

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1581*

Short Title: 1990 Omnibus Drug Act.

(Public)

Sponsors: Senators Daughtry, Carpenter, and Hardin.

Referred to: Judiciary II.

July 5, 1990

A BILL TO BE ENTITLED

AN ACT TO ENACT THE 1990 OMNIBUS DRUG ACT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the Omnibus Drug Act of 1990.

--TO ALLOW PRIVATIZATION OF PRISON FACILITIES.

Sec. 2. Effective October 1, 1990, G.S. 148-4 reads as rewritten:

"§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.

The Secretary of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the

1 authorized agents of the Secretary of Correction for the purpose of maintaining control
2 and custody of prisoners who may be placed under the supervision and control of such
3 employees, including guarding and transferring such prisoners from place to place in the
4 State as their duties might require, and apprehending and arresting escaped prisoners
5 and returning them to prison. The governing authorities of the State prison system are
6 authorized to determine by rules and regulations the manner of designating these agents
7 and placing prisoners under their supervision and control, which rules and regulations
8 shall be established in the same manner as other rules and regulations for the
9 government of the State prison system.

10 The Secretary of Correction may extend the limits of the place of confinement of a
11 prisoner, as to whom there is reasonable cause to believe he will honor his trust, by
12 authorizing him, under prescribed conditions, to leave the confines of that place
13 unaccompanied by a custodial agent for a prescribed period of time to

- 14 (1) Contact prospective employers; or
- 15 (2) Secure a suitable residence for use when released on parole or upon
16 discharge; or
- 17 (3) Obtain medical services not otherwise available; or
- 18 (4) Participate in a training program in the community; or
- 19 (5) Visit or attend the funeral of a spouse, child (including stepchild,
20 adopted child or child as to whom the prisoner, though not a natural
21 parent, has acted in the place of a parent), parent (including a person
22 though not a natural parent, has acted in the place of a parent), brother,
23 or sister; or
- 24 (6) Participate in community-based programs of rehabilitation, including,
25 but not limited to the existing community volunteer and home-leave
26 programs, pre-release and after-care programs as may be provided for
27 and administered by the Secretary of Correction and other programs
28 determined by the Secretary of Correction to be consistent with the
29 prisoner's rehabilitation and return to society; or
- 30 (7) Be on maternity leave, for a period of time not to exceed 60 days. The
31 county departments of social services are expected to cooperate with
32 officials at the North Carolina Correctional Center for Women to
33 coordinate prenatal care, financial services, and placement of the child.

34 The willful failure of a prisoner to remain within the extended limits of his confinement,
35 or to return within the time prescribed to the place of confinement designated by the
36 Secretary of Correction, shall be deemed an escape from the custody of the Secretary of
37 Correction punishable as provided in G.S. 148-45.

38 Notwithstanding any other provision of law, the Secretary of Correction may
39 contract with private for-profit or nonprofit corporations to provide confinement
40 facilities and to operate programs for State prisoners. Such contracts shall not purport
41 to alter the powers and duties of the Department of Correction and the State with respect
42 to State prisoners."

43 Sec. 3. Effective October 1, 1990, Section 65 of Chapter 500 of the 1989
44 Session Laws is repealed.

1 --TO PROVIDE THAT THE INVESTIGATING LAW ENFORCEMENT AGENCY
2 SHALL RECEIVE SEVENTY-FIVE PERCENT OF THE MONIES COLLECTED BY
3 AN ASSESSMENT UNDER THE CONTROLLED SUBSTANCE TAX LAW.

4 Sec. 4. Effective upon ratification and retroactive to January 1, 1990, G.S.
5 105-113.111 reads as rewritten:

6 "**§ 105-113.111. Assessments.**

7 (a) Notwithstanding any other provision of law, an assessment against a dealer
8 who possesses a controlled substance to which a stamp has not been affixed as required
9 by this Article shall be made as provided in this section. The Secretary shall assess a
10 tax, applicable penalties, and interest based on personal knowledge or information
11 available to the Secretary. The Secretary shall notify the dealer in writing of the amount
12 of the tax, penalty, and interest due, and demand its immediate payment. The notice
13 and demand shall be either mailed to the dealer at the dealer's last known address or
14 served on the dealer in person. If the dealer does not pay the tax, penalty, and interest
15 immediately upon receipt of the notice and demand, the Secretary shall collect the tax,
16 penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for
17 jeopardy assessments or the procedure set forth in G.S. 105-242, including causing
18 execution to be issued immediately against the personal property of the dealer unless the
19 dealer files with the Secretary a bond in the amount of the asserted liability for the tax,
20 penalty, and interest. The Secretary shall use all means available to collect the tax,
21 penalty, and interest from any property in which the dealer has a legal, equitable, or
22 beneficial interest. The dealer may seek review of the assessment as provided in Article
23 9 of this Chapter.

24 (b) Of the monies collected pursuant to subsection (a), seventy-five percent
25 (75%) shall be remitted to the law enforcement agency that conducted the investigation
26 of the dealer that led to the assessment under subsection (a). If more than one law
27 enforcement agency conducted the investigation, the Secretary of the Department of
28 Revenue shall determine the equitable pro rata share for each agency based on the
29 contribution each agency made to the investigation."

30 --TO REQUIRE CONVICTED DRUG OFFENDERS TO PAY A SPECIAL COURT
31 COST OF FIFTY DOLLARS TO PAY FOR THE COSTS OF IMPROVED LAB
32 FACILITIES AT THE STATE BUREAU OF INVESTIGATION.

33 Sec. 5. Effective October 1, 1990, and applying to offenses committed on or
34 after that date, Article 28 of Chapter 7A of the General Statutes is amended by adding a
35 new section to read:

36 "**§ 7A-304.1. Cost assessed for drug convictions.**

37 In addition to any other costs assessed pursuant to this Article, any person required
38 by G.S. 7A-304 to pay the costs specified in that section who is convicted of a violation
39 of any provision of Article 5 of Chapter 90 of the General Statutes shall be assessed an
40 additional court cost of fifty dollars (\$50.00). This fee shall be paid to the Department
41 of Justice for the use of the State Bureau of Investigation in the construction,
42 maintenance and operation of its laboratories."

1 --TO PROVIDE THAT FORTIFYING A STRUCTURE USED FOR ILLEGAL SALE,
2 DELIVERY, MANUFACTURE, OR POSSESSION OF CONTROLLED
3 SUBSTANCE IS CLASS I FELONY.

4 Sec. 6. Effective upon ratification and applying to offenses occurring on or
5 after that date, Article 5 of Chapter 90 of the General Statutes is amended by adding a
6 new section to read:

7 **"§ 90-97.1. Fortification of structure used to illegally manufacture, sell, deliver, or**
8 **possess a controlled substance.**

9 (a) It is unlawful for any person to fortify a structure in which a controlled
10 substance is, or is intended to be, manufactured, sold, delivered, or possessed in
11 violation of this Article. A violation of this subsection shall be a Class I felony.

12 (b) As used in this section:

13 (1) 'Booby trap' means any concealed or camouflaged device designed to
14 cause bodily injury when triggered by any action of any unsuspecting
15 person making contact with the device or a tripping mechanism;

16 (2) 'Fortify' includes but is not limited to, installing booby traps, alarm or
17 surveillance systems, high-security fencing, barricading windows or
18 doors, maintaining attack dogs, or similar measures to impede entry
19 into a structure;

20 (3) 'Structure' means any building, shed, or outbuilding, or part thereof,
21 whether abandoned or occupied, whether complete or under
22 construction, and whether used or intended for use for residential,
23 commercial, office, storage, or public purposes.

24 (c) The following, along with all other relevant evidence, may be considered in
25 determining whether the devices or activities defined in subsection (b) of this section
26 are installed or maintained for the purpose of hindering or impeding a law enforcement
27 officer in the discharge of his duties:

28 (1) Statements by the owner or anyone in control of the structure;

29 (2) Conviction of the owner or other person in control of the structure for
30 violations of this Article for manufacturing, selling, delivering, or
31 possessing a controlled substance in such structure;

32 (3) Prior convictions of the owner or other person in control of the
33 structure for violations of this Article;

34 (4) Possible legitimate uses of the devices or reasons for the activities;

35 (5) Security measures commonly utilized elsewhere in the neighborhood;
36 and

37 (6) Testimony as to the difficulty such devices or activities presented to
38 law enforcement officers in the discharge or attempt to discharge their
39 duties."

40 --TO MAKE PERMANENT THE LAW PERMITTING GRAND JURIES TO
41 INVESTIGATE DRUG TRAFFICKING.

42 Sec. 7. Section 6 of Chapter 843 of the 1985 Session Laws, as amended by
43 Chapter 1040 of the 1987 Session Laws reads as rewritten:

1 "Sec. 6. This act shall become effective October 1, 1986 ~~and shall expire October 1,~~
2 ~~1991, but the said expiration date shall not affect the term or authority of a grand jury~~
3 ~~constituted at that time."~~

4 --TO REQUIRE A MOTION OF THE DISTRICT ATTORNEY FOR A FINDING BY
5 THE COURT THAT A DEFENDANT HAD RENDERED SUBSTANTIAL
6 ASSISTANCE WARRANTING REDUCTION OF MANDATORY PRISON TERMS
7 OR FINES TO HALF OF MANDATORY MINIMUMS IN CONTROLLED
8 SUBSTANCE CONVICTIONS UNDER G.S. 90-95(h)(5).

9 Sec. 8. Effective October 1, 1990, and applying to offenses committed on or
10 after that date, G.S. 90-95(h)(5) reads as rewritten:

11 "(5) ~~Except as provided in this subdivision, a~~ A person being sentenced under
12 this subsection may not receive a suspended sentence or be placed on
13 probation. The actual time served pursuant to a sentence imposed
14 under this subsection may not be reduced by good time, gain time, or
15 by early parole. A person sentenced under this subsection as a
16 committed youthful offender shall be eligible for release or parole no
17 earlier than that person would have been had he been sentenced under
18 this subsection as a regular offender. The sentencing judge may ~~may,~~
19 upon motion of the district attorney, reduce the fine, or impose a prison
20 term less than the applicable mandatory minimum fine or the mandatory
21 minimum prison term provided by required under this subsection, or
22 suspend the prison term imposed and place a person on probation or both,
23 to no less than half of the mandatory minimum fine or prison term
24 required under this subsection, when such person has, to the best of his
25 knowledge, provided substantial assistance in the identification, arrest,
26 or conviction of any accomplices, accessories, co-conspirators, or
27 principals if the sentencing judge enters in the record a finding that the
28 person to be sentenced has rendered such substantial assistance."

29 --TO IMPOSE INCREASED MANDATORY MINIMUM SENTENCES FOR
30 SELLING DRUGS TO YOUTHS, INVOLVING YOUTHS IN THE SALE OF
31 DRUGS, OR FOR SELLING DRUGS WITHIN 1,000 FEET OF SCHOOL.

32 Sec. 9. Effective October 1, 1990, and applying to offenses committed on or
33 after that date, G.S. 90-95(e)(5) is recodified as G.S. 90-95(j), and reads as rewritten:

34 ~~“(5)~~ (j) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by
35 selling or delivering a controlled substance to a person under ~~16-18~~ years of age shall be
36 ~~punished as a Class E felon;~~ age, when such controlled substance is classified in:

37 (1) Schedule I or II shall be punishable by a term of imprisonment at least
38 two and one-half but no more than three times the maximum sentence
39 authorized by G.S. 90-95(b)(1) and a fine of not less than fifty
40 thousand dollars (\$50,000);

41 (2) Schedule III, IV, V, or VI shall be punishable by a term of
42 imprisonment at least two and one-half but no more than three times
43 the maximum sentence authorized by G.S. 90-95(b)(2) and a fine of
44 not less than twenty-five thousand dollars (\$25,000).

1 It shall not be relevant to the imposition of enhanced punishment pursuant to this
2 subsection that the defendant mistakenly believed that the recipient of the substance was
3 18 years of age or older, even if the mistaken belief was reasonable."

4 Sec. 10. Effective October 1, 1990, and applying to offenses committed on or
5 after that date, G.S. 90-95 is amended by adding new subsections to read:

6 "(k) It shall be unlawful for any person 18 years of age or older to employ, hire,
7 use, persuade, induce, entice, or coerce a person under 18 years of age to:

8 (1) Sell or deliver a controlled substance in violation of this section; or

9 (2) Assist in avoiding detection or apprehension by any law enforcement
10 officer for a violation of this section.

11 It shall be no defense to a prosecution under this subsection that the defendant
12 mistakenly believed that the person whom the defendant employed, hired, used,
13 persuaded, induced, enticed, or coerced was 18 years of age or older, even if such
14 mistaken belief was reasonable.

15 (l) It shall be unlawful for any person 18 years of age or older to manufacture,
16 sell, deliver, or possess with intent to manufacture, sell, or deliver a controlled
17 substance while on any school bus, or while in, on, or within 1,000 feet of the real
18 property comprising a public or private:

19 (1) Day care or preschool facility;

20 (2) Elementary or secondary school;

21 (3) Technical institute, vocational school, or proprietary school;

22 (4) College, junior college, community college, or university.

23 It shall not be a defense to a prosecution under this subsection that the defendant was
24 unaware that the prohibited took place within 1,000 feet of any school property.

25 (m) A person who violates G.S. 90-95(k) or (l) with respect to a controlled
26 substance classified in:

27 (1) Schedule I or II shall be punishable by a term of imprisonment at least
28 two and one-half but no more than three times the maximum sentence
29 authorized by G.S. 90-95(b)(1) and a fine of not less than fifty
30 thousand dollars (\$50,000);

31 (2) Schedule III, IV, V, or VI shall be punishable by a term of
32 imprisonment at least two and one-half but no more than three times
33 the maximum sentence authorized by G.S. 90-95(b)(2) and a fine of
34 not less than twenty-five thousand dollars (\$25,000).

35 A person being sentenced under this subsection or G.S. 90-95(j) may not receive a
36 suspended sentence or be placed on probation. The actual time served pursuant to a
37 sentence imposed under this subsection or G.S. 90-95(j) may not be reduced for good
38 time, gain time, or by early parole."

39 --TO IMPOSE A MANDATORY MINIMUM SENTENCE UNDER G.S. 90-95(b)
40 FOR SELLING OR DELIVERING DRUGS IN AMOUNTS NOT SUFFICIENTLY
41 LARGE TO VIOLATE ANTI-DRUG TRAFFICKING PROVISION OF G.S. 90-95(h).

42 Sec. 11. Effective October 1, 1990, and applying to sentences for convictions
43 rendered on or after that date, G.S. 90-95(b) reads as rewritten:

1 "(b) Except as provided in subsections (h) and (i) of this section, any person who
2 violates G.S. 90-95(a)(1) with respect to:

- 3 (1) A controlled substance classified in Schedule I or II shall be punished
4 as a Class H ~~felon~~, felon and shall be sentenced to a term of at least
5 seven years in the State's prison and fined not less than twenty-five
6 thousand dollars (\$25,000);
- 7 (2) A controlled substance classified in Schedule III, IV, V, or VI shall be
8 punished as a Class I ~~felon~~, felon and shall be sentenced to a term of at
9 least three years in the State's prison and fined not less than ten
10 thousand dollars (\$10,000), but the transfer of less than 5 grams of
11 marijuana for no remuneration shall not constitute a delivery in
12 violation of G.S. 90-95(a)(1).

13 A person being sentenced under this subsection may not receive a suspended
14 sentence or be placed on probation. The actual time served pursuant to a sentence
15 imposed under this subsection may not be reduced for good time, or by early parole. A
16 person sentenced under this subsection as a committed youthful offender shall be
17 eligible for release or parole no earlier than that person would have been had he been
18 sentenced under this subsection as a regular offender.

19 The sentencing judge may, upon motion of the district attorney, reduce the
20 mandatory minimum fine or the mandatory minimum prison term or both to no less than
21 two-thirds of the mandatory minimum fine or prison term required under this
22 subsection, when such person has, to the best of his knowledge, provided substantial
23 assistance in the identification, arrest, or conviction of any accomplices, accessories,
24 coconspirators, or principals if the sentencing judge enters in the record a finding that
25 the person to be sentenced has rendered such substantial assistance.

26 Sentences imposed pursuant to this subsection shall run consecutively with and shall
27 commence at the expiration of any sentence being served by the person sentenced
28 hereunder. The penalties imposed under this subsection shall also apply to any person
29 who is convicted of conspiracy to commit any of the offenses described in this
30 subsection."

31 --TO PROVIDE THAT MURDER IN THE FIRST DEGREE UNDER FELONY
32 MURDER RULE INCLUDES DEATHS OCCURRING DURING FELONIES OF
33 TRAFFICKING IN, SALE OF, OR DELIVERY OF CONTROLLED SUBSTANCE
34 AND DEATH PROXIMATELY CAUSED BY OVERDOSE.

35 Sec. 12. Effective October 1, 1990, and applying to offenses committed on or
36 after that date, G.S. 14-17 reads as rewritten:

37 "**§ 14-17. Murder in the first and second degree defined; punishment.**

38 A murder which shall be perpetrated by means of poison, lying in wait,
39 imprisonment, starving, torture, or by any other kind of willful, deliberate, and
40 premeditated killing, or which shall be committed in the perpetration or attempted
41 perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, sale or
42 delivery of or trafficking in a controlled substance prohibited by G.S. 90-95, or other
43 felony committed or attempted with the use of a deadly ~~weapon~~-weapon, or a death
44 which shall be proximately caused by the unlawful sale or delivery of or trafficking in a

1 controlled substance prohibited by G.S. 90-95 when the ingestion of such substance
2 causes the death of the user, shall be deemed to be murder in the first degree, and any
3 person who commits such murder shall be punished with death or imprisonment in the
4 State's prison for life as the court shall determine pursuant to G.S. 15A-2000, except
5 that any such person who was under 17 years of age at the time of the murder shall be
6 punished with imprisonment in the State's prison for life. Provided, however, any
7 person under the age of 17 who commits murder in the first degree while serving a
8 prison sentence imposed for a prior murder or while on escape from a prison sentence
9 imposed for a prior murder shall be punished with death or imprisonment in the State's
10 prison for life as the court shall determine pursuant to G.S. 15A-2000. All other kinds
11 of murder, including that which shall be proximately caused by the unlawful distribution of
12 opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or
13 cocaine or other substance described in G.S. 90-90(a)4, when the ingestion of such substance
14 causes the death of the user, murder shall be deemed murder in the second degree, and any
15 person who commits such murder shall be punished as a Class C felon."

16 Sec. 13. Effective October 1, 1990, and applying to offenses committed on or
17 after that date, G.S. 15A-2000(e)(5) reads as rewritten:

18 "(5) The capital felony was committed while the defendant was engaged, or
19 was an aider or abettor, in the commission of, or an attempt to commit,
20 or flight after committing or attempting to commit, any homicide,
21 robbery, rape or a sex offense, arson, burglary, kidnapping, felonious
22 sale or delivery of or trafficking in a controlled substance prohibited
23 by G.S. 90-95, or aircraft piracy or the unlawful throwing, placing, or
24 discharging of a destructive device or bomb."

25 Sec. 14. Effective October 1, 1990, and applying to offenses committed on or
26 after that date, G.S. 15A-2000(e)(9) reads as rewritten:

27 "(9) The capital felony was especially heinous, atrocious, or ~~eruel~~-cruel, or
28 involved a death which was proximately caused by the unlawful sale
29 or delivery of or trafficking in a controlled substance prohibited by
30 G.S. 90-95 when the ingestion of such substance caused the death of
31 the user."

32 --TO ESTABLISH A SEPARATE OFFENSE PUNISHABLE BY A MANDATORY
33 MINIMUM TEN YEARS IMPRISONMENT WITHOUT PAROLE, GOOD TIME, OR
34 GAIN TIME TO POSSESS OR USE A DEADLY WEAPON DURING THE
35 COMMISSION OF A FELONY DRUG OFFENSE.

36 Sec. 15. Effective October 1, 1990, and applying to offenses committed on or
37 after that date, Chapter 90 of the General Statutes is amended by adding a new section
38 to read:

39 "**§ 90-95.4. Possession of or use of deadly weapon during felony drug offense.**

40 (a) A person who possesses or uses a deadly weapon while committing a felony
41 offense in G.S. 90-95 is guilty of a Class C felony and shall be sentenced to a term of at
42 least 10 years in the State's prison.

43 (b) The offense created by this section is a separate, punishable offense from a
44 felony offense in G.S. 90-95. A person may be convicted and punished for a violation

1 of this section and also may be convicted and punished for a felony violation of G.S. 90-
2 95.

3 (c) A person sentenced under this section shall not receive a suspended sentence
4 or be placed on probation. Notwithstanding any other provision of law, a person
5 sentenced under this section shall not be eligible for parole, good time, or gain time. A
6 person sentenced under this section shall not be eligible to be sentenced as a committed
7 youthful offender. The term of imprisonment imposed pursuant to this section shall run
8 consecutively with and shall commence at the expiration of any term of imprisonment
9 imposed for a felony offense committed under G.S. 90-95 and any other sentence being
10 served by the person being sentenced."

11 --TO PROVIDE FOR FELONY OF POSSESSING 100 MARIJUANA PLANTS AND
12 TO REDUCE TO TEN POUNDS AMOUNT FOR TRAFFICKING IN MARIJUANA
13 UNDER G.S. 90-95(h)(1).

14 Sec. 16. Effective October 1, 1990, and applying to crimes committed after
15 that date, G.S. 90-95(h)(1) reads as rewritten:

16 "(1) Any person who sells, manufactures, delivers, transports, or possesses
17 in excess of ~~50~~10 pounds (avoirdupois) of ~~marijuana~~marijuana, or at
18 least 100 marijuana plants with no minimum weight threshold, shall be
19 guilty of a felony which felony shall be known as 'trafficking in
20 marijuana' and if the quantity of such substance involved:

21 a. Is 10 pounds or less and consists of 100 or more marijuana
22 plants, such person shall be punished as a Class H felon and
23 shall be sentenced to a term of at least five years in the State's
24 prison and shall be fined not less than five thousand dollars
25 (\$5,000); provided, however, if the quantity of such plants is
26 more than 10 pounds, punishment shall be as set forth
27 elsewhere in this subdivision;

28 a-a.1. Is in excess of 50 pounds, but less than 100 pounds,
29 such person shall be punished as a Class H felon and
30 shall be sentenced to a term of at least five years in the
31 State's prison and shall be fined not less than five
32 thousand dollars (\$5,000);

33 b. Is 100 pounds or more, but less than 2,000 pounds, such
34 person shall be punished as a Class G felon and shall be
35 sentenced to a term of at least seven years in the State's
36 prison and shall be fined not less than twenty-five thousand
37 dollars (\$25,000);

38 c. Is 2,000 pounds or more, but less than 10,000 pounds, such
39 person shall be punished as a Class F felon and shall be
40 sentenced to a term of at least 14 years in the State's prison
41 and shall be fined not less than fifty thousand dollars
42 (\$50,000);

43 d. Is 10,000 pounds or more, such person shall be punished as
44 a Class D felon and shall be sentenced to a term of at least

1 35 years in the State's prison and shall be fined not less than
2 two hundred thousand dollars (\$200,000)."

3 --TO REQUIRE A MANDATORY MINIMUM SENTENCE FOR POSSESSION OR
4 DISTRIBUTION OF PRECURSOR CHEMICALS WITH INTENT TO
5 MANUFACTURE ILLEGAL CONTROLLED SUBSTANCE.

6 Sec. 17. Effective October 1, 1990, and applying to offenses occurring on or
7 after that date, G.S. 90-95 is amended by adding two new subsections to read:

8 "(d1) Except as authorized by this Article, it is unlawful for any person to :

- 9 (1) Possess an immediate precursor chemical with intent to manufacture a
10 controlled substance; or
11 (2) Possess or distribute an immediate precursor chemical knowing, or
12 having reasonable cause to believe, that the immediate precursor
13 chemical will be used to manufacture a controlled substance.

14 Any person who violates this subsection shall be punished as a Class G felon and shall
15 be sentenced to a term of at least 10 years in the State's prison and shall be fined not less
16 than twenty-five thousand dollars (\$25,000).

17 (d2) The immediate precursor chemicals to which subsection (d1) of this section
18 applies are those immediate precursor chemicals designated by the Commission
19 pursuant to its authority under G.S. 90-87(14), and the following (until otherwise
20 specified by the Commission):

- 21 (1) Anthranilic acid.
22 (2) Benzyl cyanide.
23 (3) Chloroephedrine.
24 (4) Chloropseudoephedrine.
25 (5) D-lysergic acid.
26 (6) Ephedrine.
27 (7) Ergonovine maleate.
28 (8) Ergotamine tartrate.
29 (9) Ethyl Malonate.
30 (10) Ethylamine.
31 (11) Isosafrole.
32 (12) Malonic acid.
33 (13) Methylamine.
34 (14) N-acetylanthranilic acid.
35 (15) N-ethylephedrine.
36 (16) N-ethylepseudoephedrine.
37 (17) N-methylephedrine.
38 (18) N-methylpseudoephedrine.
39 (19) Norpseudoephedrine.
40 (20) Phenyl-2-propane.
41 (21) Phenylacetic acid.
42 (22) Phenylpropanolamine.
43 (23) Piperidine.
44 (24) Piperonal.

1 (25) Propionic anhydride.

2 (26) Pseudoephedrine.

3 (27) Pyrrolidine.

4 (28) Safrole.

5 (29) Thionylchloride."

6 --TO REDUCE AMOUNT REQUIRED FOR PRESCRIPTION DRUG POSSESSION
7 OFFENSE UNDER G.S. 90-95(d)(2).

8 Sec. 18. Effective October 1, 1990, and applying to crimes committed after
9 that date, G.S. 90-95(d)(2) reads as rewritten:

10 "(2) A controlled substance classified in Schedule II, III, or IV shall be
11 guilty of a misdemeanor and shall be sentenced to a term of
12 imprisonment of not more than two years or fined not more than two
13 thousand dollars (\$2,000), or both in the discretion of the court. If the
14 controlled substance exceeds four tablets, capsules, or other dosage
15 units or equivalent quantity of hydromorphone or if the quantity of the
16 controlled substance, or combination of the controlled substances,
17 exceeds ~~one hundred~~ 10 tablets, capsules or other dosage units, or
18 equivalent quantity, the violation shall be punishable as a Class I
19 felony. If the controlled substance is ~~phenylelidine-phenicyclidine,~~ or
20 cocaine and any salt, isomer, salts of isomers, compound, derivative,
21 or preparation thereof, or coca leaves and any salt, isomer, salts of
22 isomers, compound, derivative, or preparation of coca leaves, or any
23 salt, isomer, salts of isomers, compound, derivative or preparation
24 thereof which is chemically equivalent or identical with any of these
25 substances (except decocanized coca leaves or any extraction of coca
26 leaves which does not contain cocaine or ecgonine), the violation shall
27 be punishable as a Class I felony."

28 --TO PROVIDE FOR INCREASING SANCTIONS FOR SUBSEQUENT
29 POSSESSIONS OF ONE OUNCE OR LESS OF MARIJUANA.

30 Sec. 19. Effective January 1, 1991, and applying to offenses occurring on or
31 after that date, G.S. 90-95(d)(1) reads as rewritten:

32 "(1) A controlled substance classified in Schedule I shall be punished as a
33 Class I felon; but if the quantity of the controlled substance is one
34 ounce (avoirdupois) or less of marijuana or one-tenth of an ounce
35 (avoirdupois) or less of extracted resin of marijuana, commonly known
36 as hashish, the violation shall be punishable as a misdemeanor. The
37 punishment for possession of one ounce (avoirdupois) or less of
38 marijuana or one-tenth ounce (avoirdupois) or less of extracted resin of
39 marijuana shall be:

40 a. For a first conviction, the defendant shall be fined five
41 hundred dollars (\$500.00), and ordered to perform eight
42 hours of community service. The court shall file a
43 conviction report with the Division of Motor Vehicles

1 indicating the name of the person convicted and any other
2 information requested by the Division.

3 b. For a second conviction, the defendant shall be fined one
4 thousand dollars (\$1,000), ordered to perform 40 hours of
5 community service, and lose eligibility for all State financial
6 aid for post-secondary education for a period of one year
7 from the date of sentencing. The court shall file a
8 conviction report with the Division of Motor Vehicles
9 indicating the name of the person convicted and any other
10 information requested by the Division.

11 c. For a third or subsequent conviction, the punishment shall
12 be a fine of two thousand dollars (\$2,000), a minimum
13 mandatory jail term of 72 hours served consecutively,
14 suspension from any State-supported institution of higher
15 learning and lose eligibility for all State financial aid for
16 post-secondary education. The term of imprisonment may
17 be suspended only on condition that the defendant
18 successfully completes a 28-day drug abuse treatment
19 program approved by the Department of Human Resources,
20 remains in after care for six months, and tests free of
21 controlled substances for a period of one year. The court
22 shall file a conviction report with the Division of Motor
23 Vehicles indicating the name of the person convicted and
24 any other information requested by the Division."

25 Sec. 20. Effective January 1, 1991, and applying to offenses occurring on or
26 after that date, G.S. 20-13.2(a) reads as rewritten:

27 "(a) The Division must revoke the license of a person convicted of violating the
28 provisions of G.S. 20-138.3 or G.S. 90-95(d)(1) if the controlled substance is one ounce
29 (avoirdupois) or less of marijuana or one-tenth of an ounce (avoirdupois) or less of
30 extracted resin of marijuana upon receipt of a record of the licensee's conviction."

31 Sec. 21. Effective January 1, 1991, and applying to offenses occurring on or
32 after that date, G.S. 20-13.2(d) reads as rewritten:

33 "(d) ~~A-The length of revocation under this section continues until shall be equal to the~~
34 ~~number of days from the date of the charge to the provisional licensee reaches 18 years of~~
35 ~~age-licensee's 18th birthday or 45 days have elapsed, days, whichever occurs last.-is~~
36 longer. Revocations under this section run concurrently with any other revocations, but
37 a limited driving privilege issued pursuant to law does not authorize a provisional
38 licensee to drive if his license is revoked under this section."

39 --TO PROVIDE FOR THE TEMPORARY OR PERMANENT DENIAL OF STATE
40 FINANCIAL BENEFITS FOR CONVICTION UNDER CONTROLLED
41 SUBSTANCES ACT, OF ARTICLE 5 OF CHAPTER 90 OF THE GENERAL
42 STATUTES, AND FEDERAL DRUG CONTROL STATUTES.

43 Sec. 22. Effective January 1, 1991, Article 5 of Chapter 90 of the General
44 Statutes is amended by adding a new section to read:

1 **"§ 90-98.2. Denial of State benefits for controlled substance convictions.**

2 (a) As used in this section, unless the context clearly requires otherwise:

3 (1) 'Authority' means the State Educational Assistance Authority created
4 under G.S. 116-203.

5 (2) 'Financial assistance' means any loans, grants, scholarships, or other
6 forms of financial assistance for higher education utilizing State funds
7 or guarantees, including but not limited to, all such programs regulated
8 or administered by the Authority.

9 (b) Any person who is convicted in any court of competent jurisdiction of a
10 violation of any of the provisions of this Article or the Federal Drug Abuse Prevention
11 and Control Act, or a successor statute, which constitutes a felony shall:

12 (1) For the first such conviction, be ineligible for any State financial
13 assistance for no less than one year from the date of the conviction;
14 and

15 (2) For the second such conviction, be permanently ineligible for any State
16 financial assistance.

17 ♦ The penalties required under this subsection shall in no way limit the ability of the
18 Authority to impose more severe penalties in its discretion. "

19 --TO PROVIDE FOR THE SUSPENSION OR REVOCATION OF PROFESSIONAL
20 LICENSES OR CERTIFICATIONS, AND PRIVILEGE OR BUSINESS LICENSES,
21 FOR CONVICTION UNDER CONTROLLED SUBSTANCES ACT OF ARTICLE 5
22 OF CHAPTER 90 OF THE GENERAL STATUTES AND THE FEDERAL DRUG
23 CONTROL STATUTES.

24 Sec. 23. Effective January 1, 1991, Chapter 90 of the General Statutes is
25 amended by adding a new section to read:

26 **"§ 90-98.1. Suspension or revocation of professional licenses or certifications, and**
27 **business and privilege licenses for controlled substance convictions.**

28 (a) As used in this section, unless the context clearly requires otherwise:

29 (1) 'License' means any license (specifically including, but not limited to,
30 privilege or business licenses held personally by the defendant),
31 certificate, or other evidence of qualification which one must obtain
32 before engaging in, or hold oneself out as a member of, a particular
33 profession or occupation.

34 (2) 'Occupational licensing board' means any board, committee,
35 commission, or other agency in North Carolina (specifically including,
36 but not limited to, the North Carolina State Bar and the Board of
37 Medical Examiners of the State of North Carolina, and other Boards as
38 defined in Chapter 93B of the General Statutes) which is established
39 for the primary purpose of regulating the entry of persons into, or the
40 conduct of persons within, or both, a particular profession or
41 occupation, and which is authorized to issue licenses.

42 (b) Upon conviction in any court of competent jurisdiction of a violation of any
43 of the provisions of this Article or the Federal Drug Abuse Prevention and Control Act
44 (21 U.S.C. Chapter 13, or a successor statute) which constitutes a felony, the clerk of

1 said court shall forward a certified copy of the judgement of conviction to the
2 occupational licensing board by which the convicted defendant had been licensed to
3 practice his profession or occupation.

4 (c) Upon receipt of the certified copy of conviction, the occupational licensing
5 board shall:

6 (1) For the first such conviction, suspend the convicted defendant's license
7 for no less than six months from the date of suspension;

8 (2) For the second such conviction, suspend the convicted defendant's
9 license for no less than one year from the date of the suspension;

10 (3) For the third such conviction, permanently revoke the convicted
11 defendant's license.

12 The minimum penalties required under this subsection shall in no way limit the
13 authority of any occupational licensing board to impose more severe penalties in the
14 discretion of that board."

15 --TO PROVIDE FOR MANDATORY REVOCATION OF DRIVER'S LICENSES
16 FOR CONTROLLED SUBSTANCE CONVICTIONS, AND OTHER RELATED
17 PENALTIES.

18 Sec. 24. Effective January 1, 1991, G.S. 20-13.2(b) reads as rewritten:

19 "(b) If a person is convicted of an offense involving impaired driving or a violation of
20 the Controlled Substances Act of Article 5 of Chapter 90 of the General Statutes, and
21 the offense occurs while he is a provisional licensee, his license must be revoked under
22 this section in addition to any other revocation required or authorized by law."

23 Sec. 25. Effective January 1, 1991, G.S. 20-17 is amended by adding a new
24 subdivision to read:

25 "(12) Conviction of a felony under the Controlled Substances Act of Article
26 5 of Chapter 90 of the General Statutes."

27 Sec. 26. Effective January 1, 1991, G.S. 20-17.4 is amended by adding a new
28 subsection to read:

29 "(a1) The Division shall forthwith revoke the commercial driver license of any
30 driver upon receiving a record of such driver's conviction of a felony under the
31 Controlled Substances Act of Article 5 of Chapter 90 of the General Statutes. If a
32 commercial license is revoked under this subsection, the period of revocation and
33 conditions of reissuance of such license shall be as set forth in G.S. 20-19(e1)-(e5)."

34 Sec. 27. Effective January 1, 1991, G.S. 20-19 is amended by adding new
35 subsections to read: ♦

36 "(e1) When a license is revoked under G.S. 20-17(12) or G.S. 20-17.4(a1), and the
37 period of revocation is not determined by subsections (e2), (e3), or (e4) of this section,
38 the period of revocation is 183 days, and this period may be reduced to no less than 120
39 days under the provisions of subsection (e5) of this section.

40 (e2) When a person's license is revoked under G.S. 20-17(12) or G.S. 20-17.4(a1),
41 and the person has been convicted of another offense involving controlled substances,
42 which offense occurred within three years immediately preceding the date of the offense
43 for which his license is being revoked, the period of revocation is one year, and this

1 period may be reduced to no less than 183 days under the provisions of subsection (e5)
2 of this section.

3 (e3) When a person's license is revoked under G.S. 20-17(12) or G.S. 20-17.4(a1),
4 and the person has been convicted of two or more previous offenses involving
5 controlled substances, and the most recent offense occurred within the five years
6 immediately preceding the date of the offense for which his license is being revoked,
7 the period of revocation is three years, and this period may be reduced to no less than
8 548 days under the provisions of subsection (e5) of this section.

9 (e4) When a person's license is revoked under G.S. 20-17(12) or G.S. 20-17.4(a1),
10 and the person has been convicted of three or more previous offenses involving
11 controlled substances, and the most recent offense occurred within the seven years
12 immediately preceding the date of the offense for which his license is being revoked,
13 the revocation is permanent, and this period may be reduced to no less than five years
14 under the provisions of subsection (e5) of this section.

15 (e5) The Division may conditionally restore the person's license after it has been
16 revoked under subsections (e1)-(e4) of this section if the person whose license has been
17 revoked has done the following and provided satisfactory proof thereof to the Division:

18 (1) Such person shall obtain, during the period when his license has been
19 revoked, a substance abuse assessment from an area mental health
20 agency, its designated agent, or a private facility licensed by the State
21 for the treatment of alcoholism and substance abuse. If the assessing
22 agency recommends that the person participate in a treatment program,
23 the person shall do so, and he shall execute a Release of Information
24 authorizing the treatment agency to report his completion of the
25 treatment program to the Division. If the assessment does not identify
26 a substance abuse handicap, the original finding shall be filed with the
27 Division and the person shall be required to attend an alcohol and drug
28 education traffic school. The Division shall not reissue the driver's
29 license of a person required to participate in a treatment program or
30 school unless it has received the original certificate of completion from
31 the assessment or treating agency or school. Any fees charged by the
32 assessing or treating agency or school shall be paid by the person
33 seeking to have his license restored;

34 (2) From the date his license was revoked, he has not been convicted in
35 North Carolina or any other state or federal jurisdiction of an offense
36 involving the manufacture, sale, distribution, or possession of a
37 controlled substance; and

38 (3) The person shall undergo a random drug test, or series of random drug
39 tests, during the period of license revocation, and such tests must be
40 negative for the presence of controlled substances, as defined in G.S.
41 90-87(5), or their metabolites, unless the person can show that such
42 substances were lawfully administered as part of professional medical
43 treatment. The Division shall notify the person when such tests are
44 required and the results of such tests shall be submitted to the Division.

1 The costs of testing shall be borne by the person seeking to have his
2 license restored.

3 If the Division restores the person's license, it may place reasonable conditions or
4 restrictions on the person for any period up to three years from the date of restoration.
5 No person whose license was revoked under G.S. 20-17(12) shall be eligible for limited
6 driving privileges under G.S. 20-179.3."

7 Sec. 28. Effective January 1, 1991, G.S. 20-179(g) reads as rewritten:

8 "(g) Level One Punishment. – A defendant subject to Level One punishment may
9 be fined up to two thousand dollars ~~(\$2,000) and (\$2,000)~~, must be sentenced to a term
10 of imprisonment that includes a minimum term of not less than 14 days and a maximum
11 term of not more than 24 ~~months.~~ months, and must receive a mandatory minimum
12 period of nonoperation of a motor vehicle of at least 150 days. The term of
13 imprisonment may be suspended only if a condition of special probation is imposed to
14 require the defendant to serve a term of imprisonment of at least 14 days. If the
15 defendant is placed on probation, the judge must, if required by subsection (m), impose
16 the conditions relating to assessment, treatment, and education described in that
17 subsection. The judge may impose any other lawful condition of probation. If the judge
18 does not place on probation a defendant who is otherwise subject to the mandatory
19 assessment and treatment provisions of subsection (m), he must include in the record of
20 the case his reasons for not doing so."

21 Sec. 29. Effective January 1, 1991, G.S. 20-179(h) reads as rewritten:

22 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may
23 be fined up to one thousand dollars ~~(\$1,000) and (\$1,000)~~, must be sentenced to a term of
24 imprisonment that includes a minimum term of not less than seven days and a maximum
25 term of not more than 12 months. The term of imprisonment may be suspended only if a
26 condition of special probation is imposed to require the defendant to serve a term of
27 imprisonment of at least seven days. If the defendant is placed on probation, the judge
28 must, if required by subsection (m), impose the conditions relating to assessment,
29 treatment, and education described in that subsection. The judge may impose any other
30 lawful condition of probation. If the judge does not place on probation a defendant who
31 is otherwise subject to the mandatory assessment and treatment provisions of subsection
32 (m), he must include in the record of the case his reasons for not doing so."

33 Sec. 30. Effective January 1, 1991, G.S. 20-179(i) reads as rewritten:

34 "(i) Level Three Punishment. – A defendant subject to Level Three punishment
35 may be fined up to five hundred dollars ~~(\$500.00) and (\$500.00)~~, must be sentenced to a
36 term of imprisonment that includes a minimum term of not less than 72 hours and a
37 maximum term of not more than six ~~months.~~ months, and must receive a mandatory
38 minimum period of nonoperation of a motor vehicle of at least 90 days. The term of
39 imprisonment must be suspended, on the condition that the defendant:

- 40 (1) Be imprisoned for a term of at least 72 hours as a condition of special
41 probation; or
42 (2) Perform community service for a term of at least 72 hours; or
43 (3a) Both (1) and (2).
44 ~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~

1 ~~(4) Any combination of these conditions.~~

2 The judge in his discretion may impose any other lawful condition of probation and, if
3 required by subsection (m), must impose the conditions relating to assessment,
4 treatment, and education described in that subsection. This subsection does not affect
5 the right of a defendant to elect to serve the suspended sentence of imprisonment as
6 provided in G.S. 15A-1341(c)."

7 Sec. 31. Effective January 1, 1991, G.S. 20-179(j) reads as rewritten:

8 "(j) Level Four Punishment. – A defendant subject to Level Four punishment may
9 be fined up to two hundred fifty dollars ~~(\$250.00) and (\$250.00)~~, must be sentenced to a
10 term of imprisonment that includes a minimum term of not less than 48 hours and a
11 maximum term of not more than 120 ~~days.~~days, and must receive a mandatory
12 minimum period of nonoperation of a motor vehicle of at least 60 days. The term of
13 imprisonment must be suspended, on the condition that the defendant:

14 (1) Be imprisoned for a term of 48 hours as a condition of special
15 probation; or

16 (2) Perform community service for a term of 48 hours; or

17 ~~(3a) Both (1) and (2).~~

18 ~~(3) Not operate a motor vehicle for a term of 60 days; or~~

19 ~~(4) Any combination of these conditions.~~

20 The judge in his discretion may impose any other lawful condition of probation and, if
21 required by subsection (m), must impose the conditions relating to assessment,
22 treatment, and education described in that subsection. This subsection does not affect
23 the right of a defendant to elect to serve the suspended sentence of imprisonment as
24 provided in G.S. 15A-1341(c)."

25 Sec. 32. Effective January 1, 1991, G.S. 20-179(k) reads as rewritten:

26 "(k) Level Five Punishment. – A defendant subject to Level Five punishment may
27 be fined up to one hundred dollars ~~(\$100.00) and (\$100.00)~~, must be sentenced to a term
28 of imprisonment that includes a minimum term of not less than 24 hours and a
29 maximum term of not more than 60 ~~days.~~days, must receive a mandatory minimum
30 period of nonoperation of a motor vehicle of at least 30 days. The term of imprisonment
31 must be suspended, on the condition that the defendant:

32 (1) Be imprisoned for a term of 24 hours as a condition of special
33 probation; or

34 (2) Perform community service for a term of 24 hours; or

35 ~~(3) Not operate a motor vehicle for a term of 30 days; or~~

36 ~~(4) Any combination of these conditions.~~

37 ~~(3a) Both (1) and (2).~~

38 The judge may in his discretion impose any other lawful condition of probation and, if
39 required by subsection (m), must impose the conditions relating to assessment,
40 treatment, and education described in that subsection. This subsection does not affect
41 the right of a defendant to elect to serve the suspended sentence of imprisonment as
42 provided in G.S. 15A-1341(c)."

43 Sec. 33. Effective January 1, 1991, G.S. 20-179.3(c) reads as rewritten:

1 "(c) Privilege Not Effective until after Compliance with Court-Ordered
2 Revocation. – A person convicted of an impaired driving offense may apply for a
3 limited driving privilege at the time the judgment is entered. ~~If the judgment does not~~
4 ~~require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege~~
5 ~~may be issued at the time the judgment is issued. If the judgment requires the person to~~
6 ~~complete a period of nonoperation pursuant to G.S. 20-179, Although the limited driving~~
7 ~~privilege may be issued at the time the judgment is issued, it may not be effective until~~
8 ~~the person successfully completes that the period of nonoperation. nonoperation required~~
9 under G.S. 20-179. A person whose license is revoked because of a conviction in
10 another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1
11 may apply for a limited driving privilege only after having completed at least 60 days of
12 a court-imposed term of nonoperation of a motor vehicle, if the court in the other
13 jurisdiction imposed such a term of nonoperation."

14 --TO MAKE IT A FELONY TO DRIVE WITHOUT A LICENSE AFTER A
15 LICENSE HAS BEEN SUSPENDED OR REVOKED FOR AN IMPAIRED DRIVING
16 OR CONTROLLED SUBSTANCE VIOLATION.

17 Sec. 34. Effective January 1, 1991, and applying to offenses committed on or
18 after that date, G.S. 20-28 is amended by adding a new subsection to read:

19 "(b1) Notwithstanding any other provisions of this section, any person whose
20 driver's license (including a commercial driver license) has been suspended or revoked,
21 for a limited time or permanently, due to a conviction for an impaired driving or
22 controlled substance violation, who shall drive any motor vehicle upon the highways or
23 public vehicular areas of this State while such license is suspended or revoked shall be
24 guilty of a Class J felony and shall be imprisoned for not less than 90 days and fined not
25 less than two thousand dollars (\$2,000). A person sentenced under this subsection may
26 neither receive a suspended sentence nor be placed on probation. The actual time
27 served pursuant to a sentence imposed under this subsection shall not be reduced for
28 good time, gain time, or by early parole. Upon receipt of a record of a violation of this
29 subsection, the Division shall impose an additional disqualification period equal to the
30 period for which the driver's license was suspended or revoked when this subsection
31 was violated."

32 --TO REQUIRE COLOR-CODED DRIVER'S LICENSES FOR AN IMPAIRED
33 DRIVING OR CONTROLLED SUBSTANCE VIOLATION.

34 Sec. 35. Effective January 1, 1991, G.S. 20-7 is amended by adding a new
35 subsection to read:

36 "(n1) Any person whose driver's license, commercial driver license, or other
37 privilege to operate a motor vehicle in this State has been revoked or canceled pursuant
38 to G.S. 20-13.2(b), G.S. 20-17(12), or G.S. 20-17.4(a1), shall be reissued only a driver's
39 or commercial driver license of a distinctive color to be determined by the
40 Commissioner, and such person may not be issued a driver's or commercial driver
41 license of a different color for a period of four years from the date of the original
42 reissuance."

43 --TO PROVIDE ENHANCED MANDATORY MINIMUM SENTENCES FOR
44 HABITUAL DRIVING WHILE IMPAIRED VIOLATORS.

1 Sec. 36. Effective October 1, 1990, G.S. 20-179(c) reads as rewritten:

2 "(c) Determining Existence of Grossly Aggravating ~~Factors~~Factors; Habitual
3 Offender. – At the sentencing hearing, based upon the evidence presented at trial and in
4 the hearing, the judge must first determine whether there are any grossly aggravating
5 factors in the case. If the defendant has been convicted of two or more prior offenses
6 involving impaired driving, ~~if the convictions occurred within seven years before the date of~~
7 ~~the offense for which he is being sentenced,~~ such defendant shall be known as a 'habitual
8 offender,' and the judge must impose the Level One punishment under subsection (g)-
9 (g1). The judge must also impose the Level One punishment if he determines that two
10 or more of the following grossly aggravating factors apply:

- 11 (1) A single conviction for an offense involving impaired driving, if the
12 conviction occurred within seven years before the date of the offense
13 for which the defendant is being sentenced.
- 14 (2) Driving by the defendant at the time of the offense while his driver's
15 license was revoked under G.S. 20-28, and the revocation was an
16 impaired driving revocation under G.S. 20-28.2(a).
- 17 (3) Serious injury to another person caused by the defendant's impaired
18 driving at the time of the offense.

19 If the judge determines that only one of the above grossly aggravating factors applies,
20 he must impose the Level Two punishment under subsection (h). In imposing a Level
21 One or Two punishment, the judge may consider the aggravating and mitigating factors
22 in subsections (d) and (e) in determining the appropriate sentence. If there are no
23 grossly aggravating factors in the case, the judge must weigh all aggravating and
24 mitigating factors and impose punishment as required by subsection (f)."

25 Sec. 37. Effective October 1, 1990, G.S. 20-179 is amended by adding a new
26 subsection to read:

27 "(g1) Level One Punishment; Habitual Offender. – A habitual offender subject to
28 Level One Punishment shall be fined two thousand dollars (\$2,000) and shall be
29 sentenced to a term of imprisonment of two years. Notwithstanding any other provision
30 of law, the sentence so imposed shall not be suspended, the habitual offender shall not
31 be placed on probation, and the actual time served pursuant to such sentence shall not be
32 reduced for good time, gain time, or by early parole. Sentences imposed upon a
33 habitual offender shall run consecutively with and shall commence at the expiration of
34 any sentence being served by the habitual offender sentenced hereunder."

35 --TO PROVIDE FOR COMPREHENSIVE DRUG AND ALCOHOL ABUSE
36 PREVENTION AND INTERVENTION PROGRAMS AT ALL INSTITUTIONS OF
37 HIGHER EDUCATION IN NORTH CAROLINA.

38 Sec. 38. Effective July 1, 1991, Chapter 116 of the General Statutes is
39 amended by adding a new Article to read:

40 **"ARTICLE 24A.**

41 **"DRUG-FREE INSTITUTIONS OF HIGHER EDUCATION.**

42 **"§ 116-211.1. Title of Article.**

43 This Article shall be known and may be cited as the 'North Carolina Drug-Free
44 Institutions of Higher Education Act.'

1 **"§ 116-211.2. Definitions.**

2 As used in this Article:

- 3 (1) 'Appropriate Board' means either the Board of Governors or the State
4 Board, whichever has the authority to license, charter, regulate,
5 provide funds to, or govern any particular institution or group of
6 institutions.
- 7 (2) 'Board of Governors' means the Board of Governors of The University
8 of North Carolina.
- 9 (3) 'Institution' means:
- 10 a. The constituent institutions of The University of North Carolina
11 as set out in G.S 116-4;
- 12 b. The nonpublic post-secondary educational institutions subject
13 to licensure by the Board of Governors under G.S. 116-15;
- 14 c. The private institutions contracting with the Board of
15 Governors under G.S. 116-19 and G.S. 116-22 to provide
16 scholarship funds for needy North Carolina students;
- 17 d. The proprietary schools licensed and regulated by the State
18 Board under Article 8, Chapter 115D of the General Statutes,
19 except for such private high schools licensed and regulated
20 thereunder;
- 21 e. Community colleges as established pursuant to and regulated by
22 the State Board under Article 1, Chapter 115D, and Article 3,
23 Chapter 116 of the General Statutes; and
- 24 f. Any other post-secondary education institution subject to
25 licensure by, chartered or regulated by, or receiving State funds
26 from, the State of North Carolina or any Board acting under
27 authority of State law.
- 28 (4) 'Policy' means the anti-drug and alcohol abuse policy required by G.S.
29 116-211.4(a).
- 30 (5) 'State Board' means the State Board of Community Colleges.

31 **"§ 116-211.3. Authority.**

32 The appropriate Board shall require that all institutions comply with the
33 requirements of this Article pursuant to the appropriate Board's authority and power to
34 license, charter, govern, or regulate, or as a precondition to providing funds to or
35 contracting with such institutions.

36 **"§ 116-211.4. Adoption and review of anti-drug and alcohol abuse policies.**

37 (a) Each institution, through its policy-making governing body or administration,
38 shall adopt an anti-drug and alcohol abuse policy applicable to all students, faculty
39 members, administrators, and other employees. Such policy shall include, at a
40 minimum, standards addressing:

- 41 (1) Education, including the legal, medical, and educational consequences
42 and implications of drug and alcohol abuse;
- 43 (2) Counseling and rehabilitation, including campus- and institution-based
44 programs and services;

- 1 (3) Enforcement, and penalties, including an undertaking to eliminate
 2 illegal drugs and alcohol abuse from institution campuses, and to take
 3 administrative action against students, faculty members,
 4 administrators, and other employees when their conduct is deemed to
 5 affect the interests of the institution; and
 6 (4) A plan for implementation of the policy through adoption of programs
 7 and procedures.
 8 (b) The programs to be adopted shall include, but not be limited to:
 9 (1) Training all institution faculty members, administrators, and other
 10 personnel, as well as counselors, and resident counselors, in drug and
 11 alcohol use, addiction, and prevention; and
 12 (2) A mandatory course of instruction for all incoming first-year students
 13 regarding drug and alcohol abuse and prevention, specifically
 14 including the effect of drugs and alcohol on the fetus.
 15 (c) Each institution shall submit, within six months of the effective date of this
 16 act, its policy to its appropriate Board for approval by such Board.
 17 (d) Upon approval of an institution's policy, such institution shall annually
 18 distribute a copy of the policy to students, faculty members, administrators, and other
 19 employees. Additional copies of each institution's policy shall be available at the
 20 administrative office of each institution.

21 **"§ 116-211.5. Reporting requirements.**

- 22 (a) Each institution shall submit, every two years from the date of adoption of its
 23 policy, a report to its appropriate Board regarding campus activities related to drug and
 24 alcohol abuse during the preceding two-year period.
 25 (b) Such reports shall include, at a minimum, the following information for the
 26 prior reporting period:
 27 (1) A listing of the major drug and alcohol abuse educational activities
 28 conducted by the institution;
 29 (2) A report on any illegal drug-related incidents, including any sanctions
 30 imposed;
 31 (3) An assessment by the chief administrator of the institution as to the
 32 effectiveness of the program; and
 33 (4) Any proposed changes to the policy or its implementing programs and
 34 procedures."

35 --TO PROVIDE THAT REGISTERS OF DEEDS SHALL DISTRIBUTE WITH
 36 MARRIAGE LICENSES INFORMATION ON HARM TO CHILD OF PRE-BIRTH
 37 EXPOSURE TO DRUG AND ALCOHOL ABUSE.

38 Sec. 39. Effective January 1, 1991, G.S. 161-11.1 reads as rewritten:

39 **"§ 161-11.1. Fees for Children's Trust Fund.**

- 40 (a) Five dollars (\$5.00) of each fee collected by a register of deeds on or after
 41 October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall
 42 be forwarded, as soon as practical but no later than 60 days ~~of~~ after collection by the
 43 register of deeds, to the county finance officer, who shall forward same to the State
 44 Treasurer for deposit in the Children's Trust Fund.

1 (b) The register of deeds shall distribute with each marriage license issued a
2 pamphlet promoting the prevention of fetal alcohol syndrome, cocaine exposure, and
3 other potential harm to the fetus from drug and alcohol abuse by the mother. The
4 pamphlet to be distributed shall be prepared and paid for by the Department of
5 Environment, Health, and Natural Resources, which shall forward the requisite number
6 of copies to the register of deeds of each county."

7 --TO REQUIRE PARENTS OF CHILDREN SUBJECT TO NEGLECT OR ABUSE
8 BECAUSE OF PARENT'S DRUG OR ALCOHOL ABUSE TO PARTICIPATE IN
9 COURT-ORDERED TREATMENT OR FACE CRIMINAL CONTEMPT CHARGES.

10 Sec. 40. Effective October 1, 1990, G.S. 7A-650(d) reads as rewritten:

11 "(d) Failure of a parent who is personally served to participate in or comply with
12 subsections (a) through (c) ~~may~~shall result in a ~~civil~~criminal proceeding for contempt."

13 --TO PROVIDE FOR EMERGENCY COMMITMENT OF PERSONS SUFFERING
14 FROM SUBSTANCE ABUSE UNDER THE SAME PROCEDURES AVAILABLE
15 FOR PERSONS WHO ARE MENTALLY ILL.

16 Sec. 41. Effective October 1, 1990, G.S. 122C-282 reads as rewritten:

17 **"§ 122C-282. Special emergency procedure for violent individuals.**

18 (a) When an individual subject to commitment under the provisions of this Part is
19 also violent and requires restraint and when delay in taking him to a physician or
20 eligible psychologist for examination would likely endanger life or property, a law-
21 enforcement officer may take the person into custody and take him immediately before
22 a magistrate or clerk. The law-enforcement officer shall execute the affidavit required
23 by G.S. 122C-281 and in addition shall swear that the respondent is violent and requires
24 restraint and that delay in taking the respondent to a physician or eligible psychologist
25 for an examination would endanger life or property.

26 If the clerk or magistrate finds by clear, cogent, and convincing evidence that the
27 facts stated in the affidavit are true, that the respondent is in fact violent and requires
28 restraint, and that delay in taking the respondent to a physician or eligible psychologist
29 for an examination would endanger life or property, he shall order the law-enforcement
30 officer to take the respondent directly to a 24-hour facility described in G.S. 122C-252.

31 Respondents received at a 24-hour facility under the provisions of this section shall
32 be examined and processed thereafter in the same way as all other respondents under
33 this Part.

34 (b) Anyone, including a law-enforcement officer, who has knowledge of an
35 individual who is subject to commitment according to the criteria of G.S. 122C-281(a)
36 and who requires immediate hospitalization to prevent harm to himself or others, may
37 transport the individual directly to an area facility or other place, including a State
38 facility for the mentally ill, for examination by a physician or eligible psychologist, in
39 accordance with G.S. 122C-263(a). If the individual meets the criteria required in G.S.
40 122C-281(a), the physician or eligible psychologist shall so certify in writing before any
41 official authorized to administer oaths. The certificate shall also state the reason that the
42 individual requires immediate hospitalization.

43 If the physician or eligible psychologist executes the oath, appearance before a
44 magistrate shall be waived. The physician or eligible psychologist shall send a copy of

1 the certificate to the clerk of superior court by the most reliable and expeditious means.
2 If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours
3 (excluding Saturday, Sunday, and holidays) of the time that it was signed, the physician
4 or eligible psychologist shall also communicate his findings to the clerk by telephone.

5 Anyone, including a law-enforcement officer if necessary, may transport the
6 individual to a 24-hour facility described in G.S. 122C-252 for examination and
7 treatment pending a district court hearing. If there is no area 24-hour facility and if the
8 respondent is indigent and unable to pay for his care at a private 24-hour facility, the
9 law-enforcement officer or other designated person providing transportation shall take
10 the respondent to a State facility for the mentally ill designated by the Commission in
11 accordance with G.S. 143B-147(a)(1)a. and immediately notify the clerk of superior
12 court of his actions. The physician's or eligible psychologist's certificate shall serve as
13 the custody order and the law-enforcement officer or other designated person shall
14 provide transportation in accordance with the provisions of G.S. 122C-251.

15 Respondents received at a 24-hour facility under the provisions of this section shall
16 be examined by a second physician in accordance with G.S. 122C-266. After receipt of
17 notification that the district court has determined reasonable grounds for the
18 commitment, further proceedings shall be carried out in the same way as all other
19 respondents under this Part."

20 Sec. 42. Except as otherwise provided herein, this act is effective upon
21 ratification.