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HOUSE SELECT COMMITTEE

DRUG LAW REVISION



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REPORT TO THE
HOUSE OF REPRESENTATIVES
1981 GENERAL ASSEMBLY
OF NORTH CAROLINA

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INTRODUCTION

At the direction of the Select Committee of the House of Representatives on Drug Law Revision, the Honorable J. E. Lambeth, Chairman, this report is submitted containing legislative initiatives for the 1981 Session of the General Assembly.

Following the 1980 short session of the General Assembly, the Committee was established to pursue its charge to consider varied approaches to the drug problem, particularly as it concerns youthful offenders. The Committee directed special attention to laws which would:

1. provide stiff active sentences for drug pushers, especially second offenders and wholesale dealers;
2. outlaw sale of drug-use paraphernalia (instruments and toys designed for marijuana use);
3. provide mandatory drug re-education for first offender drug misdemeanor violators and education programs for parents on a voluntary basis;
4. provide drug education diversion programs for youthful first offenders;
5. and provide substantial additional appropriations for drug law enforcement agents and undercover operations aimed at pushers and drug wholesalers with special attention to those who deal in drugs on public school grounds or with children as their pushers.

The Committee was further directed to make a written report of its findings to the House of Representatives, including recommendations for appropriate legislative action.

Representative J. E. Lambeth of Thomasville was appointed chairman of this Committee and meetings were held during the summer and fall of 1980. Other members of the Committee were Representatives J. Howard Coble, David H. Diamont, Charles D. Evans, Jo Graham Foster, Tom B. Rabon, Jr., and Kenneth B. Spaulding.

SUMMARY OF TESTIMONY

Committee Meeting on July 24, 1980

Mr. Steven L. Hicks, Deputy Director of the Alcoholism and Drug Section of the Division of Mental Health, Mental Retardation and Substance Abuse Services of the Department of Human Resources, appeared first to explain the problem of community drug abuse and programs addressing these problems. Ms. Becky Brownlee, Executive Director of Drug Action of Wake County, Inc., then described the prevention, intervention and treatment of drug abuse which her organization provides the Wake County area. Mr. Cyler L. Windham, Assistant Director for Narcotics of the State Bureau of Investigation, displayed controlled substances for the Committee's edification and stressed which posed the greatest problems. The day's final speaker, Dr. Thomas G. Gleaton, Project Director of the Parent Resources Institute on Drug Education (PRIDE), Georgia State University, discussed the pharmacology of marijuana and made recommendations to combat the drug problem.

Committee Meeting on August 22, 1980

Focusing on "Operation Wake-Up" (Wake County "drug bust" occurring a year earlier) as a case study of the types of problems encountered and solutions attempted by educators, students, parents, jurists and others who are dealing with drug abuse in public schools, the Committee heard from five speakers. The first, Dr. John A. Murphy, Superintendent of the Wake County Public School System, testified that drugs are often sold during lunch time and that an open campus invites drug activities. Dr. Murphy recommended for Committee consideration that: (1) smaller schools and more appropriate administrator ratios are needed, (2) stiffer penalties should be enforced for persons convicted of selling drugs on school campuses, and (3) all secondary school teachers should be trained in drug awareness as a requirement for certification. Mr. J. Randolph Riley, Wake County District Attorney, also appeared during the morning session to inform members of the unique legal issues raised during the processing of "Operation Wake-Up" cases, of existing statutory inadequacies and of his recommendations concerning statutory development. His seven recommendations included: (1) making possession of an intermediate quantity of marijuana a general misdemeanor; (2) making possession of any amount of any controlled substance in a public school building or on school grounds a felony; (3) making possession of a controlled substance on school property by one not a

student of that school prima facie evidence that this possession was with the intent to sell or deliver the controlled substance; (4) requiring the forfeiture of conveyances intentionally used to facilitate the sale or delivery of controlled substances; (5) defining "counterfeit controlled substance" to include any substance intentionally represented to be a controlled substance; (6) expressly permit contracting between the Department of Human Resources and any District Attorney to conduct exemplary prosecution projects and (7) provide funding for supervisors experienced in controlling traffic on school grounds to train other school supervisors.

During the afternoon session, Judge Edwin Preston, North Carolina Superior Court Judge, testified before the Committee that drug wholesalers are the ones who should be put in jail and that there is a need for laws to restrict the sale of drug paraphernalia. Appearing next was Mr. Richard Schwartz, Attorney for the Wake County School Board. He recommended a mandatory penalty to be applied when a non-student sells drugs to a school student during school hours, either at school or away from school, in order to arrest and prosecute pushers. Concluding testimony was received from Mr. Greg Gault, Director of the Wake County First Offender Alternative School and Good Conduct Program. He assessed the Alternative School Program as beneficial to the student and community while suggesting ways to upgrade the program.

Committee Meeting on September 22, 1980

The focus of this meeting was to examine the Drug Enforcement Administration's Model Drug Paraphernalia Act and State education policies which would aid in the education of drug abusers. Mr. Don Jones, Law Enforcement Specialist with the Department of Crime Control and Public Safety, discussed the Model Drug Act and responded to the Committee's questions concerning the constitutionality of the Act. Mr. Robert Cogswell, Fayetteville City Attorney, informed the Committee of the experiences of the Fayetteville community following the enactment of its drug paraphernalia law. Mr. Bill Burwell, Police Attorney with the High Point Police Department, discussed the enactment of his community's drug paraphernalia ordinance based on the Model Act. Testimony was also received from Mr. George Hoffman, owner and operator of a small smoking accessories shop in Chapel Hill. Following the distribution of drug paraphernalia sold in his shop, he pointed out the difficulty in classifying materials as drug paraphernalia, advocated that children under eighteen years should not be allowed to buy "smokables" and that children should be properly educated concerning the dangers of drug and alcohol abuse.

Mr. Gregory Stahl, Planning and Evaluation Associate with the Department of Crime Control and Public Safety, gave an explanation of the three resolutions arising from the Governor's Crime Commission's proposals to: (1) limit out-of-school suspension, (2) develop a citizenship education

program and (3) establish a statewide, in-school suspension program.

Committee Meeting on November 14, 1980

Mr. Joseph Tallent, Chief of the Planning Branch, Alcohol and Drug Section, Department of Human Resources, discussed the extent of the drug abuse problem in North Carolina and the need for future action to combat the problem. He noted the Department's concurrence with several recommendations previously discussed and also urged the development of an education program for first offenders who are arrested for simple possession (prerequisite to the expunction of their records). The Committee then discussed and approved several recommendations while directing the staff to prepare a proposed draft of legislation establishing the education program for first offenders.

Committee Meeting on December 2, 1980

The Committee met and reviewed proposed legislation. Two bills were approved to be contained in the Committee's final report to the House of Representatives and staff was directed to make changes in other bills pursuant to Committee discussion.

Committee Meeting on December 15, 1980

The Committee reviewed a draft of its final Committee Report, which it approved with changes, contingent upon final review by

the Committee Chairman and Vice Chairman. Its recommendations and proposed legislation are contained in the remaining sections of this Report.

RECOMMENDATIONS

The Select House Committee on Drug Law Revision, after receiving testimony from numerous groups and individuals, has adopted general recommendations as listed and proposes legislation as set out in this Report.

1. THE COMMITTEE CONCURS IN PRINCIPLE WITH THE GOVERNOR'S CRIME COMMISSION AND RECOMMENDS THAT THE STATE BOARD OF EDUCATION ESTABLISH A STANDARD THAT WOULD ALLOW OUT-OF-SCHOOL SUSPENSIONS, WHERE ALTERNATIVES EXIST, ONLY AS A LAST RESORT.

2. THE COMMITTEE CONCURS IN PRINCIPLE WITH THE GOVERNOR'S CRIME COMMISSION AND RECOMMENDS THAT THE GENERAL ASSEMBLY ENACT LEGISLATION TO APPROPRIATE THE NECESSARY FUNDS TO SUPPORT A STATEWIDE IN-SCHOOL SUSPENSION PROGRAM.

3. THE COMMITTEE CONCURS IN PRINCIPLE WITH THE GOVERNOR'S CRIME COMMISSION AND SUPPORTS THE CONCEPT OF CITIZENSHIP EDUCATION AND RECOMMENDS THAT THE DEPARTMENT OF PUBLIC INSTRUCTION CONTINUE TO EXPAND ITS CITIZENSHIP EDUCATION PROGRAMS.

4. THE COMMITTEE RECOMMENDS THE ADOPTION OF THE DRUG PARAPHERNALIA ACT AS DRAFTED BY THE GOVERNOR'S CRIME COMMISSION (DRAFT BASED ON THE MODEL DRUG PARAPHERNALIA ACT) WITH TWO RESERVATIONS: (1) THE COMMITTEE AMENDS THE PROPOSED MODEL ACT AT § 19-113.18 (ADVERTISEMENT OF DRUG PARAPHERNALIA) BY DELETING THE PHRASE "...OR REASONABLY SHOULD KNOW....." AND (2) AMENDS THE ACT BY OMITTING SIMPLE POSSESSION OF DRUG PARAPHERNALIA (§ 90-113.16 AS A PROHIBITED ACT. (SEE APPENDIX A FOR REVISED VERSION.)

5. THE COMMITTEE RECOMMENDS IN PRINCIPLE THAT THE STATE BOARD OF EDUCATION PURSUE THE POLICY ENCOURAGING SCHOOLS TO FACILITATE THE PROPER ADMINISTRATOR RATIOS FOR THE SUPERVISION OF STUDENTS TO BETTER ADDRESS THE DRUG ABUSE PROBLEM.

6. THE COMMITTEE RECOMMENDS IN PRINCIPLE THAT STIFFER PENALTIES SHOULD BE ENFORCED FOR PERSONS CONVICTED OF SELLING DRUGS ON SCHOOL CAMPUSES.

7. THE COMMITTEE RECOMMENDS IN PRINCIPLE THAT ALL LOCAL BOARDS OF EDUCATION PROVIDE DRUG AWARENESS TRAINING FOR ALL TEACHERS IN THEIR SCHOOL SYSTEMS (IN GRADES SIX TO TWELVE).

8. THE COMMITTEE RECOMMENDS IN PRINCIPLE THAT A MANDATORY PENALTY SHOULD BE IMPOSED ON A NON-STUDENT SELLING DRUGS TO

A STUDENT DURING SCHOOL HOURS EITHER AT SCHOOL OR AWAY FROM SCHOOL.

9. THE COMMITTEE RECOMMENDS IN PRINCIPLE THAT THE STATE BOARD OF EDUCATION ENCOURAGE LOCAL SCHOOL SUPERVISORS, EXPERIENCED AND SUCCESSFUL IN CLOSING PUBLIC SCHOOL GROUNDS TO UNNECESSARY TRAFFIC, TO RELATE THEIR TECHNIQUES AND THE EFFECTIVENESS OF THOSE METHODS IN RESTRICTING ABUSE OF CONTROLLED SUBSTANCES TO OTHER INTERESTED SCHOOL SUPERVISORS.

10. BASED ON TESTIMONY RECEIVED BY THIS COMMITTEE ON JULY 24, 1980, THE COMMITTEE RECOMMENDS THAT THE NEED FOR GREATER DRUG LAW ENFORCEMENT REQUIRES MORE OFFICERS TO INVESTIGATE AND AID IN THE CONVICTION OF DRUG PUSHERS.

11. THE COMMITTEE RECOMMENDS THAT THE STATUTES SHOULD BE CHANGED BY AMENDING G.S. 90-113.3 TO EXPRESSLY PERMIT CONTRACTING BETWEEN THE DEPARTMENT OF HUMAN RESOURCES AND ANY DISTRICT ATTORNEY FOR THE PURPOSE OF CONDUCTING EXEMPLARY PROSECUTION PROJECTS INCLUDING PRECEDENT SPECIAL INVESTIGATIONS OF CONTROLLED SUBSTANCE VIOLATIONS AND SUBSEQUENT DEMONSTRATION PROGRAMS FOR TRAINING IN THE PROCEDURES DEVELOPED IN THE COURSE OF SUCH PROJECTS (SEE APPENDIX B).

12. THE COMMITTEE RECOMMENDS THAT THE STATUTES SHOULD BE AMENDED TO ADD TO THE DEFINITION OF "COUNTERFEIT CONTROLLED

SUBSTANCE" IN G.S. 90-87(6) TO INCLUDE ANY SUBSTANCE WHICH IS BY ANY MEANS INTENTIONALLY MISREPRESENTED TO BE A CONTROLLED SUBSTANCE (SEE APPENDIX C).

13. THE COMMITTEE RECOMMENDS THAT THE STATUTES SHOULD BE AMENDED TO MAKE POSSESSION OF A CONTROLLED SUBSTANCE ON SCHOOL PROPERTY BY ONE NOT A STUDENT OF THAT SCHOOL PRIMA FACIE EVIDENCE THAT SUCH POSSESSION WAS WITH INTENT TO SELL OR DELIVER THAT CONTROLLED SUBSTANCE (SEE APPENDIX D).

14. THE COMMITTEE RECOMMENDS THAT THE GENERAL STATUTES (G.S. 90-96) SHOULD BE AMENDED TO ESTABLISH A DRUG EDUCATION SCHOOL FOR FIRST OFFENDERS WHO SEEK EXPUNCTION OF THEIR RECORDS AND SECOND OFFENDERS WHO WOULD BENEFIT FROM THIS TREATMENT PROGRAM (SEE APPENDIX E).

Drug Paraphernalia

A BILL TO BE ENTITLED
AN ACT TO PROHIBIT THE ~~POSSESSION~~/ USE, DELIVERY OR MANUFACTURE
OF DRUG PARAPHERNALIA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding the following new Article 5B:

"Article 5B.

"Drug Paraphernalia.

"§ 90-113.15. General provisions. -- (a) As used in this Article, 'drug paraphernalia' means all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body. 'Drug paraphernalia' includes, but is not limited to, the following:

- (1) Kits for planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

- (2) Kits for manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (3) Isomerization devices for increasing the potency of any species of plant which is controlled substance;
- (4) Testing equipment for identifying, or analyzing the strength, effectiveness or purity of controlled substances;
- (5) Scales and balances for weighing or measuring controlled substances;
- (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose, for mixing with controlled substances;
- (7) Separation gins and sifters for removing twigs and seeds from, or otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices for compounding controlled substances;
- (9) Capsules, balloons, envelopes and other containers for packaging small quantities of controlled substances;
- (10) Containers and other objects for storing or concealing controlled substances;
- (11) Hypodermic syringes, needles and other objects for parenterally injecting controlled substances into the body;
- (12) Objects for ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into

the body, such as:

- a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;
- b. Water pipes;
- c. Carburetion tubes and devices;
- d. Smoking and carburetion masks;
- e. Objects, commonly called roach clips, for holding burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- f. Minature cocaine spoons and cocaine vials;
- g. Chamber pipes;
- h. Carburetor pipes;
- i. Electronic pipes;
- j. Air-driven pipes;
- k. Chillums;
- l. Bongs;
- m. Ice pipes or chillers.

(b) The following, along with all other relevant evidence, may be considered in determining whether an object is drug paraphernalia:

- (1) Statements by the owner or anyone in control of the object concerning its use;
- (2) Prior convictions of the owner or other person in

control of the object for violations of controlled substances law;

(3) The proximity of the object to a violation of the Controlled Substances Act;

(4) The proximity of the object to a controlled substance;

(5) The existence of any residue of a controlled substance on the object;

(6) The proximity of the object to other drug paraphernalia;

(7) Instructions provided with the object concerning its use;

(8) Descriptive materials accompanying the object explaining or depicting its use;

(9) Advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Possible legitimate uses of the object in the community;

(12) Expert testimony concerning its use;

(13) The intent of the owner or other person in control of the object to deliver it to persons whom he knows or reasonably should know intend to use the object to facilitate violations of the Controlled Substances Act.

"§ 90-113, 16. // Possession of drug paraphernalia. // (a) It is unlawful for any person to knowingly use, or to possess with

intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repack, store, contain, or conceal a controlled substance which it would be unlawful to possess, or to inject, ingest, inhale or otherwise introduce into the body a controlled substance which it would be unlawful to possess.

(b) Use, or possession with intent to use, of each separate and distinct item of drug paraphernalia is a separate offense.

(c) Violation of this section is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), imprisonment for not more than one year, or both.

"§ 90-113.17. Manufacture or delivery of drug paraphernalia.--

(a) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repack, store, contain or conceal a controlled substance which it would be unlawful to possess, or that it will be used to inject, ingest, inhale or otherwise introduce into the body a controlled substance which it would be unlawful to possess.

(b) Delivery, possession with intent to deliver, or manufacture with intent to deliver, of each separate and distinct item of drug paraphernalia is a separate offense.

(c) Violation of this section is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000.00), imprisonment for not more than two years, or both. However, delivery of drug paraphernalia by a person over 18 years of age to someone under 18 years of age who is at least three years younger than the defendant shall be punishable as a Class I felony.

'§ 90-113.18. Advertisement of drug paraphernalia.--(a) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, when he knows ~~or reasonably should know,~~ that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia described in this Article.

(b) Violation of this section is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), imprisonment for not more than six months, or both."

~~Sec. 2. of G.S. 90-113.4 is repealed.~~

Sec. 3. If any provision of this act or the application of it to any person or circumstances is held invalid, the invalidity does not affect any other provision of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 4. This act shall become effective October 1, 1981, and applies to acts committed on or after that date.

SESSION 19

INTRODUCED BY:

DRAFT
FOR REVIEW ONLY

Referred to:

1 December 2, 1980

2 A BILL TO BE ENTITLED

3 AN ACT TO AMEND G.S. 90-113.3(c)(3) TO EXPRESSLY PERMIT CONTRAC-
4 TING BETWEEN THE DEPARTMENT OF HUMAN RESOURCES AND ANY DISTRICT
5 ATTORNEY TO CONDUCT EXEMPLARY PROSECUTION PROJECTS CONCERNING
6 CONTROLLED SUBSTANCES VIOLATIONS.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 90-113.3(c) is hereby amended by
9 adding a new paragraph to read as follows:

10 "(4) Enter into contracts with any District Attorney for the
11 purpose of conducting exemplary prosecution projects including
12 precedent special investigations of controlled substance viola-
13 tions and subsequent demonstration programs for training in the
14 procedures developed in the course of such projects."

15 Sec. 2. This act is effective upon ratification.

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SESSION 197

INTRODUCED BY: Representative

**DRAFT
FOR REVIEW ONLY**

Referred to:

1 December 10, 1980

2 A BILL TO BE ENTITLED

3 AN ACT TO DEFINE "COUNTERFEIT CONTROLLED SUBSTANCE" IN THE
4 NORTH CAROLINA CONTROLLED SUBSTANCES ACT.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 90-87 is amended by adding between
7 Subdivisions (6) and (7) a new Subdivision which reads as
8 follows:9 "(6a)'Counterfeit controlled substance' means any substance
10 which is by any means intentionally misrepresented as a con-
11 trolled substance."12 Sec. 2. G.S. 90-95(a)(2) is amended by adding immediately
13 before the semicolon the words "or counterfeit substance".14 Sec. 3. This act is effective upon ratification.
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SESSION 197____

INTRODUCED BY: Representative

DRAFT
FOR REVIEW ONLY

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December 2, 1980

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OF A CONTROLLED SUBSTANCE ON SCHOOL
PROPERTY PRIMA FACIE EVIDENCE THAT POSSESSION WAS WITH INTENT
TO SELL OR DELIVER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95 is amended by adding a new
subsection (j) to read as follows:

"(j) The possession of a controlled substance on school
property by a person not a student of that school is prima facie
evidence that the possession was with the intent to sell or
deliver that controlled substance."

Sec. 2. This act is effective upon ratification.

SESSION 197

INTRODUCED BY: Representative

Referred to:

1 December 15, 1980
2 A BILL TO BE ENTITLED
3 AN ACT TO ESTABLISH A DRUG EDUCATION PROGRAM AND TO STRENGTHEN
4 THE LAWS AGAINST PERSONS WHO POSSESS CONTROLLED SUBSTANCES
5 WHILE ALLOWING CONDITIONAL DISCHARGE AND EXPUNCTION OF RECORDS
6 FOR FIRST OFFENSE.

7 Section 1. Subsection (a) of G.S. 90-96 is rewritten
8 as follows:

9 "(a) Whenever any person who has not previously been convicted
10 of any offense under this Article, or under any statute of the
11 United States or any state relating to controlled substances
12 included in any schedule of this Article, pleads guilty to or is
13 found guilty of a misdemeanor under this Article by possessing
14 a controlled substance included within Schedules II through VI
15 of this Article, the court may without entering a judgment of
16 guilt and with the consent of such person, defer further proceedings
17 and place him on probation. Notwithstanding the provisions of
18 G. S. 15A-1342(c) or any other statute or law, probation may be
19 imposed under this section for an offense under this Article for
20 which the prescribed punishment includes only a fine. To fulfill
21 the terms and conditions of probation the court may allow the
22 defendant to participate in a drug education program approved
23 for this purpose by the Department of Human Resources. Upon
24 violation of a term or condition, the court may enter an

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1 adjudication of guilt and proceed as otherwise provided. Upon
2 fulfillment of the terms and conditions, the court shall discharge
3 such person and dismiss the proceedings against him. Discharge
4 and dismissal under this section shall be without court adjudica-
5 tion of guilt and shall not be deemed a conviction for purposes
6 of this section or for purposes of disqualifications or disa-
7 bilities imposed by law upon conviction of a crime including the
8 additional penalties imposed for second or subsequent convictions
9 under this Article. Discharge and dismissal under this section
10 or G.S. 90-113.14 may occur only once with respect to any person.
11 Disposition of a case to determine discharge and dismissal under
12 this section at the district court division of the General Court
13 of Justice shall be final for the purpose of appeal. Prior to
14 taking any action to discharge and dismiss under this section
15 the court shall make a finding that the defendant has no record
16 of previous convictions under G.S. 90-95."

17 Sec. 2. By relettering Subsection (b) of G.S. 90-96
18 as the same appears in the 1979 Cumulative Supplement to Volume
19 2C of the General Statutes of North Carolina to be Subsection
20 (b1) and adding a new subsection (b) to read as follows:

21 "(b) Upon the first conviction only of any offense
22 included in G.S. 90-95(a)(3), and subject to the provisions
23 of this subsection (b) the court may place defendant on
24 probation under this section for an offense under this
25 Article including an offense for which the prescribed punish-
26 ment includes only a fine. The probation, if imposed, shall be
27 for not less than one year and shall contain a minimum
28 condition that the defendant who was found guilty or pleads

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1 guilty enroll in and successfully complete, within 150 days of
2 the date of the imposition of said probation, the program of
3 instruction at the Drug Education School approved by the Depart-
4 ment of Human Resources pursuant to G.S. 90-96A. The court may
5 impose probation that does not contain a condition that defendant
6 successfully complete the program of instruction at a Drug Educa-
7 tion School if:

8 (1) There is no Drug Education School within a
9 reasonable distance of the defendant's resi-
10 dence; or,

11 (2) There are specific, extenuating circumstances
12 which make it likely that defendant will not
13 benefit from the program of instruction.

14 The court shall enter such specific findings in the
15 record provided that in the case of subsection (2)
16 above, such findings shall include the specific,
17 extenuating circumstances which make it likely that
18 the defendant will not benefit from the program of
19 instruction.

20 For the purposes of determining whether the con-
21 viction is a first conviction or whether a person has
22 already had discharge and dismissal, no prior offense
23 occurring more than seven years before the date of the
24 current offense shall be considered. In addition,
25 convictions for violations of a provision of G.S. 90-
26 95(a)(1) or 90-95 (a)(2) or 90-95(a)(3), shall be
27 considered previous convictions.

28 Failure to successfully complete an approved program of

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1 instruction at a Drug Education School shall constitute grounds
2 to revoke probation and deny application for expungement of
3 all recordation of defendant's arrest, indictment or infor-
4 mation, trial, finding of guilty, and dismissal and discharge
5 pursuant to this section. For purposes of this subsection,
6 the phrase "failure to successfully complete the prescribed
7 program of instruction at a Drug Education School" includes
8 failure to attend scheduled classes without a valid excuse,
9 failure to complete the course within 150 days of imposition
10 of probation, willful failure to pay the required fee for
11 the course, or any other manner in which the person fails
12 to complete the course successfully. The instructor of the
13 course to which a person is assigned shall report any
14 failure of a person to successfully complete the program
15 of instruction to the court which imposed probation. The
16 court shall revoke probation and/or deny application for
17 expungement of all recordation of defendant's arrest,
18 indictment or information, trial, finding of guilty, and
19 dismissal and discharge pursuant to this section. A
20 person may obtain a hearing prior to revocation of proba-
21 tion or denial of application for expungement.

22 This subsection is supplemental and in addition to
23 existing law and shall not be construed so as to repeal
24 any existing provision contained in the General Statutes
25 of North Carolina."

26 Sec. 3. G.S. Chapter 90 is amended by adding a
27 new section numbered G.S. 90-96A between G.S. 90-96 and
28 G.S. 90-96.1 to read as follows:

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1 "§ 90-96A Drug education schools curriculum approved by
2 North Carolina Drug Commission; responsibilities of the
3 Department of Human Resources; fees.--(a) The North Carolina
4 Drug Commission shall establish standards and guidelines for
5 the curriculum and operation of local drug education programs.
6 The Department shall oversee the development of a statewide
7 system of schools and shall insure that schools are available
8 in all localities of the State as soon as is practicable.

9 (1) A fee of one hundred dollars (\$100.00)
10 shall be paid by all persons enrolling
11 in a Drug Education School established
12 pursuant to this section. That fee
13 shall be paid to the clerk of court
14 in the county in which the person was
15 convicted. The amounts received by the
16 clerk for the fees shall be remitted
17 in monthly payments to the accredited
18 drug education school located in the
19 catchment area where the court is
20 located. Area mental health, mental
21 retardation, and substance abuse
22 authorities will remit five percent
23 (5%) of the above fees from the clerks
24 of court to the Department of Human
25 Resources on a monthly basis. Fees re-
26 ceived by the Department of Human
27 Resources may only be used in sup-
28 porting and administering

1 drug education programs. Any excess funds will
2 revert to the General Fund.

3 (2) The Department of Human Resources shall have the
4 authority to approve programs to be implemented
5 by area mental health, mental retardation, and
6 substance abuse authorities. Area mental
7 health, mental retardation, and substance abuse
8 authorities may subcontract for the delivery of
9 drug education program services. The department
10 shall have the authority to approve budgets and
11 contracts with public and private governmental
12 and nongovernmental bodies for the operation
13 of such schools.

14 (3) All fees retained by the area mental health,
15 mental retardation, and substance abuse authorities
16 from the clerks of court shall be placed in a
17 nonreverting fund. Moneys in that fund shall be
18 disbursed for the operation, evaluation and
19 administration of drug education programs. Any
20 excess funds shall be used to fund other drug
21 programs.

22 (4) All fees collected by the area mental health,
23 mental retardation, and substance abuse authorities
24 from the clerks of court may not be used in any
25 manner to match other State funds or be included
26 in any computation for State formula-funded
27 allocations.

28 (b) Willful failure to pay the fee is one ground for a finding

