretion of the court.

(b) It shall be unlawful and constitute a felony for:

1. Any person, with intent to conceal or misrepresent the true identity of the vehicle, to deface, destroy, remove, cover, alter, or use any serial or motor number assigned to a vehicle by the Division; or
2. Any vehicle owner, with intent to conceal or misrepresent the true identity of the vehicle, to permit the defacing, destruction, removal, covering, alteration, or use of a serial or motor number assigned to a vehicle by the Division; or
3. Any vehicle owner, with the intent to conceal or misrepresent the true identity of a vehicle, to permit the defacing, destruction, removal, covering, alteration, use, gift, or sale of any manufacturer's serial number, serial number plate, or any part or parts of a vehicle containing the serial number or portions of the serial number.

A violation of this subsection shall be punishable by a fine of not less than two thousand dollars ($2,000) or imprisonment for not more than five years, or both, in the discretion of the court.

§ 20-109.1. Surrender of titles to salvage vehicles. — (a) A vehicle shall be deemed to be a salvage vehicle:

1. When an insurance company as a result of having paid a total loss claim acquires title to a vehicle, and obtains possession or control of a vehicle, for any cause other than theft; or
2. When an insurance company has acquired title to and obtains possession of a vehicle in settlement of a theft loss claim, and upon recovery of the vehicle it is determined that the vehicle has been damaged to the extent that it would be considered a total loss under the provisions of comprehensive and collision insurance.

If the salvage vehicle was registered in North Carolina, or if the loss or damages occurred in North Carolina, or if the sale of the salvage vehicle takes place in North Carolina then the insurance company or their authorized agent shall within 10 days after payment of a total loss claim forward to the Division of Motor Vehicles the certificate of title or the comparable ownership document.
issued by the jurisdiction wherein the vehicle was last registered. The certificate of title or comparable ownership document shall be properly assigned to the insurance company by the vehicle owner. Subsequent transfers of ownership shall be on forms provided by the Division; and such forms shall be mailed by the Division to the insurance company at the address furnished in the assignment of title from the registered owner, unless otherwise requested in writing by the insurance company or their authorized agent. The insurance company shall make an assignment of ownership on the form and deliver it to the purchaser upon sale of the salvage vehicle. The forms shall be considered as proof of ownership for the purpose of G.S. 20-61. In the event the salvage vehicle is rebuilt, an application for reissuance of the title shall be made on a form prescribed by the Division, and the application shall be accompanied by such supporting information as the Division may require.

(b) Any person acquiring or having possession of any salvage vehicle, purchased in those states that do not require the surrender of titles to salvage vehicles shall within 10 days following delivery of the vehicle and title forward to the Division the certificate of title or comparable ownership document issued by the jurisdiction wherein the vehicle was last registered, with properly executed assignments and reassignments of such title or ownership document. Subsequent transfers of ownership and reissuance of the title shall be as provided in subsection (a) hereof.

(c) Except when operated by or at the direction of the Commissioner or his designee, no person shall operate a salvage vehicle prior to compliance with Division requirements prerequisite to application for reissuance of a title. The rebuilt salvage vehicle may be operated following completion of the required examination and certification, provided the operation shall be in compliance with Chapter 20.

(d) A violation of any provision of this section shall constitute a misdemeanor punishable by a fine of not more than one hundred dollars ($100.00) or imprisonment for not more than two years, or both, in the discretion of the court. (1978, c. 1095, s. 1; 1975, c. 716, s. 5; c. 799.)

Editor's Note. — Session Laws 1975, c. 799, in the second paragraph of subsection (a), inserted "or their authorized agent" and substituted "within 10 days after payment of a total loss claim" for "within three days after sale of salvage vehicle" in the first sentence, deleted "and the insurance company shall execute an assignment of title designating the purchaser" at the end of the second sentence, substituted "to the insurance company" for "to the purchaser" and "from the registered owner, unless otherwise requested in writing by the insurance company or their authorized agent" for "from the insurance company" in the third sentence and added the fourth sentence. In subsection (b), c. 799 substituted "purchased in those states that do not require the surrender of titles to salvage vehicles shall within 10 days following delivery of the vehicle and title" for "regardless of the source and conditions of acquisition, shall immediately" near the beginning of the subsection. The amendment also rewrote subsection (c) and substituted "not more than" for "not less than" in subsection (d).

Pursuant to Session Laws 1975, c. 716, s. 5, "Division" has been substituted for "Department" throughout this section as amended by Session Laws 1975, c. 799.

§ 20-110. When registration shall be rescinded. — (a) The Division shall rescind and cancel the registration of any vehicle which the Division shall determine is unsafe or unfit to be operated or is not equipped as required by law.

(b) The Division shall rescind and cancel the registration of any vehicle whenever the person to whom the registration card or registration number plates therefor have been issued shall make or permit to be made any unlawful use of the said card or plates or permit the use thereof by a person not entitled thereto.
§ 20-111 1977 CUMULATIVE SUPPLEMENT § 20-111

(c) The Division shall rescind and cancel the license of any dealer to whom such license has been issued when such dealer allows his registration number plates to be used for other than demonstration purposes except as provided by G.S. 20-79, fails to carry out the provisions of G.S. 20-79 and 20-82, or is convicted of a felony.

(d) The Division shall rescind and cancel the certificate of title to any vehicle which has been erroneously issued or fraudulently obtained or is unlawfully detained by anyone not entitled to possession.

(e) The Division shall rescind and cancel the license and dealer plates issued to any person when it is found that false or fraudulent statements have been made in the application for the same, and when and if it is found that the applicant does not have a bona fide place of business as provided by this Article.

(f) The Division shall rescind and cancel the dealer’s license and dealer’s license plates issued to any person who knowingly delivers a certificate of title to a vehicle purchased from him which does not show a proper or correct transfer of ownership or who willfully fails to deliver proper certificate of title to a motor vehicle sold by him.

(g) The Division shall rescind and cancel the registration plates issued to a common carrier of passengers or property which has been secured by such common carrier as provided under G.S. 20-50 when the license is being used on a vehicle other than the one for which it was issued or which is being used by the lessor-owner after the lease with such lessee has been terminated.

(h) The Division may rescind and cancel the registration or certificate of title on any vehicle on the grounds that the application therefor contains any false or fraudulent statement or that the holder of the certificate was not entitled to the issuance of a certificate of title or registration.

(i) The Division may rescind and cancel the registration or certificate of title of any vehicle when the Division has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of certificate of title constituted a fraud against the rightful owner or person having a valid lien upon such vehicle.

(j) The Division may rescind and cancel the registration or certificate of title of any vehicle on the grounds that the registration of the vehicle stands suspended or revoked under the motor vehicle laws of this State.

(k) The Division shall rescind and cancel a certificate of title when the Division finds that such certificate has been used in connection with the registration or sale of a vehicle other than the vehicle for which the certificate was issued. (1937, c. 407, s. 74; 1945, c. 576, s. 5; 1947, c. 220, s. 4; 1951, c. 985, s. 1; 1953, c. 831, s. 4; 1955, c. 294, s. 1; 1956, c. 554, s. 11; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-111. Violation of registration provisions. — It shall be unlawful for any person to commit any of the following acts:

(1) To operate or for the owner thereof knowingly to permit the operation upon a highway of any vehicle, trailer, or semitrailer required to be registered and which is not registered or for which a certificate of title has not been issued, or which does not have attached thereto and displayed thereon the registration number plate or plates assigned thereto by the Division for the current registration year, subject to the provisions of G.S. 20-64 and 20-72(a) and the exemptions mentioned in G.S. 20-65 and 20-79.
§ 20-114.1 GENERAL STATUTES OF NORTH CAROLINA § 20-116

(4) To fail or refuse to surrender to the Division, upon demand, any title certificate, registration card or registration number plate which has been suspended, canceled or revoked as in this Article provided.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivisions (1) and (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1) and (4) are set out.

§ 20-114.1. Willful failure to obey traffic officer; firemen as traffic officers.


§ 20-115. Scope and effect of regulations in this title. — It shall be unlawful and constitute a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this title, or any vehicle or vehicles which are not so constructed or equipped as required in this title, or the rules and regulations of the Department of Transportation adopted pursuant thereto and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this Article. (1937, c. 407, s. 79; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" near the middle of the section.


(e) No combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 55 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided, that wreckers in an emergency may tow a combination tractor and trailer to the nearest feasible point for repair and/or storage: Provided, that the Department of Transportation shall have authority to designate any highways upon the State system as light-traffic roads when, in the opinion of the Department of Transportation, such roads are inadequate to carry and will be injuriously affected by the maximum load, size, and/or width of trucks or buses using such roads as herein provided for, and all such roads so designated shall be conspicuously posted as light-traffic roads and the maximum load, size and/or width authorized shall be displayed on proper signs erected thereon. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. The operation of any vehicle whose gross
load, size and/or width exceed the maximum shown on such signs over the roads thus posted shall constitute a misdemeanor: Provided further, that no standard concrete highway, or other highway built of material of equivalent durability, and not less than 18 feet in width, shall be designated as a light-traffic road: Provided further, that the limitations placed on any road shall not be less than eighty percent (80%) of the standard weight, unless there shall be available an alternate improved route of not more than twenty percent (20%) increase in the distance; provided, however, that such restriction of limitations shall not apply to any county road, farm-to-market road, or any other road of the secondary system: Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Division of Motor Vehicles and the Department of Transportation.

(h) Wherever there exist two highways of the primary State highway system of approximately the same distance between two or more points, the Department of Transportation shall have authority when in the opinion of the Department of Transportation, based upon engineering and traffic investigation, safety will be promoted or the public interest will be served thereby, to designate one of said highways the “truck route” between said points, and to prohibit the use of the other highway by heavy trucks or other vehicles of a gross vehicle weight or axle load limit in excess of a designated maximum. In such instances the highways so selected for heavy vehicle traffic shall be so designated as “truck routes” by signs conspicuously posted thereon, and the highways upon which heavy vehicle traffic is prohibited shall likewise be so designated by signs conspicuously posted thereon showing the maximum gross vehicle weight or axle load limits authorized for said highways. The operation of any vehicle whose gross vehicle weight or axle load exceeds the maximum limits shown on such signs over the highway thus posted shall constitute a misdemeanor: Provided, that nothing herein shall prohibit a truck or other motor vehicle whose gross vehicle weight or axle load exceeds that prescribed for such highways from using such highway when the destination of such vehicle is located solely upon said highway, road or street: Provided, further, that nothing herein shall prohibit passenger vehicles or other light vehicles from using any highways so designated for heavy truck traffic.

(j) Self-propelled grain combines or other farm equipment self-propelled, pulled or otherwise, not exceeding 18 feet in width may be operated on any highway, except a highway or section of highway that is a part of the National System of Interstate and Defense Highways: Provided that all such combines or equipment which exceed 10 feet in width may be so operated only under the following conditions:

(1) Said equipment may only be so operated during daylight hours; and

(2) Said equipment must display a red flag on front and rear, said flags shall not be smaller than three feet wide and four feet long and be attached to a stick, pole, staff, etc., not less than four feet long and shall be so attached to said equipment as to be visible from both directions at all times while being operated on the public highway for not less than 300 feet; and

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(3) Equipment [covered] by this section, which by necessity must travel more than 10 miles or where by nature of the terrain or obstacles the flags referred to in subdivision (2) are not visible from both directions for 300 feet at any point along the proposed route, must be preceded at a distance of 300 feet and followed at a distance of 300 feet by a flagman in a vehicle having mounted thereon an appropriate warning light or flag.

(4) Every such piece of equipment so operated shall operate to the right of the center line when meeting traffic coming from the opposite direction and at all other times when possible and practical.

(5) Violation of this section shall not constitute negligence per se.

(6) When said equipment is causing a delay in traffic, the operator of said equipment shall move the equipment off the paved portion of the highway at the nearest practical location until the vehicles following said equipment have passed.

(1975, c. 148, ss. 1-5; c. 716, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The first 1975 amendment inserted "pulled" near the beginning of the introductory language of subsection (j), deleted near the middle of that language a proviso relating to special permits as provided in § 20-119, deleted "further" following "Provided" near the end of that language, deleted at the end of subdivision (2) of subsection (j) "and said equipment shall travel only on routes designated by the special permit required under this section and for distances not to exceed 10 miles" and rewrote subdivision (8) of subsection (j). Section 5 of the first 1975 amendatory act has been added by the editors as subdivision (6) of subsection (j).

The second 1975 amendment, effective July 1, 1975, substituted "Department" for "Board of Transportation" in the second proviso in subsection (e), at the end of subsection (e), and in two places in the first sentence of subsection (h), As the rest of the section was not changed by the amendments, only subsections (e), (h) and (j) are set out.

§ 20-118. Weight of vehicles and load. — No vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limits specified below:

(1) When the wheel is equipped with high-pressure pneumatic, solid rubber or cushion tire, 8,000 pounds.

(2) When the wheel is equipped with low-pressure pneumatic tire, 9,000 pounds.

(3) The gross weight on any one axle of the vehicle when the wheels attached to said axle are equipped with high-pressure solid rubber or cushion tires, 16,000 pounds.

(4) The single axle weight when the wheels attached to said axle are equipped with low-pressure pneumatic tires, 19,000 pounds, provided that the maximum weight per axle when in tandem shall remain at 18,000 pounds.

(5) For each violation of subdivisions (3) or (4), or for each violation of the maximum axle-weight limits established by the Department of Transportation in connection with light-traffic roads, the owner of the vehicle shall pay to the Division a penalty for each pound of weight of [on] such axle in excess of the said maximum weight in accordance with the following schedule: for the first 1,000 pounds or any part thereof, two cents (2¢) per pound; for the next 1,000 pounds or any part thereof, three cents (3¢) per pound; and for each additional pound, five cents (5¢)
per pound. Provided, however, the penalty shall not apply if the excess weight on any one axle does not exceed 1,000 pounds. Said 1,000 pounds shall constitute a tolerance and no additional tolerance on axle weight shall be granted administratively or otherwise. In all cases of violation of the axle-weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted in subdivisions (3) and (4) including the 1,000-pound tolerance. The penalties herein provided shall constitute sole punishment for violation of this subdivision and violators thereof shall not be subject to criminal action. Provided, that a truck or other motor vehicle whose axle load exceeds that prescribed for light-traffic roads shall be exempt from such limitations when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and row crops when the destination of such vehicle and load is located solely upon said light-traffic road. Provided further that a truck or other motor vehicle whose axle load exceeds that prescribed for light-traffic roads shall be exempt from such limitations when transporting meats and row crop products originating from a farm on a light-traffic road to the nearest State maintained road which is not posted to prohibit the transportation of statutory legal load limits. Provided further that nothing herein contained shall be construed in order to raise the load limit heretofore or hereafter set by the Department of Transportation on any bridge. In the event of undue damage to any light-traffic road heretofore referred as a result of this action, such road or roads may then be restricted by the Division of Highways. Provided, that when it is discovered that a vehicle is in violation of subdivisions (3) or (4), or is in violation of the maximum axle-weight limits established by the Department of Transportation in connection with light-traffic roads, the owner of the vehicle shall be permitted to shift without penalty the weight from one axle to another to comply with the axle limits set forth in this section in the following instances, provided, that the gross weight of the vehicle is within the legal limit:

a. In cases where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. In cases where the vehicle has tandem axles and the weight exceeds the statutory limits, but does not exceed 40,000 pounds for any two-axle combination or 60,000 pounds for any three-axle combination.

c. In cases where the axle weight does not exceed 15,500 pounds and the limit placed on the road or highway by the Department of Transportation is 18,000 pounds per axle.

(6) Axle Weights. — For the purposes of this section, the following definitions shall apply:

a. Single-axle weight. — The total load on all wheels whose centers are included within two parallel transverse planes less than 48 inches apart.

b. Tandem-axle weight. — The total load on all wheels whose centers are at least 48 inches apart but not more than 104 inches apart and are equipped with a connecting mechanism designed to equalize the load on all axles except that as to any vehicle equipped with tandem axles prior to July 1, 1969, the portion of this definition concerning a connecting mechanism designed to equalize the load on all axles shall not apply.

(7) For the purposes of this section every pneumatic tire designed for use and used when inflated with air to less than 100 pounds pressure shall
be deemed a low-pressure pneumatic tire, and every pneumatic tire inflated to 100 pounds pressure or more shall be deemed a high-pressure pneumatic tire.

(8) The gross weight of any vehicle having two axles shall not exceed 30,000 pounds, unless used in connection with a combination consisting of four axles or more. For the purpose of determining the maximum weight to be allowed for passenger buses to be operated upon the highways of this State, the Commissioner of Motor Vehicles shall require, prior to the issuance of license, a certificate showing the weight of such bus when fully equipped for the road. No license shall be issued to any passenger bus with two axles having a weight, when fully equipped for operation on the highways, of more than 22,500 pounds, and no license shall be issued for any passenger bus with three axles having a weight, when fully equipped for operation on the highways, of more than 30,000 pounds, unless the bus for which application for license is made shall have been licensed in the State of North Carolina prior to the first day of February, 1949. No special permits shall be issued for any passenger buses exceeding the foregoing specified weights for each group.

(9) The gross weight of any vehicle or combination of vehicles having three axles shall not exceed 47,500 pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes. For the purposes of this subdivision, brakes shall not be required on the front wheels; provided, however, such vehicle must be capable of complying with the performance requirements of G.S. 20-124(e).

(10) The gross weight of any vehicle or combination of vehicles having four or more axles shall not exceed 64,000 pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes; provided, the gross weight of any vehicle or combination of vehicles having five or more axles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

<table>
<thead>
<tr>
<th>Distance in feet between the extremes of any 5-axle group</th>
<th>Maximum weight in pounds on any 5-axle group</th>
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<tr>
<td>35 or under</td>
<td>70,000</td>
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<td>36</td>
<td>70,500</td>
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<td>44</td>
<td>75,500</td>
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<tr>
<td>45</td>
<td>76,000</td>
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</table>

For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes. Provided a wrecker towing a disabled vehicle or vehicles of an emergency nature, only the weight of the vehicle or combination of vehicles being towed shall be considered. For the purposes of this subdivision, brakes shall not be required on the front wheels; provided, however, such vehicle must be capable of complying with the performance requirements of G.S. 20-124(e).
(11) The gross weight with normal load of passengers of any vehicle propelled by electric power obtained from trolley wires, but not operated upon rails, commonly known as an electric trackless trolley coach, which is operated as a part of the general trackless trolley system of passenger transportation of the City of Greensboro and vicinity, shall not exceed 30,000 pounds.

(12) No vehicle shall be operated on any highway the weight of which, resting on the surface of such highway, exceeds 600 pounds upon any inch of tire roller or other support.

Any vehicle or combination of vehicle and load may exceed the gross weight limitations for the vehicle or vehicle and load hereinbefore set out in this section by not more than five per centum (5%), except that under no circumstances shall the total weight, including tolerance, exceed 73,280 pounds on the National System of Interstate and Defense Highways unless changed by federal law.

For each violation of the gross weight limitation for the vehicle or vehicle and load, the owner of the vehicle shall pay to the Division a penalty for each pound of weight of such vehicle or vehicle and load in excess of the weight limitations, including the five percent (5%), hereinbefore set out in this section for each vehicle or vehicle and load in accordance with the following schedule: for the first 2,000 pounds or any part thereof, one cent (1¢) per pound; for the next 3,000 pounds or any part thereof, two cents (2¢) per pound; for each pound in excess of 5,000 pounds, five cents (5¢) per pound.

Any vehicle or combination of vehicles operated on any highway on the State highway system shall also be subject to the safe load-carrying capacity for bridges as established and posted by the Department of Transportation pursuant to G.S. 186-72. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784: 1945, c. 242, s. 2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 572; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044; 1969, c. 537; 1973, c. 507, s. 5; c. 1449, ss. 1, 2; 1975, c. 325; c. 373, s. 2; c. 716, s. 5; c. 735; c. 736, ss. 1-3; 1977, c. 461; c. 464, s. 34.)

Editor's Note. —
The first 1975 amendment deleted, immediately following the table of distances and weights in subdivision (10), a proviso which read: "Provided the tandem-axle weight shall not exceed 35,700 pounds where the gross weight of any vehicle or combination of vehicles having five or more axles exceeds 73,000 pounds."

The second 1975 amendment added the last paragraph of the section.

The third 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivision (5) and in the next-to-last paragraph of the section.

The fourth 1975 amendment substituted present subdivision (4) for a provision which read: "When the wheels attached to said axle are equipped with low-pressure pneumatic tires, 18,000 pounds."

The fifth 1975 amendment added the present sixth, eighth and ninth sentences in subdivision (5).

The first 1977 amendment added the seventh sentence of subdivision (5).

The second 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

Penalty Qualifies As "Tax". — The penalties prescribed in this section are deemed a "tax" under § 20-96 and qualify as "any tax" as used in § 20-91.1. Cedar Creek Enterprises, Inc. v. State Dep't of Motor Vehicles, 290 N.C. 450, 226 S.E.2d 336 (1976).

The penalties provided in subdivisions (5) and (12) are mandatory. Opinion of Attorney General to Mr. J.F. Alexander, 44 N.C.A.G. 307 (1975).

§ 20-118.2. Authority to fix higher weight limitations at reduced speeds for certain vehicles. — The Department of Transportation is hereby authorized and empowered to fix higher weight limitations at reduced speeds for vehicles used in transporting property when the point of origin or destination of the motor vehicles is located upon any light traffic highway, county road, farm-to-market road, or any other roads of the secondary system only and/or to the extent only
that the motor vehicle is necessarily using said highway in transporting the
property from the bona fide point of origin of the property being transported
or to the bona fide point of destination of said property and such weights may
be different from the weight of those vehicles otherwise using such roads. (1951,
c. 1013, s. 7A; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977,
substituted “Department of Transportation” for

§ 20-119. Special permits for vehicles of excessive size or weight. — The
Department of Transportation may, in their discretion, upon application in
writing and good cause being shown therefor, issue a special permit in writing
authorizing the applicant to operate or move a vehicle of a size or weight exceeding a maximum specified in this Article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer; and it shall be a misdemeanor for any person to violate any of the terms or conditions of such special permit: Provided, the authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or width exceeding the maximum expressed in this Article. (1987, c. 407, s. 83; 1957, c. 65, s. 11; 1959, c. 1129; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977,
substituted “Department of Transportation” for

§ 20-121. When authorities may restrict right to use highways. — The
Department of Transportation or local authorities may prohibit the operation
of vehicles upon or impose restrictions as to the weight thereof, for a total period not to exceed 90 days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which the body adopting the ordinance is responsible, whenever any said highway by reason of deterioration, rain, snow or other climatic conditions will be damaged unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. The local authority enacting any such ordinance shall erect, or cause to be erected and maintained, signs designating the provisions of the ordinance at each end of that portion of any highway to which the ordinance is applicable, and the ordinance shall not be effective until or unless such signs are erected and maintained. (1937, c. 407, s. 84; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977,
substituted “Department of Transportation” for

§ 20-122. Restrictions as to tire equipment.
(c) The Department of Transportation or local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks
with transverse corrugation upon the periphery of such movable tracks or farm tractors of other farm machinery.
(1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subsection (c).

§ 20-123. Trailers and towed vehicles. — (a) No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one trailer or semitrailer: Provided that this provision shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers: Provided that this provision shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveaway service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Division of Motor Vehicles and the Department of Transportation. Nothing herein shall prohibit the towing of farm trailers and equipment in single tandem during the period from one-half hour before sunrise and one-half hour after sunset, but such combination of vehicles shall not exceed a total length of 40 feet and provided there is displayed on the rear of the last vehicle being towed, in such position as to be clearly visible at all times, a red flag not less than 12 inches both in length and width. The towing of farm trailers and equipment as herein permitted shall not be applicable to interstate or federal numbered highways.
(1975, c. 716, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — As subsection (b) was not changed by the amendments, it is not set out.


Fold-Out Camper Trailers Are Not House Trailers. — See opinion of Attorney General to The Honorable Donald R. Kincaid, Member of Senate, N.C. General Assembly, 45 N.C.A.G. 210 (1976).

§ 20-125. Horns and warning devices.

(b) Every vehicle owned and operated by a police department or by the State Highway Patrol or by the Wildlife Resources Commission and used exclusively for law-enforcement purposes, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation, and every ambulance used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.
The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals and civil preparedness coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by inspectors in the employ of the North Carolina Utilities Commission shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law-enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law-enforcement officer while actively engaged in performing law-enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(1975, c. 588; c. 734, s. 15; 1977, c. 52, s. 1; c. 438, s. 1.)

Editor's Note. — Session Laws 1975, c. 588, substituted “assistant chiefs” for “one assistant chief” near the beginning of the third paragraph of subsection (b).

Session Laws 1975, c. 734, s. 15, directed that subsection (b) of this section be amended by substituting “civil preparedness” for “civil defense” in the third sentence of the sixth paragraph. The intention was evidently to amend the third line of the sixth paragraph, which consists of a single sentence, and the editors have so treated the amendment.

The first 1977 amendment inserted “county fire marshals and civil preparedness coordinators” near the middle of the third paragraph of subsection (b).

The second 1977 amendment inserted, in the first paragraph of subsection (b), “vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation.”

As the rest of the section was not changed by the amendments, only subsection (b) is set out.

§ 20-125.1. Directional signals.

(b) It shall be unlawful for any dealer to sell or deliver in this State any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, if he knows or has reasonable cause to believe that the purchaser of such vehicle intends to register it or cause it to be registered in this State or to resell it to any other person for registration in and use upon the highways of this State, unless such motor vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either of the front or rear or within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles: Provided that in the case of any motor vehicle manufactured
or assembled after July 1, 1953, the signal device with which such motor vehicle is equipped shall be presumed prima facie to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the effect that a particular type of signal device has been approved by his Division shall be admissible in evidence in all the courts of this State.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the end of subsection (b).


Editor's Note. —

The title of the Department of Natural and Economic Resources was changed to Department of Natural Resources and Community Development by Session Laws 1977, c. 771, s. 4.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 20-129.2. Lighting equipment for mobile homes. — Notwithstanding the provisions of G.S. 20-129 and 20-129.1, the lighting equipment required to be provided and equipped on a house trailer, mobile home, modular home, or structural component thereof shall be as designated by the Commissioner of Motor Vehicles and from time to time promulgated by regulation of the Division.

(1975, c. 716, s. 5; c. 833, s. 1.)

Editor's Note. — Pursuant to Session Laws 1975, c. 716, s. 5, "Division" has been substituted for "Department" at the end of the section as enacted by Session Laws 1975, c. 833, s. 1.

§ 20-130. Additional permissible light on vehicle.

(d) Electronically Modulated Headlamps. — Nothing contained in this Chapter shall prohibit the use of electronically modulated headlamps on motorcycles, law-enforcement and fire department vehicles, county fire marshals and civil preparedness coordinators, public and private ambulances, and rescue squad emergency service vehicles, provided such headlamps and light modulator are of a type or kind which have been approved by the Commissioner of Motor Vehicles. (1937, c. 407, s. 98; 1977, c. 104.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 20-130.1. Use of red lights on front of vehicles prohibited: exceptions. — It shall be unlawful for any person to drive upon the highways of this State any vehicle displaying red lights visible from the front of said vehicle. The provisions of this section shall not apply to police cars, highway patrol cars, vehicles owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes, ambulances, vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation, fire-fighting vehicles, school buses, a vehicle operated in the performance of his duties or services by any member of a municipal or rural fire department, paid or voluntary, or vehicles of a voluntary life-saving organization that have been officially approved by the local police authorities and manned or operated by members of such organization while on official call
or vehicles operated by medical doctors and anesthetists in emergencies or to such lights as may be prescribed by the Interstate Commerce Commission. The provisions of this section shall not apply to motor vehicles used in law enforcement by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, county fire marshal, or civil preparedness coordinator regardless of whether or not the vehicle is owned by the county. (1943, c. 726; 1947, c. 1032; 1953, c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2; 1967, c. 651, s. 1; 1971, c. 1214; 1977, c. 52, s. 2; c. 438, s. 2.)

Editor's Note. — The first 1977 amendment inserted "county fire marshal, or civil preparedness coordinator" near the end of the last sentence.

The second 1977 amendment inserted in the second sentence "vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation."

§ 20-130.2. Use of amber lights on certain vehicles. — All wreckers operated on the highways of the State shall be equipped with an amber-colored flashing light which shall be so mounted and located as to be clearly visible in all directions from a distance of 500 feet. It shall be lawful to equip any other vehicle with a similar warning light including, but not by way of limitation, maintenance or construction vehicles or equipment of the Department of Transportation engaged in performing maintenance or construction work on the roads, maintenance or construction vehicles of any person, firm or corporation, and any other vehicles required to contain a warning light. (1967, c. 651, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 20-134. Lights on parked vehicles.


§ 20-135. Safety glass.

(c) The Division of Motor Vehicles shall approve and maintain a list of the approved types of glass, conforming to the specifications and requirements for safety glass as set forth in this Article, and in accordance with standards recognized by the United States Bureau of Standards, and shall not issue a license for or relicense any motor vehicle subject to the provisions of this Article unless such motor vehicle be equipped as herein provided with such approved type of glass.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (c). As the rest of the section was not changed by the amendment, only subsection (c) is set out.


(b), (c) Repealed by Session Laws 1975, c. 856. (1975, c. 856.)
Part 9A. Abandoned and Derelict Motor Vehicles.

§ 20-137.7. Definitions of words and phrases. — The following words and phrases when used in this Part shall for the purpose of this Part have the meaning respectively prescribed to them in this Part, except in those instances where the context clearly indicates a different meaning:

(4) "Derelict vehicle" means a motor vehicle:
   a. Whose certificate of registration has expired and the registered and legal owner no longer resides at the address listed on the last certificate of registration on record with the North Carolina Department of Transportation; or
   b. Whose major parts have been removed so as to render the vehicle inoperable and incapable of passing inspection as required under existing standards; or
   c. Whose manufacturer's serial plates, vehicle identification numbers, license number plates and any other means of identification have been removed so as to nullify efforts to locate or identify the registered and legal owner; or
   d. Whose registered and legal owner of record disclaims ownership or releases his rights thereto; or
   e. Which is more than 12 years old and does not bear a current license as required by the Department.

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by adding "Whose" at the beginning of paragraph c of subdivision (4).

§ 20-137.10. Abandoned and derelict vehicles to be tagged; determination of value.

(b) Repealed by Session Laws 1975, c. 438, s. 3.

(c) The tag shall serve as the only notice that if the vehicle is not removed within five days from the date reflected on the tag, it will be removed to a designated place to be sold. After the vehicle is removed, the Secretary shall give notice in writing to the person in whose name the vehicle was last registered at the last address reflected in the Department's records and to any lienholder of record that the vehicle is being held, designating the place where the vehicle is being held and that if it is not redeemed within 10 days from the date of the notice by paying all costs of removal and storage the same shall be sold for recycling purposes. The proceeds of the sale shall be deposited in the highway fund established for the purpose of administering the provisions of this Part.

(d1) If the value of the vehicle is determined to be less than one hundred dollars ($100.00), and if the identity of the last registered owner cannot be determined or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identification and addresses of any lienholders, no notice in addition to that required by subsection (a) hereof shall be required prior to sale.

Editor's Note. — The 1975 amendment deleted subsection (b), relating to vehicles valued at less than $100.00, substituted "The tag" for "If the value of the vehicle is
§ 20-138. Persons under the influence of intoxicating liquor.

Constitutionality. — The prohibition against driving upon the public highways when the amount of alcohol in one's blood is 0.10 percent or more by weight contributes in a real and substantial way to the safety of other travelers and is a constitutional exercise of police power by the General Assembly. State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976).

The arrangement of this section is a logical and permissible effort by the legislature to provide for safety on the highways of this State. State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976).

Purpose of Section. — This section is designed for the protection of human life or limb. State v. Stewardson, 32 N.C. App. 344, 232 S.E.2d 308 (1977).


The elements of the offense defined in subsection (b) are (1) driving a vehicle, (2) upon a highway (or public vehicular area) within the State, (3) when the amount of alcohol in the driver's blood is 0.10 percent or more by weight. State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976).


Words “Section” And “Subsection” Intended to Have Different Applications. — It is apparent from the distinctive use in this section of the words “section” and “subsection” that the General Assembly intended them to have different applications in the enforcement of this section. The General Assembly intended the term “section” to refer to § 20-138 in its entirety while the term “subsection” refers to either § 20-138(a) or (b) individually. Helms v. Powell, 32 N.C. App. 266, 231 S.E.2d 912 (1977).

The use of the word “subsection” in the last sentence of subsection (b) is a strong indication that the General Assembly intended (a) and (b) as separate subsections. Helms v. Powell, 32 N.C. App. 266, 231 S.E.2d 912 (1977).

Thus, a “first conviction under this section” within the meaning of subsection (b) is a conviction of either offense provided by this section. Helms v. Powell, 32 N.C. App. 266, 231 S.E.2d 912 (1977).

Violation of Subsection (a) Is Negligence, etc. — An intentional, willful, or wanton violation of a statute or ordinance, designed for the protection of human life or limb, which proximately results in injury or death, is culpable negligence. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

Death caused by a violation of subsection (a), etc. — Death caused by a violation of either this section or § 20-140(b) may constitute manslaughter. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).


A precedent to a conviction of manslaughter for the violation of either this section or § 20-140(b) or both is that the violation of either one or both must have caused the accident and the death of decedent. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

The fact that a motorist has been drinking, etc. — In accord with original. See State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

The intent of the legislature as revealed by the last sentence of this section is threefold: (1) In order that a defendant shall not be twice convicted by prosecution under each subsection separately, an offense under subsection (b) is to be treated as a lesser included offense of an offense under subsection (a) for protection against such double jeopardy; (2) to place a defendant on notice by statute that in a prosecution under subsection (a), if there is evidence of a chemical analysis of his breath or blood indicating that the amount of alcohol in his blood is 0.10 percent or more by weight, he may be convicted under subsection (b); and (3) to provide that where there is evidence of a chemical analysis of a defendant's breath or blood offered in a prosecution under subsection (a), the offense under subsection (b) shall be submitted as a lesser included offense. State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976).
Evidence of Amount of Alcohol in Blood Required for Submission of Lesser Included Offense. — In a prosecution under subsection (a), where there is no evidence offered of a chemical analysis of the defendant's breath or blood indicating that the amount of alcohol in defendant's blood was 0.10 percent or more by weight, the offense under subsection (b) may not be submitted as a lesser included offense. State v. Basinger, 30 N.C. App. 45, 226 S.E.2d 216 (1976).

Source of Alcohol under Subsection (b) Need Not Be Intoxicating Beverage. — The primary purpose for which the General Assembly enacted subsection (b) is to regulate conduct for the safety of the public using the State's highways, and it would be contrary to the legislative intent of subsection (b) to read into it a requirement that the source of alcohol be intoxicating beverage as required in subsection (a). A person whose blood contains .10 percent or more by weight of alcohol, regardless of the source of the alcohol, and who drives upon the highways within the State, violates subsection (b). State v. Hill, 31 N.C. App. 733, 230 S.E.2d 579 (1976).

And State Need Not Prove Defendant Knew He Was Drinking Alcohol. — In order to convict, under subsection (b), the State need not prove that defendant must have known or had reasonable grounds to believe that he was drinking alcohol. State v. Hill, 31 N.C. App. 733, 230 S.E.2d 579 (1976).


Instruction on Lesser Included Offense of Reckless Driving. — The fact that the evidence indicated that defendant operated a motor vehicle upon a highway after consuming such quantity of intoxicating liquor as directly and visibly affected the operation of said vehicle, thereby satisfying the requisite elements of § 20-140(c), combined with the legislative mandate that such offense is a lesser included offense of reckless driving as defined in this section, required a finding that the trial court should have instructed the jury that they could find defendant guilty of the lesser included offense of reckless driving as defined in § 20-140(c). State v. Burrus, 30 N.C. App. 250, 226 S.E.2d 677 (1976).

In a prosecution for driving under the influence of intoxicating liquor, where the record was devoid of any evidence tending to show that defendant's consumption of intoxicating liquor directly and visibly affected his operation of his motor vehicle immediately prior to his arrest for driving under the influence, the trial judge was not required to charge the jury on the lesser included offense of reckless driving. State v. Pate, 29 N.C. App. 35, 222 S.E.2d 741 (1976).

Section Applicable to Persons Operating Bicycles with Helper Motors. — See opinion of Attorney General to Mr. Michael F. Royster, Assistant District Attorney, Twenty-Sixth Judicial District, 45 N.C.A.G. 286 (1976).

 Sufficiency of Warrant. — A warrant charging defendant with driving under the influence and reckless driving, which were treated as separate counts, was sufficient since each count charged all the essential elements constituting the violation of law charged. State v. Fuller, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

“Operator” under § 20-4.01(25). — In a prosecution for driving under the influence and driving while license was revoked, evidence that defendant was seated behind the wheel of a car which had the motor running was sufficient to prove that defendant was the operator of the car under § 20-4.01(25). State v. Turner, 29 N.C. App. 163, 223 S.E.2d 530 (1976).


§ 20-139. Persons under the influence of drugs.

Cited in In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975).

§ 20-139.1. Result of a chemical analysis admissible in evidence; presumption.

(b) Chemical analyses of the person’s breath or blood, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the Commission for Health Services and by an individual possessing a valid permit issued by the Department of Human Resources for this purpose. The Department of Human Resources is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and the Department of Human Resources may issue permits which shall be subject to termination or revocation at the discretion of the Department of Human Resources; provided, that in no case shall the arresting officer or officers administer said test. (1975, c. 405.)

Editor’s Note. — The 1975 amendment substituted “Department of Human Resources” for “Commission for Health Services” near the end of the first sentence and immediately preceding the proviso to the second sentence in subsection (b).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

North Carolina countenances the introduction of test results, certified copies of official documents and records, as well as other writings, which, but for statutory or decisional authority, would be written hearsay. In re Arthur, 27 N.C. App. 227, 218 S.E.2d 869, cert. granted, 288 N.C. 730, 220 S.E.2d 621 (1975).

Result of Breathalyzer Test, etc. — In an action to recover damages for injuries received when defendant’s car struck the motorcycle upon which plaintiff was a passenger, there was no prejudice to defendant by the admission of the results of the blood alcohol test performed upon the motorcycle’s driver since there was no evidence tending to establish any connection between the driver’s drinking and the cause of the accident. Gwaltney v. Keaton, 29 N.C. App. 91, 228 S.E.2d 506 (1976).

Failure to Comply with Subsection (b). — The failure of the State to produce evidence of the test operator’s compliance with subsection (b) must be deemed prejudicial error. State v. Gray, 28 N.C. App. 506, 221 S.E.2d 765 (1976). The burden of proving compliance with subsection (b) lies with the State and the failure to offer any proof is not sanctioned by the courts. State v. Gray, 28 N.C. App. 506, 221 S.E.2d 765 (1976).

Refusal of arresting officer to sign forms authorizing that blood sample be sent from hospital that did not perform certain type of analysis to hospital that did was not a violation of defendant’s rights under subsection (d) of this section so as to render prior breathalyzer results inadmissible, since the officer complied with the mandate of this section by taking defendant to a physician of his choice for the prior test and it was defendant’s responsibility to obtain an analysis of the blood sample. State v. Sawyer, 26 N.C. App. 728, 217 S.E.2d 116, cert. denied, 288 N.C. 895, 218 S.E.2d 469 (1975).

Admission of Evidence of Refusal to Submit to Test Does Not Violate Right Against Self-incrimination. — The admission of evidence of defendant’s refusal to submit to the tests under this section does not violate his constitutional right against self-incrimination. State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).

Miranda Requirements Inapplicable to Breathalyzer Test. — Since the taking of a breath sample from an accused for the purpose of the test is not evidence of a testimonial or communicative nature within the privilege against self-incrimination, the requirements of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966) are inapplicable to a breathalyzer test administered pursuant to this section. State v. Flannery, 31 N.C. App. 617, 230 S.E.2d 603 (1976).


Thus, this section is not violated when the request comes from the arresting officer. —
§ 20-140. Reckless driving.


A precedent to a conviction of manslaughter for the violation of either subsection (b) of this section or § 20-138 or both is that the violation of either one or both must have caused the accident and the death of decedent. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

The language of this section defines, etc. — An intentional, willful, or wanton violation of a statute or ordinance, designed for the protection of human life or limb, which proximately results in injury or death, is culpable negligence. State v. Griffith, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

Warrants Held Sufficient. — A warrant charging defendant with driving under the influence and reckless driving, which were treated as separate counts, was sufficient since each count charged all the essential elements constituting the violation of law charged. State v. Fuller, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

Charge on Lesser Included Offense to § 20-138. — The fact that the evidence indicated that defendant operated a motor vehicle upon a highway after consuming such quantity of intoxicating liquor as directly and visibly affected the operation of said vehicle, thereby satisfying the requisite elements of subsection (c) of this section, combined with the legislative mandate that such offense is a lesser included offense of driving under the influence of intoxicating liquor as defined in § 20-138, required a finding that the trial court should have instructed the jury that they could find defendant guilty of the lesser included offense of reckless driving as defined in subsection (c). State v. Burrus, 30 N.C. App. 250, 226 S.E.2d 677 (1976).

In a prosecution for driving under the influence of intoxicating liquor, where the record was devoid of any evidence tending to show that defendant's consumption of intoxicating liquor directly and visibly affected his operation of his motor vehicle immediately prior to his arrest for driving under the influence, the trial judge was not required to charge the jury on the lesser included offense of reckless driving. State v. Pate, 29 N.C. App. 85, 222 S.E.2d 741 (1976).


§ 20-140.3. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways. — On those sections of
highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access highways, it shall be unlawful for any person:

(7) Notwithstanding any other subdivision of this section, a member of the State Highway Patrol may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the patrol member has reasonable grounds to believe that his presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose. (1973, c. 1330, s. 5; 1977, c. 731, s. 1.)

Cross reference. — See § 136-89.58.
Editor's Note. — The 1977 amendment added subdivision (7).

§ 20-141. Speed restrictions.
(d) (1) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that any speed allowed by subsection (b) is greater than is reasonable and safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as part of the Interstate Highway System or other controlled-access highway (either inside or outside the corporate limits of a municipality), the Department of Transportation shall determine and declare a reasonable and safe speed limit.

(2) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe under the conditions found to exist upon any part of a highway designated as part of the Interstate Highway System or other controlled-access highway (either inside or outside the corporate limits of a municipality) the Department of Transportation shall determine and declare a reasonable and safe speed limit. A speed limit set pursuant to this subsection may not exceed 70 miles per hour.

Speed limits set pursuant to this subsection are not effective until appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(f) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed hereinbefore set forth is greater than is reasonable and safe, under the conditions found to exist upon any part of a street within the corporate limits of a municipality and which street is a part of the State highway system (except those highways designated as part of the interstate highway system or other controlled-access highway) said local authorities shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 miles per hour. Limits set pursuant to this subsection shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

(g) Whenever the Department of Transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Department of Transportation or such local authority may determine and declare a minimum
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speed below which no person shall operate a motor vehicle except when necessary for safe operation in compliance with law. Such minimum speed limit shall be effective when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed limit are passed and concurred in by both the Department of Transportation and the local authorities. The provisions of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(i) The Department of Transportation shall have authority to designate and appropriately mark certain highways of the State as truck routes.

(k) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the maximum speed limit on any public highway within the State of North Carolina shall not exceed 55 miles per hour.

(l) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, including municipal charters, any speed limit on any portion of the public highways within the jurisdiction of this State shall be uniformly applicable to all types of motor vehicles using such portion of the highway, if on November 1, 1973, such portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. Provided, however, that a lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. The requirement for a uniform speed limit hereunder shall not apply to any portion of the highway during such time as the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of the highway.

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

(n) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the failure of a motorist to stop his vehicle within the radius of its headlights or the range of his vision shall not be held negligence per se or contributory negligence per se. (1937, c. 297, s. 2; c. 407, s. 103; 1939, c. 275; 1941, c. 347; 1947, c. 1067, s. 17; 1949, c. 947, s. 1; 1953, c. 1145; 1955, c. 398; c. 555, ss. 1, 2; c. 1042; 1957, c. 65, s. 11; c. 214; 1959, c. 640; c. 1264, s. 10; 1961, cc. 99, 1147; 1963, cc. 134, 456, 949; 1967, c. 106; 1971, c. 79, ss. 1-3; 1973, c. 507, s. 5; c. 1380, s. 7; 1975, c. 225; 1977, c. 367; c. 464, s. 34; c. 470.)

Local Modification. — Burke: 1975, c. 533; Richmond: 1975, c. 17.

Cross Reference. — As to minimum speed on inside lanes of certain dual-lane highways, see § 20-146, subsection (e).

Editor’s Note. —

The 1975 amendment added subsections (k) and (l).

The first 1977 amendment, effective July 1, 1977, added subsection (m).

The second 1977 amendment, effective July 1, 1977, substituted “Department of Transportation” for “Board of Transportation” and “Board” throughout the section.

The third 1977 amendment added subsection (n).

As the rest of the section was not changed by the amendments, subsections (a), (b), (c), (e), (h) and (j) are not set out.


§ 20-141.1. Speed limits in school zones. — The Board of Transportation or local authorities within their respective jurisdictions may, by ordinance, set speed limits lower than those designated in G.S. 20-141 for areas adjacent to or near a public, private or parochial school. Limits set pursuant to this section shall become effective when signs are erected giving notice of the school zone, the authorized speed limit, and the days and hours when the lower limit is effective. Limits set pursuant to this section may be enforced only on days when school is in session, and no speed limit below 20 miles per hour may be set under the authority of this section. (1977, c. 902, s. 2.)

Editor's Note. — Session Laws 1977, c. 902, s. 3, makes this section effective July 1, 1977.

§ 20-141.3. Unlawful racing on streets and highways.
(d) The Commissioner of Motor Vehicles shall revoke the operator’s or chauffeur’s license or privilege to drive of every person convicted of violating the provisions of subsection (a) or subsection (c) of this section, said revocation to be for three years; provided any person whose license has been revoked under this section may apply for a new license after 18 months from revocation. Upon filing of such application the Division may issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past 18 months and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Division may see fit to impose for the balance of the three-year revocation period, which period shall be computed from the date of the original revocation.

(1975, c. 416, s. 3)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsection (d).

§ 20-141.4. Death by vehicle.

Intent of Legislature. — The intention of the legislature in enacting this section was to define a crime of lesser degree of manslaughter wherein criminal responsibility for death by vehicle is not dependent upon the presence of culpable or criminal negligence. State v. Freeman, 31 N.C. App. 93, 228 S.E.2d 516, cert. denied, 291 N.C. 449, 230 S.E.2d 766 (1976).

The purpose of subsection (c) is not to prevent the courts from treating one offense as a lesser included offense of the other, but rather to prevent the State from bringing a new prosecution against a defendant for death by vehicle after he has already been convicted or acquitted of manslaughter. State v. Freeman, 31 N.C. App. 93, 228 S.E.2d 516, cert. denied, 291 N.C. 449, 230 S.E.2d 766 (1976).

Every element of this section is embraced in the common-law definition of involuntary manslaughter. State v. Freeman, 31 N.C. App. 93, 228 S.E.2d 516, cert. denied, 291 N.C. 449, 230 S.E.2d 766 (1976).

§ 20-143. Vehicles must stop at certain railway grade crossings. — The Department of Transportation or local authorities are hereby authorized to designate dangerous railroad grade crossings and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within 50 feet but not less than 10 feet from the nearest rail of such railroad and shall proceed only upon exercising due care. (1937, c. 407, s. 105; 1969, c. 1231, s. 1; 1973, c. 1330, s. 11; 1977, c. 464, s. 34.)
§ 20-144. Special speed limitation on bridges. — It shall be unlawful to drive any vehicle upon any public bridge, causeway or viaduct at a speed which is greater than the maximum speed which can with safety to such structure be maintained thereon, when such structure is signposted as provided in this section.

The Department of Transportation, upon request from any local authorities, shall, or upon its own initiative may, conduct an investigation of any public bridge, causeway or viaduct, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this Article, the Division shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of 100 feet beyond each end of such structure. The findings and determination of the Department of Transportation shall be conclusive evidence of the maximum speed which can with safety to any such structure be maintained thereon. (1937, c. 407, s. 106; 1957, c. 65, s. 11; 1973, c. 507, ss. 5, 21; 1975, c. 715, s. 5; 1977, c. 464, s. 34.)

§ 20-145. When speed limit not applicable. — The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances and rescue squad emergency service vehicles when traveling in emergencies, nor to vehicles operated by county fire marshals and civil preparedness coordinators when traveling in the performances of their duties, nor to vehicles operated by the duly authorized officers, agents and employees of the North Carolina Utilities Commission when traveling in performance of their duties in regulating and checking the traffic and speed of buses, trucks, motor vehicles and motor vehicle carriers subject to the regulations and jurisdiction of the North Carolina Utilities Commission. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others. (1937, c. 407, s. 107; 1947, c. 987; 1971, c. 5; 1977, c. 52, s. 3.)
§ 20-146. Drive on right side of highway; exceptions.  
(e) Notwithstanding any other provisions of this section, when appropriate signs have been posted, it shall be unlawful for any person to operate a motor vehicle over and upon the inside lane, next to the median of any dual-lane highway at a speed less than the posted speed limit when the operation of said motor vehicle over and upon said inside lane shall impede the steady flow of traffic except when preparing for a left turn. “Appropriate signs” as used herein shall be construed as including “Slower Traffic Keep Right” or designations of similar import. Any person violating the provisions of this section shall be guilty of a misdemeanor punishable as provided in G.S. 20-176. (1987, c. 407, s. 108; 1965, c. 678, s. 2; 1973, c. 1330, s. 13; 1975, c. 593.)

Editor's Note. —  
The 1975 amendment, effective July 1, 1975, added subsection (e).  
As the rest of the section was not changed by the amendment, only subsection (e) is set out.  

§ 20-146.1. Operation of motorcycles. — (a) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.  
(b) Motorcycles shall not be operated more than two abreast in a single lane. (1965, c. 909; 1973, c. 1330, s. 14; 1975, c. 786.)

Editor's Note. —  
The 1975 amendment rewrote this section.

§ 20-149. Overtaking a vehicle.  

§ 20-150. Limitations on privilege of overtaking and passing.  
(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any railway grade crossing nor at any intersection of highway unless permitted so to do by a traffic or police officer. For the purposes of this section the words “intersection of highway” shall be defined and limited to intersections designated and marked by the Department of Transportation by appropriate signs, and street intersections in cities and towns.  
(d) The driver of a vehicle shall not drive to the left side of the centerline of a highway upon the crest of a grade or upon a curve in the highway where such centerline has been placed upon such highway by the Department of Transportation, and is visible.  
(e) The driver of a vehicle shall not overtake and pass another on any portion of the highway which is marked by signs or markers placed by the Department of Transportation stating or clearly indicating that passing should not be attempted.  
(1977, c. 464, s. 34.)

Editor's Note. —  
The 1977 amendment, effective July 1, 1977, substituted “Department of Transportation” for “Board of Transportation” in subsections (c), (d) and (e).  
As the rest of the section was not changed by the amendment, only subsections (c), (d) and (e) are set out.  

Negligence Per Se. —  
Where plaintiff’s driver overtook and attempted to pass defendant’s truck at an intersection within a municipality, he was guilty of negligence per se under subsection (c) of this section, and this was so without regard to his knowledge of whether he was within the city.
§ 20-153. Turning at intersections.

(c) Local authorities and the Department of Transportation, in their respective jurisdictions, may modify the foregoing method of turning at intersections by clearly indicating by buttons, markers, or other direction signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed. (1938, c. 407, s. 115; 1955, c. 913, s. 5; 1973, c. 1330, s. 18; 1977, c. 464, s. 34.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 20-154. Signals on starting, stopping or turning.

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, or by any mechanical or electrical signal device approved by the Division, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the Division.

Whenever the signal is given the driver shall indicate his intention to start, stop, or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

Left turn — hand and arm horizontal, forefinger pointing.
Right turn — hand and arm pointed upward.
Stop — hand and arm pointed downward.

All hand and arm signals shall be given from the left side of the vehicle and all signals shall be maintained or given continuously for the last 100 feet traveled prior to stopping or making a turn. Provided, that in all areas where the speed limit is 45 miles per hour or higher and the operator intends to turn from a direct line of travel, a signal of intention to turn from a direct line of travel shall be given continuously during the last 200 feet traveled before turning; and provided further that the violation of this section shall not constitute negligence per se.

Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the rear outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply


The meaning of subsection (c), etc. —

Since subsection (c) of this section does not contain the words "knowingly," "willfully" or any other words of like import, it was the obvious intent of the legislature to make the performance of a specific act a criminal violation and to thereby place upon the individual the burden to know whether his conduct is within the statutory prohibition. Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975).

Subsection (c) of this section is a safety statute enacted for the public's common safety and welfare. Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975).

Subsection (c) of this section requires one to observe street intersections within corporate limits whether marked or unmarked. Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975).

Violations of subsection (c) of this section have been held to constitute negligence per se. Watson Seafood & Poultry Co. v. George W. Thomas, Inc., 289 N.C. 7, 220 S.E.2d 536 (1975).

to any single vehicle, also to any combination of vehicles except combinations operated by farmers in hauling farm products.

(c) No person shall operate over the highways of this State a right-hand-drive motor vehicle or a motor vehicle equipped with the steering mechanism on the right-hand side thereof unless said motor vehicle is equipped with mechanical or electrical signal devices by which the signals for left turns and right turns may be given. Such mechanical or electrical devices shall be approved by the Division.

(1975, c. 716, s. 5.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first paragraph of subsection (b) and in subsection (c).

§ 20-156. Exceptions to the right-of-way rule.

(b) The driver of a vehicle upon the highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances, vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation and to rescue squad emergency service vehicles and vehicles operated by county fire marshals and civil preparedness coordinators when the operators of said vehicles are giving a warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from a distance not less than 1,000 feet. This provision shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance or vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation or rescue squad emergency service vehicle or county fire marshals or civil preparedness coordinators from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle or county fire marshal or civil preparedness coordinator from the consequence of any arbitrary exercise of such right-of-way. (1987, c. 407, s. 118; 1971, c. 78, 106; 1973-13880; 1977, c. 52, s. 4; c. 438, s. 3.)

Editor’s Note. —
The first 1977 amendment substituted “and vehicles operated by county fire marshals and civil preparedness coordinators when the operators of said vehicles are” for “when the latter are operated upon official business and the drivers thereof" in the first sentence of subsection (b) and inserted “or county fire marshals or civil preparedness coordinators” and “or county fire marshal or civil preparedness coordinator" in the second sentence of subsection (b). The amendment also made other minor changes in wording in the first sentence of subsection (b).

The second 1977 amendment inserted "vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation” in the first sentence of subsection (b) and "or vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation" in the second sentence of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

Duty of Driver Entering Highway, etc. —
In order to comply with subsection (a) of this section, the driver of a vehicle about to enter or cross a highway from an alley, building entrance, private road or driveway is only required to look for vehicles approaching on the highway at a time when his lookout may be effective, to see what he should see, and to yield the right-of-way to vehicles on the highway which, in the exercise of reasonable care, he sees or should see are being operated at such a speed or distance as to make his entry onto the highway unsafe, by delaying his entry onto the highway until a reasonable and prudent man would conclude that the entry could be made in safety. Penland v. Green, 289 N.C. 281, 221 S.E.2d 365 (1976).

Subsection (a) of this section does not require omniscience on the part of a motorist entering a public highway from a private drive.

Instructions to Jury. — There is no error prejudicial to defendant in the occasional use of the term “servient highway or street” instead of “private road or drive” in the charge to the jury. Penland v. Green, 24 N.C. App. 240, 210 S.E.2d 505 (1974), aff’d, 289 N.C. 281, 221 S.E.2d 365 (1976).

While use of the words “dominant” and “servient” may not be precisely correct in referring to the roads in question under subsection (a) of this section in instructions to the jury, where judge instructs upon proper principles of law applicable to each motorist, defendant was not prejudiced thereby. Penland v. Green, 289 N.C. 281, 221 S.E.2d 365 (1976).

§ 20-158. Vehicle control signs and signals. — (a) The Department of Transportation, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to control vehicles:

1. At intersections, by erecting or installing stop signs requiring vehicles to come to a complete stop at the entrance to that portion of the intersection designated as the main traveled or through highway. Stop signs may also be erected at three or more entrances to an intersection.

2. At appropriate places other than intersections, by erecting or installing stop signs requiring vehicles to come to a complete stop.

3. At intersections and other appropriate places, by erecting or installing steady-beam stoplights and other traffic control devices, signs, or signals. All steady-beam stoplights emitting alternate red and green lights shall be arranged so that the red light shall appear at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.

4. At intersections and other appropriate places, by erecting or installing flashing red or yellow lights.

(b) Control of Vehicles at Intersections. —

1. When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection the driver, after stopping in obedience thereto, may proceed with caution.

2. When a stoplight has been erected or installed at an intersection and is emitting a steady red light, vehicles facing the red light shall come to a complete stop. When the stoplight is emitting a steady yellow light, vehicles facing the yellow light shall be warned that a red light will be immediately forthcoming and that vehicles may not enter the intersection on such a red light; provided, that except where prohibited by appropriate sign, vehicular traffic facing a steady red light may enter an intersection to make a right turn after coming to a complete stop and yielding the right-of-way to pedestrians and to other traffic using the intersection. When the stoplight is emitting a steady green light, vehicles may proceed through the intersection subject to the rules applicable to making a stop at a stop sign.

3. When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.

4. When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.
§ 20-158.1. Erection of “yield right-of-way” signs. — The Department of Transportation, with reference to State highways, and cities and towns with reference to highways and streets under their jurisdiction, are authorized to designate main-traveled or through highways and streets by erecting at the entrance thereto from intersecting highways or streets, signs notifying drivers of vehicles to yield the right-of-way to drivers of vehicles approaching the intersection on the main-traveled or through highway. Notwithstanding any other provisions of this Chapter, except G.S. 20-156, whenever any such yield right-of-way signs have been so erected, it shall be unlawful for the driver of any vehicle to enter or cross such main-traveled or through highway or street unless he shall first slow down and yield right-of-way to any vehicle in movement on the main-traveled or through highway or street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main-traveled or through highway or street. No failure to so yield the right-of-way shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to yield the right-of-way may be considered with the other facts in the case in determining whether either party in such action was guilty of negligence or contributory negligence. (1955, c. 295; 1957, c. 65, s. 11; 1978, c. 507, s. 5; c. 1880, s. 23; 1977, c. 464, s. 34.)

Editor’s Note. —
The 1977 amendment, effective July 1, 1977, substituted “Department of Transportation” for “Board of Transportation” in the first sentence.

§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.


§ 20-165.1. One-way traffic. — In all cases where the Department of Transportation has heretofore, or may hereafter lawfully designate any highway or other separate roadway, under its jurisdiction for one-way traffic
and shall erect appropriate signs giving notice thereof, it shall be unlawful for
any person to willfully drive or operate any vehicle on said highway or roadway
except in the direction so indicated by said signs. (1957, c. 1177; 1973, c. 507, s.
5; c. 1330, s. 28; 1977, c. 464, s. 34.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977,
substituted "Department of Transportation" for
"Board of Transportation."

§ 20-166. Duty to stop in event of accident or collision; furnishing
information or assistance to injured person, etc.; persons assisting exempt
from civil liability.

(b) The driver of any vehicle involved in an accident or collision resulting in
damage to property and in which there is not involved injury or death of any
person shall immediately stop his vehicle at the scene of the accident or collision
and shall give his name, address, operator's or chauffeur's license number and
the registration number of his vehicle to the driver or occupants of any other
vehicle involved in the accident or collision or to any person whose property is
damaged in the accident or collision; provided that if the damaged property is
a parked and unattended vehicle and the name and location of the owner is not
known to or readily ascertainable by the driver of the responsible vehicle, the
said driver shall furnish the information required by this subsection to the
nearest available peace officer, or, in the alternative, and provided he thereafter
within 48 hours fully complies with G.S. 20-166.1(c), shall immediately place a
paper-writing containing said information in a conspicuous place upon or in the
damaged vehicle and, provided that if the damaged property is a guard rail,
utility pole, or other public service corporation to which report cannot readily
be made at the scene, it shall be sufficient if the responsible driver shall furnish
the information required to the nearest peace officer or make written report
thereof containing said information by U.S. certified mail, return receipt
requested, to the N.C. Division of Motor Vehicles within five days following said
collision. Any person violating the provisions of this subsection shall be guilty
of a misdemeanor and fined or imprisoned for a period of not more than two
years, or both, in the discretion of the court.

(1975, c. 716, s. 5; 1977, c. 464, s. 34.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975,
substituted "Division" for "Department" in
subsection (b).
The 1977 amendment, effective July 1, 1977,
substituted "Department of Transportation" for
"Board of Transportation" in subsection (b).
As the rest of the section was not changed by
the amendment, only subsection (b) is set out.

Driver Must Stop at Scene, etc. —
The driver violates this section if he does not
immediately stop at the scene. State v. Norris,
26 N.C. App. 259, 215 S.E.2d 875, appeal
dismissed, 288 N.C. 249, 217 S.E.2d 673 (1975),
cert. denied, 423 U.S. 1073, 96 S. Ct. 856, 47
L. Ed. 2d 88 (1976).

The proviso in subsection (b) merely
withdraws the case of a parked or unattended
vehicle whose owner's identity is not readily
ascertainable from the general language of the
statute. It does not describe a separate offense,
and therefore it need not be negatived in the
S.E.2d 875, appeal dismissed, 288 N.C. 249, 217
S.E.2d 673 (1975), cert. denied, 423 U.S. 1073, 96
S. Ct. 856, 47 L. Ed. 2d 83 (1976).

Applied in State v. Rimmer, 25 N.C. App. 637,
214 S.E.2d 225 (1975).
§ 20-166.1. Reports and investigations required in event of collision. — (a) The driver of a vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of two hundred dollars ($200.00) or more shall immediately, by the quickest means of communication, give notice of the collision to the local police department if the collision occurs within a municipality, or to the office of the sheriff or other qualified rural police of the county wherein the collision occurred.

(b) The driver of any vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of two hundred dollars ($200.00) or more shall furnish proof of financial responsibility on forms prescribed by the Division.

(c) Notwithstanding any other provisions of this section, the driver of any motor vehicle which collides with another motor vehicle left parked or unattended on any street or highway of this State shall within 48 hours report the collision to the owner of such parked or unattended motor vehicle. Such report shall include the time, date and place of the collision, the driver’s name, address, operator’s or chauffeur’s license number and the registration number of the vehicle being operated by the driver at the time of the collision, and such report may be oral or in writing. Such written report must be transmitted to the current address of the owner of the parked or unattended vehicle by United States certified mail, return receipt requested, and a copy of such report shall be transmitted to the North Carolina Division of Motor Vehicles.

No report, oral or written, made pursuant to this Article shall be competent in any civil action except to establish identity of the person operating the moving vehicle at the time of the collision referred to therein.

Any person who violates this subsection is guilty of a misdemeanor and shall be punishable by fine or imprisonment, or both, in the discretion of the court.

(d) The Division may require the driver of a vehicle involved in a collision which is required to be reported by this section to file a supplemental report when the original report is insufficient in the opinion of the court.

(e) It shall be the duty of the State Highway Patrol or the sheriff’s office or other qualified rural police to investigate all collisions required to be reported by this section when the collisions occur outside the corporate limits of a city or town; and it shall be the duty of the police department of each city or town to investigate all collisions required to be reported by this section when the collisions occur within the corporate limits of the city or town. Every law-enforcement officer who investigates a collision as required by this subsection, whether the investigation is made at the scene of the collision or by subsequent investigations and interviews, shall, within 24 hours after completing the investigation, forward a written report of the collision to the Division if the collision occurred outside the corporate limits of a city or town, or to the police department of the city or town if the collision occurred within the corporate limits of such city or town. Police departments should forward such reports to the Division within 10 days of the date of the collision. Provided, when a collision occurring outside the corporate limits of a city or town is investigated by a duly qualified law-enforcement officer other than a member of the State Highway Patrol, as permitted by this section, such other officer shall forward a written report of the collision to the office of the sheriff or other law enforcement official of the county wherein the collision occurred and the office of the sheriff or other law enforcement official shall forward such reports to the Division within 10 days of the date of the collision. The reports by law-enforcement officers shall be in addition to, and not in place of, the reports required of drivers by this section.

When any person involved in an automobile collision shall die as a result of said collision within a period of 12 months following said collision, and such death shall not have been reported in the original report, it shall be the duty of
investigating enforcement officers to file a supplemental report setting forth the death of such person.

(f) Every person holding the office of medical examiner in this State shall report to the Division the death of any person as a result of a collision involving a motor vehicle and the circumstances of the collision within five days following such death. Every hospital shall notify the medical examiner of the county in which the collision occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a collision involving a motor vehicle.

(g) With respect to a collision between a common carrier and another vehicle, which collision is required to be reported by this section, the common carrier shall make a written report of the collision to the Division within 10 days from the date of the collision, and the report shall be in addition to the report required of the driver. When the original report submitted by a common carrier is insufficient in the opinion of the Division, the Division may require it to file a supplemental report.

(h) The Division shall prepare and shall upon request supply to police, [medical examiners], sheriffs, and other suitable agencies, or individuals, forms for collision reports calling for sufficiently detailed information to disclose with reference to a highway collision the cause, conditions then existing, and the persons and vehicles involved. All collision reports required by this section shall be made on forms supplied or approved by the Division.

(i) All collision reports, including supplemental reports, above mentioned, except those made by State, city or county police, shall be without prejudice and shall be for the use of the Division and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of such collision except that the Division shall furnish upon demand of any court a properly executed certificate stating that a particular collision report has or has not been filed with the Division solely to prove a compliance with this section.

The reports made by State, city or county police and medical examiners, but no other reports required under this section, shall be subject to the inspection of members of the general public at all reasonable times, and the Division shall furnish a certified copy of any such report to any member of the general public who shall request the same, upon receipt of a fee of two dollars fifty cents ($2.50) [for a] certified copy, or the Division is authorized to furnish without charge to departments of the governments of the United States, states, counties, and cities certified copies of such collision reports for official use.

Nothing herein provided shall prohibit the Division from furnishing to interested parties only the name or names of insurers and insured and policy number shown upon any reports required under this section.

(j) The Division shall receive collision reports required to be made by this section and may tabulate and analyze such reports and publish annually, or at more frequent intervals, statistical information based thereon as to the number, cause and location of highway collisions.

Based upon its findings after analysis, the Division may conduct further necessary detailed research to determine more fully the cause and control of highway collisions. It may further conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and collision prevention. (1953, c. 1340, s. 2; 1955, c. 913, s. 9; 1963, c. 1249; 1965, c. 577; 1971, c. 55; c. 763, s. 1; c. 958, ss. 2, 3; 1973, c. 1133, ss. 1, 2; c. 1380, s. 29; 1975, c. 307; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, eliminated provisions as to uncertified copies of reports in the second paragraph of subsection (i), increased the fee for certified copies in the first sentence of that paragraph from $1.00 to $2.50, and deleted the former last sentence of that paragraph, relating to disposition of funds received under the provisions of subsection (i). The amendment also

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§ 20-167.1. Transportation of spent nuclear fuel. — (a) No person, firm or corporation shall transport upon the highways of this State any spent nuclear fuel unless such person, firm, or corporation notifies the State Highway Patrol in advance of transporting the spent nuclear fuel.

(b) The provisions of this section shall apply whether or not the fuel is for delivery in North Carolina and whether or not the shipment originated in North Carolina.

(c) The Radiation Protection Commission is authorized to adopt, promulgate, amend, and repeal rules and regulations necessary to implement the provisions of this section.

(d) Any person, firm or corporation violating any provision of this section shall be punished by a fine of not less than five hundred dollars ($500.00), and each unauthorized shipment shall constitute a separate offense. (1977, c. 839, s. 1.)

Editor's Note. — Session Laws 1977, c. 8389, s. 2, makes this section effective Jan. 1, 1978.

Part 10A. Operation of Bicycles.

§ 20-171.1. Definitions. — As used in this Part, except where the context clearly requires otherwise, the words and expressions defined in this section shall be held to have the meanings here given to them:

Bicycle. — A nonmotorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled. (1977, c. 1123, s. 1.)

Editor's Note. — Session Laws 1977, c. 1128, s. 2, makes this Part effective Jan. 1, 1978.

§ 20-171.2. Bicycle racing. — (a) Bicycle racing on the highways is prohibited except as authorized in this section.

(b) Bicycle racing on a highway shall not be unlawful when a racing event has been approved by State or local authorities on any highway under their respective jurisdictions. Approval of bicycle highway racing events shall be granted only under conditions which assure reasonable safety for all race participants, spectators and other highway users, and which prevent unreasonable interference with traffic flow which would seriously inconvenience other highway users.

(c) By agreement with the approving authority, participants in an approved bicycle highway racing event may be exempted from compliance with any traffic laws otherwise applicable thereto, provided that traffic control is adequate to assure the safety of all highway users. (1977, c. 1123, s. 1.)


§ 20-174. Crossing at other than crosswalks; walking along highway.

But It Is Duty of Pedestrian, etc. —

A pedestrian who crosses the street at a point where he does not have the right-of-way must constantly watch for oncoming traffic before he steps into the street and while he is crossing. Dendy v. Watkins, 288 N.C. 447, 219 S.E.2d 214 (1975).

Duty of Motorist to Child. —

The presence of children on or near the traveled portion of a highway whom a driver sees, or should see, places him under the duty to use due care to control the speed and movement of his vehicle and to keep a vigilant...
§ 20-174.1
1977 CUMULATIVE SUPPLEMENT
§ 20-174.1


The presence of children on or near a highway is a warning signal to a motorist, who must bear in mind that they have less capacity to shun danger than adults and are prone to act on impulse. Anderson v. Smith, 29 N.C. App. 72, 223 S.E.2d 402 (1976).

Violation of Section Not Negligence Per Se.


The failure of a pedestrian, etc. —


Although the failure of a pedestrian crossing a roadway at a point other than a crosswalk to yield the right-of-way to a motor vehicle is not contributory negligence per se but is only evidence of negligence, the court will nonsuit a plaintiff-pedestrian on the ground of contributory negligence when all the evidence so clearly establishes his failure to yield the right-of-way as one of the proximate causes of his injuries that no other reasonable conclusion is possible. Foster v. Shearin, 28 N.C. App. 51, 220 S.E.2d 179 (1975).

Upon consideration of a motion for a directed verdict, where it appears that plaintiff was proceeding along a dirt pathway beyond the curb on the north side of a street when she was confronted with an automobile blocking a driveway which traversed the path, plaintiff left the dirt path and walked along a gutter between the driveway and the portion of the street upon which vehicles ordinarily traveled, plaintiff was never more than 12 inches from the north curb of the street, and just before she reached the curb on the western side of the driveway she was struck by defendant’s automobile, the evidence permits diverse inferences as to whether plaintiff acted in a reasonable manner and whether her acts proximately caused her injuries, and thus, the issue of contributory negligence should have been submitted to the jury. Clark v. Bodycombe, 289 N.C. 246, 221 S.E.2d 506 (1976).

The issue of contributory negligence was properly submitted to the jury in an action by a pedestrian for personal injuries sustained when he was struck by defendant’s car, where evidence showed that plaintiff was crossing the roadway at an unmarked crossing in the path of an oncoming car which had the right-of-way. Maness v. Ingram, 29 N.C. App. 26, 222 S.E.2d 737 (1976).

It is to be left to the jury to consider a violation of subsection (d) of this section as evidence of negligence along with other evidence in determining whether or not the plaintiff contributed to his own injury and was, therefore, guilty of contributory negligence. Clark v. Bodycombe, 289 N.C. 246, 221 S.E.2d 506 (1976).

Failure to yield the right-of-way as required under subsection (a) is not negligence per se, but it does constitute evidence of negligence. Brooks v. Boucher, 22 N.C. App. 676, 207 S.E.2d 282, cert. denied, 286 N.C. 211, 209 S.E.2d 319 (1974).

A pedestrian who crosses the street at a point where he does not have the right-of-way must constantly watch for on-coming traffic before he steps into the street and while he is crossing. If he sees a vehicle approaching him, he must move out of its path. A pedestrian who fails to take these precautions cannot be said to exercise reasonable care for his own safety. Brooks v. Boucher, 22 N.C. App. 676, 207 S.E.2d 282, cert. denied, 286 N.C. 211, 209 S.E.2d 319 (1974).


§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited.

The legislative intent, etc. —


Conduct Constituting Violation, etc. —

§ 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets. — (a) No person shall stand in any portion of the State highways, except upon the shoulders thereof, for the purpose of soliciting a ride from the driver of any motor vehicle.

(b) No person shall stand or loiter in the main traveled portion, including the shoulders and median, of any State highway or street, excluding sidewalks, or stop any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle that impedes the normal movement of traffic on the public highways or streets: Provided that the provisions of this subsection shall not apply to licensees, employees or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys.

(c) Repealed by Session Laws 1973, c. 1330, s. 39. (1987, c. 407, s. 186; 1965, c. 673, 1973, c. 507, s. 5; c. 1330, s. 39; 1977, c. 464, s. 34.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in subsection (b).

Part 12. Sentencing; Penalties.

§ 20-176. Penalty for misdemeanor. — (b) Unless another penalty is in this Article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this Article shall be punished by a fine of not more than one hundred dollars ($100.00) or by imprisonment in the county or municipal A for not more than 60 days, or by both such fine and imprisonment. (1987, c. 407, s. 187; 1951, ec. 1018, s. 7; 1957, c. 1255; 1967, c. 674, s. 3; 1969, c. 3878, s. 3; 1978, c. 1830, s. 34; 1975, c. 644.)

Editor's Note. —
The 1975 amendment deleted in subsection (b) a proviso which set a lesser punishment for certain violations.

§ 20-178. Penalty for bad check. — When any person, firm, or corporation shall tender to the Division any uncertified check for Segrt of any tax, fee or other obligation due by him under the provisions of this Article, and the bank upon which such check shall be drawn shall refuse to pay it on account of insufficient funds of the drawer on deposit in such bank, and such check shall be returned to the Division, an additional tax shall be imposed by the Division upon such person, firm or corporation, which additional tax shall be equal to ten percent (10%) of the tax or fee in payment of which such check was tendered: Provided, that in no case shall the additional tax be less than one dollar ($1.00); provided, further, that no additional tax shall be imposed if, at the time such check was presented for payment, the drawer had on deposit in any bank of this State funds sufficient to pay such check and by inadvertence failed to draw the check upon such bank, or upon the proper account therein. The additional tax imposed by this section shall not be waived or diminished by the Division. (1987, c. 407, s. 139; 1953, c. 1144; 1975, c. 716, s. 5.)
§ 20-179. Penalty for driving or operating vehicle while under the influence of intoxicating liquor, narcotic drugs, or other impairing drugs; limited driving permits for first offenders.

(b) (1) Upon a first conviction only, the trial judge may when feasible allow a limited driving privilege or license to the person convicted for proper purposes reasonably connected with the health, education and welfare of the person convicted and his family. For purposes of determining whether conviction is a first conviction, no prior offense occurring more than 10 years before the date of the current offense shall be considered. The judge may impose upon such limited driving privilege any restrictions as in his discretion are deemed advisable including, but not limited to, conditions of days, hours, types of vehicles, routes, geographical boundaries and specific purposes for which limited driving privilege is allowed. Any such limited driving privilege allowed and restrictions imposed thereon shall be specifically recorded in a written judgment which shall be as near as practical to that hereinafter set forth and shall be signed by the trial judge and shall be affixed with the seal of the court and shall be made a part of the records of the said court. A copy of said judgment shall be transmitted to the Division of Motor Vehicles along with any operator's or chauffeur's license in the possession of the person convicted and a notice of the conviction. Such permit issued hereunder shall be valid for such length of time as shall be set forth in the judgment of the trial judge. Such permit shall constitute a valid license to operate motor vehicles upon the streets and highways of this or any other state in accordance with the restrictions noted thereon and shall be subject to all provisions of law relating to operator's or chauffeur's license not by their nature rendered inapplicable.

(2) The judgment issued by the trial judge as herein permitted shall as near as practical be in form and contents as follows:

IN THE GENERAL COURT
STATE OF NORTH CAROLINA
COUNTY OF ...............  REstricted DRivIng PRIVILEGES

This cause coming on to be heard and being heard before the Honorable ............. , Judge presiding, and it appearing to the Court that the defendant, ............... , has been convicted of the offense of (describe offense under G.S. 20-138, 20-139(a) or 20-139(b) or as appropriate), and it further appearing to the court that the defendant should be issued a restrictive driving license and is entitled to the issuance of a restrictive driving privilege under and by the authority of G.S. 20-179(b);

Now, therefore, it is ordered, adjudged and decreed that the defendant be allowed to operate a motor vehicle under the following conditions and under no other circumstances.

Name: ..........................................................  
Race: ..........................................................
Sex: ..........................................................
Height: ....................................................
Weight: ..................................................
Color of Hair: ........................ Color of Eyes:
Birth Date: ................................................
Driver's License Number: ..........................
Signature of Licensee: ..............................
Conditions of Restriction: ........................................
Type of Vehicle: ........................................
Geographic Restrictions: ................................
Hours of Restriction: ...................................
Other Restrictions: ....................................

This limited license shall be effective from .......... to .......... subject to further orders as the court in its discretion may deem necessary and proper.

This the ............ day of .........., 19....

(Judge Presiding)

(3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to the presiding or resident judge of the superior court or district court judge of the district in which he resides for limited driving privileges herein before defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge.

(4) Any violation of the restrictive driving privileges as set forth in the judgment of the trial judge allowing such privileges shall constitute the offense of driving while license has been revoked as set forth in G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge.

(5) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1138, s. 1; 1975, c. 716, s. 5; 1977, c. 125.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subdivision (b)(1).

The 1977 amendment inserted “presiding or” and “or district court judge” in the first sentence of subdivision (b)(3).

As subsection (a) was not changed by the amendments, it is not set out.

Out-of-State Convictions. — If it is the clear intent of the legislature to count out-of-state convictions in permanently depriving one of his license under § 20-19(e), it is logical to conclude that the legislature intended them to count for purposes of granting limited driving privileges under subdivision (b)(1) of this section. In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975).

It is reasonable to assume that the legislative amendment in 1971 adding “or as appropriate” to the offenses to be listed in the form judgment of subdivision (b)(2) was referring to out-of-state convictions. In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975).

In view of the legislative recognition of out-of-state convictions in other subdivisions of subsection (b), and the fundamental rule of construction that sections and acts in pari materia, and all parts thereof, should be construed together on out-of-state conviction within 10 years of the present offense abrogates the discretion of a judge to grant a limited permit. In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975).

Subdivision (b)(1) is a license reinstatement provision, and insofar as the court has already held that the clear legislative intent under a penal provision was to count prior out-of-state convictions, it becomes very difficult to discount them under a grace type provision. In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975).

Judgment upon Ex Parte Request. — Judge’s execution judgments allowing limited driving privileges under this section upon a mere ex parte request without making any effort or conducting any inquiry to ascertain whether the facts recited in the judgments were true and whether he was lawfully entitled to enter the judgments and without giving the State an opportunity to be heard when in truth the judgments were supported neither in fact nor in law and were beyond the judge’s jurisdiction to enter constituted a gross abuse of important provisions of the motor vehicle statutes and amounted to conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In re Crutchfield, 289 N.C. 597, 223 S.E.2d 822 (1975).

Under § 20-24(c), a bond forfeiture is equivalent to a conviction. In re Sparks, 25 N.C. App. 65, 212 S.E.2d 220 (1975).
§ 20-183. Duties and powers of law-enforcement officers; warning by local officers before stopping another vehicle on highway; warning tickets.

(b) In addition to other duties and powers heretofore existing, all law-enforcement officers charged with the duty of enforcing the motor vehicle laws are authorized to issue warning tickets to motorists for conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the motor vehicle laws. Each warning ticket issued shall be prenumbered and shall contain information necessary to identify the offender, and shall be signed by the issuing officer. A copy of each warning ticket issued shall be delivered to such offender and a copy thereof forwarded by the issuing officer forthwith to the Driver License Section of the Division of Motor Vehicles but shall not be filed with or in any manner become a part of the offender’s driving record. Warning tickets issued as well as the fact of issuance shall be privileged information and available only to authorized personnel of the Division for statistical and analytical purposes.

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Driver License Section of the Division of Motor Vehicles” for “Driver License Division of the Department of Motor Vehicles” and “Division” for “Department” in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

Authority Granted Law-Enforcement Officers, etc. —

Although when a police officer first stopped and approached the truck he had no probable cause to believe that defendant had committed any offense, nevertheless, the officer had authority to stop the truck under this section and the existence of probable cause at the time the truck was stopped was not essential to the validity of the subsequent arrest. State v. Dark, 22 N.C. App. 566, 207 S.E.2d 290, cert. denied, 285 N.C. 760, 209 S.E.2d 284 (1974).


ARTICLE 3A.


Part 2. Equipment Inspection of Motor Vehicles.

§ 20-183.2. Equipment inspection required; inspection certificate; one-way permit to move vehicle to inspection station.

(b) Every inspection certificate issued under this Part shall be valid for not less than 12 months and shall expire at midnight on the last day of the month designated on said inspection certificate. It shall be unlawful to operate any motor vehicle on the highway until there is displayed thereon a current inspection certificate as provided by this Part, indicating that the vehicle has been inspected within the previous 12 months and has been found to comply with the standard for safety equipment prescribed by this Chapter subject to the following provisions:

(1) Vehicles of a type required to be inspected under subsection (a), which are owned by a resident of this State, that have been outside of North Carolina continuously for a period of 30 days, or more, immediately preceding the expiration of the then current inspection certificate shall within 10 days of reentry to the State be inspected and have an approved certificate attached thereto if vehicle is to continue operation on the streets and highways.

(2) Any vehicle owned or possessed by a dealer, manufacturer or transporter within this State and operated over the public streets and
§ 20-183.2  GENERAL STATUTES OF NORTH CAROLINA  § 20-183.2

highways displaying thereon a dealer demonstration, manufacturer or transporter plate must have affixed to the windshield thereof a valid certificate of inspection and approval, except a dealer, manufacturer or transporter or his agent may operate a motor vehicle displaying dealer demonstration, manufacturer or transporter plates from source of purchase to his place of business or to an inspection station, provided it is within 10 days of purchase, foreclosure or repossession. Provided further, that a new car dealer may operate a new motor vehicle prior to first sale for customer demonstration purposes only without affixing thereto an inspection certificate as required by this section if such dealer causes an inspection of the equipment enumerated in G.S. 20-183.3 to be made and affixes on the window of the vehicle adjacent to the manufacturer's price list a certificate as near as practical in form and content as follows:

Dealer .................................................................
Dealer license number ..............................................
Vehicle make. .......... Year model ............................
Vehicle identification number ....................................

Equipment Item

<table>
<thead>
<tr>
<th>Brakes</th>
<th>Lights</th>
<th>Horn</th>
<th>Steering Mechanism</th>
<th>Windshield Wiper</th>
<th>Directional Signals</th>
<th>Tires</th>
<th>Rear View Mirror</th>
<th>Exhaust System</th>
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I certify that the above items of equipment have been inspected and found to be in good working order.

Dealer or Agent

(3) Vehicles acquired by residents of this State from dealers or owners located outside of the State must, upon entry to this State, be inspected and approved, certificate attached, within 10 days after the vehicle becomes subject to registration.

(4) Vehicles acquired by residents within this State, not displaying current North Carolina inspection certificates, must be inspected and have approved inspection certificate attached within 10 days from date registration plate issued or if registration plate is to be transferred, within 10 days of the date of purchase.

(5) Owners of motor vehicles moving their residence to North Carolina from other states must within 10 days from the date the vehicles are subject to registration have same inspected and have an approved certificate attached thereto.

(6) The Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant special written one-way permits to operate motor vehicles without current inspection certificates solely for the purpose of moving such vehicles to an authorized inspection station to obtain the inspection required under this Part.

(c) On and after February 16, 1966, all motor vehicle dealers in North Carolina shall, prior to retail sale of any new or used motor vehicle, have such motor vehicle inspected by an approved inspection station as required by this Part.
Provided, however, a purchaser of a motor vehicle, who is licensed as a self-inspector, may conduct the required inspection, after entering into a written agreement with the dealer to follow such a procedure. A copy of such dealer-purchaser agreement must be filed with the Division of Motor Vehicles. Provided further, that any new and unregistered vehicle sold to a nonresident (as defined in G.S. 20-6) shall be exempt from the requirements of this section if such vehicle is not required to be registered in this State.

(1975, c. 683; c. 716, s. 5.)

Editor's Note. —
The first 1975 amendment, effective July 1, 1975, added to subdivision (2) of subsection (b) the proviso relating to operation of a new motor vehicle by a dealer without an inspection certificate.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (c).

As the rest of the section was not changed by the amendments, only subsections (b) and (e) are set out.

§ 20-183.3. Inspection requirements.

Editor's Note. —
The title of the Department of Natural and Economic Resources was changed to Department of Natural Resources and Community Development by Session Laws 1977, c. 771, s. 4.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 20-183.4. Licensing of safety equipment inspection stations. — Every person, firm or agency with employees meeting the following qualifications shall, upon application, be issued a license designating the person, firm or agency as a safety equipment inspection station:

1. Be of good character and have a good reputation for honesty.
2. Have adequate knowledge of the equipment requirements of the motor vehicle laws of North Carolina.
3. Be able to satisfactorily conduct the mechanical inspection required by this Part.
4. Have adequate facilities as to space and equipment in order to check each of the items of safety equipment listed herein.
5. Have a general knowledge of motor vehicles sufficient to recognize a mechanical condition which is not safe.

Any person, firm or agency meeting the above requirements and desiring to be licensed as a motor vehicle inspection station may apply to the Commissioner of Motor Vehicles on forms provided by the Commissioner. The Commissioner shall cause an investigation to be made as to the applicant's qualifications, and if, in the opinion of the Commissioner, the applicant fulfills such qualifications, he shall issue a certificate of appointment to such person, firm or agency as a safety equipment inspection station. Such appointment shall be issued without charge and shall be effective until canceled by request of licensee or until revoked or suspended by the Commissioner. Any licensee whose license has been revoked or suspended or any applicant whose application has been refused may, within 10 days from the notice of such revocation, suspension or refusal, request a hearing before the Commissioner and, in such cases, the hearing shall be conducted within 10 days of receipt of request for such hearing. The Commissioner, following such hearing, may rescind the order of suspension, revocation or the refusal to issue license, or he may affirm the previous order of revocation, suspension or refusal. Any applicant or licensee aggrieved by the decision of the Commissioner may, following such decision, file a petition in the Superior Court of Wake County or in the county wherein applicant or licensee resides. Such petition shall recite the fact that the administrative remedy, as provided above, has been exhausted. Provided, that no restraining order shall
issue against the Division of Motor Vehicles under this section until and unless
the Division shall have had at least five days' notice of the petitioner's intention
to seek such restraining order.

The Commissioner may designate the State or any political subdivision thereof
or any person, firm or corporation as self-inspectors for the sole purpose of
inspecting vehicles owned or operated by such agencies, persons, firms, or
corporations so designated. (1965, c. 734, s. 1; 1967, c. 692, s. 2; 1975, c. 716, s.
5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for
"Department" in the second paragraph.

§ 20-183.6. Commissioner of Motor Vehicles to establish procedures;
unlawful possession, etc., of certificates. — (a) The Commissioner of Motor
Vehicles shall establish procedures for the control, distribution, sale, refund, and
display of certificates and for the accounting for proceeds of their sale,
consistent with this Article. It shall be unlawful knowingly to possess, affix,
transfer, remove, imitate or reproduce an inspection certificate, except by
direction of the Commissioner of Motor Vehicles under the terms of this Article.

(b) Notwithstanding any other provision of this Article, those who replace
windshields in motor vehicles shall place on the replacement windshield an
inspection certificate having the same expiration date as the certificate attached
to the windshield removed and shall retain the certificate attached to the
windshield removed until 30 days after the expiration thereof. In addition to the
authority granted in subsection (a), the Commissioner is hereby authorized to
adopt and enforce such rules and regulations as may be necessary to carry out
the provisions of this section. (1965, c. 734, s. 1; 1975, c. 109.)

Editor's Note. — The 1975 amendment, provisions of the section as subsection (a) and
effective July 1, 1975, designated the former added subsection (b).

§ 20-183.7. Fees to be charged by safety equipment inspection station. —
Every inspection station, except self-inspectors as designated herein, shall
charge a fee of three dollars ten cents ($3.10) for inspecting a motor vehicle to
determine compliance with this Article and shall give the operator a receipt
indicating the articles and equipment approved and disapproved; provided, that
inspection stations approved by the Commissioner, and operated under rules,
regulations and supervision of any governmental agency, when inspecting
vehicles required to be inspected by such agencies' rules and regulations and
by the provisions of this Part, may, upon approval by such inspection station
and the payment of a fee of thirty-five cents (35¢), attach to the vehicle inspected
a North Carolina inspection certificate as required by this Part. When the receipt
is presented to the inspection station which issued it, at any time within 90 days,
that inspection station shall reinspect the motor vehicle free of additional charge
until approved. When said vehicle is approved, and upon payment to the
inspection station of the fee, the inspection station shall affix a valid inspection
certificate to said motor vehicle, and said inspection station shall maintain a
record of the motor vehicles inspected which shall be available for 18 months.
The Division of Motor Vehicles shall receive thirty-five cents (35¢) for each
inspection certificate, and these proceeds shall be placed in the Highway Fund.
(1965, c. 734, s. 1; 1969, c. 1242; 1973, c. 1480; 1975, c. 547; c. 716, s. 5; c. 875,
s. 4.)
§ 20-183.8. Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation; fictitious or unlawful safety inspection certificate; 30-day grace period for expired inspection certificates.

(d) No person shall display or cause to be displayed or permit to be displayed upon any motor vehicle any safety inspection certificate, knowing the same to be fictitious or to be issued for another motor vehicle or to be issued without inspection and approval having been made. The Division is hereby authorized to take immediate possession of any safety inspection certificate which is fictitious or which has been otherwise unlawfully or erroneously issued or which has been unlawfully used. Any person violating the provisions of this subsection shall be guilty of a misdemeanor punishable by fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

ARTICLE 3B.

Permanent Weighing Stations and Portable Scales.

§ 20-183.9. Establishment and maintenance of permanent weighing stations. — The Department of Transportation is hereby authorized, empowered and directed to establish during the biennium ending June 30, 1953, not less than six nor more than 12 permanent weighing stations equipped to weigh vehicles using the streets and highways of this State to determine whether such vehicles are being operated in accordance with legislative enactments relating to weights of vehicles and their loads. The permanent weighing stations shall be established at such locations on the streets and highways in this State as will enable them to be used most advantageously in determining the weight of vehicles and their loads. Said permanent weighing stations shall be equipped by the Department of Transportation and shall be maintained by said Department of Transportation. (1951, c. 988, s. 1; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, ss. 34, 37.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted “Department of Transportation” for “Board of Transportation” in three places. The amendment also deleted the former second paragraph of the section, which made an appropriation.

§ 20-183.10. Operation by Division of Motor Vehicles; uniformed personnel with powers of peace officers. — The permanent weighing stations to be established pursuant to the provisions of this Article shall be operated by
§ 20-183.11. Refusal of operator to cooperate in weighing vehicle; removal of excess portion of load. — When a permanent weighing station is established under the provisions of this section, it shall constitute a misdemeanor for the operator of any vehicle to refuse to permit his vehicle to be weighed at such station or to refuse to drive his vehicle upon the scales so that the same may be weighed. Any vehicle and its load found to be above the weight authorized in Chapter 20 of the General Statutes shall have immediately removed by the operator such portion of its load as may be necessary to decrease the gross weight of the vehicle to the maximum therefor specified in Chapter 20 of the General Statutes: Provided, that the Division may allow any vehicle transporting refrigerated or iced perishable foods for human consumption to proceed without removing all or a portion of its load when the owner or operator has paid the taxes and penalties due because of the overload or has made satisfactory arrangements with the Commissioner of Motor Vehicles to pay said taxes and penalties. The material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of the owner or operator of such vehicle. (1951, c. 988, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the proviso to the second sentence.

§ 20-183.12. Portable scales. — In addition to the appropriation contained in G.S. 20-183.9, there is hereby appropriated to the Division of Motor Vehicles out of the State Highway and Public Works Fund the sum of sixty-five thousand dollars ($65,000) for each year of the biennium ending June 30, 1953. The money appropriated in this section shall be used by the Commissioner of Motor Vehicles for the purchase and use of portable scales for weighing vehicles traveling over the streets and highways of this State. (1951, c. 988, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first sentence.
§ 20-183.14. Legislative findings. — The General Assembly finds that:
(3) The Division of Motor Vehicles, acting upon recommendations of the Vehicle Equipment Safety Commission and pursuant to the Vehicle Equipment Safety Compact provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this Article. (1963, c. 1167, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subdivision (3).

§ 20-183.16. Compact Commissioner. — The Commissioner of this State on the Vehicle Equipment Safety Commission shall be the Secretary of Transportation or such other officer of the Department of Transportation as the Secretary may designate. (1968, c. 1167, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Secretary of Transportation or such other officer of the Department of Transportation as the Secretary may designate” for “Commissioner of Motor Vehicles or such other officer of the Department as the Commissioner may designate.”

ARTICLE 4.
State Highway Patrol.
§ 20-184. Patrol under supervision of Department of Crime Control and Public Safety. — The Secretary of Crime Control and Public Safety, under the direction of the Governor, shall have supervision, direction and control of the State Highway Patrol. The Secretary shall establish in the Department of Crime Control and Public Safety a State Highway Patrol Division, prescribe regulations governing said Division, and assign to the Division such duties as he may deem proper. (1985, c. 824, s. 2; 1989, c. 887, s. 1; 1941, c. 86; 1975, c. 716, s. 5; 1977, c. 70, ss. 13, 14, 15.)

Cross Reference. — As to transfer of the State Highway Patrol to the Department of Crime Control and Public Safety, see § 143A-292.

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division of Motor Vehicles” for “Department of Motor Vehicles” in the second sentence. The 1977 amendment, effective April 1, 1977, substituted “Secretary of Crime Control and Public Safety” for “Commissioner of Motor Vehicles,” “Department of Crime Control and Public Safety” for “Division of Motor Vehicles,” and “State Highway Patrol Division” for “Division of Highway Safety and Patrol.” Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 20-185. Personnel; appointment; salaries. — (a) The State Highway Patrol shall consist of a commanding officer, who shall be appointed by the Governor and whose rank shall be designated by the Governor, and such additional subordinate officers and members as the Secretary of Crime Control and Public Safety, with the approval of the Governor, shall direct. Members of the State Highway Patrol shall be appointed by the Secretary, with the approval of the Governor, and shall serve at the pleasure of the Governor and Secretary. The commanding officer, other officers and members of the State Highway Patrol shall be paid such salaries as may be established by the Division of Personnel of the Department of Administration. Notwithstanding any other provision of
this Article, the number of supervisory personnel of the State Highway Patrol shall not exceed a number equal to twenty-one percent (21%) of the personnel actually serving as uniformed highway patrolmen. Nothing in the previous sentence is intended to require the demotion, reassignment or change in status of any member of the State Highway Patrol presently assigned in a supervisory capacity. If a reduction in the number of Highway Patrol personnel assigned in supervisory capacity is required in order for the State Highway Patrol to meet the mandatory maximum percentage of supervisory personnel as set out in the fourth sentence of this subsection, that reduction shall be achieved through normal attrition resulting from supervisory personnel resigning, retiring or voluntarily transferring from supervisory positions.

(b) The salary of any officer or member of the State Highway Patrol shall be paid to him so long as his employment as such officer or member of the patrol shall continue, notwithstanding his total or partial incapacity to perform any duties to which he may lawfully be assigned by the commanding officer of the State Highway Patrol, if such incapacity be the result of an injury by accident or occupational disease arising out of and in the course of the performance by him of his official duties; provided, however, that if such incapacity continue for more than two years from its inception, such officer or member of the State Highway Patrol shall during the further continuance of such incapacity be subject to the provisions of Chapter 97 of the General Statutes. Salary paid to an officer or member of the State Highway Patrol pursuant to this subsection shall cease upon the resumption of his regularly assigned duties, retirement, resignation, or death, whichever first occurs; provided, however, that temporary return to duty shall not prohibit payment of salary to such officer or member of the State Highway Patrol provided the officer or member submits to the commanding officer of the State Highway Patrol prior to the beginning of each subsequent period of disability during the two-year period medical evidence that such disability is directly related to the original cause of incapacity; provided further, that officers or members of the State Highway Patrol, notwithstanding the provisions of subsection (c) of this section, shall during the two-year period salary is paid pursuant to this subsection be subject to the provisions of G.S. 97-27. All payments of salary provided for in this subsection shall be made at the same time and in the same manner as other salaries are paid to members of the State Highway Patrol.

(c) The provisions of subsection (b) of this section shall be in lieu of all compensation provided for the first two years of such incapacity by G.S. 97-29 and 97-30, but shall be in addition to any other benefits or compensation to which such officer or member of the State Highway Patrol shall be entitled under the provisions of the Workmen's Compensation Act. The provisions of G.S. 97-24 will commence at the end of the two-year period salary is paid under subsection (b) of this section to any officer or member of the State Highway Patrol.

(e) Any officer or member of the State Highway Patrol, who as a result of an injury by accident arising out of and in the course of the performance by him of his official duties, shall be totally or partially incapacitated to perform any duties to which he may be lawfully assigned, shall report such incapacity to the commanding officer of the State Highway Patrol as soon as may be practicable in such manner as the commanding officer of the State Highway Patrol shall require. Upon the filing of such report, the commanding officer of the State Highway Patrol shall determine the cause of such incapacity, and to what extent the claimant may be assigned to other than his normal duties. The finding of the commanding officer of the State Highway Patrol shall determine the right of the claimant to benefits under subsection (b) of this section, unless the claimant, within 30 days after he receives notice thereof, files with the North Carolina Industrial Commission, upon such form as it shall require, a request for a hearing. Upon the filing of such request, the North Carolina Industrial
§ 20-186. Commission shall proceed to hear the matter in accordance with its regularly established procedure for hearing claims filed under the Workmen's Compensation Act, and shall report its findings to the commanding officer of the State Highway Patrol. From the decision of the North Carolina Industrial Commission an appeal shall lie as in other matters heard and determined by such Commission. Any officer or member of the State Highway Patrol who shall refuse to perform any duties to which he may properly be assigned as the result of the finding of the commanding officer of the State Highway Patrol, or of the North Carolina Industrial Commission, shall be entitled to no benefits pursuant to subsection (b) of this section so long as such refusal shall continue.

(f) The benefits provided for members of the State Highway Patrol under the provisions of subsections (b), (c), (d), and (e) of this section shall be granted to the Director and assistant director of the License and Theft Enforcement Section of the Division of Motor Vehicles, Department of Transportation, and to members of the License and Theft Enforcement Section of the Division of Motor Vehicles, Department of Transportation, designated by the Commissioner of Motor Vehicles as “inspectors,” and uniformed weigh station personnel in the same manner and under the same circumstances and subject to the same limitations as if the Director and assistant director and the inspectors were members of the State Highway Patrol. The benefits provided for members of the State Highway Patrol under the provisions of subsections (b), (c), (d), and (e) of this section shall be granted to incapacitated driver license examiners, if such total or partial incapacity is the result of an injury by accident arising out of and in the course of giving a road test.

(1975, c. 61, ss. 1, 2; c. 716, s. 5; 1977, c. 70, ss. 6-8, 13; c. 329, ss. 1-3; cc. 749, 889.)

Editor's Note.— The first 1975 amendment, effective July 1, 1975, added the last three sentences of subsection (a).

The second 1975 amendment, effective July 1, 1975, substituted “License and Theft Enforcement Section of the Division” for “License and Theft Enforcement Division of the Department” in the first sentence of subsection (f). The editors have also substituted “License and Theft Enforcement Section” for “License and Theft Enforcement Division” in the first sentence of subsection (f).

The first 1977 amendment, effective April 1, 1977, inserted “who shall be appointed by the Governor and,” substituted “members” for “men” and “Secretary of Crime Control and Public Safety” for “Commissioner of Motor Vehicles” and deleted “and Advisory Budget Commission” preceding “shall direct,” all in the first sentence of subsection (a), and substituted “Secretary” for “Commissioner” in the second sentence of subsection (a). In subsection (f), the amendment inserted “of Motor Vehicles, Department of Transportation” and “of the Division of Motor Vehicles, Department of Transportation” and inserted “of Motor Vehicles” following “Commissioner,” all in the first sentence.

The second 1977 amendment rewrote subsection (b), added the second sentence of subsection (c), and substituted “commanding officer of the State Highway Patrol” for “Commissioner of Motor Vehicles” and “Commissioner” throughout subsection (e).

The third 1977 amendment substituted “twenty-one percent (21%)” for “eighteen percent (18%)” in the fourth sentence of subsection (a).

The fourth 1977 amendment inserted “and uniformed weigh station personnel” in the first sentence of subsection (f).

Session Laws 1977, c. 329, s. 4, provides: “This act shall become effective upon ratification [May 9, 1977] and shall apply to all injuries occurring on or after Nov. 1, 1975.”

Session Laws 1977, c. 70, s. 34, contains a severability clause.

Pursuant to Session Laws 1957, c. 269, s. 1, “Department of Administration” has been substituted for “Budget Bureau” in subsection (a).

As subsections (d), (g) and (h) were not changed by the amendments, they are not set out.
§ 20-187. Orders and rules for organization and conduct. — The Secretary of Crime Control and Public Safety is authorized and empowered to make all necessary orders, rules and regulations for the organization, assignment, and conduct of the members of the State Highway Patrol. Such orders, rules and regulations shall be subject to the approval of the Governor. (1929, c. 218, ss. 1, 8; 1931, c. 381; 1933, c. 214, ss. 1, 2; 1939, c. 387, s. 2; 1941, c. 36; 1977, c. 70, s. 13.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Commissioner of Motor Vehicles" and deleted former provisions relating to bonds of members of the Highway Patrol. Session Laws 1977, c. 70, s. 34, contains a severability clause.


(e) Upon receipt of a recommendation of the committee, the patrol commander shall inquire into the facts of the matter and shall reduce his recommendation to writing. The patrol commander shall forward his recommendation, together with the recommendation of the committee, to the Secretary of Crime Control and Public Safety. The Secretary shall have final authority to approve or disapprove recommendations affecting the issuance of all awards except the award of honor. All recommendations for the award of honor shall be forwarded to the Governor for final approval or disapproval.

(f) The patrol commander shall, with the approval of the Secretary, establish all necessary rules and regulations to fully implement the provisions of this section and such rules and regulations shall include, but shall not be limited to, the following:

1) Announcement of awards
2) Presentation of awards
3) Recording of awards
4) Replacement of awards
5) Authority to wear award insignias. (1967, c. 1179; 1971, c. 848; 1977, c. 70, s. 13.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Commissioner of Motor Vehicles" in the second sentence of subsection (e). The editors have also substituted "Secretary" for "Commissioner" in the third sentence of subsection (e) and in the introductory paragraph of subsection (f), although that substitution was not expressly directed by the amendatory act. Session Laws 1977, c. 70, s. 34, contains a severability clause. As the rest of the section was not changed by the amendments, only subsections (e) and (f) are set out.

§ 20-187.2. Badges and service revolvers of deceased or retiring members of State, city and county law-enforcement agencies; revolvers of active members. — (a) Surviving spouses, or in the event such members die ununsurvived
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by a spouse, surviving children, of members of North Carolina State, city and county law-enforcement agencies killed in the line of duty or who are members of such agencies at the time of their deaths, and retiring members of such agencies, shall receive, upon request and at no cost to them, the badge and service revolver worn or carried by such deceased or retiring member, upon securing a permit as required by G.S. 14-402 et seq. or G.S. 14-409.1 et seq., or without such permit provided the revolver shall have been rendered incapable of being fired.

(1975, c. 44; 1977, c. 548.)

Editor's Note. —

The 1975 amendment inserted "city and county" between "State" and "law-enforcement agencies" near the beginning of subsection (a). Similar language in subsection (b) was not changed.

The 1977 amendment substituted "Surviving spouses" for "Widows" and "spouse" for "widow" in subsection (a).

As subsection (b) was not changed by the amendments, it is not set out.

§ 20-188. Duties of Highway Patrol. — The State Highway Patrol shall be subject to such orders, rules and regulations as may be adopted by the Secretary of Crime Control and Public Safety, with the approval of the Governor, and shall regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State. To this end, the members of the Patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the State having criminal jurisdiction, and are likewise authorized to arrest without warrant any person who, in the presence of said officers, is engaged in the violation of any of the laws of the State regulating travel and the use of vehicles upon the highways, or of laws with respect to the protection of the highways, and they shall have jurisdiction anywhere within the State, irrespective of county lines. The State Highway Patrol shall enforce the provisions of G.S. 14-399.

The State Highway Patrol shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor, and such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

The Secretary of Crime Control and Public Safety shall direct the officers and members of the State Highway Patrol in the performance of such other duties as may be required for the enforcement of the motor vehicle laws of the State.

Members of the State Highway Patrol, in addition to the duties, power and authority hereinbefore given, shall have the authority throughout the State of North Carolina of any police officer in respect to making arrests for any crimes committed in their presence and shall have authority to make arrests for any crime committed on any highway.

Regardless of territorial jurisdiction, any member of the State Highway Patrol who initiates an investigation of an accident or collision may not relinquish responsibility for completing the investigation, or for filing criminal charges as appropriate, without clear assurance that another law-enforcement officer or agency has fully undertaken responsibility, and in such cases he shall render reasonable assistance to the succeeding officer or agency if requested. (1929, c. 218, s. 4; 1933, c. 214, ss. 1, 2; 1935, c. 324, s. 3; 1939, c. 387, s. 2; 1941, c. 36; 1945, c. 1048; 1947, c. 1067, s. 20; 1973, c. 689; 1975, c. 716, s. 5; 1977, c. 70, ss. 10, 13; c. 887, s. 3.)
§ 20-189. Patrolmen assigned to Governor's office. — The Secretary of Crime Control and Public Safety, at the request of the Governor, shall assign and attach two members of the State Highway Patrol to the office of the Governor, there to be assigned such duties and perform such services as the Governor may direct. The salary of the State highway patrolmen so assigned to the office of the Governor shall be paid from appropriations made to the office of the Governor and shall be fixed in an amount to be determined by the Governor and the Advisory Budget Commission. (1941, c. 23, 36; 1965, c. 1159; 1977, c. 70, s. 13.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division of Motor Vehicles” in the first sentence of the first paragraph and rewrote the third paragraph.

The second 1977 amendment, effective July 1, 1977, added the third sentence of the first paragraph.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 20-190. Uniforms; motor vehicles and arms; expense incurred; color of vehicle. — The Department of Crime Control and Public Safety shall adopt some distinguishing uniform for the members of said State Highway Patrol, and furnish each member of the Patrol with an adequate number of said uniforms and each member of said Patrol force when on duty shall be dressed in said uniform. The Department of Crime Control and Public Safety shall likewise furnish each member of the Patrol with a suitable motor vehicle, and necessary arms, and provide for all reasonable expense incurred by said Patrol while on duty, provided, that not less than seventy-nine percent (79%) of the number of motor vehicles operated on the highways of the State by members of the State Highway Patrol shall be painted a uniform color of black and silver. (1929, c. 218, s. 5; 1941, c. 36; 1955, c. 1132, ss. 1, 1 1/4, 1 1/4; 1957, c. 478, s. 1; c. 673, s. 1; 1961, c. 342; 1975, c. 716, s. 5; 1977, c. 70, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division of Motor Vehicles” for “Department of Motor Vehicles” in two places.

The 1977 amendment, effective April 1, 1977, substituted “Department of Crime Control and Public Safety” for “Commissioner of Motor Vehicles” in the first sentence.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 20-190.2. Signs showing highways patrolled by unmarked vehicles. — The Department of Transportation shall erect or cause to be erected signs at all points where paved highways enter this State from adjacent states stating that the highways are patrolled by unmarked police vehicles. (1957, c. 673, s. 2; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted “Department of Transportation” for “Board of Transportation.”
§ 20-191. Use of facilities. — Office space and other equipment and facilities of the Division of Motor Vehicles, Department of Transportation, presently being used by the State Highway Patrol shall continue to be used by the Patrol, and joint use of space, equipment and facilities between any division of the Department of Transportation and the State Highway Patrol may continue, unless such arrangements are changed by agreements between the Secretary of Crime Control and Public Safety and the Secretary of Transportation. (1929, c. 218, s. 6; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 2; 1975, c. 716, s. 5; 1977, c. 70, s. 11.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division of Motor Vehicles" for "Department of Motor Vehicles" in the section as it stood before the 1977 amendment.

The 1977 amendment, effective April 1, 1977, rewrote this section, which formerly related to the establishment of district headquarters. Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 20-192. Shifting of patrolmen from one district to another. — The commanding officer of the State Highway Patrol under such rules and regulations as the Department of Crime Control and Public Safety may prescribe shall have authority from time to time to shift the forces from one district to another, or to consolidate more than one district force at any point for special purposes. Whenever a member of the State Highway Patrol is transferred from one point to another for the convenience of the State or otherwise than upon the request of the patrolman, the Department shall be responsible for transporting the household goods, furniture and personal apparel of the patrolman and members of his household. (1929, c. 218, s. 7; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 3; 1951, c. 285; 1975, c. 716, s. 5; 1977, c. 70, s. 15.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department" for "Division" in two places.
The 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Division of Motor Vehicles" in the first sentence. The editors have also substituted "Department" for "Division" in the second sentence, although this substitution was not expressly directed by the amendatory act. Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 20-194. Expense of administration; defense of members and other State law-enforcement officers in civil actions; payment of judgments. — (a) All expenses incurred in carrying out the provisions of this Article shall be paid out of the highway fund.

(c) The coverage afforded under this Article shall be excess coverage over any commercial liability insurance up to the limit of the Tort Claims Act. (1929, c. 218, s. 9; 1941, c. 36; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1328; 1975, c. 210; 1977, c. 70, s. 12.)

Editor's Note. — The 1975 amendment added subsection (c).
The 1977 amendment, effective April 1, 1977, substituted "highway fund" for "maintenance funds of the Board of Transportation" at the end of subsection (a).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As subsection (b) was not changed by the amendments, it is not set out.

§ 20-195. Cooperation between Patrol and local officers. — The Secretary of Crime Control and Public Safety with the approval of the Governor, through the State Highway Patrol Division, shall encourage the cooperation between the Highway Patrol and the several municipal and county peace officers of the State for the enforcement of all traffic laws and the proper administration of the
§ 20-196. Statewide radio system authorized; use of telephone lines in emergencies. — The Secretary of Crime Control and Public Safety, through the State Highway Patrol Division is hereby authorized and directed to set up and maintain a statewide radio system, with adequate broadcasting stations so situate as to make the service available to all parts of the State for the purpose of maintaining radio contact with the members of the State Highway Patrol and other officers of the State, to the end that the traffic laws upon the highways may be more adequately enforced and that the criminal use of the highways may be prevented.

If the Director of the Budget shall find that the appropriation provided for the Division is not adequate to take care of the entire cost of the radio service herein provided for, after providing for the administration of other provisions of this law, the Department of Transportation, upon the order of the Director of the Budget approved by the Advisory Budget Commission, shall make available such additional sum as the said Budget Commission may find to be necessary to make the installation and operation of such radio service possible; and the sum so provided by the Department of Transportation shall constitute a valid charge against the appropriation item of betterments for State and county roads.

The Secretary of Crime Control and Public Safety is likewise authorized and empowered to arrange with the various telephone companies of the State for the use of their lines for emergency calls by the members of the State Highway Patrol, if it shall be found practicable to arrange apparatus for temporary contact with said telephone circuits along the highways of the State.

In order to make this service more generally useful, the various boards of county commissioners and the governing boards of the various cities and towns are hereby authorized and empowered to provide radio receiving sets in the offices and vehicles of their various officers, and such expenditures are declared to be a legal expenditure of any funds that may be available for police protection.

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Transportation" for "Division of Highway Safety and Patrol" in both places.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 20-196.3. Who may hold supervisory positions over uniformed personnel. — Notwithstanding any other provision of the General Statutes of
North Carolina, it shall be unlawful for any person other than the Governor and the Secretary of Crime Control and Public Safety and other than a uniformed member of the North Carolina State Highway Patrol who has met all requirements for employment within the Patrol, including but not limited to completion of the basic Patrol school, to hold any supervisory position over uniformed personnel within the Patrol. (1975, c. 47; 1977, c. 70, s. 14.1.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Secretary of Crime Control and Public Safety" for "Secretary of the Department of Transportation."

ARTICLE 6.

Giving Publicity to Highway Traffic Laws through the Public Schools.

§ 20-212. Department of Transportation to prepare digest. — The Department of Transportation shall cause to be prepared a digest of the traffic laws of the State suitable for use in the public schools of the State and have published in pamphlet form and delivered on or before the first day of August, 1927, to the State Superintendent of Public Instruction, a sufficient number of said pamphlets to supply at least one copy each to all of the public high school teachers of the State. (1927, c. 242, s. 1; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

§ 20-215. Practice to be continued; Department of Transportation to supply additional copies yearly. — This practice shall be continued during each school year and the Department of Transportation is directed annually on or before the first Monday of August, to supply, as hereinbefore provided, such additional copies of the said pamphlet, having the same revised from time to time to meet any amendments of the traffic laws of the State, as the State Superintendent of Public Instruction may ascertain and report to the Department of Transportation to be necessary. (1927, c. 242, s. 4; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in two places.

ARTICLE 6A.

Motor Carriers of Migratory Farm Workers.

§ 20-215.2. Power to regulate; rules and regulations establishing minimum standards. — Notwithstanding any other provisions of this Chapter the North Carolina Division of Motor Vehicles, hereinafter referred to as "Division," is
hereby vested with the power and duty to make and enforce reasonable rules and regulations applicable to motor carriers of migratory farm workers to and from their places of employment. The rules promulgated shall establish minimum standards:

(1) For the construction and equipment of such vehicles, including coupling devices, lighting equipment, exhaust systems, rear vision mirrors, brakes, steering mechanisms, tires, windshield wipers and warning devices.

(2) For the operation of such vehicles, including driving rules, distribution of passengers and load, maximum hours of service for drivers, minimum requirements of age and skill of drivers, physical conditions of drivers and permits, licenses or other credentials required of drivers.

(3) For the safety and comfort of passengers in such vehicles, including emergency kits, fire extinguishers, first-aid equipment, sidewalks, seating accommodations, tail gates or doors, rest and meal stops, maximum number of passengers, and safe means of ingress and egress. (1961, c. 505, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places in the introductory paragraph.

§ 20-215.3. Adoption of I.C.C. regulations; public hearings on rules and regulations; distribution of copies. — The Division may adopt and enforce rules and regulations promulgated by the Interstate Commerce Commission, insofar as the Division finds such rules to be practicable in this State; shall conduct public hearings in connection with the formulation and adoption of rules and regulations; and shall cause the distribution of copies of such rules as are promulgated to interested persons and groups. (1961, c. 505, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-215.4. Violation of regulations a misdemeanor. — The violation of any rule or regulation promulgated by the Division hereunder by any person, firm or corporation shall be a misdemeanor, punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for a period of not more than 30 days, or by both such fine and imprisonment. (1961, c. 505, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of the section.

ARTICLE 7.


§ 20-218. Standard qualifications for school bus drivers; speed limit. — (a) No person shall drive or operate a school bus over the public roads of North Carolina while the same is occupied by children unless said person shall be fully trained in the operation of motor vehicles, and shall furnish to the superintendent of the schools of the county in which said bus shall be operated a certificate from the Highway Patrol of North Carolina, or from any
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representative duly designated by the Commissioner of Motor Vehicles, and the chief mechanic in charge of school buses in said county showing that he has been examined by a member of the said Highway Patrol, or a representative duly designated by the Commissioner of Motor Vehicles, and chief mechanic in charge of school buses in said county and that he is a fit and competent person to operate or drive a school bus over the public roads of the State. Notwithstanding the above, school activity buses may be operated by a person who holds a school bus driver's certificate or a chauffeur's license.

(b) It shall be unlawful for any person to operate or drive a school bus loaded with children over the public roads of North Carolina at a greater rate of speed than 35 miles per hour, with the following exceptions:

(1) For school activity buses which are painted a different color from regular school buses and which are being used for transportation of students or others to or from places for participation in events other than regular classroom work, it shall be unlawful to operate such a school activity bus at a greater rate of speed than 45 miles per hour.

(2) For school buses or special buses with a capacity of 16 pupils or less that are used to transport students who are children with special needs, it shall be unlawful to operate the buses at a greater rate of speed than 45 miles per hour.

(c) Any person violating this section shall, upon conviction, be fined not more than fifty dollars ($50.00) or imprisoned for not more than 30 days. (1937, c. 397, ss. 1-3; 1941, c. 21; 1943, c. 440; 1945, c. 216; 1957, cc. 139, 595; 1971, c. 293; 1977, c. 791, ss. 1, 2; c. 1102.)

Editor's Note. — The first 1977 amendment rewrote this section to read as set out above. The amendment designated the first through third paragraphs as subsections (a) through (c), combined the former first and second sentences of present subsection (b) into the introductory language and subdivision (1) by substituting "with the following exceptions:" and "(1) For" for "Provided, however, that as to," added subdivision (2) to subsection (b), and inserted "for" in present subsection (c).

The second 1977 amendment, effective July 1, 1977, inserted "for anyone other than a person 21 years old or older who holds a school bus driver's certificate or a chauffeur's license" in the second sentence of the second paragraph of the section as it stood before the first 1977 amendment. The section as amended by the second 1977 act would read as follows:

"§ 20-218. Standard qualifications for school bus drivers; speed limit. — (a) No person shall drive or operate a school bus over the public roads of North Carolina while the same is occupied by children unless said person shall be fully trained in the operation of motor vehicles, and shall furnish to the superintendent of the schools of the county in which said bus shall be operated a certificate from the Highway Patrol of North Carolina, or from any representative duly designated by the Commissioner of Motor Vehicles, and the chief mechanic in charge of school buses in said county showing that he has been examined by a member of the said Highway Patrol, or a representative duly designated by the Commissioner of Motor Vehicles, and said chief mechanic in charge of school buses in said county and that he is a fit and competent person to operate or drive a school bus over the public roads of the State. Notwithstanding the above, school activity buses may be operated by a person who holds a school bus driver's certificate or a chauffeur's license.

(b) It shall be unlawful for any person to operate or drive a school bus loaded with children over the public roads of North Carolina at a greater rate of speed than 35 miles per hour, with the following exceptions:

(1) For school activity buses which are painted a different color from regular school buses and which are being used for transportation of students or others to or from places for participation in events other than regular classroom work, it shall be unlawful for anyone other than a person 21 years old or older who holds a school bus driver's certificate or a chauffeur's license to operate such a school activity bus at a greater rate of speed than 45 miles per hour.

(2) For school buses or special buses with a capacity of 16 pupils or less that are used to transport students who are children with special needs, it shall be unlawful to operate the buses at a greater rate of speed than 45 miles per hour.

(c) Any person violating this section shall, upon conviction, be fined not more than fifty dollars ($50.00) or imprisoned for not more than 30 days."

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§ 20-219. Refund to counties of costs of prosecuting theft cases. — Whenever the Motor Vehicle Division of the State has caused to be instituted criminal prosecutions in the superior court of any county of the State for violation of the automobile theft laws, and the county wherein such case was tried has incurred court costs incident thereto, upon certificate of the clerk of the superior court of said county showing an itemized statement thereof, and that the same has been paid, upon the approval of the Commissioner of Motor Vehicles and the Attorney General, the sum or sums so paid shall be refunded to said county, the same to be paid from the highway maintenance fund from receipts from the motor vehicle registration title fees.

This section shall apply to costs incurred in the prosecution of automobile theft cases only. (1929, c. 275; 1941, c. 36; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, "Department" near the beginning of the first effective July 1, 1975, substituted "Division" for paragraph.


(c) This section shall apply only to the Counties of Craven, Forsyth, Gaston, Guilford, New Hanover, Orange, Robeson, Wake, Wilson and to the City of Durham. (1969, cc. 173, 288; 1971, c. 986; 1973, c. 183; c. 981, s. 1; c. 1330, s. 36; 1975, c. 575.)

Local Modification. — By virtue of Session Laws 1975, c. 671, the City of Durham should be stricken from the Replacement Volume.

Editor's Note. —

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

The 1975 amendment added Forsyth to the list of counties in subsection (c).

ARTICLE 8.

Habitual Offenders.

§§ 20-220 to 20-231: Repealed by Session Laws 1977, c. 243, s. 1.

Cross Reference. — As to issuance of new licenses to persons whose licenses were revoked under the repealed sections, see § 20-231.1.

ARTICLE 8A.

Issuance of New Licenses to Persons Adjudged Habitual Offenders.

§ 20-231.1. Issuance of new licenses to persons whose licenses were revoked under repealed §§ 20-220 to 20-231. — Any person whose driver's license has been revoked under the habitual offender statutes repealed by this act (Article 8 of Chapter 20) may apply to the Division of Motor Vehicles for a new license after three years from the commencement of the revocation. Upon the filing of such application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the date the revocation became effective and that his conduct and attitude are such as to entitle him to favorable consideration. The Division must reissue a license to any person adjudged a habitual offender after five years from the commencement of the revocation if...
the person is otherwise eligible to be licensed under Article 2 of Chapter 20. If a person’s license has been revoked for five years under the statutes repealed by this act (Article 8 of Chapter 20), his previous status as a habitual offender may not be used as a basis for denying him a license. (1977, c. 243, s. 2.)

ARTICLE 9A.


§ 20-279.10. Custody, disposition and return of security; escheat.

(b) One year from the deposit of any security under the terms of this Article, the Commissioner shall notify the depositor thereof by registered mail addressed to his last known address that the depositor is entitled to a refund of the security upon giving reasonable evidence that no action at law for damages arising out of the accident in question is pending or that no judgment rendered in any such action remains unpaid. If, at the end of three years from the date of deposit, no claim therefor has been received, the Division shall notify the depositor thereof by registered mail and shall cause a notice to be posted at the courthouse door of the county in which is located the last known address of the depositor for a period of 60 days. Such notice shall contain the name of the depositor, his last known address, the date, amount and nature of the deposit, and shall state the conditions under which the deposit will be refunded. If, at the end of two years from the date of posting of such notice, no claim for the deposit has been received, the Commissioner shall certify such fact together with the facts of notice to the State Treasurer and the Treasurer shall turn such deposit over to the University of North Carolina as an escheat. (1958, c. 1300, s. 10; 1955, c. 1152, s. 13; 1967, c. 1227; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, as subsection (a) was not changed by the effective July 1, 1975, substituted “Division” for “Department” in the second sentence of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 20-279.13. Suspension for nonpayment of judgment; exceptions.

Applicability of Subsection (a). — The mandatory provisions of subsection (a) are not applicable to unsatisfied judgments based on debt and/or conversion of a motor vehicle and damages resulting therefrom. Opinion of Attorney General to Mr. Charles Hensley, 44 N.C.A.G. 250 (1975).

§ 20-279.14. Suspension to continue until judgments satisfied. — Such license and nonresident’s operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment:

(1) Is stayed, or
(2) Is satisfied in full, or
(3) Is subject to the exemptions stated in G.S. 20-279.13 or G.S. 20-279.16, or
(4) Is barred from enforcement by the statute of limitations pursuant to G.S. 1-47,
(5) Is discharged in bankruptcy. (1953, c. 1300, s. 14; 1969, c. 186, s. 5; 1975, c. 301.)

(b) Such owner's policy of liability insurance:

1. Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

2. Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident; and

3. No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of G.S. 20-279.5, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; and provided that an insured shall be entitled to secure increased limits coverage of fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident if the policy of such insured carries liability limits of equal or greater amounts for the protection of third persons. Such provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of five thousand dollars ($5,000) and subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. Such provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that such other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of such other motor vehicle was uninsured at the time of the accident with the insured.
for the purposes of recovery under this provision of the insured’s liability insurance policy. The coverage required under this section shall not be applicable where any insured named in the policy shall reject the coverage.

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

**a.** A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether such pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law.

**b.** Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in such event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in such notice the time, date and place of such injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer such further reasonable information concerning the accident and the injury as the insurer shall request. If such forms are not so furnished within 15 days, the insured shall be deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of such injury or
accident to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is such insurance but the insurance company writing the same denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of such bodily injury and property damage liability insurance, or the owner of such motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;

b. A motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

c. A motor vehicle which is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);

d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in such motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of such motor vehicle.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

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(1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified mail with return receipt requested, or served by any other method of service provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the assigned risk bureau. The Commissioner of Motor Vehicles and the North Carolina assigned risk bureau shall, upon request made, furnish to the plaintiff or his counsel the identity and address of the insurance carrier as shown upon the records of the Division or the bureau, and whether the policy is an assigned risk policy. Neither the Division of Motor Vehicles nor the assigned risk bureau shall be subject to suit by reason of a mistake made as to the identity of the carrier and its address in response to a request made for such information.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after
receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an “insured” under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;

(4) The policy, the written application therefor, if any, and an endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.

(1975, c. 326, ss. 1, 2; c. 716, s. 5; c. 866, ss. 1-4.)

I. GENERAL CONSIDERATION.

Editor’s Note. —

The first 1975 amendment, effective July 1, 1975, inserted “by registered or certified mail, return receipt requested, or” near the middle of the first sentence of paragraph (8)a of subsection (b), and substituted “by certified or registered mail with return receipt requested or served by any other method of service provided by law” for “by registered mail with return receipt requested” near the end of the second sentence of subdivision (1) of subsection (f).

The second 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in two places in subdivision (1) of subsection (f).

The third 1975 amendment added the last paragraph in subsection (b), deleted “and with respect to policies of motor vehicle liability insurance written under the North Carolina assigned risk plan” following “Except as hereinafter provided” at the beginning of subdivision (1) of subsection (f), rewrote the second sentence of that subdivision by inserting “or through the North Carolina Motor Vehicle Reinsurance Facility” and substituting “such an insured” for “an assigned risk” near the beginning of the sentence and inserting “or certified” near the end of the sentence. The amendment also deleted “assigned risk” preceding “insurer has delivered” in the last paragraph of subdivision (1) of subsection (f).

In the second sentence of subdivision (1) of subsection (f) in the section as set out above, the editors have combined the first and third 1975 amendments by inserting “or served by any other method of service provided by law” pursuant to Session Laws 1975, c. 326, in the sentence as rewritten by Session Laws 1975, c. 866.

As the rest of the section was not changed by the amendments, only subsections (b) and (f) are set out.

II. THE OMNIBUS CLAUSE.

Liberal Construction in Interpreting Scope, etc. —


It was the necessity of proof of permission that the 1967 amendment to subsection (b)(2) was designed to obviate. Although lawful possession by the operator may be shown by evidence of permission granted to the operator to take the vehicle in the first instance, the plaintiff is not required to show more than lawful possession at the time of the accident.
§ 20-279.34. North Carolina Automobile Insurance Plan. — The Commissioner of Insurance shall develop a revised assigned risk plan to be denominated "The North Carolina Automobile Insurance Plan" as follows:

(7) The Commissioner of Insurance or the person designated in the plan adopted or approved by the Commissioner is empowered, after reviewing all information pertaining to the applicant or policyholder available from the records of the Division of Motor Vehicles and after determining that the applicant's license to operate a motor vehicle has been suspended and continues to be suspended or has been revoked and the revocation remains in effect:

a. To refuse to assign an application;

b. To approve the rejection of an application by an insurance carrier;

c. To approve the cancellation of any motor vehicle liability insurance policy written through the plan by an insurance carrier; or

d. To refuse to approve the renewal or the reassignment of an expiring policy.

Otherwise, nonrenewal or cancellation of insurance under the provisions of this section shall be exercised only in the event of nonpayment of premiums.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph of subdivision (7).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (7) are set out.


ARTICLE 11.

Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

§ 20-283. Compliance with Article prerequisite to issuance of license plates. — No license plates shall be issued by the Division of Motor Vehicles
to operate a motor vehicle, for lease or rent for operation by the rentee or lessee, until the applicant for such license plates demonstrates to the Commissioner of Motor Vehicles that he has complied with the provisions of this Article. (1953, c. 1017, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of the section.

ARTICLE 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-286. Definitions. — Unless the context otherwise requires, the following words and terms, for the purpose of this Article, shall have the following meanings:

(6) "Established place of business" means a salesroom containing at least 96 square feet of floor space in a permanent enclosed building; said salesroom shall have displayed thereon or immediately adjacent thereto a sign, in block letters not less than three inches in height on contrasting background, clearly and distinctly designating the trade name of the business at which a permanent business of bartering, trading and selling motor vehicles will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records and files as the Division may require necessary to conduct the business at such place. Provided, however, the minimum area requirement provided for in this subdivision is not applicable to any established place of business lawfully in existence and duly licensed on or before January 1, 1978. (1977, c. 560, s. 1.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, in the first sentence of subdivision (6), substituted "96 square feet" for "64 square feet," deleted "or structure" following "permanent enclosed building," inserted "in block letters not less than three inches in height on contrasting background" and "as the division may require," and deleted "and shall not mean tents, temporary stands or other temporary

§ 20-288. Application for license; information required and considered; expiration of license; supplemental license; bond. — (a) Application for license shall be made to the Division at such time, in such form, and contain such information as the Division shall require, and shall be accompanied by the required fee.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matter commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, distributor branch, or factory branch shall furnish a corporate surety bond or cash bond or fixed value equivalent thereof in the quarters, nor permanent quarters occupied pursuant to any temporary arrangement, devoted principally to the business of a motor vehicle dealer, as herein defined" from the end. The amendment also added the second sentence of subdivision (6).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (6) are set out.
§ 20-289. License fees.

(b) The fees and licenses collected under this section shall be placed in the Highway Fund. Provided, that nothing contained in this section or in any other section of this Article shall be construed as exempting any person of any license, tax or fee imposed by any other provision of the law. (1955, c. 12438, s. 5; 1969, c. 598; 1977, c. 802, s. 8.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, added subsection (e). As subsections (c) and (d) were not changed by the amendments, they are not set out.

§ 20-290. Licenses to specify places of business; display of license and list of salesmen; advertising. — (a) The licenses of new motor vehicle dealers, used motor vehicle dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of each place of business or branch or other location occupied or to be occupied by the licensee in conducting his business as such, and the license or supplementary license issued therefor shall be conspicuously displayed on each of such premises. In the event any such location is changed, the Division shall endorse the change of location on the license, without charge.

(1975, c. 716, s. 5.)
§ 20-291. Salesman, etc., to carry license and display on request; license to name employer. — Every salesman, factory representative and distributor representative shall carry his license when engaged in his business, and shall display the same upon request. The licensee shall name his employer, and in the event of a change of employer, he shall immediately mail his license to the Division, which shall endorse such change on the license without charge. (1955, c. 1243, s. 7; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the second sentence of subsection (a).

§ 20-294. Grounds for denying, suspending or revoking licenses. — A license may be denied, suspended or revoked on any one or more of the following grounds:

(2) Willful and intentional failure to comply with any provision of this Article or the willful and intentional violation of G.S. 20-52.1, G.S. 20-75, G.S. 20-79, G.S. 20-82, G.S. 20-108, G.S. 20-109 or rescission and cancellation of dealer's license and dealer's plates under G.S. 20-110(e) or 20-110(f) or any lawful rule or regulation promulgated by the Division under this Article.

(1975, c. 716, s. 5; 1977, c. 660, s. 8.)


§ 20-295. Time to act upon applications; refusal of license; notice; hearing. — The Division shall act upon all applications for a license within 30 days after receipt thereof, by either granting or refusing the same. Any applicant denied a license shall, upon his written request filed within 30 days, be given a hearing at such time and place as determined by the Commissioner, or person designated by him. All such hearings shall be public and shall be held with reasonable promptness. Any applicant denied a license for failure to comply with the definition of an established place of business, as defined in this Article, may not, nor shall anyone else apply for a license for such premises, for which a license was denied, until the expiration of 60 days from the date of the rejection of such application. (1955, c. 1243, s. 11; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” near the beginning of the first sentence.
§ 20-296. Notice and hearing upon denial, suspension, revocation or refusal to renew license. — No license shall be suspended or revoked or denied, or renewal thereof refused, until a written notice of the complaint made has been furnished to the licensee against whom the same is directed, and a hearing thereon has been had before the Commissioner, or a person designated by him. At least 10 days' written notice of the time and place of such hearing shall be given to the licensee by registered mail to his last known address as shown on his license or other record of information in possession of the Division. At any such hearing, the licensee shall have the right to be heard personally or by counsel. After hearing, the Division shall have power to suspend, revoke or refuse to renew the license in question. Immediate notice of any such action shall be given to the licensee in the manner herein provided in the case of notices of hearing. (1955, c. 1243, s. 12; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second and fourth sentences.

§ 20-297. Inspection of records, etc. — The Division may inspect the pertinent books, records, letters and contracts of a licensee relating to any written complaint made to him against such licensee. (1955, c. 1243, s. 13; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of the section.

§ 20-300. Appeals from actions of Commissioner.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.


§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

The notice provision contemplates an analysis of relevant market conditions within the trade area at or about the time that the notice of the new dealership is made, not the distant past or future. Smith's Cycles, Inc. v. Alexander, 27 N.C. App. 382, 219 S.E.2d 282 (1975).

Further Notice under Subdivision (5) Required. — Where a motorcycle manufacturer gave plaintiff dealer notice under subdivision (5) of this section of its intention to grant a new motorcycle franchise in plaintiff's trade area on or before September 1, 1973, but the manufacturer did not grant such a franchise by that date, the failure of plaintiff to request a hearing by the Commissioner of Motor Vehicles within 30 days after receipt of such notice did not give the manufacturer the right to grant a new franchise at any time in the future without giving plaintiff further notice under subdivision (5); and where the manufacturer granted a new franchise on October 14, 1974, without giving additional notice to plaintiff, the 30-day time limitation never began to run, and plaintiff properly filed its petition for a hearing on October 19, 1974. Smith's Cycles, Inc. v. Alexander, 27 N.C. App. 382, 219 S.E.2d 282 (1975).

§ 20-309. Financial responsibility prerequisite to registration; must be maintained throughout registration period.

(c) When it is certified that financial responsibility is a liability insurance policy, the Commissioner of Motor Vehicles may require that the owner produce records to prove the fact of such insurance, and failure to produce such records shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and the Division of Motor Vehicles shall revoke the owner's registration plate for 60 days. In no case shall any vehicle the registration of which has been revoked for failure to have financial responsibility be reregistered in the name of the registered owner, spouse, or any child of the spouse or any child of such owner, within less than 60 days after the date of receipt of the registration plate by the Division, except that a spouse living separate and apart from the registered owner may reregister such vehicle immediately in such spouse's name. As a condition precedent to the registration of the vehicle, the separated spouse shall furnish the Division his or her affidavit and the affidavit of two other individuals stating that he or she is separated. As a condition precedent to the reregistration of the vehicle, the owner shall pay a restoration fee of fifteen dollars ($15.00) and the appropriate fee for a new registration plate. It shall be the duty of insurance companies, upon request of the Division, to verify the accuracy of any owner's certification. Failure by an insurance company to deny coverage within 20 days may be considered by the Commissioner as acknowledgment that the information as submitted is correct.

(d) When liability insurance with regard to any motor vehicle is terminated by cancellation or failure to renew, or the owner's financial responsibility for the operation of any motor vehicle is otherwise terminated, the owner shall forthwith surrender the registration certificate and plates of the vehicle to the Division of Motor Vehicles unless financial responsibility is maintained in some other manner in compliance with this Article.

(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (d), the insurer shall forthwith notify the North Carolina Division of Motor Vehicles of such termination. Where the insurance policy is terminated by the insured, the insurer shall forthwith notify the Division of Motor Vehicles that such insurance policy has been terminated. The Division of Motor Vehicles, upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this Article, shall notify such owner of such cancellation or termination, and such owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 15 days from date of notice given by the Division, certify to the Division that he has financial responsibility effective on or prior to the date of such cancellation or termination. Failure by the owner to certify that he has financial
responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and, unless the owner's registration plate has been surrendered to the Division of Motor Vehicles by surrender to an agent or representative of the Division of Motor Vehicles and so designated by the Commissioner of Motor Vehicles or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division of Motor Vehicles shall revoke the owner's registration plate for 60 days. In no case shall any vehicle the registration of which has been revoked for failure to have financial responsibility be registered in the name of the registered owner, spouse, or any child of the spouse or any child of such owner, within less than 60 days after the date of receipt of the registration plate by the Division, except that a spouse living separate and apart from the registered owner may reregister such vehicle immediately in such spouse's name. As a condition precedent to the registration of the vehicle, the owner shall pay a restoration fee of fifteen dollars ($15.00) and the appropriate fee for a new registration plate. Any person, firm or corporation failing to give notice of termination as required herein shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division of Motor Vehicles.

(f) The fees collected under this section and G.S. 20-311 shall be placed in the Highway Fund. (1957, c. 1393, s. 1; 1959, c. 1277, s. 1; 1963, c. 964, s. 1; 1965, c. 272; c. 1136, ss. 1, 2; 1967, c. 822, ss. 1, 2; c. 857, ss. 1, 2; 1971, c. 477, ss. 1, 2; c. 924; 1975, c. 302; c. 348, ss. 1-3; c. 716, s. 5.)

Editor's Note. —
The first 1975 amendment, effective July 1, 1975, rewrote the first sentence of subsection (e), which formerly required 15 days' notice of termination or cancellation prior to the effective date thereof, substituted "forthwith" for "immediately" near the middle of the second sentence of subsection (e), substituted "registered" for "reregistered" in the fifth sentence and "registration" for "reregistration" in the sixth sentence of subsection (e) and added the last sentence of subsection (e).

The second 1975 amendment, effective July 1, 1975, inserted "a restoration fee of fifteen dollars ($15.00) and" in the fourth sentence of subsection (e) and in the next-to-last sentence of subsection (e) and added subsection (f).

The third 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout subsections (c), (d) and (e).

As the rest of the section was not changed by the amendments, only subsections (c), (d), (e) and (f) are set out.

§ 20-311. Revocation of registration when financial responsibility not in effect. — The Division of Motor Vehicles, upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, shall revoke the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle if the year registration has changed for 60 days. In no case shall any vehicle the registration of which has been revoked for failure to have financial responsibility be reregistered in the name of such owner, spouse or any child of the spouse or any child of such owner within less than 60 days after the registration plates have been surrendered to the Division except that a spouse living separate and apart from the registered owner may reregister such vehicle immediately in such spouse's name. As a condition precedent to the reregistration of the vehicle the owner shall pay a restoration fee of fifteen dollars ($15.00) and the appropriate fee for a new registration plate. (1957, c. 1393, s. 3; 1959, c. 1277, s. 2; 1963, c. 964, s. 4; 1965, c. 205; c. 1136, s. 3; 1967, c. 822, s. 3; c. 857, s. 4; 1971, c. 477, s. 3; 1975, c. 348, s. 4; c. 716, s. 5.)
§ 20-312. Failure of owner to deliver certificate of registration and plates after revocation. — Failure of an owner to deliver the certificate of registration and registration plates issued by the Division of Motor Vehicles, after revocation thereof as provided in this Article, shall constitute a misdemeanor. (1957, c. 1398, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the middle of the section.

§ 20-313. Operation of motor vehicle without financial responsibility a misdemeanor.

(b) Evidence that the owner of a motor vehicle registered or required to be registered in this State has operated or permitted such motor vehicle to be operated in this State, coupled with proof of records of the Division of Motor Vehicles indicating that the owner did not have financial responsibility applicable to the operation of the motor vehicle in the manner certified by him for purposes of G.S. 20-309, shall be prima facie evidence that such owner did at the time and place alleged operate or permit such motor vehicle to be operated without having in full force and effect the financial responsibility required by the provisions of this Article. (1957, c. 1393, s. 5; 1959, c. 1277, s. 3; 1963, c. 964, s. 5; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, as subsection (a) was not changed by the amendment, it is not set out.

§ 20-313.1. Making false certification or giving false information a misdemeanor.

(b) Any person, firm, or corporation giving false information to the Division concerning another's financial responsibility for the operation of a motor vehicle registered or required to be registered in this State, knowing or having reason to believe that such information is false, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1963, c. 964, s. 6; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, as subsection (a) was not changed by the amendment, it is not set out.

§ 20-316. Divisional hearings upon lapse of liability insurance coverage.

Any person whose registration plate has been revoked under G.S. 20-309(e) or 20-311 may request a hearing. Upon receipt of such request, the Division shall, as early as practical, afford him an opportunity for hearing. Upon such hearing the duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and documents. If it appears that continuous financial responsibility existed for the vehicle involved, or if it appears the lapse of financial responsibility is not reasonably attributable to the neglect or fault of the person whose registration plate was revoked, the Division shall withdraw its order of revocation and such

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§ 20-316.1. Notification of Division of renewal or reinstatement of policy. — Whenever any insurance company writing automobile liability insurance within this State shall, pursuant to the laws of this State, notify the North Carolina Division of Motor Vehicles of the cancellation or termination of any automobile liability insurance policy, and such company shall subsequently reinstate or renew such policy, it shall become the duty of the insurance company renewing or reinstating the policy to immediately notify the North Carolina Division of Motor Vehicles of the renewal or reinstatement. Notification of the renewal or reinstatement shall constitute proof of continuous coverage to the North Carolina Division of Motor Vehicles, provided such reinstatement or renewal has occurred without any lapse in coverage. (1978, c. 1069, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” throughout the section.

§ 20-317. Insurance required by any other law; certain operators not affected. — This Article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this Article, may be certified as proof of financial responsibility under this Article; provided, however, that nothing contained in this Article shall affect operators of motor vehicles that are now or hereafter required to furnish evidence of insurance or financial responsibility to the North Carolina Utilities Commission or the Interstate Commerce Commission or both, but to the extent that any insurance policy, bond or other agreement filed with or certified to the North Carolina Utilities Commission or Interstate Commerce Commission as evidence of financial responsibility affords less protection to the public than the financial responsibility required to be certified to the Division of Motor Vehicles under this Article as a condition precedent to registration of motor vehicles, the amounts, provisions and terms of such policy, bond or other agreement so certified shall be deemed to be modified to conform to the financial responsibility required to be proved under this Article as a condition precedent to registration of motor vehicles in this State. It is the intention of this section to require owners of self-propelled motor vehicles registered in this State and operated under permits from the North Carolina Utilities Commission or the Interstate Commerce Commission to show and maintain proof of financial responsibility which is at least equal to the proof of financial responsibility required of other owners of self-propelled motor vehicles registered in this State. (1957, c. 1398, s. 9; 1959, c. 1252, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in the first sentence.
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ARTICLE 13A.
Certification of Automobile Insurance Coverage by Insurance Companies.

§ 20-319.1. Company to forward certification within seven days after receipt of request. — Upon the receipt by an insurance company at its home office of a registered letter from an insured requesting that it certify to the North Carolina Division of Motor Vehicles whether or not a previously issued policy of automobile liability insurance was in full force and effect on a designated day, it shall be the duty of such insurance company to forward such certification within seven days. (1967, c. 908, s. 1; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” near the middle of the section.

ARTICLE 14.
Driver Training School Licensing Law.

§ 20-321. Enforcement of Article by Commissioner.

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” near the middle of the section.

§ 20-324. Expiration and renewal of licenses; fees. — All licenses issued under the provisions of this Article shall expire on the last day of June in the year following their issuance and may be renewed upon application to the Commissioner as prescribed by his regulations. Each application for a new or renewal school license shall be accompanied by a fee of twenty-five dollars ($25.00), and each application for a new or a renewal instructor’s license shall be accompanied by a fee of five dollars ($5.00). The license fees collected under this section shall be used under the supervision and direction of the Director of the Budget for the administration of this Article. No license fee shall be refunded in the event that the license is rejected, suspended, or revoked. (1965, c. 873; 1977, c. 802, s. 9.)

Editor’s Note. — The 1977 amendment, effective July 1, 1977, deleted “shall be placed in a special fund to be designated the ‘Commercial Driver Training Law Fund’ and” following “this section” in the third sentence.

§ 20-328. Administration of Article. — This Article shall be administered by the Division of Motor Vehicles with no additional appropriations. (1965, c. 873; 1973, c. 440; 1975, c. 716, s. 5.)

Editor’s Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department.”

ARTICLE 15.
Vehicle Mileage Act.

§§ 20-351 to 20-355: Reserved for future codification purposes.
ARTICLE 16.

Professional Housemoving.

(This Article Will Expire August 1, 1979.)

§ 20-356. Definitions. — "Person" as used in this Article shall mean an individual, corporation, partnership, association or any other business entity. The word "House" as used in this Article shall mean a dwelling, building, or other structure in excess of 14 feet in width. The word "Department" as used in this Article shall mean the North Carolina Department of Transportation. (1977, c. 720, s. 1.)

Editor's Note. — Session Laws 1977, c. 720, on August 1, 1977, and will expire August 1, s. 18, provides: "This act shall become effective 1979."

§ 20-357. Housemovers to be licensed. — All persons who engage in the profession of housemoving on roads and highways on the State Highway System shall be licensed by the Department. (1977, c. 720, s. 2.)

20-358. Qualifications to become licensed. — The Department shall issue annual printed licenses to applicants meeting the following conditions:

(1) The applicant must be at least 18 years of age; present acceptable evidence of good character and show sufficient housemoving experience on the application form furnished by the Department. Housemoving experience means extensive and responsible training gained by the applicant while engaged actively and directly on a full-time basis in the moving of houses and structures on public roads and highways with at least 24 months experience. Examples of the capacity in which a person may work in gaining experience include the following in building moving operations:
   a. Moving superintendent,
   b. Moving foreman, and
   c. General mechanic and helper in the housemoving profession or trade.

(2) The applicant must furnish proof that he has (i) complied with Article 18, Chapter 20 of the North Carolina General Statutes for the liability imposed by law for the ownership, operation, maintenance or use of motor vehicles in his business operation; (ii) a permit or license bond in the amount of five thousand dollars ($5,000).

(3) The applicant must furnish proof that all of the vehicles, excluding "beams and dollies" and "hauling units," to be used in the movement of buildings, structures, or other extraordinary objects wider than 14 feet have met the requirements of G.S. 20-183.2 pertaining to the equipment inspection of motor vehicles; provided that the "beams and dollies" and "hauling units" are excluded from inspection under G.S. 20-183.2 and, further, are not required to be equipped with brakes.

(4) Exhibit his federal employer's identification number. (1977, c. 720, s. 3.)

§ 20-359. Effective period of license. — A license issued hereunder shall be effective for a period of one year from date of issuance and shall be renewable on an annual basis. (1977, c. 720, s. 4.)

§ 20-360. Requirements for permit. — (a) Persons licensed as professional housemovers shall also be required to secure a permit from the Department for every move undertaken on the State Highway System of roads; that permit shall be issued by the Department after determining that the applicant is (i) properly licensed, (ii) furnished special surety bonds as required by the Department, and (iii) complying with such other regulations as required by the Department.
§ 20-361. Application for permits. — Application must be made to the division or district engineer having jurisdiction at least two days prior to the date of move. For good cause shown, this time may be waived by the district or division engineer. A travel plan shall accompany the application. Division or district engineers are authorized to issue permits for individual moves of a structure or building whose width does not exceed 36 feet. The travel plan will show the proposed route, the time estimated for each segment of the move, a plan to handle traffic so that no one delay to other highway users shall exceed 10 minutes. The division or district engineers shall review the travel plan and if the route cannot accommodate the move due to roadway weight limits, bridge size or weight limits, or will cause undue interruption of traffic flow, the permit shall not be issued. The applicant may submit alternate plans if desired until an acceptable route is determined. If the width of the building or structure to be relocated is more than 36 feet, or if no acceptable travel plan has been filed, and the denial of the permit would cause a hardship, the application and travel plan may be submitted to the Department on appeal. After reviewing the route and travel plan, the Department may in its discretion issue the permit after considering the practical physical limitations of the route, the nature and purpose of the move, the size and weight of the structure, the distance the structure is to be moved, and the safety and convenience of the traveling public. A surety bond in an amount to cover the cost of any damage to the pavement, structures, bridges, roadway or other damages that may occur can be required if deemed necessary by the Department. (1977, c. 720, s. 6.)

§ 20-362. Liability of housemovers. — The permittee assumes all responsibility for injury to persons or damage to property of any kind and agrees to hold the Department harmless for any claims arising out of his conduct or actions. (1977, c. 720, s. 7.)

§ 20-363. Removal and replacement of obstructions. — All obstructions, including traffic signals, signs, and utility lines will be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided that arrangements for and approval from the owner is obtained. (1977, c. 720, s. 8.)

§ 20-364. Route changes. — Irrespective of the route shown on the permit, an alternate route will be followed:
§ 20-365. Loading or parking on right-of-way. — The object to be transported will not be loaded, unloaded, nor parked, day or night, on highway right-of-way without specific permission from the district or division engineer.

§ 20-366. Effect of weather. — No move will be made when atmospheric conditions render visibility lower than safe for travel. Moves will not be made when highway is covered with snow or ice, or at any time travel conditions are considered unsafe by the Department or Highway Patrol or other law-enforcement officers having jurisdiction.

§ 20-367. Obtaining license or permit by fraud. — The permit may be voided if any conditions of the permit are violated. Upon any violation, the permit must be surrendered and a new permit obtained before proceeding. Misrepresentation of information on application to obtain a license, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit will render the permit void.

§ 20-368. Municipal regulations. — All moves on streets on the municipal system of streets shall comply with local regulations.

§ 20-369. Out-of-state licenses and permits. — An out-of-state person, partnership, or corporation engaging in the structural moving business may apply to the Department for a license to engage in the housemoving profession in North Carolina, and obtain permits for moves by complying with the provisions of this Article and the regulations of the Department in the same manner as is required of North Carolina residents.

§ 20-370. Speed limits. — The speed of moves will be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time.

§ 20-371. Penalties. — (a) Any person violating the provisions of this Article or the regulations of the Department governing housemoving shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00), or imprisonment for not more than 30 days or both.

(b) The Department is hereby authorized in the name of the State to apply for relief by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Article, or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof.

§ 20-372. Invalid section; severability. — If any of the provisions of this Article, or if the application of such provisions to any person or circumstance shall be held invalid, the remainder of this Article and the application of such provision of this Article other than those as to which it is held valid, shall not be affected thereby.
I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1977 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN

Attorney General of North Carolina