LEGISLATIVE RESEARCH COMMISSION

CRIMINAL LAWS, PROCEDURES, AND SENTENCING

REPORT TO THE

1995 GENERAL ASSEMBLY

OF NORTH CAROLINA

1996 REGULAR SESSION

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

May 1, 1996

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY (REGULAR SESSION 1996):

The Legislative Research Commission herewith submits to you for your consideration its interim report on criminal laws, procedures, and sentencing. The report was prepared by the Legislative Research Commission's Committee on Criminal Laws, Procedures, and Sentencing pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Harold J. Brubaker
Speaker of the House

Marc Basnight
President Pro Tempore

Cochair
Legislative Research Commission

1995-1996

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1995 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of criminal laws, procedures, and sentencing was authorized by Section 2.3 of Chapter 542 of the 1995 Session Laws. The relevant portions of Chapter 542 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its civil and criminal law area under the direction of Senator Frank W. Ballance, Jr. The Committee was chaired by Senator Frank W. Ballance, Jr. and Representative Michael Decker. The full membership of the Committee is listed in Appendix B of this report.

A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Study Committee on Criminal Laws, Procedures, and Sentencing met 6 times during the 1995-96 biennium.

At its first meeting the Committee heard from the North Carolina Sentencing and Policy Advisory Commission. Rob Lubitz, Executive Director gave a status report on structured sentencing and a summary of criminal law legislation enacted by the 1995 General Assembly. Franklin Freeman, Secretary of the Department of Correction, provided the committee with a status report on North Carolina's prison population and discussed the continuing and projected impact of fair sentencing and structured sentencing on the State's prison system.

At the second meeting of the Committee, Jane Gray, Deputy Attorney General, summarized the cases of Small v. Martin/Hunt and Hubert v. Martin, and explained the effect of those two cases on the State's prison system. She informed the Committee that Hubert v. Martin has been dismissed and there will be no further appeals of that case. In 1994, the Attorney General's Office sought and received a modification of the consent decree in Small v. Martin/Hunt. The modification requested was a variation of the square footage requirement. The consent order referenced 50 square feet per inmate. The modification sought was 35-40 square feet depending upon the type unit. The motion was granted and the State is now operating under the modified court order. Prison legal services has appealed that order and the appeal is still pending. The motion to dismiss Small v. Martin/Hunt in its entirety, now that North Carolina is in compliance with the decree, is being held in abeyance by Judge Britt, pending the appeal by the Prison Legal Services on the modification order.

Art Zeidman, former member of the North Carolina Sentencing Policy Advisory Commission also addressed the Committee. As a member of the Sentencing Commission that developed structured sentencing, Mr. Zeidman authored a minority

report that differed from the Commission's final report. Mr. Zeidman outlined for the Committee his differences with the final report of the North Carolina Sentencing Commission. He informed the Committee that his view and proposal over the last several years has been that sentencing policies should reflect the General Assembly's notion of public safety and punishment and any other goals of sentencing. The focus should be on what sentences are appropriate for the crime. A determination should then be made as to the cost for that type of system and how best to use State budgetary resources to pay for the system.

Rob Lubitz, Executive Director of the North Carolina Sentencing and Policy Advisory Commission updated the Committee on criminal law and sentencing issues being considered by the North Carolina Sentencing and Policy Advisory Commission. He noted some of the issues that the Sentencing Commission may address in its report to the General Assembly for possible consideration during the 1996 Regular Session.

Greg Stahl, Assistant Secretary, Department of Correction provided the Committee with information requested at an earlier meeting regarding the number and types of crimes committed by persons released on parole or probation. Greg Stahl also provided the Committee, as requested at an earlier meeting, with a comparison of the housing cost of State prisoners in State prisons, private prisons, and the cost of prisoner housing in other states.

As its last agenda item, the Committee reviewed some of the bills pending in the House Judiciary II Committee. The members of the Criminal Laws, Procedures, and Sentencing Study Committee decided a more complete review was needed of some of the bills and agreed to further consider those bills at a later meeting.

At its third meeting the Committee considered the following agenda items: (i) controlled substances tax and criminal forfeitures, (ii) statutory law and proceedings governing the distribution and use of assets and moneys obtained in criminal forfeiture

proceedings, and (iii) law enforcement agencies and county school systems as recipients of the funds obtained through criminal forfeiture proceedings.

Mr. Richard Riddle with the North Carolina Department of Revenue provided the Committee with an overview of the State controlled substance excise tax. The law, which became effective January 1, 1990, levies a tax on controlled substances. The purpose of the tax is to tax the drug dealer. A dealer is defined as anyone who possesses 42 grams or more of marijuana, seven or more grams of any other substance sold by weight, or ten dosage units of those controlled substances measured by dosage units. Under the law a dealer must purchase a controlled substance excise stamp. The dealer purchasing the excise stamps is not required to disclose his or her identity, and in fact, any information obtained from the drug dealer is confidential and may not be used in any criminal action against the dealer. However, nothing in the controlled substance excise tax law legalizes the possession of the drugs.

With regard to enforcement of and collection under the controlled substance excise tax law, Mr. Riddle informed the Committee that ninety-five percent of the collections under the law are forced collections. Those collections include levies on automobiles, jewelry, cash, and garnishment of bank accounts. The other five percent of collections are voluntarily paid.

Questions were raised regarding the distribution among State and local law enforcement agencies, federal law enforcement agencies, and county school boards of monies and assets obtained when illegal drug operations are "busted". Mr. Riddle informed the Committee, that failure to purchase the controlled substance tax stamps as required by law is punishable by a civil penalty. Under the law 75 percent of any civil penalty imposed on a person goes to law enforcement. Mr. Riddle stated that it is his understanding that this is permissible. He acknowledged that Section 7 of Article IX of the North Carolina Constitution provides that "the clear proceeds of all penalties and

forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State" are to be used for the public schools. However, a civil penalty, to date, has not been considered to be covered under this particular constitutional provision.

The enforcement and collection of the excise tax on controlled substances becomes even more complicated, when a criminal prosecution is involved. Often, in a drug "bust", the arresting officer will seize the drugs, cash, and certain other assets at the crime scene as evidence. If the arresting officer is a State or local law enforcement officer the monies and other assets seized eventually are distributed under State law. However, if the arresting officer is a federal law enforcement official, the monies and other assets seized eventually are distributed in accordance with federal law which differs from the State's distribution procedures. In addition to the criminal monies and assets being held for use in the criminal trial, the North Carolina Department of Revenue has a duty to levy and collect the excise tax due on the controlled substances. If the drug dealer fails to pay the tax assessment, then the Department of Revenue attempts to confiscate the drug dealer's cash, places a lien on other property traceable to the drug dealer, and also attempts to garnish any other assets traceable to the drug dealer, including the assets and cash seized as evidence.

In 1995, the North Carolina Court of Appeals held in State v. Bonds, 120 N.C. App. 546 (1995), that the Department of Revenue may garnish money seized in the arrest of a drug dealer. The court found that the money identified in a garnishment order must be turned over to the Department of Revenue unless the prosecuting attorney required the seized money as evidence in the criminal trial. In State v. Bonds the Wayne County District Attorney did not need the money as evidence and therefore the garnishment on behalf of the Department of Revenue was upheld.

Dale Talbert, Department of Justice, addressed the Committee next. Mr. Talbert outlined for the Committee the State's criminal laws dealing with forfeitures, explained what the criminal law forfeiture proceedings are, and advised the Committee who, under State law, makes the decision with regard to how forfeited proceeds are distributed.

Mr. Talbert began by distinguishing between civil forfeitures and criminal forfeitures. In a criminal forfeiture proceeding, the owner of the property must first be convicted of a criminal offense. A conviction is not required in a civil forfeiture proceeding. One of North Carolina's civil forfeiture proceedings most frequently applied in drug cases is Chapter 75D of the General Statutes. That is the State's RICO Act (Racketeer Influenced and Corrupt Organizations). Under RICO, no criminal conviction is required for the forfeiture of property. Further, the burden of proof applied in RICO forfeiture proceedings is based on a preponderance of the evidence.

With regard to criminal forfeiture proceedings, Mr. Talbert stated that North Carolina law provides for 10 separate criminal forfeiture procedures. There is no comprehensive statute dealing with all criminal forfeitures. As a result State law regarding criminal forfeitures is a hodgepodge of laws that are confusing and not always very workable. For example, there are wildlife forfeitures that pertain to violations of the gaming laws. Gambling statutes provide that property used in gambling are subject to forfeiture. There are also separate statutes that deal with forfeiture of controlled substances, forfeiture of deadly weapons, forfeiture of conveyances used in robberies, and forfeiture of any gain resulting from the commission of a felony. The burden of proof generally applied in criminal forfeiture proceedings is actually taken from G.S. 18B-504 which provides for the forfeiture of property seized under the State statutes regulating alcoholic beverages. It is interesting to note, that the burden of proof set out in the State's ABC statutes is based on federal law.

To determine what property is subject to criminal forfeiture and who the authorized recipient of the forfeiture is, it is necessary to look at the individual statutes. However, as a general practice, at the end of a criminal trial a verbal motion for forfeiture is made by the prosecuting attorney if the prosecuting attorney feels that sufficient evidence has been introduced during the course of the trial to justify forfeiture. If the court agrees, no further evidence with regard to forfeiture is required and the motion is granted.

For a court to rule that property is forfeited, the prosecuting attorney must establish that the property was acquired from, was used in, or was intended to be used in the violation of a particular statute. In 1985, the North Carolina Court of Appeals held in the case of State v. Teasley, 82 N.C. App. 668(1985), that the fact that large amounts of cash were found in close proximity to controlled substances was insufficient to warrant forfeiture of the cash. In order for a State law enforcement officer to make a seizure there must be a legal standard of evidence available. However, at the federal level, federal appellate case law allows a lesser standard of evidence to be applied by federal law enforcement agents with regard to seizures and with regard to forfeitures. The federal appellate case law is "pro" forfeiture, while the State appellate case law is not.

Mr. Talbert was asked whether evidence seized at a crime scene must be held pending the disposition of the case, and whether this issue was addressed in State v. Bonds, the State appellate case referred to earlier by Mr. Riddle. Mr. Talbert responded that G.S. 15A-258 provides for the disposition of property seized pursuant to a search warrant, and that there was some discussion of that statute in the case of State v. Bonds. Mr. Talbert pointed out that G.S. 15-11.1 is another statute that the Committee should note. G.S. 15-11.1 provides for the handling and maintenance of property not seized pursuant to a search warrant. Under G.S. 15-11.1, the district

attorney has discretionary authority to hold property seized as evidence. Once the district attorney determines that the property being held for evidence is no longer needed in the criminal trial, the district attorney may release the property to its rightful owner or to another who has a possessory or legal interest in the property. In 1990 the North Carolina Court of Appeals decided the case of State v. Jones, 97 N.C. App. 189 (1990). The facts of that case involved property seized as evidence for a criminal trial. The property was later released to DEA which meant that the forfeiture of the property was controlled by federal law rather than State law. The Court of Appeals held in State v. Jones, that no court order is required under G.S. 15A-258 to release property to another law enforcement agency and that the release of the property to another law enforcement agency was appropriate under both G.S. 15A-258 and G.S. 15-11.1.

Addressing the issue of forfeitures under Section 7 of Article IX of the North Carolina Constitution, Mr. Talbert stated that the key question regarding this particular constitutional provision is, "what is a breach of the State's penal laws?" If an action is a breach of the State's penal laws, then any fine, forfeiture, or penalty that accrues as a result of that action must go to the county school fund. To date, this issue has not been addressed by the State's appellate courts and so there is not a clear answer.

Finally, Mr. Talbert provided the Committee with a brief explanation of how forfeitures work at the federal level. The federal civil forfeiture statute is 28 USC 881. That statute provides that no criminal conviction is necessary for the federal government to seize property. Mr. Talbert indicated North Carolina's controlled substance forfeiture statute (G.S. 90-112.1) is almost identical to the federal civil forfeiture statute. The difference has been in the interpretation of the two and the implementation of the federal procedure which is taken mainly from maritime and admiralty law. Under maritime and admiralty law, the federal district courts had exclusive jurisdiction over actions involving the seizure of property as a "prize". Under

"the relation back theory" at federal law, if one uses property in violation of federal law, at the moment of the illegal use the property belongs to the federal government, not the individual. A case on point is U.S. v. Alston, 717 F. Supp. 378 (MDNC 1989). That case provides that if a State or local law enforcement officer is aware of the federal forfeiture laws and seizes property indicating that the property is being seized for federal forfeiture, then under federal law the property goes to DEA for forfeiture proceedings. In U.S. v. Alston, the Fourth Circuit Court of Appeals ruled that no provision in State law prohibits this practice. The court further held that the State courts had no jurisdiction because under maritime and admiralty law, a motion by the property owner to have the property returned must be filed in federal court. The remedy is exclusively in the federal court. The Fourth Circuit Court of Appeals went on to say, "since the federal government may adopt a seizure even when the person seizing the property has no authority to make the seizure, it follows that the federal government may adopt a procedure where there is no authority to transfer the property." In Mr. Talbert's opinion, the Fourth Circuit has interpreted the federal law to be that local and State law enforcement officers may seize the property under federal law and it may be forfeited under federal law whether or not the law enforcement officer had the authority initially.

Glenn Jernigan, North Carolina Sheriff's Association, Sheriff Frank McGirt, Past President and Chairman of the Executive Committee of the North Carolina Sheriffs Association, and a number of other law enforcement officers briefly informed the Committee how their particular offices and areas had benefitted as recipients of forfeiture funds.

Ms. Ann W. McColl, North Carolina School Board Association spoke to the Committee about the role of the School Board in forfeiture proceedings and about how important those funds are to public schools. Referring to the State constitutional

provision that provides that the county school fund shall receive the proceeds of penalties and fines collected, Ms. McColl indicated that there have been problems with the schools getting the money to which they are entitled. After a brief presentation on State law controlling the distribution of forfeiture funds to county school systems, Ms. McColl shared with the committee a letter that she had received from the school board attorney in Wayne County. The letter was written shortly after the North Carolina Court of Appeals decision in State v. Bonds. It stated, "as promised, I am enclosing a copy of the North Carolina Court of Appeals opinion reversing Judge Butterfield's order which gave the subject money to Wayne County Board of Education. Judge Eagle dissented, giving the Board the right to appeal to the Supreme Court. While we feel this is an important issue that should be decided by the Supreme Court, my client received no benefit from any such decision. This is because a deduction was received from the Wayne County Commissioners for each dollar received fund for forfeiture fund under the North Carolina Constitution. As such, there is no benefit in the Board paying its counsel to appeal this case any further. It was for this reason that no brief was filed before the Court of Appeals."

Mr. David Henderson, Counsel for Craven County Schools, was also recognized to speak and further explain the dilemma of school boards regarding the funds to which they are entitled under the State's constitution. Mr. Henderson stated that they have no argument with the taxing procedure Mr. Riddle outlined, provided that the tax does not amount to a forfeiture or a penalty. The distribution of the proceeds from the taxing procedure on drugs is not a problem. The two points that are of concern are as follows. First, the morass of forfeiture statutes results in no communication between the agencies. There is a need for centralization. There is no methodology for recognizing when forfeiture or penalties occur. Second, is the perception that federal preemption has become a large source of diversion of what would be school funds. He

cited a case in which undercover operations had been going on for at least two years. Before the "bust" was made the case was handed over to the "feds". The local law enforcement agencies received a percentage of the proceeds, but it cut off the schools from receiving any of the money.

Mr. Henderson, stated that it was not his intention to create tension between schools and law enforcement. He indicated that many resources are provided to the schools by law enforcement. He suggested, however, there should be legislation that defines how schools and law enforcement work together. Mr. Henderson indicated that G.S. 115C-437 provides for the allocation of revenues to the local school administrative unit by the county. He indicated that there is a methodology but no teeth in the statute.

At its fourth meeting the Committee reviewed a draft bill that incorporated the main provisions of several House bills introduced during the 1995 Regular Session of the General Assembly, but that are still pending in the House Judiciary II Committee. In its review of the draft bill and pending house bills the Committee considered how the proposed criminal provisions would fit into the structured sentencing system as amended by the General Assembly during the 1995 Regular Session, whether another study commission was considering the same or similar issues addressed by a particular provision, and the need for each particular provision incorporated in the draft legislation. The list of House bills that had provisions incorporated into the draft legislation reviewed by the Committee and a short description of the bill follows: House Bill 973 (Constitutional amendment to allow waiver of jury trial in non-capital cases); House Bill 974 (Repeal the requirement of a proportionality review on direct appeal); House Bill 387 (Increase the penalty for common law robbery); House Bill 735 (Increase the penalty for certain misdemeanors if committed as acts of domestic violence); House Bill 801 (Create the criminal offense of HIV assault); House Bill 811

(Create the capital crime of murder of a law enforcement officer a correctional officer, a district attorney, an assistant district attorney , a justice or a judge; repeal judicial review of life sentences without parole); House Bill 961 (Redefine the offense of trafficking in marijuana as the sale, manufacture, delivery, transport or possession of ten pounds or more of marijuana); House Bill 967 (Create the felony offense of assaulting a law enforcement officer, a fire fighter, or an emergency medical provider); House Bill 432 (Fingerprint juveniles adjudicated delinquent for a offense that would be a felony if committed by an adult; clarify that nontestimonial identification procedures set for the juvenile code do not apply to criminal defendants who are sixteen years old); and House Bill 449 (Improve restitution collection by requiring that an amount of restitution be ordered in all cases where a crime victim has suffered injury, property damage, or other loss; provide for the docketing, payment, and collection or restitution judgments; and make other conforming statutory changes pertaining to restitution of crime victims). After reviewing and discussing the draft legislation, the Committee agreed that the following House bills should not be included in the draft legislation: House Bill 735, House Bill 811, House Bill 432, and House Bill 449. Additional changes were suggested for the remaining provisions in the draft legislation and Committee Counsel was requested to prepare a revised draft bill for further consideration by the Committee.

At its fifth meeting the Committee considered a number of issues brought to the attention of the Committee by representatives of the superior court reporters. The chief concern expressed to the Committee is that the Administrative Office of the Courts and the General Assembly may be considering the elimination of official court reporters at the superior court level, as was done at the district court level last session. The Committee members indicated to the speakers that they were not aware of such a plan and that they were very interested to learn of these concerns. Miriam Saxon, Court

Management Specialist, Administrative Office of the Courts addressed the Committee first. Ms. Saxon provided members with background information regarding the decision to use audio equipment and eliminate district court reporter positions at the district court level. She also provided the Committee with statistical and salary information regarding superior court reporter positions. The next speaker to address the Committee was Frances Graham, President of the Superior Court Reporters Association. Ms. Graham identified a number of concerns that superior court reporters have in view of the elimination last year of district court reporter positions. Ms. Graham outlined the responsibilities of a superior court reporter for the Committee, contrasted the procedures used in this State with those used in some other states, and explained the mechanics and time frames involved in court reporting. Ms. Graham was followed by Ralph Knott, Chairman of the Legislative Committee for the Clerks of North Carolina and Judge Robert Farmer, Past President of the Superior Court Judges Conference. Both were very supportive of the superior court reporters and indicated that the clerks and superior court judges feel very strongly that the superior court reporter positions are essential to a well-run court system. Judge Farmer also provided the Committee with a resolution passed by The Conference of North Carolina Superior Court Judges opposing the termination of using official court reporters in superior court.

As the next item on its agenda the Committee again reviewed and discussed the legislative proposal to be recommended in its interim report.

At its sixth meeting the Committee reviewed and approved its proposed draft report to the Legislative Research Committee. The Committee will continue its considerations and study after the General Assembly adjourns the 1995 session sine die.

RECOMMENDATIONS

The Legislative Research Committee on Criminal Laws, Procedures, and Sentencing recommends that the General Assembly enact legislation to make it a Class E felony to assault and inflict serious bodily injury on a law enforcement officer who is discharging or attempting to discharge his or her official duties and to make it a criminal offense to assault a fire fighter who is discharging official duties. (See Legislative Proposal set out in Appendix C).

APPENDIX A

CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1995".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

...

Sec. 2.3. Criminal Laws and Procedures; Sentencing (Neely, Odom, and Ballance). The Legislative Research Commission may study criminal laws and procedures, including criminal offenses, criminal penalties, criminal process and procedure, sentencing, and related matters.

...

Sec. 2.8. Committee Membership. For each Legislative Research Commission committee created during the 1995-96 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Sec. 2.9. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly, or both.

Sec. 2.10. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.11. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission....

PART XXVI.-----EFFECTIVE DATE

Sec. 26.1. This act is effective upon ratification.

APPENDIX B

CRIMINAL LAWS, PROCEDURES, AND SENTENCING COMMITTEE MEMBERSHIP
1995 - 1996

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APPENDIX C

LEGISLATIVE PROPOSAL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H D

95-LH-226C(4.22)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Assault Law Officer/Fire fighter. (Public)

Sponsors: Criminal Law LRC Study Members

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CLASS F FELONY OFFENSE TO ASSAULT A LAW ENFORCEMENT OFFICER AND INFLICT SERIOUS BODILY INJURY AND TO CREATE A NEW CRIMINAL OFFENSE OF ASSAULTING A FIRE FIGHTER AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CRIMINAL LAWS, PROCEDURES, AND SENTENCING.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.7. Assault on a law enforcement officer.

Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a law enforcement officer while the law enforcement officer is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the law enforcement officer."

Sec. 2. G.S. 143-34.6 reads as rewritten:

"§ 14-34.6. Assault or affray on a fire fighter; an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician.

(a) A person is guilty of a Class A1 misdemeanor if the person commits an assault or an affray on any of the following persons

who are discharging or attempting to discharge their official duties:

(1) ~~an~~ An emergency medical ~~technician,~~ technician.

(2) An ambulance ~~attendant,~~ attendant.

(3) An emergency department ~~nurse, or~~ nurse.

(4) An emergency department ~~physician while the technician, attendant, nurse, or physician is discharging or attempting to discharge official duties.~~physician.

(5) A fire fighter.

(b) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person violates subsection (a) of this section and (i) inflicts serious bodily injury or (ii) uses a deadly weapon other than a firearm.

(c) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person violates subsection (a) of this section and uses a firearm."

Sec. 3. This act becomes effective December 1, 1996, and applies to offenses committed on or after that date.

ANALYSIS OF LEGISLATIVE PROPOSAL:

A BILL TO BE ENTITLED AN ACT TO MAKE IT A CLASS F FELONY OFFENSE TO ASSAULT A LAW ENFORCEMENT OFFICER AND INFLICT SERIOUS BODILY INJURY AND TO CREATE A NEW CRIMINAL OFFENSE OF ASSAULTING A FIRE FIGHTER AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CRIMINAL LAWS, PROCEDURES, AND SENTENCING.

The Legislative Proposal creates two new criminal offenses. Section one makes it a Class F felony to assault and inflict serious bodily injury on a law enforcement officer who is discharging or attempting to discharge his or her official duties. Under current law it is a Class E felony to assault a law enforcement officer with a firearm. (G.S. 14-34.5.)

Section two of the legislative proposal amends G.S. 14-34.6 to make it a criminal offense to assault a firefighter. The punishment for the offense varies depending on the type of assault committed. Under G.S. 14-34.6 as amended by the legislative proposal a "simple assault" on a fire fighter is a Class A1 misdemeanor. If the person inflicted bodily injury or used a deadly weapon other than a firearm, the assault is punishable as a Class I felony. If the person used a firearm, the assault is punishable as a Class F felony.

The sentencing grid under Structured Sentencing for misdemeanor offenses follows:

PRIOR CONVICTION LEVELS

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

Under structured sentencing the punishment for a Class F felony is as follows:

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
	I/A 16-20	I/A 19-24	I/A 21-26	A 25-31	A 34-42	A 39-49	DISPOSITION Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated