

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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1

HOUSE BILL 217

Short Title: Drug Trafficking Control Act.

(Public)

Sponsors: Representatives Cromer; Justus, J. Crawford, Church, and Gardner.

Referred to: Judiciary.

February 15, 1989

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PENALTIES FOR DRUG VIOLATIONS, TO MAKE PERMANENT PROVISIONS FOR CONVENING A SPECIAL INVESTIGATIVE GRAND JURY TO INVESTIGATE DRUG TRAFFICKING, AND TO PERMIT THE USE OF ELECTRONIC SURVEILLANCE IN LIMITED CIRCUMSTANCES BY INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. This act may be cited as the Drug Trafficking Control Act of 1989.

Sec. 2. G.S. 90-95 reads as rewritten:

"§ 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:

- (1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;
- (2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;
- (3) To possess a controlled substance.

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

- (1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon;
- (2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, but the transfer of less than 5 grams of

1 marijuana for no remuneration shall not constitute a delivery in
2 violation of G.S. ~~90-95(a)(1)~~. 90-95(a)(1) under this subdivision.

3 (c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I
4 felon.

5 (d) Except as provided in subsections (h) and (i) of this section, any person who
6 violates G.S. 90-95(a)(3) with respect to:

7 (1) A controlled substance classified in Schedule I shall be punished as a
8 Class I felon;

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

28 (3) A controlled substance classified in Schedule V shall be guilty of a
29 misdemeanor and shall be sentenced to a term of imprisonment of not
30 more than six months or fined not more than five hundred dollars
31 (\$500.00), or both in the discretion of the court;

32 (4) A controlled substance classified in Schedule VI shall be guilty of a
33 misdemeanor and shall be sentenced to a term of imprisonment of not
34 more than 30 days or fined not more than one hundred dollars
35 (\$100.00), or both, in the discretion of the court, but any sentence of
36 imprisonment imposed must be suspended and the judge may not
37 require at the time of sentencing that the defendant serve a period of
38 imprisonment as a special condition of probation. If the quantity of the
39 controlled substance exceeds one-half of an ounce (avoirdupois) of
40 marijuana or one-twentieth of an ounce (avoirdupois) of the extracted
41 resin of marijuana, commonly known as hashish, the violation shall be
42 punishable as a general misdemeanor. If the quantity of the controlled
43 substance exceeds one and one-half ounces (avoirdupois) of marijuana
44 or three-twentieths of an ounce (avoirdupois) of the extracted resin of

1 marijuana, commonly known as hashish, or if the controlled substance
2 consists of any quantity of synthetic tetrahydrocannabinols or
3 tetrahydrocannabinols isolated from the resin of marijuana, the
4 violation shall be punishable as a Class I felony.

5 (e) The prescribed punishment and degree of any offense under this Article shall
6 be subject to the following conditions, but the punishment for an offense may be
7 increased only by the maximum authorized under any one of the applicable conditions:

8 (1),(2) Repealed by Session Laws 1979, c. 760, s. 5.

9 (3) If any person commits an offense under this Article for which the
10 prescribed punishment includes imprisonment for not more than two
11 years, and if he has previously been convicted for one or more offenses
12 under any law of North Carolina or any law of the United States or any
13 other state, which offenses are punishable under any provision of this
14 Article, he shall be punished as a Class I felon;

15 (4) If any person commits an offense under this Article for which the
16 prescribed punishment includes imprisonment for not more than six
17 months, and if he has previously been convicted for one or more
18 offenses under any law of North Carolina or any law of the United
19 States or any other state, which offenses are punishable under any
20 provision of this Article, he shall be guilty of a misdemeanor and shall
21 be sentenced to a term of imprisonment of not more than two years or
22 fined not more than two thousand dollars (\$2,000), or both in the
23 discretion of the court;

24 ~~(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by~~
25 ~~selling or delivering a controlled substance to a person under 16 years~~
26 ~~of age shall be punished as a Class E felon;~~

27 (6) For the purpose of increasing punishment, previous convictions for
28 offenses shall be counted by the number of separate trials at which
29 final convictions were obtained and not by the number of charges at a
30 single trial;

31 (7) If any person commits an offense under this Article for which the
32 prescribed punishment requires that any sentence of imprisonment be
33 suspended, and if he has previously been convicted for one or more
34 offenses under any law of North Carolina or any law of the United
35 States or any other state, which offenses are punishable under any
36 provision of this Article, he shall be guilty of a misdemeanor and shall
37 be sentenced to a term of imprisonment of not more than six months or
38 fined not more than five hundred dollars (\$500.00), or both in the
39 discretion of the court.

40 (f) Any person convicted of an offense or offenses under this Article who is
41 sentenced to an active term of imprisonment that is less than the maximum active term
42 that could have been imposed may, in addition, be sentenced to a term of special
43 probation. Except as indicated in this subsection, the administration of special probation
44 shall be the same as probation. The conditions of special probation shall be fixed in the

1 same manner as probation, and the conditions may include requirements for
2 rehabilitation treatment. Special probation shall follow the active sentence but shall not
3 preclude parole. If parole is granted, special probation shall become effective in place of
4 parole. No term of special probation shall exceed five years. Special probation may be
5 revoked in the same manner as probation; upon revocation, the original term of
6 imprisonment may be increased by no more than the difference between the active term
7 of imprisonment actually served and the maximum active term that could have been
8 imposed at trial for the offense or offenses for which the person was convicted, and the
9 resulting term of imprisonment need not be diminished by the time spent on special
10 probation. A person whose special probation term has been revoked may be required to
11 serve all or part of the remainder of the new term of imprisonment.

12 (g) Whenever matter is submitted to the North Carolina State Bureau of
13 Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory
14 or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical
15 analysis to determine if the matter is or contains a controlled substance, the report of
16 that analysis certified to upon a form approved by the Attorney General by the person
17 performing the analysis shall be admissible without further authentication in all
18 proceedings in the district court division of the General Court of Justice as evidence of
19 the identity, nature, and quantity of the matter analyzed.

20 (h) Notwithstanding any other provision of law, the following provisions apply
21 except as otherwise provided in this Article.

22 (1) Any person who sells, manufactures, delivers, transports, or possesses
23 in excess of 50 pounds (avoirdupois) of marijuana shall be guilty of a
24 felony which felony shall be known as 'trafficking in marijuana' and if
25 the quantity of such substance involved:

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

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

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

38 d. Is 10,000 pounds or more, such person shall be punished as a
39 Class D felon and shall be sentenced to a term of at least 35
40 years in the State's prison and shall be fined not less than two
41 hundred thousand dollars (\$200,000).

42 (2) Any person who sells, manufactures, delivers, transports, or possesses
43 1,000 tablets, capsules or other dosage units, or the equivalent
44 quantity, or more of methaqualone, or any mixture containing such

1 substance, shall be guilty of a felony which felony shall be known as
2 'trafficking in methaqualone' and if the quantity of such substance or
3 mixture involved:

- 4 a. Is 1,000 or more dosage units, or equivalent quantity, but less
5 than 5,000 dosage units, or equivalent quantity, such person
6 shall be punished as a Class G felon and shall be sentenced to a
7 term of at least seven years in the State's prison and shall be
8 fined not less than twenty-five thousand dollars (\$25,000);
9 b. Is 5,000 or more dosage units, or equivalent quantity, but less
10 than 10,000 dosage units, or equivalent quantity, such person
11 shall be punished as a Class F felon and shall be sentenced to a
12 term of at least 14 years in the State's prison and shall be fined
13 not less than fifty thousand dollars (\$50,000);
14 c. Is 10,000 or more dosage units, or equivalent quantity, such
15 person shall be punished as a Class D felon and shall be
16 sentenced to a term of at least 35 years in the State's prison and
17 shall be fined not less than two hundred thousand dollars
18 (\$200,000).

19 (3) Any person who sells, manufactures, delivers, transports, or possesses
20 28 grams or more of cocaine and any salt, isomer, salts of isomers,
21 compound, derivative, or preparation thereof, or any coca leaves and
22 any salt, isomer, salts of isomers, compound, derivative, or preparation
23 of coca leaves, and any salt, isomer, salts of isomers, compound,
24 derivative or preparation thereof which is chemically equivalent or
25 identical with any of these substances (except decocanized coca leaves
26 or any extraction of coca leaves which does not contain cocaine) or
27 any mixture containing such substances, shall be guilty of a felony,
28 which felony shall be known as 'trafficking in cocaine, and if the
29 quantity of such substance or mixture involved:

- 30 a. Is 28 grams or more, but less than 200 grams, such person shall
31 be punished as a Class G felon and shall be sentenced to a term
32 of at least seven years in the State's prison and shall be fined not
33 less than fifty thousand dollars (\$50,000);
34 b. Is 200 grams or more, but less than 400 grams, such person
35 shall be punished as a Class F felon and shall be sentenced to a
36 term of at least 14 years in the State's prison and shall be fined
37 not less than one hundred thousand dollars (\$100,000);
38 c. Is 400 grams or more, such person shall be punished as a Class
39 D felon and shall be sentenced to a term of at least 35 years in
40 the State's prison and shall be fined at least two hundred fifty
41 thousand dollars (\$250,000).

42 (4) Any person who sells, manufactures, delivers, transports, or possesses
43 four grams or more of opium or opiate, or any salt, compound,
44 derivative, or preparation of opium or opiate (except apomorphine,

1 nalbuphine, analoxone and naltrexone and their respective salts),
2 including heroin, or any mixture containing such substance, shall be
3 guilty of a felony which felony shall be known as 'trafficking in opium
4 or heroin' and if the quantity of such controlled substance or mixture
5 involved:

- 6 a. Is four grams or more, but less than 14 grams, such person shall
7 be punished as a Class F felon and shall be sentenced to a term
8 of at least 14 years in the State's prison and shall be fined not
9 less than fifty thousand dollars (\$50,000);
10 b. Is 14 grams or more, but less than 28 grams, such person shall
11 be punished as a Class E felon and shall be sentenced to a term
12 of at least 18 years in the State's prison and shall be fined not
13 less than one hundred thousand dollars (\$100,000);
14 c. Is 28 grams or more, such person shall be punished as a Class C
15 felon and shall be sentenced to a term of at least 45 years in the
16 State's prison and shall be fined not less than five hundred
17 thousand dollars (\$500,000).

18 (4a) Any person who sells, manufactures, delivers, transports, or
19 possesses 100 tablets, capsules, or other dosage units, or the
20 equivalent quantity, or more, of Lysergic Acid Diethylamide, or any
21 mixture containing such substance, shall be guilty of a felony, which
22 felony shall be known as 'trafficking in Lysergic Acid
23 Diethylamide'. If the quantity of such substance or mixture
24 involved:

- 25 a. Is 100 or more dosage units, or equivalent quantity, but less
26 than 500 dosage units, or equivalent quantity, such person shall
27 be punished as a Class G felon and shall be sentenced to a term
28 of at least seven years in the State's prison and shall be fined not
29 less than twenty-five thousand dollars (\$25,000);
30 b. Is 500 or more dosage units, or equivalent quantity, but less
31 than 1,000 dosage units, or equivalent quantity, such person
32 shall be punished as a Class F felon and shall be sentenced to a
33 term of at least 14 years in the State's prison and shall be fined
34 not less than fifty thousand dollars (\$50,000);
35 c. Is 1,000 or more dosage units, or equivalent quantity, such
36 person shall be punished as a Class D felon and shall be
37 sentenced to a term of at least 35 years in the State's prison and
38 shall be fined not less than two hundred thousand dollars
39 (\$200,000).

40 (5) Except as provided in this subdivision, a person being sentenced under
41 this subsection may not receive a suspended sentence or be placed on
42 ~~probation~~ probation, and, notwithstanding any other provision of law,
43 shall serve the term of imprisonment without benefit of parole or good
44 time, gain time, or any other form of credits toward or deductions from

1 the term of imprisonment. A person sentenced under this subsection as
2 a committed youthful offender shall be eligible for release or parole no
3 earlier than that person would have been had he been sentenced under
4 this subsection as a regular offender. The sentencing judge may
5 reduce the fine, or impose a prison term less than the applicable
6 minimum prison term provided by this subsection, or suspend the
7 prison term imposed and place a person on probation when such
8 person has, to the best of his knowledge, provided substantial
9 assistance in the identification, arrest, or conviction of any
10 accomplices, accessories, co-conspirators, or principals if the
11 sentencing judge enters in the record a finding that the person to be
12 sentenced has rendered such substantial assistance.

13 (6) Sentences imposed pursuant to this subsection shall run consecutively
14 with and shall commence at the expiration of any sentence being
15 served by the person sentenced hereunder.

16 (i) The penalties provided in subsection (h) of this section shall also apply to any
17 person who is convicted of conspiracy to commit any of the offenses described in
18 subsection (h) of this section.

19 (j) Selling or Delivery to Minors. Violation of subdivision (a)(1) of this section
20 by selling or delivering controlled substances to minors is punishable as follows:

21 (1) A person who is at least 18 years old and who sells or delivers a
22 controlled substance to a minor who is less than 16 years old is
23 punishable as a Class E felon. A person punishable under this
24 subdivision shall receive a sentence of at least 10 years. This sentence
25 may be reduced by gain time, as provided in G.S. 148-13, and by good
26 time, as provided in G.S. 15A-1340.7. The sentencing judge may not
27 suspend this sentence or place the person sentenced on probation. A
28 person punishable under this subdivision may not be sentenced as a
29 committed youthful offender if he has previously been convicted of a
30 controlled substance offense.

31 (2) A person who is 16 or 17 years old and who sells or delivers a
32 controlled substance to a minor who is less than 16 years old is
33 punishable as a Class J felon. A person punishable under this
34 subdivision shall receive a sentence of at least one year. This sentence
35 may be reduced by gain time, as provided in G.S. 148-13, and by good
36 time, as provided in G.S. 15A-1340.7. The sentencing judge may not
37 suspend this sentence or place the person sentenced on probation. A
38 person punishable under this subdivision may not be sentenced as a
39 committed youthful offender if he has previously been convicted of a
40 controlled substance offense.

41 (3) A person who in fact sells or delivers a controlled substance to a
42 teenager, who is less than 18 years old and is at least 16 years old and
43 who sells or delivers the same controlled substance to a minor who is

1 less than 16 years old, is punishable as if he had sold the controlled
2 substance directly to that minor.

3 (4) The sentencing judge may impose a prison term less than the
4 applicable minimum prison term provided by this subsection or
5 impose a split sentence with probation, when a person convicted under
6 this subsection has, to the best of the judge's knowledge disclosed the
7 identity of the person or persons from whom the controlled
8 substance(s) were obtained."

9 Sec. 3. G.S. 90-95.1 reads as rewritten:

10 **"§ 90-95.1. Continuing criminal enterprise.**

11 (a) Any person who engages in a continuing criminal enterprise shall be
12 punished as a Class C ~~felon~~-felon, except as provided in subsection (e) of this section,
13 and in addition shall be subject to the forfeiture prescribed in subsection (b) of this
14 section.

15 (b) Any person who is convicted under subsection (a) of engaging in a continuing
16 criminal enterprise shall forfeit to the State of North Carolina:

17 (1) The profits obtained by him in such enterprise, and

18 (2) Any of his interest in, claim against, or property or contractual rights
19 of any kind affording a source of influence over, such enterprise.

20 (c) For purposes of this section, a person is engaged in a continuing criminal
21 enterprise if:

22 (1) He violates any provision of this Article, the punishment of which is a
23 felony; and

24 (2) Such violation is a part of a continuing series of violations of this
25 Article;

26 a. Which are undertaken by such person in concert with five or
27 more other persons with respect to whom such person occupies
28 a position of organizer, a supervisory position, or any other
29 position of management; and

30 b. From which such person obtains substantial income or
31 resources.

32 (d) Repealed by Session Laws 1979, c. 760, s. 5.

33 (e) Any person convicted of a continuing criminal enterprise involving a
34 violation of G.S. 90-95(h) shall be punished as a Class B felon and, notwithstanding any
35 other provision of law, shall serve the term of imprisonment without benefit of parole or
36 good time, gain time, or any other form of credits toward or deductions from the term of
37 imprisonment."

38 Sec. 4. Section 6 of Chapter 843, 1985 Session Laws reads as rewritten:

39 " Sec. 6. This act shall become effective October 1, ~~1986-1986~~ and shall
40 ~~expire October 1, 1988, but the said expiration date shall not affect the term or authority~~
41 ~~of a grand jury constituted at that time."~~

42 Sec. 5. G.S. 15A-2000(e)(5) reads as rewritten:

43 "(e) Aggravating Circumstances. – Aggravating circumstances which may be
44 considered shall be limited to the following:

- 1 (1) The capital felony was committed by a person lawfully incarcerated.
 2 (2) The defendant had been previously convicted of another capital felony.
 3 (3) The defendant had been previously convicted of a felony involving the
 4 use or threat of violence to the person.
 5 (4) The capital felony was committed for the purpose of avoiding or
 6 preventing a lawful arrest or effecting an escape from custody.
 7 (5) The capital felony was committed while the defendant was engaged, or
 8 was an aider or abettor, in the commission of, or an attempt to commit,
 9 or flight after committing or attempting to commit, any homicide,
 10 robbery, rape or a sex offense, arson, burglary, kidnapping, drug
 11 trafficking offense as defined in G.S. 90-95, or aircraft piracy or the
 12 unlawful throwing, placing, or discharging of a destructive device or
 13 bomb.
 14 (6) The capital felony was committed for pecuniary gain.
 15 (7) The capital felony was committed to disrupt or hinder the lawful
 16 exercise of any governmental function or the enforcement of laws.
 17 (8) The capital felony was committed against a law-enforcement officer,
 18 employee of the Department of Correction, jailer, fireman, judge or
 19 justice, former judge or justice, prosecutor or former prosecutor, juror
 20 or former juror, or witness or former witness against the defendant,
 21 while engaged in the performance of his official duties or because of
 22 the exercise of his official duty.
 23 (9) The capital felony was especially heinous, atrocious, or cruel.
 24 (10) The defendant knowingly created a great risk of death to more than
 25 one person by means of a weapon or device which would normally be
 26 hazardous to the lives of more than one person.
 27 (11) The murder for which the defendant stands convicted was part of a
 28 course of conduct in which the defendant engaged and which included
 29 the commission by the defendant of other crimes of violence against
 30 another person or persons."

31 Sec. 6. Chapter 15A of the General Statutes is amended by adding a new
 32 Article to read:

33 **"ARTICLE 16A.**

34 **"ELECTRONIC SURVEILLANCE.**

35 **"§ 15A-300.1. Definitions.**

36 As used in this Article:

- 37 (1) 'Aggrieved person' means a person who was a party to any
 38 intercepted wire or oral communication, a person against whom the
 39 interception was directed, or a person whose facilities have been
 40 subject to interception.
 41 (2) 'Attorney General' means the Attorney General of the State
 42 of North Carolina, unless otherwise specified.

- 1 (3) 'Chapter 119 of the United States Code' means Chapter 119
2 of Part I of Title 18, United States Code, being Public Law 90-351,
3 the Omnibus Crime Control and Safe Streets Act of 1968.
- 4 (4) 'Communications common carrier' means and shall have the
5 meaning which is given the term 'common carrier' by Section 153(h)
6 of Title 47 of the United States Code.
- 7 (5) 'Contents' when used with respect to any wire or oral
8 communication, means and includes any information concerning the
9 identity of parties to such communications or the existence,
10 substance, purport, or meaning of that communication.
- 11 (6) 'Electronic, mechanical, or other device' means any device
12 or apparatus which can be used to intercept a wire or oral
13 communication other than:
- 14 a. Any telephone or telegraph instrument, equipment or
15 facility, or any component thereof:
- 16 (i) Furnished to a subscriber or user in the ordinary
17 course of its business; or
- 18 (ii) Being used by a communications common carrier in
19 the ordinary course of its business; or
- 20 (iii) Used by an investigative or law
21 enforcement officer in the ordinary course of
22 his duties; or
- 23 b. A hearing aid or similar device being used to correct
24 subnormal hearing to not better than normal.
- 25 (7) 'Electronic surveillance' means the interception of wire or
26 oral communications as defined herein.
- 27 (8) 'Intercept' means the aural acquisition of the contents of any
28 wire or oral communication through the use of any electronic,
29 mechanical or other device.
- 30 (9) 'Investigative or law enforcement officer' means any officer
31 of the State of North Carolina or any political subdivision thereof,
32 who is empowered by the laws of this State to conduct investigations
33 of or to make arrests for offenses enumerated in this Article, and any
34 attorney authorized by the laws of this State to prosecute or
35 participate in the prosecution of such offenses, including the
36 Attorney General of North Carolina.
- 37 (10) 'Judge' means any judge of the trial divisions of the General
38 Court of Justice.
- 39 (11) 'Judicial review panel' means a three-judge body, composed
40 of such judges as may be assigned by the Chief Justice of the
41 Supreme Court of North Carolina, which shall review applications
42 for electronic surveillance orders and may issue orders valid
43 throughout the State authorizing such surveillance as provided

1 herein, and which shall submit a report of its decision to the Chief
2 Justice.

3 (12) 'Oral communication' means any oral communication
4 uttered by a person exhibiting an expectation that such
5 communication is not subject to interception under circumstances
6 justifying such expectation.

7 (13) 'Person' means any official, employee, or agent of the
8 United States or any political subdivision thereof, and any
9 individual, partnership, association, joint stock company, trust, or
10 corporation.

11 (14) 'Wire communication' means any communication made in
12 whole or in part through the use of facilities for the transmission of
13 communications by the aid of wire, cable, or other like connection
14 between the point of origin and the point of reception furnished or
15 operated by any person engaged as a common carrier in providing or
16 operating such facilities for the transmission of intrastate, interstate,
17 or foreign communications.

18 **"§ 15A-300.2. Interception and disclosure of wire or oral communications**
19 **prohibited.**

20 (a) Except as otherwise specifically provided in this Article, a person is guilty of
21 a Class I felony if, without the consent of at least one party to the communication, he:

22 (1) Willfully uses, endeavors to use, or procures any other person to use or
23 endeavor to use any electronic, mechanical, or other device to intercept
24 any wire or oral communication; or

25 (2) Willfully discloses, or endeavors to disclose, to any other person the
26 contents of any wire or oral communication, knowing or having reason
27 to know that the information was obtained through violation of this
28 Article; or

29 (3) Willfully uses, or endeavors to use, the contents of any wire or oral
30 communication, knowing or having reason to know that the
31 information was obtained through the interception of a wire or oral
32 communication in violation of this section.

33 (b) It is not unlawful under this Article for an operator of a switchboard, or an
34 officer, employee, or agent of any communications common carrier, whose facilities are
35 used in the transmission of a wire communication, to intercept, disclose, or use that
36 communication in the normal course of his employment while engaged in any activity
37 that is a necessary incident to the rendition of his service or to the protection of the
38 rights or property of the carrier of such communication: Provided, that said
39 communications common carriers may not utilize service observing or random
40 monitoring except for mechanical or service quality control checks.

41 (c) It is not unlawful under this Article for an officer, employee, or agent of
42 the Federal Communications Commission, in the normal course of his employment and
43 in discharge of the monitoring responsibilities exercised by the Commission in the
44 enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire

1 communication, or oral communication transmitted by radio, or to disclose or use the
2 information thereby obtained.

3 (d) Any person who, as a result of his official position or his employment has
4 obtained knowledge of the contents of any wire or oral communication lawfully
5 intercepted pursuant to an electronic surveillance order or of the pendency or existence
6 of, or implementation of an electronic surveillance order who shall knowingly and
7 willfully disclose such information for the purpose of hindering or thwarting any
8 investigation or prosecution relating to the subject matter of the electronic surveillance
9 order, except as is necessary for the proper and lawful performance of the duties of his
10 position or employment, or as shall be required or allowed by law shall be guilty of a
11 Class B felony.

12 (e) Any person who shall, knowingly or with gross negligence, divulge the
13 existence of or contents of any electronic surveillance order in a way likely to hinder or
14 thwart any investigation or prosecution relating to the subject matter of the electronic
15 surveillance order or anyone who shall, knowingly or with gross negligence, release the
16 contents of any wire or oral communication intercepted under an electronic surveillance
17 order, except as is necessary for the proper and lawful performance of the duties of his
18 position or employment or as is required or allowed by law shall be guilty of a
19 misdemeanor.

20 (f) Any public officer who shall violate subsection (a) or (d) of this section or
21 who shall knowingly violate subsection (e) shall be removed from any public office he
22 may hold and shall thereafter be ineligible to hold any public office, whether elective or
23 appointed.

24 **"§ 15A-300.3. Manufacture, distribution, possession, and advertising of wire or**
25 **oral communication intercepting devices prohibited.**

26 (a) Except as otherwise specifically provided in this Article, a person is guilty of
27 a Class I felony if he:

28 (1) Manufactures, assembles, possesses, purchases, or sells any electronic,
29 mechanical, or other device, knowing or having reason to know that
30 the design of the device renders it primarily useful for the purpose of
31 the surreptitious interception of wire or oral communications; or

32 (2) Places in any newspaper, magazine, handbill, or other publication any
33 advertisement of:

34 a. Any electronic, mechanical, or other device knowing or having
35 reason to know that the design of the device renders it primarily
36 useful for the purpose of the surreptitious interception of wire
37 or oral communications; or

38 b. Any other electronic, mechanical, or other device where the
39 advertisement promotes the use of the device for the purpose of
40 the surreptitious interception of wire or oral communications.

41 (b) It is not unlawful under this section for the following persons to
42 manufacture, assemble, possess, purchase, or sell any electronic, mechanical, or other
43 device, knowing or having reason to know that the design of the device renders it

1 primarily useful for the purpose of the surreptitious interception of wire or oral
2 communications:

3 (1) A communications common carrier or an officer, agent or employee
4 of, or a person under contract with, a communications common carrier,
5 acting in the normal course of the communications common carrier's
6 business, or

7 (2) An officer, agent, or employee of, or a person under contract with, the
8 State, acting in the course of the activities of the State, and with the
9 written authorization of the Attorney General.

10 **"§ 15A-300.4. Confiscation of wire or oral communication interception devices.**

11 Any electronics, mechanical, or other device used, sent, carried, manufactured,
12 assembled, possessed, sold, or advertised in violation of G.S. 15A-300.3 may be seized
13 and forfeited to this State.

14 **"§ 15A-300.5. Offenses for which orders for electronic surveillance may be**
15 **granted.**

16 (a) Orders authorizing or approving the interception of wire or oral
17 communications may be granted, subject to the provisions of this Article and Chapter
18 119 of the United States Code, when such interception:

19 (1) May provide or has provided evidence of the commission of, or any
20 conspiracy to commit, any violation of G.S. 90-95(h) or G.S. 90-95.1;
21 or

22 (2) May expedite the apprehension of persons indicted for the commission
23 of, or any conspiracy to commit, any violation of G.S. 90-95(h) or G.S.
24 90-95.1.

25 (b) When an investigative or law enforcement officer, while engaged in
26 intercepting wire or oral communications in the manner authorized, intercepts wire or
27 oral communications relating to offenses other than those specified in the order of
28 authorization or approval, the contents thereof, and evidence derived therefrom, may be
29 disclosed or used as provided in G.S. 15A-300.9(a) and (b). Such contents and any
30 evidence derived therefrom may be used in accordance with G.S. 15A-300.9(c) when
31 authorized or approved by a judicial review panel where the panel finds, on subsequent
32 application made as soon as practicable, that the contents were otherwise intercepted in
33 accordance with this Article or Chapter 119 of the United States Code.

34 (c) No otherwise privileged wire or oral communication intercepted in
35 accordance with, or in violation of, the provisions of this Article or Chapter 119 of the
36 United States Code, shall lose its privileged character.

37 **"§ 15A-300.6. Application for electronic surveillance order.**

38 (a) The Attorney General may, pursuant to the provisions of Section 2516(2) of
39 Chapter 119 of the United States Code, apply to a judicial review panel for an order
40 authorizing or approving the interception of wire or oral communications by
41 investigative or law enforcement officers having responsibility for the investigation of
42 the offenses as to which the application is made, and for such offenses and causes as are
43 enumerated in G.S. 15A-300.5. A judicial review panel may be appointed by the Chief

1 Justice pursuant to the Attorney General's written notification of his intent to apply for
2 an electronic surveillance order.

3 (b) A judicial review panel is hereby authorized to grant orders valid
4 throughout the interception of wire or oral communications. Applications for such
5 orders may be made by the Attorney General and by no other person. The Attorney
6 General, in applying for such orders, and a judicial review panel in granting such orders,
7 shall comply with all procedural requirements of Section 2518 of Chapter 119 of the
8 United States Code except the requirements in Section 2518(7). In applying Section
9 2518 the word 'judge' in that section shall be construed to refer to the judicial review
10 panel, unless the context otherwise indicates. The judicial review panel may stipulate
11 any special conditions it feels necessary to assure compliance with the terms of this act.

12 (c) No judge who sits as a member of a judicial review panel shall preside at
13 any trial or proceeding resulting from or in any manner related to information gained
14 pursuant to a lawful electronic surveillance order issued by that panel.

15 (d) Each application for an order authorizing or approving the interception of
16 a wire or oral communication must be made in writing upon oath or affirmation to the
17 judicial review panel. Each application must include the following information:

18 (1) The identity of the officer requesting the application;

19 (2) A full and complete statement of the facts and circumstances relied
20 upon by the applicant, to justify his belief that an order should be
21 issued, including:

22 a. Details as to the particular offense that has been, or is being
23 committed;

24 b. A particular description of the nature and location of the
25 facilities from which or the place where the communication is
26 to be intercepted;

27 c. A particular description of the type of communications sought
28 to be intercepted; and

29 d. The identity of the person, if known, committing the offense
30 and whose communications are to be intercepted.

31 (3) A full and complete statement as to whether or not other investigative
32 procedures have been tried and failed or why they reasonably appear to
33 be unlikely to succeed if tried or to be too dangerous;

34 (4) A statement of the period of time for which the interception is required
35 to be maintained. If the nature of the investigation is such that the
36 authorization for interception should not automatically terminate when
37 the described type of communication has been obtained, a particular
38 description of facts establishing probable cause to believe that
39 additional communications of the same type will occur thereafter must
40 be added;

41 (5) A full and complete statement of the facts concerning all previous
42 applications known to the individual authorizing and making
43 application, made to a judicial review panel for authorization to
44 intercept, or for approval of interceptions of, wire or oral

1 communications involving any of the same persons, facilities, or
2 places specified in the application, and the action taken by that judicial
3 review panel on each such application; and

4 (6) Where the application is for the extension of an order, a statement
5 setting forth the results thus far obtained from the interception, or a
6 reasonable explanation of the failure to obtain such results.

7 (e) Before acting on the application, the judicial review panel may examine on
8 oath the person requesting the application or any other person who may possess
9 pertinent information, but information other than that contained in the affidavit may not
10 be considered by the panel in determining whether probable cause exists for the
11 issuance of the order unless the information is either recorded or contemporaneously
12 summarized in the record on the face of the order by the panel.

13 **"§ 15A-300.7. Request for application for electronic surveillance order.**

14 (a) The head of any municipal, county, or State law enforcement agency or any
15 district attorney may submit a written request to the Attorney General that the Attorney
16 General apply to a judicial review panel for an electronic surveillance order to be
17 executed within the requesting agency's jurisdiction. Such written requests shall be on a
18 form approved by the Attorney General and shall provide sufficient information to form
19 the basis for an application for an electronic surveillance order. The head of a law
20 enforcement agency shall also submit a copy of the request to the district attorney, who
21 shall review the request and forward it to the Attorney General along with any
22 comments he may wish to include. The Attorney General is authorized to review the
23 request and decide whether it is appropriate to submit an application to a judicial review
24 panel for an electronic surveillance order. If a request for an application is deemed
25 inappropriate, the Attorney General shall send a signed, written statement to the person
26 submitting the request, and to the district attorney, summarizing the reasons for failing
27 to make an application. If the Attorney General decides to submit an application to a
28 judicial review panel, he shall so notify the requesting agency head, the district attorney,
29 and the head of the local law enforcement agency which has the primary responsibility
30 for enforcing the criminal laws in the location in which it is anticipated the majority of
31 the surveillance will take place, if not the same as the requesting agency head, unless
32 the Attorney General has probable cause to believe that the latter notifications should
33 substantially jeopardize the success of the surveillance or the investigation in general. If
34 a judicial review panel grants an electronic surveillance order, a copy of such order shall
35 be sent to the requesting agency head and the district attorney, and a summary of the
36 order shall be sent to the head of the local law enforcement agency with primary
37 responsibility for enforcing the criminal laws in the jurisdiction where the majority of
38 the surveillance will take place, if not the same as the requesting agency head, unless
39 the judicial review panel finds probable cause to believe that the latter notifications
40 would substantially jeopardize the success of the surveillance or the investigation.

41 (b) This Article does not limit the authority of the Attorney General to apply
42 for electronic surveillance orders independent of, or contrary to, the requests of law
43 enforcement agency heads, nor does it limit the discretion of the Attorney General in
44 determining whether an application is appropriate under any given circumstances.

1 (c) The Chief Justice of the North Carolina Supreme Court shall receive a
2 report concerning each decision of a judicial review panel.

3 **"§ 15A-300.8. Issuance of order for electronic surveillance; procedures for**
4 **implementation.**

5 (a) Upon application by the Attorney General, a judicial review panel may enter
6 an **ex parte** order, as requested or as modified, authorizing the interception of wire or
7 oral communications, if the panel determines on the basis of the facts submitted by the
8 applicant that:

- 9 (1) There is probable cause for belief that an individual is committing, has
10 committed, or is about to commit an offense set out in G.S. 15A-300.5;
11 (2) There is probable cause for belief that particular communications
12 concerning that offense will be obtained through such interception;
13 (3) Normal investigative procedures have been tried and have failed or
14 reasonably appear to be unlikely to succeed if tried or to be too
15 dangerous; and
16 (4) There is probable cause for belief that the facilities from which, or the
17 place where, the wire or oral communications are to be intercepted are
18 being used, or are about to be used, in connection with the commission
19 of such offense, or are leased to, listed in the name of, or commonly
20 used by the individual described in subdivision (1).

21 (b) Each order authorizing the interception of any wire or oral
22 communications must specify:

- 23 (1) The identity of the person if known, whose communications are to be
24 intercepted;
25 (2) The nature and location of the communications facilities as to which,
26 or the place where, authority to intercept is granted, and the means by
27 which such interceptions may be made;
28 (3) A particular description of the type of communication sought to be
29 intercepted, and a statement of the particular offense to which it
30 relates;
31 (4) The identity of the agency authorized to intercept the communications,
32 and of the person requesting the application; and
33 (5) The period of time during which such interception is authorized,
34 including a statement as to whether or not the interception
35 automatically terminates when the described communication has been
36 first obtained.

37 (c) No order entered under this Article may authorize the interception of any
38 wire or oral communication for any period longer than is necessary to achieve the
39 objective of the authorization, nor in any event longer than 30 days. Extensions of an
40 order may be granted, but only upon application for an extension made in accordance
41 with G.S. 15A-300.6 and the panel making the findings required by subsection (a) of
42 this section. The period of extension may be no longer than the panel determines to be
43 necessary to achieve the purpose for which it was granted and in no event for longer
44 than 15 days. Every order and extension thereof must contain a provision that the

1 authorization to intercept be executed as soon as practicable, be conducted in such a
2 way as to minimize the interception of communications not otherwise subject to
3 interception under this Article, and terminate upon attainment of the authorized
4 objective, or in any event in 30 or 15 days, as is appropriate.

5 (d) Whenever an order authorizing interception is entered pursuant to this Article
6 the order may require reports to be made to the issuing judicial review panel showing
7 that progress has been made toward achievement of the authorized objective and the
8 need for continued interception. Such reports must be made at such intervals as the
9 panel may require.

10 (e) (1) The contents of any wire or oral communication intercepted by any
11 means authorized by this Article must be recorded on tape or wire or
12 other comparable device. The recording of the contents of any wire or
13 oral communication under this subsection must be done in such way as
14 will protect the recording from editing or other alterations.
15 Immediately upon the expiration of the period of the order, or
16 extensions thereof, such recordings must be made available to the
17 judicial review panel and sealed under its direction. Custody of the
18 recordings is wherever the panel orders. They may not be destroyed
19 except upon an order of the issuing panel and in any event must be
20 kept for 10 years. Duplicate recordings may be made for use or
21 disclosure pursuant to the provisions of G.S. 15A-300.9(a) and (b) for
22 investigations. The contents of any wire or oral communication or
23 evidence derived therefrom may not be disclosed or used under G.S.
24 15A-300.9(c) unless they have been kept sealed.

25 (2) Applications made and orders granted under this Article must be
26 sealed by the panel. Custody of the applications and orders may be
27 disclosed only upon a showing of good cause before the issuing panel
28 and may not be destroyed except on its order and in any event must be
29 kept for 10 years.

30 (3) Any violation of the provisions of this subsection may be punished as
31 for contempt.

32 (f) The State Bureau of Investigation shall own or control, and shall operate any
33 equipment used to implement electronic surveillance orders issued by a judicial review
34 panel. No electronic surveillance equipment in which a local government or any of its
35 agencies has any property interest may be used in implementing any electronic
36 surveillance order.

37 (g) The Attorney General shall establish procedures for the use of electronic
38 surveillance equipment in assisting local law enforcement agencies implementing
39 electronic surveillance orders. The Attorney General shall supervise such assistance
40 given to local law enforcement agencies and is authorized to conduct statewide training
41 sessions for investigative and law enforcement officers regarding this Article.

42 **"§ 15A-300.9. Authorization for disclosure and use of intercepted wire or oral**
43 **communications.**

1 (a) Any investigative or law enforcement officer who, by any means authorized
2 by this Article or Chapter 119 of the United States Code, has obtained knowledge of the
3 contents of any wire or oral communication, or evidence derived therefrom may
4 disclose such contents to another investigative or law enforcement officer to the extent
5 that such disclosure is appropriate to the proper performance of the official duties of the
6 officer making or receiving the disclosure.

7 (b) Any investigative or law enforcement officer, who by any means
8 authorized by this Article or Chapter 119 of the United States Code has obtained
9 knowledge of the contents of any wire or oral communication or evidence derived
10 therefrom may use such contents to the extent such use is appropriate to the proper
11 performance of his official duties.

12 (c) Any person who has received by any means authorized by this Article or
13 Chapter 119 of the United States Code any information concerning a wire or oral
14 communication, or evidence derived therefrom intercepted in accordance with the
15 provisions of this Article may disclose the contents of that communication or such
16 derivative evidence while giving testimony under oath or affirmation in any proceeding
17 in any court or before any grand jury in this State, or in any court of the United States or
18 of any state, or in any federal or State grand jury proceeding.

19 (d) Within a reasonable time but no later than 90 days after the filing of an
20 application for an order or the termination of the period of an order or the extensions
21 thereof, the issuing judicial review panel must cause to be served on the persons named
22 in the order or the application, and such other parties as the panel in its discretion may
23 determine, an inventory that includes notice of:

24 (1) The fact of the entry of the order or the application;

25 (2) The date of the entry and the period of the authorized interception; and

26 (3) The fact that during the period wire or oral communications were or
27 were not intercepted.

28 (e) The issuing judicial review panel upon the filing of a motion, may in its
29 discretion, make available to such person or his counsel for inspection such portions of
30 the intercepted communications, applications, and orders as the panel determines to be
31 required by law or in the interest of justice.

32 (f) The contents of any intercepted wire or oral communication or evidence
33 derived therefrom may not be received in evidence or otherwise disclosed in any trial,
34 hearing, or other proceeding in any court of this State unless each party, not less than 20
35 working days before the trial, hearing or other proceeding, has been furnished with a
36 copy of the order, and accompanying application, under which the interception was
37 authorized.

38 (g) (1) Any aggrieved person in any trial, hearing, or proceeding in or
39 before any court, department, officer, agency, regulatory body, or
40 other authority of this State, or a political subdivision thereof, may
41 move to suppress the contents of any intercepted wire or oral
42 communication, or evidence derived therefrom, on the grounds that:

43 a. The communication was unlawfully intercepted;

- 1 b. The order of authorization under which it was intercepted is
 2 insufficient on its face; or
 3 c. The interception was not made in conformity with the order of
 4 authorization.

5 Such motion must be made before the trial, hearing, or proceeding unless
 6 there was no opportunity to make such motion or the person was not
 7 aware of the grounds of the motion. If the motion is granted, the
 8 contents of the intercepted wire or oral communication, or evidence
 9 derived therefrom, must be treated as having been obtained in violation
 10 of this Article.

11 (2) In addition to any other right to appeal, the State may appeal:

- 12 a. From an order granting a motion to suppress made under
 13 subdivision (1) of this subsection if the district attorney certifies
 14 to the judge granting the motion that the appeal is not taken for
 15 purposes of delay. The appeal must be taken within 30 days
 16 after the date the order of suppression was entered and must be
 17 prosecuted as are other interlocutory appeals; or
 18 b. From an order denying an application for an order of
 19 authorization, and the appeal may be made **ex parte** and must
 20 be considered **in camera** and in preference to all other pending
 21 appeals.

22 **"§ 15A-300.10. Reports concerning intercepted wire or oral communications.**

23 In January of each year, the Attorney General of this State must report to the
 24 Administrative Office of the United States Court the information required to be filed by
 25 Section 2519 of Title 18 of the United States Code, as heretofore or hereafter amended,
 26 and file a copy of the report with the Administrative Office of the Courts of North
 27 Carolina.

28 **"§ 15A-300.11. Recovery of civil damages authorized.**

29 Any person whose wire or oral communication is intercepted, disclosed or used in
 30 violation of this Article has a civil cause of action against any person who intercepts,
 31 discloses, or uses, or procures any other person to intercept, disclose, or use such
 32 communications, and is entitled to recover from any other person:

- 33 (1) Actual damages but not less than liquidated damages
 34 computed at the rate of one hundred dollars (\$100.00) a day for each
 35 day of violation or one thousand dollars (\$1,000), whichever is
 36 higher;
 37 (2) Punitive damages; and
 38 (3) A reasonable attorney's fee and other litigation costs
 39 reasonably incurred.

40 Good faith reliance on a court order or on a representation made by the Attorney
 41 General or a district attorney is a complete defense to any civil or criminal action
 42 brought under this Article.

43 **"§ 15A-300.12. Conformity to provisions of federal law.**

1 It is the intent of this Article to conform the requirements of all interceptions of wire
2 or oral communications conducted by investigative or law enforcement officers in this
3 State to provisions of Chapter 119 of the United States Code, except where the context
4 indicates a purpose to provide safeguards even more protective of individual privacy
5 and constitutional rights."

6 Sec. 7. Section 3 of this act is effective upon ratification. The remainder of
7 this act shall become effective October 1, 1989, and shall apply to offenses occurring on
8 or after that date.